

A BILL

*i n t i t u l e d*

An Act to amend the Customs Act 1967.

[ ]

**ENACTED** by the Parliament of Malaysia as follows:

**Short title and commencement**

1. (1) This Act may be cited as the Customs (Amendment) Act 2019.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette* and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

**Amendment of section 2**

2. The Customs Act 1967 [Act 235], which is referred to as the “principal Act” in this Act, is amended in section 2—

(a) in subsection (1)—

(i) by inserting before the definition of “agent” the following definition:

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

- (ii) by inserting after the definition of “aircraft” the following definition:

‘ “authorized body” means a government agency authorized under section 99B;’;

- (iii) by inserting after the definition of “computer” the following definition:

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

- (iv) by inserting after the definition of “customs airport” the following definitions:

‘ “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;’;

- (v) by inserting after the definition of “customs duty” the following definition:

‘ “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;’;

- (vi) by inserting after the definition of “customs warehouse” the following definition:

‘ “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;’;

- (vii) by substituting for the definition of “export” the following definition:

‘ “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;’;

- (viii) by substituting for the definition of “goods” the following definition:

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

- (ix) by substituting for the definition of “import” the following definition:

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

- (x) by substituting for the definition of “importer” the following definition:

‘ “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;

- (xi) by deleting the definition of “in transit”;
- (xii) by inserting after the definition of “intoxicating liquor” the following definition:
  - ‘ “issuing authority” means a body or government agency appointed under section 99c;’;
- (xiii) in the definition of “manufacture”, by substituting for paragraph (c) the following paragraph:
  - “(c) in relation to petroleum, the process of refining that include separation, conversion, purification, and blending of refinery streams or petrochemical streams; and”;
- (xiv) by inserting after the definition of “master” the following definitions:
  - ‘ “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;’;
- (xv) by substituting for the definition of “officer of customs” the following definition:
  - ‘ “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;’;
- (xvi) by inserting after the definition of “officer of customs” the following definition:

‘ “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;’;

- (xvii) by substituting for the definition of “owner” the following definition:

‘ “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;’;

(xviii) by inserting after the definition of “pilot of an aircraft” the following definitions:

‘ “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;’;

(xix) in the definition of “preventive vessel”, by deleting the words “and includes a vessel owned and employed for the prevention of smuggling by the Government of Singapore”;

- (xx) by inserting after the definition of “preventive vessel” the following definition:

‘ “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;’;

- (xxi) in the definition of “prohibited goods”, by inserting after the words “section 31” the words “and any subsidiary legislation made under this Act”;

- (xxii) by inserting after the definition of “proper officer of customs” the following definitions:

‘ “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;’;

- (xxiii) by substituting for the definition of “senior officer of customs” the following definition:

‘ “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;’;

(xxiv) by inserting after the definition of “sufferance wharf” the following definition:

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

(xxv) by inserting after the definition of “territorial waters” the following definitions:

‘ “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;’; and



(xxvi) by substituting for the definition of “value” the following definition:

‘ “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;’;

(b) by substituting for subsection (1A) the following subsection:

“ (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.”;

(c) by inserting after subsection (1A) the following subsection:

“ (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”; and

(d) in subsection (2)—

(i) by inserting after the words “customs or licensed warehouse,” the words “warehouse or other place approved by the Director General, petroleum supply base,”; and

(ii) by substituting for the words “any vessel, train, conveyance, aircraft, pipeline or place” the words “any conveyance”.

### **Amendment of section 3**

**3.** Section 3 of the principal Act is amended—

(a) in subsection (1), by substituting for the words “Director General of Customs and Excise and such number of Deputy Directors General, Assistant Directors General, Directors, Senior Assistant Directors and Assistant Directors of Customs and Excise” the words “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”;

(b) in subsection (3)—

(i) by inserting after the words “Assistant Directors General, Directors,” the words “Deputy Directors,”; and

(ii) by inserting after the word “sections” the words “10F,”; and

(c) in subsection (4), by substituting for the words “Superintendents and Assistant Superintendents of Customs and Excise” the words “Superintendents, Chief Assistant Superintendents, Senior Assistant Superintendents and Assistant Superintendents of Customs and Excise”.

### **Substitution of section 8**

4. The principal Act is amended by substituting for section 8 the following section:

#### **“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.”.

### **Amendment of Part II<sub>A</sub>**

5. Part II<sub>A</sub> of the principal Act is amended in the heading by inserting after the words “CUSTOMS RULING” the word “AND PUBLIC RULING”.

### **Amendment of section 10<sub>A</sub>**

6. Subsection 10<sub>A</sub>(1) of the principal Act is amended by inserting after paragraph (a) the following paragraph:

“(aa) the origin of goods;”.

### **New section 10<sub>F</sub>**

7. The principal Act is amended by inserting after section 10<sub>E</sub> the following section:

#### **“Public ruling**

10<sub>F</sub>. (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.”.

**New section 11A**

8. The principal Act is amended by inserting after section 11 the following section:

**“No customs duty levied on goods *bona fide* in transit and transhipment**

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

**Amendment of section 14A**

9. Section 14A of the principal Act is amended—

- (a) in the shoulder note, by substituting for the words “**customs duties**” the words “**customs duty, etc.**”;
- (b) by renumbering the existing provision as subsection (1);
- (c) in subsection (1) as renumbered, by substituting for the words “customs duties or any other prescribed fees or charges” the words “customs duty, surcharge, penalty, fee or other money”; and
- (d) by inserting after subsection (1) as renumbered the following subsection:

“(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.”.

**Amendment of section 16**

10. Section 16 of the principal Act is amended—

- (a) in the shoulder note, by substituting for the word “**Return**” the word “**Refund**”;

- (b) by renumbering the existing provision as subsection (1);
- (c) in subsection (1) as renumbered, by substituting for the words “customs duties” the words “customs duty, surcharge, penalty, fee or other money”;
- (d) in paragraph (b) of the proviso to subsection (1) as renumbered—
  - (i) by substituting for the words “under protest under section 13B” the words “under section 13A or paragraph 99H(2)(b) or pending the result of a review under section 143 or appeal under section 141T,”; and
  - (ii) by substituting for the words “after the decision on classification or valuation” the words “from the date of the decision on classification, valuation, verification of origin, review or appeal”; and
- (e) by inserting after subsection (1) as renumbered the following subsection:

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

**Amendment of section 17**

**11.** Section 17 of the principal Act is amended—

- (a) in subsection (1)—
  - (i) in paragraph (a), by substituting for the words “any customs duties or other moneys” the words “any customs duty, surcharge, penalty, fee or other money”;
  - (ii) in paragraph (b), by substituting for the words “such customs duties or other moneys,” the words “any customs duty, surcharge, penalty, fee or other money,”;

- (iii) by substituting for the words “such customs duties or other moneys” the words “such customs duty, surcharge, penalty, fee or other money”;
  - (iv) by substituting for the words “three years from the date on which customs duty was payable or deficient customs duty was paid” the words “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”; and
  - (v) by substituting for the words “until such customs duty” the words “until such customs duty, surcharge, penalty, fee or other money”;
- (b) by deleting subsection (2); and
- (c) by inserting after subsection (2) the following subsections:
- “ (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.”.

#### **Amendment of section 17A**

**12.** Section 17A of the principal Act is amended—

- (a) in the shoulder note, by substituting for the words “**customs duties**” the words “**customs duty, etc.**”;
- (b) in subsection (1)—
  - (i) by substituting for the words “any customs duties,” the words “any customs duty, surcharge, penalty, fee or other money, payable under this Act,”;

- (ii) by substituting for the words “any Director of Immigration” the words “the Director General of Immigration”;
  - (iii) by substituting for the words “particulars of the duties so payable” the words “particulars of the person reasonably suspected of having committed an offence”; and
  - (iv) by inserting after the words “all the duties” the words “, surcharges, penalties, fees or other moneys”;
- (c) in subsection (2), by substituting for the words “any Director of Immigration” the words “the Director General of Immigration”;
- (d) in subsection (3), by substituting for the word “on” the words “at the last known address of”;
- (e) in subsection (4), by substituting for the words “all the duties specified in the certificate” the words “all the duties, surcharges, penalties, fees or other moneys”; and
- (f) by deleting subsection (6).

### **New section 17B**

**13.** The principal Act is amended by inserting after section 17A the following section:

#### **“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.”.

### **Substitution of section 18**

**14.** The principal Act is amended by substituting for section 18 the following section:

**“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.”.

**Substitution of section 22B**

15. The principal Act is amended by substituting for section 22B the following section:

**“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.”.

**Amendment of section 22c**

**16.** Section 22c of the principal Act is amended—

- (a) by inserting after the words “Where any customs duty” the words “, surcharge, penalty, fee or other money”;
- (b) by inserting after the words “liable for the customs duty” the words “, surcharge penalty, fee or other money”; and
- (c) in the proviso, by inserting after the words “having priority over the customs duty” the words “, surcharge, penalty, fee or other money”.

**Amendment of section 24**

**17.** Section 24 of the principal Act is amended by inserting after the words “cleared at” the words “such customs airport,”.

**Amendment of section 29**

**18.** Section 29 of the principal Act is amended by inserting after the words “cleared at” the words “such customs airport,”.

**Amendment of section 29A**

**19.** Section 29A of the principal Act is amended—

- (a) by renumbering the existing provision as subsection (1); and
- (b) by inserting after subsection (1) as renumbered the following subsections:

“ (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.”.

### **New section 29B**

20. The principal Act is amended by inserting after section 29A the following section:

#### **“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.”.

### **Substitution of section 34**

21. The principal Act is amended by substituting for section 34 the following section:

#### **“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.”.

**New Part IVA**

**22.** The principal Act is amended by inserting after Part IV the following Part:

“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 35κ(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**

**35κ.** (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.”.

### **Amendment of section 36**

**23.** Subsection 36(3) of the principal Act is amended by substituting for the words “one thousand ringgit” the words “fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both”.

### **Amendment of section 37**

**24.** Subsection 37(3) of the principal Act is amended by substituting for the words “one thousand ringgit” the words “fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both”.

### **Amendment of section 38**

**25.** Section 38 of the principal Act is amended—

- (a) in the shoulder note, by substituting for the words “**Master to attend and answer questions when applying for port clearance, and deliver documents**” the words “**Port clearance before departure**”;
- (b) in subsection (1), by deleting the words “shall attend before the proper officer of customs, and”; and
- (c) in subsection (2), by deleting the words “complete, sign and”.

### **Amendment of section 44**

**26.** Subsection 44(3) of the principal Act is amended by substituting for the words “shall be liable on conviction before a Magistrate of the First Class to a fine of two thousand ringgit and to imprisonment for a term of twelve months” the words “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”.

**Amendment of section 48**

27. Section 48 of the principal Act is amended by inserting after subsection (3) the following subsection:

“ (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.”.

**Amendment of section 49**

28. Section 49 of the principal Act is amended by inserting after subsection (3) the following subsection:

“ (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.”.

**Substitution of section 52**

29. The principal Act is amended by substituting for section 52 the following section:

**“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.”.

### **Deletion of section 53**

30. The principal Act is amended by deleting section 53.

### **Substitution of section 54**

31. The principal Act is amended by substituting for section 54 the following section:

#### **“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.”.



**Amendment of section 55**

**32.** Section 55 of the principal Act is amended—

(a) in subsection (1)—

(i) by substituting for the words “two months” the words “one month”; and

(ii) by deleting the words “in duplicate”;

(b) by inserting after subsection (1) the following subsection:

“ (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.”;

(c) in subsection (2)—

(i) by substituting for the words “two months” the words “one month”;

(ii) by substituting for the words “five hundred ringgit” the words “five thousand ringgit”; and

(iii) by substituting for the words “two thousand ringgit” the words “ten thousand ringgit”; and

(d) by inserting after subsection (3) the following subsection:

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

**Substitution of section 56**

**33.** The principal Act is amended by substituting for section 56 the following section:

**“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.”.

### **Amendment of section 57**

**34.** Section 57 of the principal Act is amended—

(a) by substituting for the words “within seven days of the departure of such vessel, present to the proper officer of customs at the customs office” the words “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”; and

(b) by substituting for the words “substantially in the prescribed form, certified by such owner or agent, together with a duplicate copy thereof,” the words “in the prescribed form and certified by such owner or agent,”.

**Amendment of section 58**

**35.** Section 58 of the principal Act is amended—

- (a) by renumbering the existing provision as subsection (1);
- (b) in subsection (1) as renumbered, by substituting for the words “such vessel, attend in person at the customs office, and make a written or oral declaration in the prescribed form or manner of all cargo shipped on board his vessel and the port or ports of destination of such cargo,” the words “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
- (c) by inserting after subsection (1) as renumbered the following subsection:

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

**Amendment of section 59**

**36.** Section 59 of the principal Act is amended—

- (a) by substituting for the words “before the departure of such aircraft, present to the proper officer of customs at the customs office” the words “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”; and
- (b) by substituting for the words “substantially in the prescribed form, certified by such pilot or agent, together with a duplicate copy thereof,” the words “in the prescribed form and certified by such pilot or agent,”.

**Amendment of section 60**

**37.** Section 60 of the principal Act is amended—

(a) by renumbering the existing provision as subsection (1);

(b) in subsection (1) as renumbered—

(i) by substituting for the words “to which dutiable goods are consigned, shall on demand produce” the words “to which goods are consigned, shall produce”; and

(ii) by inserting after the word “waybill” the words “or any other document approved by the Director General”; and

(c) by inserting after subsection (1) as renumbered the following subsection:

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

**Amendment of section 65**

**38.** Section 65 of the principal Act is amended—

(a) in subsection (1)—

(i) by substituting for the words “at his absolute discretion, on payment of such fees as may be fixed by him in each case,” the words “on payment of such fees as may be prescribed,”; and

(ii) by deleting the words “and any other goods”;

(b) by inserting after subsection (1) the following subsection:

“ (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.”; and

(c) by inserting after subsection (4) the following subsections:

“ (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.”.

**Amendment of section 65A**

**39.** Section 65A of the principal Act is amended—

(a) in subsection (1)—

- (i) by substituting for the words “In respect of warehouse licensed under section 65, the Director General may, at his absolute discretion,” the words “The Director General may,”;
- (ii) by substituting for the words “grant an additional licence to the licensee” the words “grant a licence to any person”; and
- (iii) by inserting after the word “withdraw” the words “, suspend or cancel”;

(b) by inserting after subsection (1) the following subsection;

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

(c) in subsection (3)—

- (i) in paragraph (a), by substituting for the word “warehouse” the words “licensed manufacturing warehouse”; and
- (ii) in paragraph (b), by substituting for the word “warehouse” the words “licensed manufacturing warehouse”; and

(d) by deleting subsection (4).

**New sections 65AA, 65AB and 65AC**

**40.** The principal Act is amended by inserting after section 65A the following sections:

**“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.”.

### **Amendment of section 65B**

**41.** Section 65B of the principal Act is amended—

(a) in subsection (1), by substituting for the words “a licensed manufacturer” the words “licensed under this Part.”;

(b) in subsection (2A)—

(i) by inserting after the words “subsection (1)” the words “or (2B)”;

(ii) by substituting for the words “ten thousand ringgit” the words “fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both”;

(c) by inserting after subsection (2A) the following subsection:

“(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.”.

**Amendment of section 65c**

**42.** Section 65c of the principal Act is amended—

(a) in subsection (1)—

- (i) by substituting for the words “the property of a licensed manufacturer” the words “the property of a licensee under this Part”;
- (ii) by substituting for the words “assets of the licensed manufacturer” the words “assets of the licensee”; and
- (iii) by substituting for the words “or manufactured by the licensed manufacturer” the words “by the licensee”;

(b) in subsection (2A)—

- (i) by inserting after the words “subsection (1)” the words “or (2B)”;
- (ii) by substituting for the words “ten thousand ringgit” the words “fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both”;

(c) by inserting after subsection (2A) the following subsection:

“(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.”.

**Amendment of section 65D**

**43.** Subsection 65D(1) of the principal Act is amended—

- (a) by deleting the words “at his absolute discretion”; and
- (b) by substituting for the words “may suspend or withdraw” the words “may withdraw, suspend or cancel”.



**Amendment of section 65E**

**44.** Subsection 65E(1) of the principal Act is amended—

- (a) by deleting the words “at his absolute discretion”; and
- (b) by substituting for the words “may suspend or withdraw” the words “may withdraw, suspend or cancel”.

**New section 65F**

**45.** The principal Act is amended by inserting after section 65E the following section:

**“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.”.

**Substitution of section 66**

**46.** The principal Act is amended by substituting for section 66 the following section:

**“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.”.

#### **Amendment of section 68**

**47.** Section 68 of the principal Act is amended by inserting after the words “any customs or licensed warehouse” the words “or in a warehouse or other place approved by the Director General”.

#### **Amendment of section 74**

**48.** Section 74 of the principal Act is amended by substituting for subsection (7) the following subsection:

- “(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.”.

#### **Amendment of section 75**

**49.** Section 75 of the principal Act is amended—

- (a) by substituting for paragraph (b) the following paragraph:
  - “(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;”;

- (b) by substituting for the words “or any other warehouse” the words “, or warehouse or other place”; and
- (c) in the proviso, by substituting for the words “in a licensed warehouse may be removed therefrom” the words “may be removed from the customs or licensed warehouse or the warehouse or other place approved by the Director General”.

### **Deletion of section 76**

**50.** The principal Act is amended by deleting section 76.

### **New Part VIII<sub>A</sub>**

**51.** The principal Act is amended by inserting after section 77 the following Part:

#### **“PART VIII<sub>A</sub>**

#### **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.”.

**Amendment of Part IX**

**52.** Part IX of the principal Act is amended—

- (a) by inserting before section 87A the subheading of “C — *General Provisions*”; and
- (b) by deleting after section 87A the subheading “C — *General Provisions*”.

**Substitution of section 78**

**53.** The principal Act is amended by substituting for section 78 the following section:

**“Declaration of dutiable goods on import**

**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.”.

### **New sections 78A, 78B and 78C**

**54.** The principal Act is amended by inserting after section 78 the following sections:

#### **“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.”.

### **Amendment of section 79**

**55.** Section 79 of the principal Act is amended—

(a) in subsection (1)—

(i) by substituting for the semicolon after the words “origin of such goods” a full stop; and

(ii) by deleting the proviso; and

(b) by deleting subsection (2).

**Amendment of section 80**

**56.** Subsection 80(1) of the principal Act is amended—

- (a) in paragraph (b), by inserting after the semicolon at the end of the paragraph the word “and”;
- (b) in paragraph (c), by inserting after the words “charge leviable thereon” the words “, if any,”; and
- (c) by deleting the proviso.

**Amendment of section 87**

**57.** Section 87 of the principal Act is amended—

- (a) by substituting for the words “the particulars for which provision is made in the respective prescribed forms:” the words “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.”; and
- (b) by deleting the proviso.

**Substitution of section 87A**

**58.** The principal Act is amended by substituting for section 87A the following section:

**“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.”.

#### **New sections 88A and 88B**

**59.** The principal Act is amended by inserting after section 88 the following sections:

#### **“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.

### **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.”.

### **Deletion of section 91A**

**60.** The principal Act is amended by deleting section 91A.

### **Amendment of section 92**

**61.** Section 92 of the principal Act is amended—

(a) in the shoulder note, by substituting for the words “**in duplicate**” the words “**in copies**”; and

(b) by substituting for the words “in duplicate or in such other number of copies as the person,” the words “in such number of copies as the proper officer of customs,”.

### **Amendment of Part X**

**62.** The heading of Part X of the principal Act is amended by substituting for the word “DRAWBACK” the words “REFUND AND DRAWBACK OF DUTY”.

### **Amendment of section 93**

**63.** Section 93 of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting the words “section 95 and”;

- (ii) in paragraph (b), by substituting for the words “fifty ringgit” the words “two hundred ringgit”;
  - (iii) in paragraph (c), by substituting for the words “twelve months” the words “three months”; and
- (b) in subsection (2), by deleting the words “, or at the rate of customs duty leviable on goods of a like description at the time of re-export of the goods, whichever is the lower”.

#### **Amendment of section 94**

**64.** Section 94 of the principal Act is amended—

- (a) by deleting the words “in duplicate, substantially”; and
- (b) by deleting the words “, where goods of a like description are liable to customs duty.”.

#### **Deletion of section 95**

**65.** The principal Act is amended by deleting section 95.

#### **Amendment of section 97**

**66.** Section 97 of the principal Act is amended by substituting for the words “home use” the words “home consumption”.

#### **Amendment of section 99**

**67.** Paragraph 99(1)(d) the principal Act is amended—

- (a) by inserting after the words “given on the” the word “prescribed”; and
- (b) by deleting the words “and established”.

**New section 99A**

**68.** The principal Act is amended by inserting after section 99 the following section:

**“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 any 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.”.

**New Part XA**

**69.** The principal Act is amended by inserting after Part X the following Part:

“PART X<sub>A</sub>

ORIGIN OF GOODS, AND PREFERENTIAL AND  
NON-PREFERENTIAL TARIFF TREATMENT

**Authorized body**

**99B.** (1) The Minister may authorize any Government agency to perform the functions under sections 99E and 99H.

(2) The authorization under subsection (1) shall be in writing and shall be subject to such terms and conditions as the Minister deems fit.

(3) The Minister may revoke any authorization given under subsection (1) as the Minister deems fit.

(4) Where a government agency ceases to be an authorized body under this section, that government agency shall surrender to the Minister all articles and documents received in relation to the authorization.

**Issuing Authority**

**99c.** (1) The Minister may, in consultation with the Minister charged with the responsibility for international trade and industry, appoint any body or Government agency as an issuing authority to issue a preferential or non-preferential certificate of origin if the Minister is satisfied that the body or Government agency meets the prescribed criteria subject to such terms and conditions as the Minister deems fit.

(2) The Minister may revoke the appointment made under subsection (1) as the Minister deems fit.



(3) Where a body or Government agency ceases to be an issuing authority under this section, that body or Government agency shall surrender to the Minister all articles and documents received in relation to the appointment.

### **Application for and issuance of preferential and non-preferential certificate of origin**

**99D.** (1) A producer or an exporter may apply for a preferential and non-preferential certificate of origin to the issuing authority.

(2) The issuing authority may, upon evaluating and determining the application for certificate of origin under subsection (1), approve the application and issue a certificate of origin subject to such terms and conditions as the authority deems fit, or refuse the application.

### **Registration for producing a declaration of origin**

**99E.** (1) An importer, a producer or an exporter may apply to the authorized body for registration for the purpose of producing a declaration of origin.

(2) Upon registration under subsection (1)—

(a) an importer may produce a declaration of origin for the purposes of claiming the preferential tariff treatment under paragraph 99G(c); and

(b) a producer or an exporter may produce a declaration of origin for the purposes of claiming the preferential tariff treatment under the relevant trade agreements.

### **Responsibility of importer, producer or exporter**

**99F.** (1) In any declaration of goods imported or to be exported, the importer, producer or the exporter shall give the true and correct origin of the goods declared.

(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.

### **Claim for preferential tariff treatment**

**99G.** An importer is eligible to claim for preferential tariff treatment if—

- (a) he has complied with the requirement of the origin of goods under the relevant orders made under section 11 pertaining to the relevant trade agreements;
- (b) he has been registered under section 99E, if applicable; and
- (c) he has produced a declaration of origin or a preferential certificate of origin.

### **Verification of document and information**

**99H.** (1) When there is reasonable doubt as to the authenticity of the document or to the accuracy of the information regarding the origin of the imported goods or goods to be exported or certain parts of the goods, the proper officer of customs or authorized body may make a verification as to the authenticity of the document and the accuracy of the information.

(2) Pending the verification under subsection (1), the proper officer of customs may—

- (a) suspend the granting of the preferential tariff treatment; and
- (b) release the goods to the importer subject to—
  - (i) the payment of customs duty payable under the customs duty order made under section 11; or

- (ii) the payment of customs duty payable based on the preferential tariff treatment and if such preferential tariff treatment is less than the amount of customs duty payable under subparagraph (b)(i), a security for the difference being furnished.

(3) Notwithstanding subsection (2), the proper officer of customs may detain the goods if—

- (a) the goods are prohibited goods; or
- (b) there is reasonable cause to believe that any form of fraud, misrepresentation, false declaration or non-disclosure of material fact has taken place at the time of import.

(4) Upon completion of the verification under subsection (1), the proper officer of customs shall—

- (a) in the case where the document is authentic or the information is accurate, return the security furnished under subparagraph (2)(b)(ii); and
- (b) in the case where the document is not authentic or the information is not accurate—
  - (i) refuse to give the preferential tariff treatment; and
  - (ii) forfeit the security furnished under subparagraph (2)(b)(ii).

### **Revocation or suspension of certificate of origin**

**99I.** (1) The issuing authority may revoke or suspend the certificate of origin issued under section 99D if—

- (a) any term or condition specified in the certificate of origin has been contravened; or
- (b) the issuing authority considers that the producer or exporter who has been issued with the certificate of origin is no longer a fit and proper person to hold the certificate.

(2) Where the certificate of origin has been revoked or suspended under subsection (1), the producer or exporter shall be notified in writing of such revocation or suspension.

(3) Any person who is dissatisfied with the decision under this section may, within thirty days from the date on which notice of the decision is given, appeal to the issuing authority.”.

### **Substitution of section 100A**

**70.** The principal Act is amended by substituting for section 100A the following section:

#### **“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.”.

### **New section 100B**

**71.** The principal Act is amended by inserting after section 100A the following section:

#### **“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 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).”.

### **Amendment of section 102**

**72.** Paragraph 102(2)(b) of the principal Act is amended by substituting for the words “to his usual or last known place of abode” the words “to his last known address”.

### **New section 102A**

**73.** The principal Act is amended by inserting after section 102 the following section:

#### **“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.”.

### **Amendment of section 103**

**74.** Subsection 103(2) of the principal Act is amended by inserting after the words “The baggage of passengers” the words “or any other person”.

### **Amendment of section 104**

**75.** Subsection 104(2) of the principal Act is amended by deleting the words “, on demand,”.

### **Amendment of section 105**

**76.** Section 105 of the principal Act is amended—

(a) by renumbering the existing provision as subsection (1);  
and

(b) by inserting after subsection (1) as renumbered the following subsection:

“ (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.”.

**Amendment of section 106A**

77. Section 106A of the principal Act is amended—

(a) by substituting for subsection (1) the following subsection:

“(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.”;

(b) in subsection (2)—

(i) by substituting for paragraph (a) the following paragraph:

“(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.”;

(ii) by substituting for paragraph (d) the following paragraph:

“(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;” and

(iii) in paragraph (f), by substituting for the words “the importer or the person who has dealings with such importer” the words “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)”;

(c) in subsection (3), by substituting for the words “an importer carries on his business or where a person who has dealings with such importer” the words “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)”;

and

(d) by inserting after subsection (4) the following subsection:

“ (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.”.

### **Amendment of section 107**

**78.** Section 107 of the principal Act is amended—

(a) in subsection (1)—

- (i) by substituting for the words “dwelling-house, shop, or other building or place” the words “conveyance, premises or place”;
- (ii) in paragraph (a), by substituting for the words “dwelling-house, shop, or other building or place” the words “conveyance, premises or place”; and
- (iii) in paragraph (b), by substituting for the words “dwellinghouse, shop, building or place” the words “conveyance, premises or place”;

(b) in subsection (2)—

- (i) in paragraph (a), by substituting for the words “dwellinghouse, shop, or other building or place” the words “conveyance, premises or place”;
- (ii) in paragraph (b), by inserting after the words “forcibly enter such” the words “conveyance, premises or”;
- (iii) in paragraph (c), by inserting the word “and” at the end of the paragraph; and

(iv) in paragraph (d), by substituting for the words “such place until such place has been searched” the words “such conveyance, premises or place until the search has been completed”; and

(c) by inserting after subsection (2) the following subsections:

“ (3) Where by reason of its nature, size or amount it is not practicable to remove any goods, document or thing seized under this section, the officer of customs may, by any means, seal the conveyance, premises or place or such goods, document or thing in the conveyance, premises or place in which it is found.

(4) A person who, without lawful authority, breaks, tampers with or damages the seal referred to in subsection (3) or removes the goods, document or thing 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.”.

### **Amendment of section 108**

**79.** Section 108 of the principal Act is amended—

(a) by substituting for the words “any dwelling-house, shop, or other building or place” the words “any conveyance, premises or place”; and

(b) by substituting for the words “in respect of such dwelling-house, shop, or other building or place” the words “in respect of such conveyance, premises or place”.

### **Amendment of section 110**

**80.** Subsection 110(1) of the principal Act is amended—

(a) by substituting for the words “A proper officer of customs” the words “For the purposes of Part IX, a proper officer of customs”;

(b) by deleting the words “at which the goods produced to an officer of customs under section 80 are deposited”.

**Amendment of section 111A**

**81.** Section 111A of the principal Act is amended—

(a) in subsection (1), by inserting after the words “he may think fit; and any proper officer” the words “of customs”;

(b) in subsection (2)—

(i) by inserting after the words “reasonable signal of a proper officer” the words “of customs”; and

(ii) by substituting for the words “shall be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment; and any proper officer may, without warrant, arrest such person unless he gives his name and address and otherwise satisfies the proper officer that he will duly answer any summons or other proceedings that may be taken against him” the words “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”; and

(c) in subsection (3), by inserting after the words “No proper officer” the words “of customs”.

**Amendment of section 111B**

**82.** Section 111B of the principal Act is amended—

(a) in subsection (2)—

(i) in paragraph (a), by deleting the word “and” at the end of the paragraph; and

(ii) by inserting after paragraph (a) the following paragraph:

“(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”; and

(b) by inserting after subsection (3) the following subsection:

“ (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.”.

### **New section 111c**

**83.** The principal Act is amended by inserting after section 111B the following section:

#### **“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 paragraph (1)(a), (b) or (c).”.

### **Amendment of section 112**

**84.** Section 112 of the principal Act is amended—

(a) by renumbering the existing provision as subsection (1);  
and

(b) by inserting after subsection (1) as renumbered the following subsection:

“ (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.”.

**Substitution of section 113**

**85.** The principal Act is amended by substituting for section 113 the following section:

**“Search of persons etc., 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.”

**Amendment of section 114**

**86.** Section 114 of the principal Act is amended—

(a) in subsection (1)—

- (i) by substituting for the words “conveyance, vessel not exceeding two hundred tons nett registered tonnage, or aircraft other than an aircraft engaged in international carriage” the words “conveyance other than vessel exceeding two hundred tons nett registered tonnage or aircraft engaged in international carriage”; and
- (ii) by inserting after the words “may be seized by any officer of customs” the words “on the person or”;

(b) in subsection (2), by substituting for the words “receptacles, packages, conveyances, vessels or aircraft” the words “receptacles, packages or conveyances referred to in subsection (1)”;

(c) in subsection (3)—

- (i) by substituting for the words “, conveyances, vessels or aircraft” the words “and such receptacles, packages or conveyances referred to in subsection (1)”;
- (ii) by substituting for the words “his place of abode, if known:” the words “the person’s last known address.”; and

(iii) by deleting the proviso;

(d) by deleting subsection (5); and

(e) in subsection (6), by substituting for the words “all equipment” the words “all tackles, equipment and furnishing”.



**New section 114A**

**87.** The principal Act is amended by inserting after section 114 the following section:

**“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.”.

**Amendment of section 115**

**88.** Section 115 of the principal Act is amended—

(a) in the shoulder note, by substituting for the words “**movable property**” the word “**goods**”;

(b) in subsection (1)—

(i) by substituting for the words “movable property has been seized” the words “goods have been seized”;

(ii) in paragraph (a)—

(A) by substituting for the words “return the movable property to the owner thereof or to the person from whose possession, custody or control it was seized” the words “return the goods to the owner thereof or to the person from whose possession, custody or control the goods were seized”; and

(B) by substituting for the words “the movable property shall be surrendered” the words “the goods shall be surrendered”;

(iii) in paragraph (b)—

(A) by substituting for the words “return the movable property to the owner thereof or to the person from whose possession, custody or control it was seized” the words “return the goods to the owner thereof or to the person from whose possession, custody or control the goods were seized”;

(B) by substituting for the words “the movable property is so returned to dispose of the same, such return being subject to” the words “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”;

(C) in subparagraph (i)—

(CA) by substituting for the words “for property” the words “for goods”; and

(CB) by substituting for the words “the property or goods” the words “such goods”;

(D) in subparagraph (ii), by inserting after the word “thereof” the words “, if any”; and

(E) in subparagraph (iii), by inserting after the words “any written law” the words “, if any”; and

(iv) in paragraph (c)—

(A) by substituting for the words “the moveable property, as appropriate in the circumstances, where it is a living creature” the words “goods, as appropriate in the circumstances, where the goods are living creatures”;

(B) by substituting for the words “it is of a perishable” the words “the goods are of perishable”; and

(C) by substituting for the words “and where it is so sold” the words “and where the goods are so sold”;

(c) in subsection (2)—

(i) in paragraph (a), by substituting for the words “movable property” the word “goods”;

(ii) in paragraph (b), by inserting after the words “paragraph (1)(a)” the words “or (b)”;

(iii) by substituting for the words “three years” the words “five years”; and

(iv) by substituting for the words “ten thousand ringgit” the words “one hundred thousand ringgit”;

(d) in subsection (3), by substituting for the words “the movable property under paragraph (1)(a)” the words “the goods under paragraph (1)(a) or (b)”;

(e) in subsection (4), by substituting for the words “the property is returned under paragraph (1)(a)” the words “the goods are returned under paragraph (1)(a) or (b)”;  
and

(f) by deleting subsection (7).

### **Amendment of section 115A**

**89.** Subsection 115A(1) of the principal Act is amended—

(a) by substituting for the words “any movable property returned” the words “any goods returned”; and

(b) by substituting for the words “the movable property” the words “the goods”.

**Amendment of section 116**

**90.** Section 116 of the principal Act is amended—

(a) in subsection (3), by substituting for the words “charged with an offence under this Act or any regulation made thereunder” the words “arrested under subsection (1)”;

(b) in subsection (5), by substituting for the words “ Every person so arrested may be released from custody—” the words “Subject to such conditions as the Director General deems fit, every person so arrested may be released from custody—”; and

(c) by inserting after subsection (6) the following subsections:

“ (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.”.

**Amendment of section 116A**

**91.** Paragraph 116A(7)(b) of the principal Act is amended by substituting for the word “property” the word “goods”.

**Amendment of section 119**

**92.** Section 119 of the principal Act is amended by substituting for the words “or penalties” the words “or surcharge”.

**Amendment of section 121**

**93.** Section 121 of the principal Act is amended—

(a) by substituting for subsection (5) the following subsection:

“ (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].”; and

(b) by inserting after subsection (5) the following subsection:

“ (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.”.

**New sections 121A and 121B**

**94.** The principal Act is amended by inserting after section 121 the following sections:

**“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.”.

### **Amendment of section 122**

**95.** Section 122 of the principal Act is amended—

(a) in the shoulder note, by deleting the words “**vessels and**”;  
and

(b) by deleting the words “vessel or”.



**Amendment of section 123**

96. Section 123 of the principal Act is amended—

(a) by substituting for the scale 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”;

(b) by substituting for the words “for every hundred ringgit after the first two hundred ringgit” the words “for every ten thousand ringgit after the first twenty thousand ringgit”.

**Amendment of section 124A**

97. Section 124A of the principal Act is amended—

(a) in subsection (1), by substituting for the words “name and address” the words “name, address, identification card number and passport number”; and

(b) in subsection (2), by substituting for the words “a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both” the words “a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding seven years or to both”.

**Substitution of section 125A**

**98.** The principal Act is amended by substituting for section 125A the following section:

**“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.”.

### **Amendment of section 126**

**99.** Section 126 of the principal Act is amended by inserting after the word “forfeiture” the words “and all forfeited goods shall be disposed of in accordance with the directions of the Director General”.

**Amendment of section 127**

**100.** Subsection 127(1A) of the principal Act is amended by substituting for the words “movable property” the word “goods”.

**Amendment of section 128**

**101.** Section 128 of the principal Act is amended—

(a) in subsection (1), by substituting for the words “one calendar month from the date of seizure of the goods” the words “thirty days from the date of the notice of seizure of the goods”;

(b) by substituting for subsection (3) the following subsection:

“(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.”; and

(c) by inserting after subsection (3) the following subsection:

“(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.”.

**Amendment of section 129**

**102.** Section 129 of the principal Act is amended—

- (a) by substituting for the words “section 127 or 128” the words “section 127, 128 or 131”; and
- (b) by substituting for the words “or payment” the words “on payment”.

**Substitution of section 131**

**103.** The principal Act is amended by substituting for section 131 the following section:

**“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.”.

**New section 131A**

**104.** The principal Act is amended by inserting after section 131 the following section:

**“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.”.

**New section 132A**

**105.** The principal Act is amended by inserting after section 132 the following section:

**“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.”.

**Amendment of section 133**

**106.** Paragraph 133(1)(g) of the principal Act is amended by inserting after the words “of goods” the words “imported or”.

**Amendment of section 135**

**107.** Subsection 135(1) of the principal Act is amended—

- (a) in subsubparagraph (iv)(bb), by substituting for the words “five years” the words “seven years”; and
- (b) in subsubparagraph (v)(bb), by substituting for the words “five years” the words “seven years”.

**New sections 135A, 135B and 135C**

**108.** The principal Act is amended by inserting after section 135 the following sections:

**“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.”.

**Amendment of section 137**

**109.** Subsection 137(1) of the principal Act is amended—

(a) in paragraph (a), by deleting the words “vessel or aircraft or other means of”; and

(b) in paragraph (c), by deleting the words “vessel, aircraft or”.

**Amendment of section 142**

**110.** Section 142 of the principal Act is amended—

(a) by inserting after paragraph (4) the following paragraph:

“ (4A) to regulate the landing and loading of goods under section 33;”;

(b) by inserting after paragraph (9) the following paragraph:

“ (9A) to regulate any matter relating to port clearance;”;

(c) in paragraph (13), by inserting after the words “customs and licensed warehouses” the words “, warehouses or other places approved by the Director General or petroleum supply bases,”;

(d) in paragraph (15), by deleting the words “, other than warehouse licences”;

(e) in paragraph (19), by inserting after the words “to regulate the manner” the words “and to provide the conditions”;

(f) by inserting after paragraph (19A) the following paragraph:

“ (19B) to regulate any matter relating to manifest;”;

(g) by deleting paragraph (25);

(h) in paragraph (26), by inserting after the words “the offences which may be compounded” the words “, the criteria for compounding the compoundable offence”; and

(i) by inserting after paragraph (35E) the following paragraphs:

“ (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;”.

### **Amendment of section 143**

**111.** Section 143 of the principal Act is amended—

- (a) in subsection (4) by substituting for the words “subsection 128(3)” the words “subsection 128(3A)”; and
- (b) in subsection (5) by substituting for the words “subsection 128(3)” the words “subsection 128(3A)”.

### **Amendment of section 145A**

**112.** Section 145A of the principal Act is amended by substituting for the words “customs duty, penalty or surcharge” the words “customs duty, surcharge, penalty, fee or other money”.

### **New section 145B**

**113.** The principal Act is amended by inserting after section 145A the following section:

#### **“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.”.

#### **Amendment of section 154**

**114.** Section 154 of the principal Act is amended in the definition of “principal customs area”, by substituting for the words “and Tioman” the words “, Tioman and Pangkor”.

#### **Amendment of section 156**

**115.** Section 156 of the principal Act is amended in the proviso, by deleting the words “as if Labuan were a place outside Malaysia”.

#### **Amendment of section 163**

**116.** Section 163 of the principal Act is amended in the proviso, by substituting for the words “customs licensed or approved warehouse” the words “customs or licensed warehouse, or warehouse or other place approved by the Director General”.

#### **Amendment of section 163A**

**117.** Section 163A of the principal Act is amended in the definition of “principal customs area”, by substituting for the words “and Tioman” the words “, Tioman and Pangkor”.

**Amendment of section 163c**

**118.** Section 163C of the principal Act is amended—

- (a) by substituting for the words “, 87 and 87A thereof” the words “and 87 and paragraph 87A(1)(b)”; and
- (b) by substituting for the words “vehicles transporting such goods as if Langkawi were a place outside Malaysia” the words “vehicles, vessels and aircrafts transporting such goods”.

**Amendment of section 163D**

**119.** Section 163D of the principal Act is amended by substituting for the words “vessel or aircraft” wherever appearing the words “vehicle, vessel or aircraft”.

**Amendment of section 163J**

**120.** Section 163J of the principal Act is amended in the definition of “principal customs area”, by substituting for the words “and Tioman” the words “, Tioman and Pangkor”.

**Amendment of section 163L**

**121.** Section 163L of the principal Act is amended—

- (a) by substituting for the words “, 87 and 87A thereof” the words “and 87 and paragraph 87A(1)(b)”; and
- (b) by deleting the words “as if Tioman were a place outside Malaysia” .

**Amendment of section 163M**

**122.** Section 163M of the principal Act is amended by substituting for the words “vessel or aircraft” wherever appearing the words “vehicle, vessel or aircraft”.

**New Part XIXD**

**123.** The principal Act is amended by inserting after Part XIXC the following Part:

**“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**

**163r.** 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.”.

### **Deletion of Part XX**

**124.** The principal Act is amended by deleting Part XX.

### **Savings and transitional provision**

**125.** (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 offence 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.

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#### EXPLANATORY STATEMENT

This Bill seeks to amend the Customs Act 1967 (“Act 235”). The main purpose of the amendment is to improve customs procedures in particular relating to the payment of customs duty, surcharge, penalty, fee or other money, submission of manifest, obligation to keep records of imported goods, movement of goods through transit and transshipment, warehousing of imported goods, and customs clearance. The amendment also provides for the licensing of a petroleum supply base, for matters relating to origin of goods, preferential and non-preferential tariff treatment, for the exclusion of Pangkor from the principal customs area, and for special provisions dealing with Pangkor as a duty free island. The amendment also seeks to strengthen the enforcement powers of the officers of Customs and to increase the amount of penalty for offences under Act 235.

2. *Clause 1* contains the short title and the provision on the commencement of the proposed Act.

3. *Clause 2* seeks to amend section 2 of Act 235.

*Subclause 2(a)* seeks to provide for new definitions of “accredited person”, “authorized body”, “conveyance”, “customs clearance”, “customs control”, “customs office”, “declaration of origin”, “excise duty”, “issuing Authority”, “Minister”, “non-preferential certificate of origin”, “origin of goods”, “postal article”, “preferential certificate of origin”, “preferential tariff treatment”, “producer”, “public ruling”, “release”, “surcharge”, “transit”, “transshipment” and deleting the definition of “in transit”. This *clause* also seeks to amend the definitions of “export”, “goods”, “import”, “importer”, “intoxicating liquor”, “manufacture”, “officer of customs”, “owner”, “preventive vessel”, “prohibited goods”, “senior officer of customs” and “value”.

*Subclause 2(b)* seeks to amend subsection 2(1A) of Act 235 to clarify that 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 Act 235 shall be applicable to a free zone.

*Subclause 2(c)* seeks to introduce a new subsection 2(1B) into Act 235 to provide for the definitions of “free zone” and “principal customs area”.

*Subclause 2(d)* seeks to amend subsection 2(2) of Act 235 to provide that for the purposes of Act 235, goods shall be deemed to be under customs control whilst the goods are deposited or held in any warehouse or other place approved by the Director General or petroleum supply base.

4. *Clause 3* seeks to amend section 3 of Act 235.

*Subclause 3(a)* seeks to amend subsection 3(1) of Act 235 to provide for the appointment of Deputy Directors for the purposes of Act 235 and any written law relating to excise.

*Subclause 3(b)* seeks to amend subsection 3(3) of Act 235 to provide that the Deputy Directors shall also be subject to the general direction of the Director General and to provide that Deputy Directors General, Assistant Directors General, Directors, Deputy Directors, Senior Assistant Directors and Assistant Directors shall have and exercise all powers conferred on the Director General under Act 235 other than those conferred by sections 10F, 13B, 22 and 145.

*Subclause 3(c)* seeks to amend subsection 3(4) of Act 235 to provide for the appointment of Chief Assistant Superintendents and Senior Assistant Superintendents for the purposes of Act 235 and any written law relating to excise.

5. *Clause 4* seeks to substitute section 8 of Act 235 to no longer allow any District Officer or Assistant District Officer in any district to exercise all the powers conferred by Act 235 on senior officers of customs and to clarify that the powers exercised by all police officers are only in relation to Part XII of Act 235 (Inspection, Investigation, Search, Seizure and Arrest).

6. *Clause 6* seeks to introduce a new subparagraph (*aa*) into subsection 10A(1) of Act 235 to provide that any person may apply to the Director General for a customs ruling in respect of the origin of goods.

7. *Clause 7* seeks to introduce a new section 10F into Act 235 to empower the Director General to make public rulings on the application of any provision of Act 235.

8. *Clause 8* seeks to introduce a new section 11A into Act 235 to provide that 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.

9. *Clause 9* seeks to amend section 14A of Act 235.

*Subclause 9(c)* seeks to amend subsection 14A(1) of Act 235 as renumbered to empower the Minister to remit the whole or any part of the customs duty, surcharge, penalty, fee or other money payable under Act 235.

*Subclause 9(d)* seeks to introduce a new subsection (2) into section 14A of Act 235 to provide that where a person has paid any of the customs duty, surcharge, penalty, fee or other money payable under Act 235 to which remission has been granted under subsection 14A(1) as renumbered, he shall be entitled to a refund of such customs duty, surcharge, penalty, fee or other money which had been remitted.

10. *Clause 10* seeks to amend section 16 of Act 235.

*Subclause 10(d)* seeks to amend the proviso to paragraph 16(1)(b) of Act 235 to provide that 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 of Act 235, 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.

*Subclause 10(e)* seeks to introduce a new subsection 16(2) into Act 235 to provide that a claim under subsection 16(1) of Act 235 shall be supported by such documents as required by the Director General.

11. *Clause 11* seeks to amend section 17 of Act 235.

*Subclause 11(a)* seeks to amend subsection 17(1) of Act 235 to provide that where customs duty, surcharge, penalty, fee or other money have not been paid or erroneously refunded due to inadvertence error or misconstruction on the part of any officer of customs, or due to unintentional misstatement as to value, quantity or description by any person, the person liable to pay such customs duty, surcharge, penalty, fee or other money 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 the customs duty, surcharge, penalty, fee or other money was payable or the deficient customs duty, surcharge, penalty, fee or other money was paid, or the refund was made, as the case may be.

*Subclause 11(b)* seeks to delete subsection 17(2) of Act 235. The provision relating to empowering the Director General to allow payment of any customs duty, surcharge, penalty, fee or other money by instalment is redrafted as the proposed section 17B in *clause 13*.

*Subclause 11(c)* seeks to introduce the following new subsections (3), (4), (5), (6) and (7) into section 17 of Act 235.

The proposed subsection 17(3) seeks to provide that subsection 17(1) of Act 235 shall not prejudice the exercise of the rights and powers of the Director General to seize or, subject to the proposed subsection 17(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 17(1) of Act 235 or the proposed subsection 17(7), or any outstanding balance thereof.

The proposed subsection 17(4) seeks to empower the Director General to sell the goods under customs control belonging to a person liable to pay the amount due under subsection 17(1) of Act 235 if the customs duty, surcharge, penalty, fee or other money or deficiency, or the refund to be repaid remain unpaid by the person, as the case may be, after giving not less than thirty days' notice in writing or in the *Gazette*.

The proposed subsection 17(5) seeks to provide that the proceeds of sale of any goods under the proposed subsection 17(4) shall be applied to the payment of the customs duty, surcharge, penalty, fee or other money, or 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 17(1) of Act 235 and if such person cannot be found within one month of the sale, such surplus shall be paid to the Consolidated Fund.

The proposed subsection 17(6) seeks to provide that the goods under customs control belonging to a person liable to pay the amount due under the subsection 17(1) of Act 235 shall be forfeited to the Government and shall be disposed of in such manner as the Director General may direct if at the sale of any such goods no sufficient bid is forthcoming to defray the customs duty, surcharge, penalty, fee or other money payable or the refund erroneously paid, as the case may be.

The proposed subsection 17(7) seeks to provide that the Director General may make a demand at any time after six years from the date on which customs duty, surcharge, penalty, fee or other money was payable or the deficient customs duty, surcharge, penalty, fee or other money was paid or the refund was made, as the case may be, whenever the payment of such 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.

12. *Clause 12* seeks to amend section 17A of Act 235.

*Subclause 12(b)* seeks to amend subsection 17A(1) of Act 235 to provide that 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, 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 customs duty, surcharge, penalty, fee or other money so payable or furnishes security to the satisfaction of the Director General for its payment.

*Subclause 12(c)* seeks to amend subsection 17A(2) of Act 235 to empower the Director General of Immigration who receives a request under subsection 17A(1) of Act 235 to 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 a person as may be necessary to give effect to the request.

*Subclause 12(d)* seeks to amend subsection 17A(3) of Act 235 to require the Director General to serve a notice of the issue of a certificate under subsection 17A(1) of Act 235 to be served personally or by registered post at the last known address of the person to whom the certificate relates.

*Subclause 12(e)* seeks to amend subsection 17A(4) of Act 235 to provide that a written statement signed by the Director General stating that all the customs duty, surcharge, penalty, fee or other money specified in the certificate under subsection 17A(1) 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.

13. *Clause 13* seeks to introduce a new section 17B into Act 235 to empower the Director General to allow payment of any customs duty, surcharge, penalty, fee or other money to be made by instalment subject to such conditions as the Director General may determine.

14. *Clause 14* seeks to substitute section 18 of Act 235 to provide that 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. 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.

15. *Clause 15* seeks to substitute section 22B of Act 235 to allow any customs duty, surcharge, penalty, fee or other money payable under Act 235 to be recovered as a civil debt due to the Government of Malaysia.

16. *Clause 16* seeks to amend section 22c of Act 235 to provide that where any customs duty, surcharge, penalty, fee or other money is payable by a company, a firm or a society, an association or other body of persons, 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.

This *clause* also provides that the directors of a company which is been wound up shall only be 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 2016 in relation to the application of the assets of the company in such winding up.

17. *Clause 17* seeks to amend section 24 of Act 235 to allow goods imported by air to be cleared at the customs airport.

18. *Clause 18* seeks to amend section 29 of Act 235 to allow goods exported by air to be cleared at the customs airport.

19. *Clause 19* seeks to introduce new subsections (2) and (3) into section 29A of Act 235.

The proposed subsection 29A(2) seeks to provide that goods imported by means of a pipeline shall be treated as imported at the time when they are brought, if by sea, across the boundaries into the territorial waters or if by land, across the boundaries into Malaysia.

The proposed subsection 29A(3) seeks to provide that 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.

20. *Clause 20* seeks to introduce a new section 29B into Act 235 to prohibit goods to be imported or exported by other means except as approved by the Director General subject to such conditions as he deems fit.

21. *Clause 21* seeks to substitute section 34 of Act 235 to empower the Director General to 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. Where any security has been required to be given, no person shall move goods under customs control unless such security has been given.

22. *Clause 22* seeks to introduce a new Part IVA (Transit and Transhipment) into Act 235.

The proposed subsection 35A(1) seeks to provide for circumstances of transit which are allowed under the proposed Part IVA. The proposed subsection 35A(2) seeks to allow the Director General to temporarily suspend the payment of customs duties for the imported or exported goods which moved in transit under the proposed subsection 35A(1).

The proposed section 35B seeks to provide for the commencement and the completion of transit procedure.

The proposed section 35C seeks to empower the Director General to require the owner of the goods in transit to take necessary measures to safeguard against any unauthorized interference with goods in transit. Any person who fails to comply with the request of the Director General commits an offence.

The proposed section 35D seeks to empower the Director General to determine customs ports and airports for the purpose of transit. Any person who load or off-load goods for transit at the customs port or airport other than as determined by the Director General commits an offence.

The proposed section 35E seeks to empower the Director General to determine the routes, by road or railway, over which goods may be transported under the transit procedures. Any person who transports goods for the purpose of transit operation over a road or railway route other than a route determined by the Director General commits an offence.

The proposed section 35F seeks to specify that the persons who are entitled to submit declarations to clear goods for the purpose of transit are the owner of the goods, the licensed carrier or any other person as approved by the Director General under the proposed subsection 35H(2) or a customs agent.

The proposed section 35G seeks to prohibit goods to be moved in transit (including transshipment) by road except by a licensed carrier. However, the Director General may, in special circumstances and subject to such conditions, approve any person other than the licensed carrier to move goods in transit and transshipment. Any person who fails to comply with this provision commits an offence.

The proposed section 35H seeks to empower the Director General to grant a licence to any person to act as a licensed carrier subject to such terms and conditions as he deems fit. This *clause* also provides for the duties and liabilities of a licensed carrier.

The proposed section 35I seeks to require dutiable goods or prohibited 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 to be deposited in a customs warehouse or licensed warehouse or a warehouse approved by the Director General until such goods are loaded on board the vessel or aircraft and transported out of Malaysia. This *clause* also prohibits movement of goods for transshipment 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. Any person who fails to comply with this provision commits an offence.

The proposed section 35J seeks to provide for the commencement and the completion of transshipment procedure. Any person who fails to comply with this provision commits an offence.

The proposed section 35K seeks to empower the Director General to require the owner of the goods under transshipment procedure to take necessary measures to safeguard against any authorized interference with goods under transshipment procedure. Any person who fails to comply with the request of the Director General commits an offence.

The proposed section 35L seeks to require 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 to notify the proper officer of customs of the delay in commencement or completion of the transshipment procedure. Any person who fails to comply with this provision commits an offence.

The proposed section 35M seeks to impose a duty on the master of a vessel or pilot of an aircraft or the agent of the vessel or aircraft under Part VII to ensure that the goods are delivered at a place in accordance with the proposed section 35I where the goods are to be loaded on board the vessel or aircraft and be transported out of Malaysia. Any person who fails to comply with this section commits an offence.



The proposed section 35N seeks to require 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 which are deposited under the proposed section 35I, to keep such records of the receipt, handling, storage and delivery of the goods as may be determined by the Director General. Any person who fails to comply with this section commits an offence.

23. *Clause 23* seeks to amend subsection 36(3) of Act 235 to increase the penalty of the offence for the failure to report the arrival of a vessel or the failure to give information or document under subsection 36(1) of Act 235 from a fine not exceeding one thousand ringgit to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

24. *Clause 24* seeks to amend subsection 37(3) of Act 235 to increase the penalty of the offence for departing or attempting to depart from any customs port without a port clearance under subsection 37(1) of Act 235 from a fine not exceeding one thousand ringgit to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

25. *Clause 25* seeks to amend subsection 38(1) of Act 235 to no longer require the master or agent of vessel departing from a customs port to attend before the proper officer of customs to give information concerning the vessel, cargo, crew and passengers of the voyage.

26. *Clause 26* seeks to amend subsection 44(3) of Act 235 to increase the penalty of the offence relating to 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 from a fine of two thousand ringgit and to imprisonment for a term of twelve months to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

27. *Clause 27* seeks to introduce a new subsection (4) into section 48 of Act 235 to provide for a specific penalty for the offence of opening, breaking or altering hatchways or entrances of a vessel, or locks, seals or marks of any goods 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. Any person who commits this offence shall be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one hundred thousand ringgit or to both.

28. *Clause 28* seeks to introduce a new subsection (4) into section 49 of Act 235 to provide for a specific penalty for the offence of carrying dutiable goods or prohibited goods in any local craft without permission of the Director General and for a vessel going alongside of legal landing place or alongside an ocean going vessel without permission of the proper officer of customs. Any person who commits this offence shall be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one hundred thousand ringgit or to both.

29. *Clause 29* seeks to substitute section 52 of Act 235.

The proposed subsection 52(1) seeks to require the master or agent of every vessel, other than a local craft, arriving in any customs port, to present a true and complete manifest of the whole cargo of the vessel to the proper officer of customs not less than twenty-four hours before the arrival of the vessel or such period as the Director General may determine, whichever is lesser, subject to certain requirements.

The proposed subsection 52(2) seeks to provide that the manifest presented under the proposed subsection 52(1) shall contain a complete list of the whole cargo which remain on board, intended to be landed and to be transhipped at the customs port and a complete list of stores on board such vessel.

The proposed subsection 52(3) seeks to provide that 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.

The proposed subsection 52(4) seeks to provide that the contravention of the proposed subsection 52(1), (2) or (3) shall be an offence and upon conviction the person shall be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one hundred thousand ringgit or to both.

The proposed subsection 52(5) seeks to provide for the definition of “agent of every vessel”.

30. *Clause 30* seeks to delete section 53 of Act 235 to disallow any master or agent who is unable to ascertain the particulars of any inward or transhipment cargo or the names of the consignees from signing a declaration that he has exercised due diligence to ascertain the particulars of such cargo and the names of the consignees. This is in line with the proposed new section 52 in *clause 29*.

31. *Clause 31* seeks to substitute section 54 of Act 235 to require the master or agent of every local craft arriving in any customs port to make a declaration in the prescribed form a complete list of the whole cargo on board the vessel without the need to attend in person at the customs office, and to prohibit cargo from being landed or delivered to the importer or consignee, or his agent except with the permission of the proper officer of customs.

32. *Clause 32* seeks to amend section 55 of Act 235.

*Subclause 32(a)* seeks to amend subsection 55(1) of Act 235 to reduce the period for the master or agent of a vessel to present to the proper officer of customs a certified statement of the outturn of the cargo from two months to one month. The period of one month is sufficient for the purpose of presenting the statement of the outturn of the cargo.

*Subclause 32(b)* seeks to introduce a new subsection (1A) into section 55 of Act 235 to allow the proper officer of customs to refuse to accept any alteration made in the manifest once he has been notified that investigation into any offence under any written law has commenced in connection with the goods to which the manifest relates.

*Subclause 32(c)* seeks to amend subsection 55(2) of Act 235 to increase the sum liable to be paid, on demand, by the master or the agent of the vessel to the proper officer of customs in the case where 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 the statement of outturn of the cargo from not exceeding five hundred ringgit to not exceeding five thousand ringgit. In the case where the correct duty cannot be assessed, the sum liable to be paid is increased from not exceeding two thousand ringgit to not exceeding ten thousand ringgit.

*Subclause 32(d)* seeks to introduce a new subsection (4) into section 55 of Act 235 to provide for the definition of “agent of the vessel”.

33. *Clause 33* seeks to substitute section 56 of Act 235.

The proposed subsection 56(1) seeks to require the pilot or agent of every aircraft arriving at a customs airport to present a true and complete manifest of the whole cargo of the aircraft to the proper officer of customs not less than two hours before the landing of the aircraft or such period as the Director General may determine, whichever is lesser, subject to certain requirements.

The proposed subsection 56(2) seeks to provide that the manifest presented under subsection (1) shall contain a complete list of the whole cargo which remains on board, intended to be landed and to be transhipped at the customs airport and a complete list of stores on board such aircraft.

The proposed subsection 56(3) seeks to provide that 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.

The proposed subsection 56(4) seeks to provide that the contravention of the proposed subsection 56(1), (2) or (3) shall be an offence and upon conviction the person shall be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one hundred thousand ringgit or to both.

The proposed subsection 56(5) seeks to provide for the definition of “agent of every aircraft”.

34. *Clause 34* seeks to amend section 57 of Act 235 to require the owner or agent of any vessel, other than a local craft, to present to the proper officer of customs a true outward manifest of the vessel not less than twenty-four hours before the departure of such vessel or such period as the Director General may determine, whichever is lesser. Currently the true outward manifest is required to be presented within seven days of the departure of such vessel.

35. *Clause 35* seeks to amend section 58 of Act 235 to require the master of any local craft leaving any customs port to 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 without the need to attend in person at the customs office, and to prohibit cargo from being loaded into the local craft except with the permission of the proper officer of customs.

36. *Clause 36* seeks to amend section 59 of Act 235 to require the pilot or agent of any aircraft leaving any customs airport to present to the proper officer of customs a true outward manifest of the aircraft not less than two hours before the departure of such aircraft or such period as the Director General may determine, whichever is lesser.

37. *Clause 37* seeks to amend section 60 of Act 235 to require the station-master at the place of import or export of goods by rail and at the customs station to which goods are consigned to produce to the proper officer of customs the railway invoices or waybill or any other document approved by the Director General in respect of such goods without a demand being made, and to prohibit cargo from being loaded into or unloaded off the train except with the permission of the proper officer of customs.

38. *Clause 38* seeks to amend section 65 of Act 235.

*Subclause 38(a)* seeks to amend subsection 65(1) of Act 235 to allow the Director General to grant a licence for warehousing goods on payment of prescribed fees.

*Subclause 38(b)* seeks to introduce a new subsection (1A) into section 65 of Act 235 to empower the Director General to allow goods, other than goods liable to customs duty, to be kept in the licensed warehouse subject to such conditions he deems fit.

*Subclause 38(c)* seeks to introduce a new subsection (5) into section 65 of Act 235 to provide that 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.

39. *Clause 39* seeks to amend section 65A of Act 235.

*Subclause 39(a)* seeks to amend subsection 65A(1) of Act 235 to provide for a separate licence to carry on manufacturing process and other operation in respect of the goods liable to customs duties and any other goods. Currently, the licence for this activity is granted in addition to the licence granted for warehousing goods under section 65 of Act 235. The Director General is also allowed to suspend or cancel the licence so granted.

40. *Clause 40* seeks to introduce new sections 65AA, 65AB and 65AC into Act 235.

The proposed subsection 65AA seeks to deal with remission on waste or refuse from goods undergoing process. The proposed subsection 65AA(2) seeks to provide that if the customs duty is remitted under subsection 65A(1), the Director General shall direct the waste or refuse to be destroyed subject to such conditions as the Director General deems fit. The proposed subsection 65AA(3) seeks to provide that if no remission of customs duty is granted under the proposed subsection 65AA(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.

The proposed section 65AB seeks to deal with deficiency in quantity of dutiable goods at licensed manufacturing warehouse. The proposed subsection 65AB(1) seeks to provide that if there is a deficiency in the quantity of dutiable goods which ought to be found in any licensed manufacturing warehouse, the licensee shall, in the absence of proof to the contrary, be presumed to have illegally removed such goods and without prejudice to any proceedings under Act 235, be liable to pay to the proper officer of customs the customs duty leviable on the goods found deficient. The proposed subsection 65AB(2) seeks to provide that if the deficiency referred to in the proposed subsection 65AB(1) 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.

The proposed section 65AC seeks to require the licensee of a licensed warehouse to provide customs office and facilities within or at the perimeter of the licensed warehouse.

41. *Clause 41* seeks to amend section 65B of Act 235.

*Subclause 41(a)* seeks to amend subsection 65B(1) to clarify that the company against which an effective resolution is passed or an order is made for winding up is a company which is licensed under Part VIII (Warehousing) and not just a licensed manufacturer.

*Subclause 41(b)* seeks to make it an offence for any liquidator who fails to furnish the relevant documents, books and records provided under the proposed subsection 65B(2B). This *clause* also seeks to increase the penalty for the offence of failure to give notice to the Director General and to set aside such sum out of the assets for payment of customs duty under subsection 65B(1) and the offence under the proposed subsection 65B(2B) from a fine not exceeding ten thousand ringgit to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

*Subclause 41(c)* seeks to introduce a new subsection (2B) into section 65B of Act 235 to require the liquidator to 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 Act 235.

42. *Clause 42* seeks to amend section 65C of Act 235.

*Subclause 42(a)* seeks to amend subsection 65C(1) to clarify that the receiver appointed under subsection 65C(1) is the receiver of the property of a licensee under Part VIII (Warehousing) and not just the receiver of the property of a licensed manufacturer.

*Subclause 42(b)* seeks to make it an offence for any receiver who fails to furnish the relevant documents, books and records under the proposed subsection 65C(2B). This *clause* also seeks to increase the penalty for the offence of failure to give notice to the Director General and to set aside such sum out of the assets for payment of customs duty under subsection 65C(1) and the offence under the proposed subsection 65C(2B) from a fine not exceeding ten thousand ringgit to fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

*Subclause 42(c)* seeks to introduce a new subsection (2B) into section 65C of Act 235 to require the receiver to 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.

43. *Clause 43* seeks to amend subsection 65D(1) of Act 235 to allow the Director General to cancel a licence to operate a duty free shop.

44. *Clause 44* seeks to amend subsection 65E(1) of Act 235 to allow the Director General to cancel a licence to operate an inland clearance depot.

45. *Clause 45* seeks to introduce a new section 65F into Act 235 to empower the Director General to approve a warehouse, not being a customs warehouse or licensed warehouse, or other place for depositing dutiable goods subject to such conditions as the Director General may specify. The Director General may withdraw, suspend or cancel such approval.

46. *Clause 46* seeks to substitute section 66 of Act 235.

The proposed subsection 66(1) seeks to require goods other than prohibited goods, on arrival or landing, to be deposited in a customs warehouse or licensed warehouse or a warehouse or other place approved by the Director General except where the customs duty payable has been paid in accordance with section 78A, or the goods have been approved for movement in transit or transshipment under certain conditions, the goods are imported by post, by road or by sea under certain conditions and the goods are personal effects.

The proposed subsection 66(2) seeks to allow prohibited goods which are subject to certain conditions to be deposited in a customs warehouse or licensed warehouse or in a warehouse or other place approved by the Director General if the goods are accompanied by a licence, permit or approval required under any written law and the licence, permit or approval is produced to the proper officer of customs.

The proposed subsection 66(3) seeks to allow the Director General to require any imported goods, if it is necessary for the purposes of public interest, to be deposited in a customs warehouse or licensed warehouse or in a warehouse or other place approved by the Director General.

The proposed subsection 66(4) seeks to provide that the goods deposited under the proposed subsection 66(3) to be deposited at the expense of the owner and to be deemed under customs control. The goods shall not be removed except with the permission of the proper officer of customs.

The proposed subsection 66(5) seeks to provide that the proposed subsection 66(1) is not applicable to goods entering the principal customs area from a free zone.

47. *Clause 47* seeks to amend section 68 of Act 235 to allow a senior officer of customs to direct any goods or package lodged in a customs warehouse or licensed warehouse, or warehouse or other place approved by the Director General to be opened, weighed or examined.

48. *Clause 48* seeks to amend subsection 74(7) of Act 235 to give an option to conduct an auction sale by or in the presence of senior officer of customs or by electronic means as determined by the Director General.

49. *Clause 49* seeks to amend section 75 of Act 235.

*Subclause 49(a)* seeks to amend paragraph 75(b) to provide that if dutiable goods are in a customs warehouse 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, the dutiable goods are prohibited to be removed from customs control except for purpose of transit to another customs warehouse or licensed warehouse, a warehouse or other place approved by the Director General or a petroleum supply base.

*Subclause 49(c)* seeks to amend the proviso to section 75 to provide that petroleum or any other dutiable goods as approved by the Director General may be removed from the customs warehouse 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.

50. *Clause 50* seeks to delete section 76 of Act 235. The provision has been redrafted as the proposed section 351 under the proposed Part IVA (Transit and Transshipment).

51. *Clause 51* seeks to introduce a new Part VIII<sub>A</sub> into Act 235 which deals with petroleum supply base.

The proposed section 77<sub>A</sub> seeks to provide for the definitions of “licensee” and “petroleum supply base”.

The proposed section 77<sub>B</sub> seeks to empower the Director General to issue, upon payment of prescribed fees, a licence to any person to manage and administer a petroleum supply base and to carry out activities in the petroleum supply base subject to such conditions as the Director General may specify.

The proposed section 77C seeks to prohibit the release of goods which have undergone any process in the petroleum supply base for home consumption or export without prior approval of the Director General. If the goods 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.

The proposed section 77D seeks to allow the Minister to exempt any person from the payment of the whole or part of customs duty subject to such conditions as he deems fit.

The proposed section 77E seeks to provide that where in the course of carrying out any activities approved under the proposed 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. If the customs duty is remitted, the Director General shall direct the waste or refuse to be destroyed subject to such conditions as the Director General deems fit. If no remission is granted, the Director General shall require customs duty to be paid on such waste or refuse as if it had been imported in that form.

The proposed section 77F seeks to provide that if there is a deficiency in the quantity of dutiable goods which ought to be found in any petroleum supply base, the owner of the goods or the occupier of the premises shall, in the absence of proof to the contrary, be presumed to have illegally removed such goods and without prejudice to any proceedings under Act 235, be liable to pay to the proper officer of customs the customs duty leviable on the goods found deficient. If the 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.

52. *Clause 53* seeks to substitute section 78 of Act 235 to provide for the time or period for making a declaration on dutiable goods on import in the form as may be prescribed to the proper officer of customs.

53. *Clause 54* seeks to introduce new sections 78A, 78B and 78C into Act 235.

The proposed section 78A provides for the time and period for the payment of customs duties and other charges by the importer of the goods.

The proposed section 78B seeks to allow any importer of dutiable goods to make a declaration to the proper officer of customs before arrival of the goods to be imported subject to such conditions as determined by the Director General. The customs duties and other charges leviable on such good shall be paid within fourteen days from the date of declaration being approved by the proper officer of customs.

The proposed section 78C seeks to provide that any imported goods which are not declared according to section 78 of Act 235 shall be deemed to be abandoned and the Director General may destroy or dispose of such goods as he deems fit.



54. *Clause 55* seeks to amend section 79 of Act 235 to delete the provisions on provisional declaration as these provisions are redrafted under section 87A of Act 235.

55. *Clause 56* seeks to amend section 80 of Act 235.

*Subclause 56(c)* seeks to delete the proviso to subsection 80(1) to no longer allow the exportation of any goods without prior payment of duty.

56. *Clause 57* seeks to amend section 87 of Act 235.

*Subclause 57(a)* seeks to require that the declaration made under sections 81, 82, 83, 84, 85 and 86 to 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.

*Subclause 57(b)* seeks to delete the proviso to section 87 as the provisions on provisional declaration are redrafted under section 87A of Act 235.

57. *Clause 58* seeks to substitute section 87A of Act 235.

The proposed section 87A seeks to empower the proper officer of customs to allow a provisional declaration to be made in relation to good imported or goods to be exported if certain requirements are met. However provisional declaration shall not be allowed if the goods are subject to prohibition. Goods which have been provisionally declared may be released from customs control subject to certain conditions. This *clause* also provides for assessment to be made by the proper officer of customs on the submission of a full and correct declaration within the time specified. If a full and correct declaration is not made within the time specified, any security given by the importer or exporter shall forfeited and paid into the Consolidated Fund.

58. *Clause 59* seeks to introduce new sections 88A and 88B into Act 235.

The proposed section 88A seeks to empower the Director General to approve any person to defer the payment of customs duty due and payable under sections 78A and 80 of Act 235. Any person who fails to pay to the Director General the amount of customs duty due and payable on the due date as determined by the Director General commits an offence.

The proposed section 88B seeks to empower the Director General to approve any person to be an accredited person and to allow such person to benefit from simplified procedure for customs clearance as determined by the Director General subject to such terms and conditions as he deems fit.

59. *Clause 60* seeks to delete section 91A of Act 235. The provision relating to licensed carrier is redrafted as the proposed section 35 in *clause 22*.

60. *Clause 61* seeks to amend section 92 of Act 235 to require that every declaration made under Part IX (Declaration of Goods) to be made in such number of copies as the proper officer of customs may direct.

61. *Clause 63* seeks to amend section 93 of Act 235.

*Subclause 63(a)(ii)* seeks to increase the minimum value for drawback claims from fifty ringgit to two hundred ringgit.

*Subclause 63(a)(iii)* seeks to reduce the period during which goods are re-exported for the purposes of drawback claims from twelve months to three months of the date upon which the customs duty was paid.

*Subclause 63(b)* seeks to require the amount of drawback allowed to be calculated at the rate of customs duty levied at the time of import only.

62. *Clause 65* seeks to delete section 95 of Act 235 to remove the power of the Director General to allow drawback of customs duty on goods which suffer deterioration or damage and are destroyed in the presence of a senior officer of customs.

63. *Clause 68* seeks to introduce a new section 99A into Act 235 to provide that where a drawback or refund of customs duties under Act 235 is due to a person who has failed to pay any amount of customs duty, excise duty, etc., the Director General may offset the amount of such drawback or refund against the amount such person has failed to pay.

64. *Clause 69* seeks to introduce a new Part XA into Act 235.

Part XA deals with origin of goods, and preferential and non-preferential tariff treatment.

The proposed section 99B seeks to empower the Minister to authorize any government agency to perform the functions under the proposed sections 99E and 99H subject to such terms and conditions as the Minister deems fit.

The proposed section 99C seeks to empower the Minister after in consultation with the Minister charged with the responsibility for international trade and industry to appoint any body or Government agency as an issuing authority to issue a preferential or non-preferential certificate of origin if the Minister is satisfied that the body or Government agency meets the prescribed criteria subject to such terms and conditions as the Minister deems fit.

The proposed section 99D seeks to provide that the producer or exporter may apply to the issuing authority for the issuance of a preferential and non-preferential certificate of origin. The issuing authority may approve the application and issue a certificate of origin or refuse the application made by the producer or exporter.

The proposed section 99E seeks to provide that the importer, producer or exporter may apply to the authorized body to be registered as an approved person. Upon being registered as approved person, the importer shall produce a declaration of origin for the purposes of claiming the preferential tariff treatment under the proposed paragraph 99G(c) and the producer or exporter shall produce a declaration of origin for the purposes of claiming the preferential tariff treatment under the relevant trade agreements.

The proposed section 99F seeks to require the importer, producer or the exporter to give the true and correct origin of the goods declared. Any person who contravenes this provision commits an offence.

The proposed section 99G seeks to provide for the eligibility of the importer to claim for preferential tariff treatment.

The proposed section 99H seeks to empower the proper officer of customs or authorized body to make verification as to the authenticity of the document and the accuracy of the information regarding the origin of the imported goods or goods to be exported. Pending the verification, the proper officer of customs may suspend the granting of the preferential tariff treatment and may release the goods to the importer subject to certain requirements. The proper officer of customs is also empowered to detain the goods in certain circumstances.

The proposed section 99I seeks to empower the issuing authority to revoke or suspend the certificate of origin if certain requirements are not fulfilled. Any person who is dissatisfied with the decision of the issuing authority may appeal to the issuing authority.

65. *Clause 70* seeks to substitute section 100A of Act 235 to require every person to keep full and true records up to date of all transactions which affect or may affect his obligation on any matters under Act 235. Any person who contravenes this provision commits an offence.

66. *Clause 71* seeks to introduce a new section 100B into Act 235 to empower a senior officer of customs to require the person who had the possession, custody or control of the goods, record, report or document which has been seized, detained, or taken possession to furnish him a translation in the national language or English language within such period as the officer may specify if the goods, record, report or document is in a language other than the national language or English language.

67. *Clause 73* seeks to introduce a new section 102A into Act 235 to require the master of every vessel or pilot of every aircraft, or his agent to furnish a true and complete list of the passengers and crews on board the vessel or aircraft within a certain period upon arriving at or leaving any customs airport, customs port or entry or exit point to the proper officer of customs.

68. *Clause 74* seeks to amend subsection 103(2) of Act 235 to allow the baggage of any person other than passengers to be examined and delivered in such manner as the Director General may direct.

69. *Clause 75* seeks to amend subsection 104(2) of Act 235 to require the proper officer of customs to give a receipt for any sample of goods taken.

70. *Clause 76* seeks to introduce a new subsection 105(2) into Act 235 to provide for a specific penalty of a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both for the offence of packing dutiable goods in any manner calculated to deceive an officer of customs.

71. *Clause 77* seeks to amend section 106A of Act 235.

*Subclause 77(a)* seeks to substitute subsection 106A(1) of Act 235 to empower any senior officer of customs to have access at any times to any place or premises where any importer, exporter, manufacturer or any other person carries on his business, and any person who has dealings with such importer, exporter, manufacturer or other person referred to in paragraph 106A(1)(a).

*Subclause 77(b)(i)* seeks to amend paragraph 106A(2)(a) of Act 235 to empower the senior officer of customs who enters into the premises to require any books, data, document or other record, or thing to be produced to him.

*Subclause 77(b)(ii)* seeks to amend paragraph 106A(2)(d) of Act 235 to empower the senior officer of customs who enters into the premises to require questions relating to any books, data, document or other record, etc., to be answered truthfully.

*Subclause 77(b)(iii)* seeks to amend paragraph 106A(2)(f) of Act 235 to empower the senior officer of customs to open and examine any packages or any goods or materials in the premises at the risk and expense of the importer, exporter, manufacturer or other person, or any person who has dealings with such importer, exporter, manufacturer or other person.

*Subclause 77(c)* seeks to amend subsection 106A(3) of Act 235 to clarify that the premises where the senior officer of customs may enter, if necessary by force, are the premises where the importer, exporter, manufacturer or any other person carries on his business or where any person who has dealings with such importer, exporter, manufacturer or other person carries on his business.

*Subclause 77(d)* seeks to introduce a new subsection 106A(5) into Act 235 to provide for a specific penalty of imprisonment for a term not exceeding five years or to a fine not exceeding one hundred thousand ringgit or to both for the offence of refusing to give access to any place or premises to any senior officer of customs.

72. *Clause 78* seeks to amend section 107 of Act 235.

*Subclause 78(a)* seeks to amend subsection 107(1) of Act 235 to empower the Magistrate to issue search warrant in relation to any conveyance, premises or place if there is reasonable cause to believe that any prohibited or uncustomed goods etc., are concealed or deposited in the conveyance, premises or place.

*Subclause 78(b)* seeks to amend subsection 107(2) of Act 235 to empower the officer of customs to break open and forcibly enter conveyance, premises or place and detain every person found in such conveyance, premises or place.

*Subclause 78(c)* seeks to introduce new subsections(3) and (4) into section 107 of Act 235.

The proposed subsection 107(3) seeks to empower officer of customs to seal the conveyance, premises or place in which it is found if by reason of its nature, size or amount it is not practicable to remove any goods, document or thing seized under section 107 of Act 235.

The proposed subsection 107(4) seeks to make it an offence for any person who without lawful authority, breaks, tampers with or damages the seal referred to in subsection (3) or removes the goods, document or thing under seal, or attempts to do so. Any person who commits this offence 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.

73. *Clause 79* seeks to amend section 108 of Act 235 to empower the senior officer of customs to exercise all the powers mentioned in section 107 of Act 235 to search conveyance, premises or place without warrant if 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 Act 235 and if he has reasonable grounds to believe that by reason of the delay in obtaining a search warrant such goods are likely to be removed.

74. *Clause 80* seeks to amend section 110 of Act 235 to empower the proper officer of customs to exercise all the powers mentioned in section 107 of Act 235 to search without warrant any vessel, aircraft, landing place, wharf, jetty, port installation or railway or any place at which the goods are deposited under Part IX (Declaration of Goods). Currently this power is only exercisable on the goods produced to an officer of customs under section 80 of Act 235.

75. *Clause 81* seeks to amend section 111A of Act 235.

*Subclause 81(b)(ii)* seeks to amend subsection 111A(2) of Act 235 to increase the penalty for the offence of failure to comply with any reasonable signal of a proper officer of customs requiring a person or vehicle to stop before reaching any barrier etc., from a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding twelve months or to both to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both. With this amendment, the proper officer of customs may also arrest such person without warrant.

76. *Clause 82* seeks to amend section 111B of Act 235.

*Subclause 82(a)(ii)* seeks to introduce a new paragraph (aa) into subsection 111B(2) of Act 235 to allow the officer of customs to make copies or take extracts from the recorded information or computerized data as he deems necessary in exercising his powers under sections 106A, 107, 108, 109 and 111 of Act 235.

*Subclause 82(b)* seeks to introduce a new subsection (4) into section 111B of Act 235 to provide for a specific penalty for the offence of failure to give access to any officer of customs to any recorded information or computerized data, or the offence of failure to comply with the request to provide reasonable assistance under paragraph 111B(2)(b) of Act 235. Any person who commits this offence shall be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one hundred thousand ringgit or to both.

77. *Clause 83* seeks to introduce a new section 111c into Act 235 to provide that the Public Prosecutor, on application of senior officer of customs, may authorize any proper officer of customs to intercept any postal article transmitted by post or any messages or conversation transmitted or received by any telecommunication service provider.

78. *Clause 84* seeks to introduce a new subsection (2) into section 112 of Act 235 to allow the proper officer of customs to use any tracing and tracking device, non-intrusive instrument, or any other form of aids in the performance of his duty under Act 235.

79. *Clause 85* seeks to substitute section 113 of Act 235 to empower the proper officer of customs to search any person landing, or being about to land, or having recently landed, from any vessel or aircraft, or leaving any vessel in territorial waters or aircraft, or entering or having recently entered Malaysia by road or railway and his goods and baggage.

80. *Clause 86* seeks to amend section 114 of Act 235.

*Subclause 86(c)(iii)* seeks to delete the proviso to subsection 114(3) of Act 235 to remove the requirement not to give notice of seizure where such seizure is made on the person, or in the presence of the offender or the owner or his agent, or in the case of a vessel or an aircraft, in the presence of the master or pilot, as the case may be.

81. *Clause 87* seeks to introduce a new section 114A into Act 235 to provide that no person shall be entitled to the costs of any entry or search of any premises, place or conveyance or seizure of any goods, book, record, document or thing, or to any damages or other relief unless such entry, search or seizure was made without reasonable cause.

82. *Clause 88* seeks to amend section 115 of Act 235 to provide for the return of goods to the owner of the goods or to the person from whose possession, custody or control the goods were seized. The words “movable property” under this section is substituted with the word “goods” so as to be in line with the definition of “goods” under section 2 of Act 235.

*Subclause 88(b)(iii)* seeks to amend paragraph 115(1)(b) of Act 235 to provide that the return of the goods to the owner of the goods or to the person from whose possession, custody or control the goods were seized is subject to such terms and conditions as the senior officer of customs may impose.

*Paragraph 88(c)(ii)* seeks to amend paragraph 115(2)(b) of Act 235 to make it an offence for any person who fails to comply with or contravenes any of the terms or conditions under paragraph 115(1)(b) of Act 235.

*Subclause 88(d)* seeks to amend subsection 115(3) of Act 235 to provide that the criminal liability of any person under subsection 115(2) of Act 235 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 115(1)(b) of Act 235.

*Subclause 88(e)* seeks to amend subsection 115(4) of Act 235 to provide that the provisions of subsection 115(2) of Act 235 shall not apply to such person, if any, who is the guarantor or surety of the person to whom the goods is returned under paragraph 115(1)(b) of Act 235.

83. *Clause 89* seeks to amend subsection 115A(1) of Act 235 to be in line with the amendment to section 115 of Act 235 in *clause 88* whereby the words “movable property” is substituted with the word “goods”.

84. *Clause 90* seeks to amend section 116 of Act 235.

*Subclause 90(b)* seeks to amend subsection 116(5) of Act 235 to provide that every person arrested may be released from custody subject to certain conditions as the Director General deems fit.

*Subclause 90(c)* seeks to introduce new subsections (7) and (8) into section 116 of Act 235.

The proposed subsection 116(7) seeks to allow, upon an order in writing by a senior officer of customs or an officer above the rank of Senior Assistant Director, a person who is arrested for an offence under Act 235 who is serving a sentence of imprisonment or is under detention under any law relating to preventive detention, or is otherwise in lawful custody, to be produced before such officer for the purpose of investigation and the person may be kept in lawful custody for a period not exceeding fourteen days for the purpose of such investigation.

The proposed subsection 116(8) seeks to provide that a person who is detained in lawful custody under the proposed subsection 116(7) to be made available to a senior officer of customs for the purpose of investigation or to 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 Act 235.

85. *Clause 92* seeks to amend subsection 119 of Act 235 to provide that if in any prosecution for the recovery of any surcharges under Act 235 any dispute arises as to 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 from where such goods were brought or where such goods were loaded, or whether anything is exempt from duty under section 14 of Act 235, then and in every such case the burden of proof there of shall lie on the defendant in such prosecution.

86. *Clause 93* seeks to amend section 121 of Act 235.

*Subclause 93(a)* seeks to amend subsection 121(5) of Act 235 to provide for the definition of “analyst”.

*Subclause 93(b)* seeks to introduce a new subsection (5A) into section 121 of Act 235 to empower the Minister after consultation with the relevant Ministers, to appoint any qualified person or class of qualified persons by notification in the *Gazette* to be an analyst.

87. *Clause 94* seeks to introduce new sections 121A and 121B into Act 235.

The proposed section 121A deals with the admissibility of statements and documents of persons who are dead or cannot be traced, etc.

The proposed section 121B deals with evidential provisions.

The proposed subsection 121B(1) seeks to provide that any statement purporting to be signed by the Director General or any authorized officer and its annexure shall be *prima facie* evidence of the facts stated therein.

The proposed subsection 121B(2) seeks to provide that any transcript of any particulars in a declaration or other document relating to customs duty shall be *prima facie* evidence of the facts stated therein if it is certified by the Director General or authorized officer.

The proposed subsection 121B(3) seeks to provide that no statement or document shall be inadmissible as evidence against a person in proceedings on the ground that the statement was made under any inducement or promise.

The proposed subsection 121B(4) seeks to provide that nothing in Act 235 shall affect the operation of Chapter IX of Part III of the Evidence Act 1950 [Act 56].

The proposed subsection 121B(5) seeks to provide that a person is presumed to make a false statement or entry, to evade the payment of customs duty or any prohibition of import or export, or improperly obtain a refund or drawback if it is proven that a false statement or entry has been made in a declaration by or on behalf of any person unless the contrary is proven.

The proposed subsection 121B(6) seeks to provide that where any officer of customs has obtained any document or other evidence in exercise of his powers under Act 235, the document or copy of the document or other evidence, as the case may be, shall be *prima facie* evidence in any proceedings under Act 235.

The proposed subsection 121B(7) seeks to provide that 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.

88. *Clause 96* seeks to amend section 123 of Act 235 to provide a new scale, consisting of the new threshold of fine and the maximum period of imprisonment, imposed by any court in respect of non-payment of any fine under Act 235.



89. *Clause 97* seeks to amend section 124A of Act 235.

*Subclause 97(a)* seeks to amend subsection 124A(1) of Act 235 which deals with the obligation of secrecy in relation to identification card number and passport number of an informer.

*Subclause 97(b)* seeks to amend subsection 124A(2) of Act 235 to increase the penalty for the offence of disclosing information relating to an informer under subsection 124A(1) of Act 235 from a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding seven years or to both.

90. *Clause 98* seeks to substitute section 125A of Act 235 which deals with the confidentiality of information, documents or declarations relating to importation, exportation, valuation or classification or origin determination of any goods as confidential. With this amendment, any person who commits an offence of communicating such confidential information, document or declaration 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.

91. *Clause 99* seeks to amend section 126 of Act 235 to provide that all forfeited goods shall be disposed of in accordance with the directions of the Director General.

92. *Clause 101* seeks to amend section 128 of Act 235.

*Subclause 101(a)* seeks to amend subsection 128(1) of Act 235 to provide that if there is no prosecution with regard to any goods seized under the Act 235, such goods or the proceeds of sale of such goods which are held pursuant to paragraph 115(1)(c) of Act 235 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 except certain requirements are met.

*Subclause 101(b)* seeks to amend subsection 128(3) of Act 235 to require the senior officer of customs to refer the claim or the written application relating to such goods seized or the proceeds of such goods to the Director General if the claim or the written application made within the period of thirty days and there is no prosecution with regard to the goods.

*Subclause 101(c)* seeks to introduce a new subsection (3A) into section 128 of Act 235 to empower the Director General to direct such senior officer of customs to release such goods or the proceeds of sale of such goods or the security furnished under paragraph 115(1)(a) or (b) of Act 235 or to refer the matter to a Magistrate of the First Class for his decision.

93. *Clause 102* seeks to amend section 129 of Act 235 to provide that the Minister may order any goods seized under Act 235 or any amount secured under paragraph 115(1)(a) or (b) of Act 235 or the amount realized by sale under paragraph 115(1)(c) of Act 235 whether forfeited, or taken or deemed to be forfeited pursuant to section 127, 128 or 131 Act 235 to be delivered or refunded to the owner or other person entitled.

94. *Clause 103* seeks to amend section 131 of Act 235 to empower any senior officer of customs to compound any offence which is prescribed to be a compoundable offence committed by any person under Act 235 with the written consent of the Public Prosecutor. The amount compounded shall not exceed fifty per centum of the amount of the maximum fine for that offence.

95. *Clause 104* seeks to introduce a new section 131A into Act 235 to provide that where any goods, document or thing seized under Act 235 is held in the custody of the officer of customs pending completion of any proceedings in respect of an offence under Act 235, the cost of holding such goods, document or thing in custody shall, in the event of any person found guilty of an offence, to be a debt due to the Government by such person and shall be recoverable accordingly.

96. *Clause 105* seeks to introduce a new section 132A into Act 235 to empower the court to impose additional punishment by ordering the person who is convicted of an offence under Act 235 or any regulations made under Act 235 which has caused damage to the Government property to pay the Director General the costs and expenses incurred in repairing or replacing the Government property and any other cost and expenses incurred in connection with the damage to the property.

97. *Clause 106* seeks to amend paragraph 133(1)(g) of Act 235 to make it an offence for the person who fails to make a declaration of goods imported in the prescribed form.

98. *Clause 107* seeks to amend section 135 of Act 235.

*Subclause 107(a)* seeks to amend subparagraph 135(1)(iv)(bb) of Act 235 to increase the penalty of imprisonment for the second offence or any subsequent offence for smuggling under subsection 135(1) of Act 235 relating to cigarettes containing tobacco or intoxicating liquor included in a class of goods appearing in an order made under subsection 11(1) of Act 235 from imprisonment for a term not less than six months and not more than five years to imprisonment for a term not less than six months and not more than seven years.

*Subclause 107(b)* seeks to amend subparagraph 135(1)(v)(bb) of Act 235 to increase the penalty of imprisonment for the second offence or any subsequent offence for smuggling under subsection 135(1) of Act 235 relating to cigarettes containing tobacco or intoxicating liquor from imprisonment for a term not less than six months and not more than five years to imprisonment for a term not less than six months and not more than seven years.

These amendments are made to deter the smuggling of cigarettes containing tobacco or intoxicating liquor which is currently increasing, and to prevent the loss of revenue to the Government.

99. *Clause 108* seeks to introduce new sections 135A, 135B and 135C into Act 235.

The proposed section 135A seeks to provide for offences relating to data stored in computer and its penalties.

The proposed section 135B seeks to provide for the offence relating to the claim for drawback and its penalty.

The proposed section 135C seeks to provide for the offence relating to the claim for refund and its penalty.

100. *Clause 110* seeks to amend section 142 of Act 235.

*Subclause 110(a)* seeks to introduce a new paragraph (4A) into section 142 of Act 235 to provide for the powers of Minister to make regulation to regulate the landing and loading of goods under section 33.

*Subclause 110(b)* seeks to introduce a new paragraph (9A) into section 142 of Act 235 to provide for the powers of Minister to make regulation to regulate matter relating to port clearance.

*Subclause 110(c)* seeks to amend paragraph 142(13) of Act 235 to provide for the powers of Minister to make regulation to regulate the deposit, custody and withdrawal of goods in and from warehouses or other place approved by the Director General or petroleum supply base, and the management and control of the same.

*Subclause 110(d)* seeks to amend paragraph 142(15) of Act 235 to provide for the powers of the Minister to make regulation to prescribe the fees, if any, to be paid for all permits and licences, including warehouse licences.

*Subclause 110(e)* seeks to amend paragraph 142(19) of Act 235 to empower the Minister to provide the conditions in which goods may be transhipped or goods in transit may be moved.

*Subclause 110(f)* seeks to introduce a new paragraph (19B) into section 142 of Act 235 to empower the Minister to regulate any matter relating to manifest.

*Subclause 110(g)* seeks to delete paragraph 142(25) of Act 235 as the provision has been redrafted into paragraph 142(19) of Act 235.

*Subclause 110(h)* seeks to amend paragraph 142(26) of Act 235 to empower the Minister to prescribe the criteria for compoundable offence.

*Subclause 110(i)* seeks to introduce new paragraphs (35F) and (35G) into section 142 of Act 235.

The proposed paragraph 142(35F) seeks to empower the Minister to regulate any matters relating to origin of goods.

The proposed paragraph 142(35G) seeks to empower the Minister to regulate the operation of the petroleum supply base and any matter relating to it.

101. *Clause 111* seeks to amend section 143 of Act 235 to allow any person aggrieved by any decision of the Director General to apply to the Director General for review of 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 court. This provision disallows review to be made in any matter relating to compound or the proposed subsection 128(3A). This provision also allows any person aggrieved by any decision of the Director General on the review or under any other provision of this Act, except any matter relating to compound or the proposed subsection 128(3A), to appeal to the Tribunal within thirty days from the date of notification in writing of the decision to the aggrieved person. This provision also clarifies that any duty payable under Act 235 shall be paid on the due date notwithstanding any review or appeal has been made under this section.

102. *Clause 113* seeks to introduce a new section 145B into Act 235.

The proposed section 145B deals with the protection against any action, suit, prosecution or other proceeding in relation to any officer of customs, any police officer having the powers of a senior officer of customs or officer of customs under section 8 of Act 235, any person employed under section 10 of Act 235, the authorized body and the issuing authority.

103. *Clause 115* seeks to amend section 156 of Act 235 to clarify that Labuan is not a place outside Malaysia. This is in line with the amendment made in subsection 2(1A) of Act 235 which provides that Labuan is a place outside principal customs area.

104. *Clause 116* seeks to amend subsection 163 of Act 235 to provide that the customs duty on goods stored in a customs warehouse or licensed warehouse or a warehouse or other place approved by the Director General shall be paid at such time and in such manner as may be prescribed by regulations.

105. *Clause 118* seeks to amend section 163C of Act 235 to provide that where goods are transported from Langkawi to the principal customs area or 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) of Act 235 shall 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. With this amendment, Part XII of Act 235 shall apply to vehicles, vessels or aircrafts transporting goods to or from Langkawi from or to the principal customs area. This amendment also clarifies that Langkawi is not a place outside Malaysia. This is in line with the amendment made in subsection 2(1A) of Act 235 which provides that Langkawi is a place outside principal customs area.

106. *Clause 121* seeks to amend section 163L of Act 235 to provide that where goods are transported from Tioman to the principal customs area or 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) of Act 235 shall 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. This amendment also clarifies that Tioman is not a place outside Malaysia. This is in line with the amendment made in subsection 2(1A) of Act 235 which provides that Tioman is a place outside principal customs area.

107. *Clause 123* seeks to introduce a new Part XIXID (Special provisions dealing with Pangkor) into Act 235.

The proposed section 163Q seeks to provide the definitions of “Pangkor” and “principal customs area”.

The proposed section 163R seeks to provide for the treatment of customs duties in Pangkor relating to the importation, exportation and transportation of goods.

The proposed section 163s seeks to provide for the application of the provisions of Act 235, other than sections 81, 82, 83, 84, 85, 86 and 87 and paragraph 87A(1)(b), where goods are transported from Pangkor to the principal customs area or from the principal customs area to Pangkor. The proposed section 163s also seeks to provide for the application of Part XII of Act 235 (Inspection, Investigation, Search, Seizure and Arrest) 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.

The proposed section 163t seeks to require the person in charge of any vessel or aircraft on which goods are transported from Pangkor to the principal customs area to make a declaration of the goods transported in such vessel or aircraft.

The proposed section 163U seeks to provide that dutiable goods, other than goods declared by the Minister under the proposed paragraph 163R(1)(a), are deemed to be non-dutiable goods while in Pangkor.

The proposed section 163v seeks to empower the Minister to make regulations under section 142 of Act 235 to provide for certain matters in relation to Pangkor.

The proposed section 163w seeks to provide for the application of provision of Part X of Act 235 which deals with drawback on goods, other than goods declared by the Minister under the proposed paragraph 163R(1)(a), transported from the principal customs area to Pangkor.

108. *Clause 124* seeks to delete Part XX of Act 235 (Singapore Preventive Vessels) to no longer empower the master or other persons having the charge or command of a Singapore preventive vessel to exercise all the powers conferred by sections 109, 110, 114 and subsection 116(1) of Act 235.

109. *Clause 125* seeks to provide for the savings and transitional provisions.

110. Other amendments not specifically dealt with in this Statement are minor or consequential in nature.

#### FINANCIAL IMPLICATIONS

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

A BILL

*i n t i t u l e d*

An Act to amend the Excise Act 1976.

[ ]

**ENACTED** by the Parliament of Malaysia as follows:

**Short title and commencement**

**1.** (1) This Act may be cited as the Excise (Amendment) Act 2019.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette* and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

**Amendment of section 2**

**2.** The Excise Act 1976 [*Act 176*], which is referred to as the “principal Act” in this Act, is amended in section 2—

(a) in subsection (1)—

(i) in the definition of “bottle” by substituting for the words “half a gallon” the words “two litres”;

- (ii) by deleting the definition of “public excise warehouse”;
- (iii) by inserting after the proposed definition of “public ruling” the following definition:
  - ‘ “road” has the meaning assigned by subsection 2(1) of the Customs Act 1967 [Act 235];’;
- (iv) by inserting after the definition of “Customs Appeal Tribunal” the following definition:
  - ‘ “customs control” has the meaning assigned by subsection 2(1) of the Customs Act 1967;’;
- (v) by inserting after the definition of “dutiable goods” the following definition:
  - ‘ “duty free shop” has the meaning assigned by subsection 2(1) of the Customs Act 1967;’;
- (vi) by inserting before the definition of “senior officer of excise” the following definition:
  - ‘ “public ruling” means the public ruling made by the Director General under section 5F;’;
- (vii) by inserting after the proposed definition of “road” the following definition:
  - ‘ “sea” has the meaning assigned by subsection 2(1) of the Customs Act 1967;’;
- (viii) in the definition of “native liquor” by inserting after the word “consumption” the words “and not for commercial use”;
- (ix) in the definition of “officer of excise” by deleting paragraph (b);

- (x) by substituting for the definition of “senior officer of excise” the following definition:

‘ “senior officer of excise” means—

- (a) the Director General;
- (b) any Deputy Director General of Customs and Excise appointed under subsection 3(1) of the Customs Act 1967;
- (c) any Assistant Director General, Director, Deputy Director, Senior Assistant Director and Assistant Director of Customs appointed under subsection 3(1) of the Customs Act 1967;
- (d) any Senior Superintendent, Superintendent, Chief Assistant Superintendent, Senior Assistant Superintendent or Assistant Superintendent of Customs appointed under subsection 3(4) of the Customs Act 1967;
- (e) any officer of excise invested with the powers of a senior officer of excise under subsection 4(2) or (3);
- (f) any police officer having the powers of a senior officer of excise by virtue of section 4A;”;

- (xi) by inserting after the definition “licensed warehouse” the following definition:

‘ “licensee” means any person licensed under section 25 or 35;”;



- (xii) by inserting after the proposed definition of “transhipment” the following definition:

‘ “transit” has the meaning assigned by subsection 2(1) of the Customs Act 1967;’;

- (xiii) by inserting after the definition of “toddy” the following definition:

‘ “transhipment” has the meaning assigned by subsection 2(1) of the Customs Act 1967;’;

- (xiv) by substituting for the definitions of “owner” the following definition:

‘ “owner”—

(a) in respect of goods, includes any person (other than an officer of excise acting in his official capacity) being or holding himself out to be the owner, importer, manufacturer, assembler, 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 land, means the registered proprietor or the legal owner or holder by customary tenure of any land;’;

- (xv) by inserting after the definition “computer” the following definition:

‘ “conveyance” has the meaning assigned by subsection 2(1) of the Customs Act 1967;’;

- (xvi) in the definition of “manufacture” by substituting for paragraph (c) the following paragraph:

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

- (xvii) by inserting after the definition of “licensed carrier” the following definition:

‘ “licensed manufacturer” means any person licensed under section 20;’;

- (xviii) by deleting the definition of “licensed tobacco manufacturer”;

- (xix) by inserting after the definition of “senior officer of excise” the following definition:

‘ “surcharge” means any charge that is due and payable under subsection 15(3);’;

- (xx) by deleting the definition of “free zone”;

- (b) by inserting after subsection (1) the following subsections:

“(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 Parts VII, VIII A and section 76 shall be applicable to a free zone.

(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.”; and

(c) in subsection (2), by substituting for the words “any public excise warehouse, licensed warehouse, post office, or in any vessel, train, conveyance, aircraft, pipeline or place” the words “licensed warehouse, a warehouse or other place approved by the Director General, post office, or in any conveyance”.

**Amendment of section 4**

3. Subsection 4(1) of the principal Act is amended by inserting after the word “Director,” the words “Deputy Director,”.

**New section 4A**

4. The principal Act is amended by inserting after section 4 the following section:

**“Powers of police officers**

4A. 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 X of this Act on senior officers of excise, and all police officers below the rank of Inspector shall have and may exercise all the powers conferred by Part X of this Act on officers of excise.”.

**Amendment of Part IIA**

5. Part IIA of the principal Act is amended in the heading by inserting after the words “CUSTOMS RULING” the words “AND PUBLIC RULING”.

**New section 5F**

6. The principal Act is amended by inserting after section 5E the following section:

**“Public ruling**

5F. (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.”.

**Amendment of section 6**

7. Section 6 of the principal Act is amended by deleting subsection (6).

**New section 6A**

8. The principal Act is amended by inserting after section 6 the following section:

**“No excise duty levied on goods *bona fide* in transit and transshipment**

**6A.** For the purpose of levying of excise duties, goods *bona fide* in transit, including goods for transshipment, shall not be deemed to be imported unless they are or become unexcisable goods.”.

**Amendment of section 11A**

9. Section 11A of the principal Act is amended—

- (a) in the shoulder note, by substituting for the words “**excise duties**” the words “**excise duty, etc.**”;
- (b) by renumbering the existing provision as subsection (1);
- (c) in subsection (1) as renumbered, by substituting for the words “excise duties, or any other prescribed fees or charges” the words “excise duty, surcharge, penalty, fee or other money”; and
- (d) by inserting after subsection (1) as renumbered the following subsection:

“(2) Where a person has paid any of the excise duty, surcharge, penalty, fee or other money payable under this Act to which remission has been granted under subsection (1), he shall be entitled to a refund of such excise duty, surcharge, penalty, fee or other money which had been remitted.”.

**Amendment of section 13**

10. Section 13 of the principal Act is amended—

- (a) in the shoulder note by inserting after the word “**overpaid**” the words “**or erroneously paid**”;
- (b) by renumbering the existing provision as subsection (1);
- (c) in subsection (1) as renumbered, by substituting for the words “excise duties” the words “excise duty, surcharge, penalty, fee or other money”;
- (d) in paragraph (b) of the proviso to subsection (1)—
  - (i) by substituting for the words “under protest under section 8A” the words “under section 8A, or pending the result of a review or appeal under section 47”; and
  - (ii) by substituting for the words “after the decision on classification or valuation” the words “from the date of the decision on classification, valuation, review or appeal”; and
- (e) by inserting after subsection (1) as renumbered the following subsection:

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

**Substitution of section 14**

11. The principal Act is amended by substituting for section 14 the following section:

**“Remission of duty on goods damaged, destroyed or lost before removal from excise control**

**14.** (1) If any dutiable goods are damaged, destroyed or lost due to unavoidable accident at any time before removal from excise control, the Director General may, where he deems fit, remit the whole or any part of the excise 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 excise control, no abatement of excise duty shall be allowed on such goods.”.

### **Amendment of section 15**

**12.** Section 15 of the principal Act is amended—

(a) in the shoulder note, by inserting after the word “**duty**” the words “, *etc.*”;

(b) by substituting subsection (1) the following subsection:

“(1) Whenever—

(a) through inadvertence, negligence, error, collusion, or misconstruction on the part of any officer of excise, or through misstatement as to value, quantity, quality or description by any person, or for any other reason, the whole or any part of any excise duty, surcharge, penalty, fee or other money payable under this Act has not been paid; or

(b) the whole or any part of such excise duty, surcharge, penalty, fee or other money, after having been paid, has been, owing to any cause, erroneously refunded,

the person liable to pay such excise 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 the excise duty, surcharge, penalty, fee or other money were payable, or the deficient excise duty, surcharge, penalty, fee

or other money were 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 the person liable to pay the amount due which may be in excise control may be detained until such excise duty, surcharge, penalty, fee or other money or deficiency be paid or the refund be repaid, as the case may be.”;

(c) in subsection (2), by substituting for the words “in such amount and on such dates” the words “subject to such conditions”;

(d) by substituting for subsections (3), (4) and (5) the following subsections:

“(3) If there is default in payment of any instalment under subsection (2) 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.

(4) Nothing in subsections (2) and (3) shall prejudice the exercise of the rights and powers under this section by the Director General to seize or, subject to subsection (5), sell any goods under excise control belonging to the person liable to pay such excise duty, surcharge, penalty, fee or other money for the recovery of the amount payable under subsections (1), (2) or (3), or any outstanding balance thereof.

(5) If the excise duty, surcharge, penalty, fee or other money or deficiency, or the refund to be repaid remain unpaid, as the case may be, the Director General may sell such goods after giving not less than thirty days notice in writing from the date of seizure to the owner or his agent, or if the name and address of such owner or agent is not known to him, by notification in the *Gazette*.”; and

(e) by inserting after subsection (5) the following subsections:

“(6) The proceeds of sale of any goods under subsection (5) shall be applied to the payment of the excise duty, surcharge, penalty, fee or other money, or 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 to the Consolidated Fund.

(7) If at the sale of any such goods no sufficient bid is forthcoming to defray the excise 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.

(8) Nothing in subsection (1) prevents the Director General to make a demand at any time after six years whenever any payment of excise 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.

(9) If the sale of such goods is by auction, electronically or otherwise, such auction shall be conducted by or in the presence of senior officer of excise.”.

### **Amendment of section 15A**

**13.** Section 15A of the principal Act is amended—

- (a) in the shoulder note, by inserting after the words “**excise duty**” the words “, *etc.*”;
- (b) by inserting after the words “excise duty” wherever appearing the words “surcharge, penalty, fee or other money”;
- (c) by substituting for the words “any Director of Immigration” wherever appearing the words “the Director General of Immigration”;



- (d) in subsection (1), by substituting for the words “particulars of the excise duty so payable” the words “particulars of the person reasonably suspected of having committed an offence”;
- (e) in subsection (3), by substituting for the words “on the person” the words “at the last known address of the person”;
- (f) in subsection (4), by substituting for the words “excise duty specified in the certificate” the words “the excise duty, surcharge, penalty, fee or other money”; and
- (g) by deleting subsection (6).

### **New section 15B**

**14.** The principal Act is amended by inserting after section 15A the following section:

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

**15B.** (1) Without prejudice to any other remedy and notwithstanding any review or appeal against any decision of the Director General under section 47, any excise duty, surcharge, penalty, fee or other money payable under this Act, may be recovered as a civil debt due to the Government.

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

- (a) stating that any excise 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 excise 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 judgment 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 excise duty, surcharge, penalty, fee or other money 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.”.

#### **Amendment of section 16**

**15.** Paragraph 16(1)(a) of the principal Act is amended by substituting for the words “public excise warehouse or licensed warehouse” the words “licensed warehouse, or a warehouse or any other place approved by the Director General”.

#### **Amendment of section 19A**

**16.** Section 19A of the principal Act is amended—

(a) in subsection (1)—

- (i) by inserting after the words “imported goods,” the words “other than goods affected under section 19E”;
- (ii) in paragraph (a), by substituting for the word “excise” the word “customs”;
- (iii) in paragraph (b), by substituting for the word “fifty” the words “two hundred”; and
- (iv) in paragraph (c), by substituting for the word “twelve” the word “three”; and

- (b) in subsection (2), by deleting the words “, or at the rate of excise duty leviable on goods of a like description at the time of re-export of the goods, whichever is the lower”.

### **Amendment of section 19B**

**17.** Section 19B of the principal Act is amended—

- (a) by substituting for the words “a senior officer of excise a declaration in duplicate, substantially” the words “a senior officer of excise a declaration”; and
- (b) by deleting the words “, where goods of a like description are liable to excise duty”.

### **Deletion of section 19D**

**18.** The principal Act is amended by deleting section 19D.

### **New section 19G**

**19.** The principal Act is amended by inserting after section 19F the following section:

#### **“Offsetting of drawback or refund against amount owing**

**19G.** Notwithstanding any provision of this Act, where any person has failed to pay, in whole or in part—

- (a) any amount of excise duty, surcharge, penalty, fee or any other money under this Act;
- (b) any amount of customs duty, surcharge, penalty, fee or any other money under the Customs Act 1967;
- (c) any amount of sales tax due and payable, any surcharge accruing, or any penalty or any 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 any other money payable under the Service Tax Act 1975 [Act 151];
- (e) any amount of tax due and payable, any surcharge accruing, or any penalty or any 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 any 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 any 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 paragraph (a), (b), (c), (d), (e), (f) or (g), and the Director General shall treat the amount offset as payment or part payment received from that person.”.

#### **Amendment of section 20**

**20.** Section 20 of the principal Act is amended by substituting for the words “licensee” wherever appearing the words “licensed manufacturer”.

#### **Amendment of section 21**

**21.** Section 21 of the principal Act is amended—

- (a) in the shoulder note, by substituting for the words “licensee” the words “**licensed manufacturer**”;
- (b) in subsection (1), by substituting for the words “holder of a licence” the words “licensed manufacturer”; and

- (c) in subsection (2), by substituting for the words “licenced tobacco manufacturer” the words “licensed manufacturer in tobacco product”.

### **Amendment of section 23**

**22.** Section 23 of the principal Act is amended by deleting paragraph (1)(b).

### **Amendment of section 23A**

**23.** Section 23A of the principal Act is amended—

- (a) by substituting for subsection (2A), the following subsections:

“(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.”; and

- (b) by inserting after subsection (2A) the following subsection:

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

### **Amendment of section 23B**

**24.** Section 23B of the principal Act is amended—

- (a) in subsection (2A)—

(i) by inserting after the words “subsection (1)” the words “or (1A)”; and

(ii) by substituting for the words “ten thousand ringgit” the words “fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both”; and

(b) by inserting after subsection (2A) the following subsection:

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

#### **Deletion of section 24**

**25.** The principal Act is amended by deleting section 24.

#### **Amendment of section 26**

**26.** Section 26 of the principal Act is amended by substituting for the words “public excise, or licensed warehouse,” the words “licensed warehouse, or a warehouse or any other place approved by the Director General”.

#### **Substitution of section 27A**

**27.** The principal Act is amended by substituting for section 27A the following section:

##### **“Depositing goods into warehouse**

**27A.** (1) On arrival or landing, any goods imported shall be deposited in a licensed warehouse other than a warehouse licensed under section 25 or in a warehouse or any other place approved by the Director General unless—

- (a) the excise duty payable, if any, has been paid;
- (b) the goods have been approved for movement in transit and the payment of excise duty is suspended;
- (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 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) If the Director General deems it necessary for the purposes of public interest that the goods are to be warehoused, the Director General may require the goods to be deposited in a licensed warehouse other than a warehouse licensed under section 25 or in a warehouse or other place approved by the Director General.

(3) The goods deposited under subsection (2) 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.

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

(5) Notwithstanding subsection (4), the goods referred to in subsection (4) shall not be released from customs control unless—

- (a) the excise duty payable, if any, has been paid; or
- (b) the goods have been approved for movement in transit and the payment for excise duty is suspended.”.

**New section 27AB**

**28.** The principal Act is amended by inserting after section 27A the following section:

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

**27AB.** (1) The Director General may approve any warehouse, not being a licensed warehouse, or any other place to be deposited with dutiable goods, and the approval granted may be withdrawn, suspended or cancelled.

(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.”.

**Amendment of section 28**

**29.** Section 28 of the principal Act is amended—

(a) by substituting for the shoulder note the following shoulder note:

**“Removal of dutiable goods from excise control”;**

(b) by substituting for the words “a public excise warehouse or a licensed warehouse” the words “a licensed warehouse or a warehouse or any other place approved by the Director General”; and

(c) by substituting for paragraph (b) the following paragraph:

“(b) if such goods are in a licensed warehouse, a warehouse or other place approved by the Director General or any other place under excise control, under such conditions as the Director General deems fit—

(i) for transit to another licensed warehouse, a warehouse or any other place approved by the Director General or any other place under excise control; or



- (ii) for manufacture in another place licensed under section 20; or”.

### **Amendment of section 30**

**30.** Section 30 of the principal Act is amended by substituting for the word “licensee” wherever appearing the words “licensed manufacturer”.

### **Amendment of section 32**

**31.** Subsection 32(2) of the principal Act is amended by inserting after the words “twenty seven litres” the words “in any one day”.

### **Amendment of section 35**

**32.** Subsection 35(4) of the principal Act is amended by substituting for the words “holder of a licence issued” the words “licensee”.

### **Substitution of section 40D**

**33.** The principal Act is amended by substituting for section 40D the following section:

#### **“Declaration of dutiable goods on import**

**40D.** (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—

- (a) in the case of goods deposited in a licensed warehouse other than a warehouse licensed under section 25 or in a warehouse or other place approved by the Director General referred to under subsection 27A(1) or (2), 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 licensed warehouse or in a warehouse or other place approved by the Director General referred to under subsection 27A(1) or (2), 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 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.”.

#### **Amendment of section 40G**

**34.** Section 40G of the principal Act is amended—

- (a) by substituting for the shoulder note the following shoulder note:

**“Copies of declaration”**; and

- (b) by substituting for the words “in duplicate or in such other” the words “in such”.

#### **Substitution of section 41B**

**35.** Section 41B of the principal Act is amended by substituting for the following section:

**“Records relating to excise matters**

**41B.** (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 so 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.”.

**New section 41BA**

**36.** The principal Act is amended by inserting after section 41B the following section:

**“Requirement to provide translation**

**41BA.** (1) Where a senior officer of excise investigating into an offence finds, seizes, detains, or takes possession of any goods, record, report or document 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 the senior officer of excise 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 excise 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).”.

**Amendment of section 41c**

**37.** Section 41c of the principal Act is amended—

(a) by renumbering the existing provision as subsection (1);

(b) in subsection (1) as renumbered—

- (i) by substituting for the words “to which dutiable goods are consigned shall on demand produce” the words “to which goods are consigned shall produce”; and
- (ii) by inserting after the word “waybill” the words “or any other document approved by the Director General”; and

(c) by inserting after subsection (1) as renumbered the following subsection:

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

#### **Amendment of section 41D**

**38.** Section 41D of the principal Act is amended—

(a) in subsection (1)

- (i) by substituting for the words “two months” the words “one month”;
- (ii) by substituting for the words “ five hundred” the words “five thousand”; and
- (iii) by substituting for the words “two thousand” the words “ten thousand”;

(b) by inserting after subsection (2) the following subsection:

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

#### **Amendment of section 42A**

**39.** Subsection 42A(2) of the principal Act is amended by inserting after the word “The baggage of passengers” the words “or any other person”.

**Amendment of section 44**

**40.** Section 44 of the principal Act is amended—

(a) in the shoulder note by deleting the word “**licensed**”;

(b) by substituting for subsection (1) the following subsection:

“(1) For the purposes of this Act and the regulations made thereunder, any senior officer of excise shall at all times have access to any place or premises where—

(a) any licensed manufacturer, licensee or importer carries on his business; and

(b) any person who has dealings with the licensed manufacturer, licensee or importer carries on his business.”;

(c) in subsection (2)—

(i) by substituting for paragraph (a) the following paragraph:

“(a) he may require the licensed manufacturer, licensee, importer or person referred to in paragraph 1(b) to produce any book, data, document, record or thing which is required to be kept under the provisions of this Act, or which relates to any dutiable goods;”;

(ii) in paragraph (d), by substituting for the words “manufacturer or importer or any person employed by such person or importer to answer questions” the words “licensed manufacturer, licensee, importer or person referred to in paragraph 1(b) or any person employed by the licensed manufacturer, licensee, importer or person referred to in paragraph 1(b) to answer the questions truthfully”; and

(iii) in paragraph (f) by substituting for the words “manufacturer or importer” the words “ licensed manufacturer, licensee, importer or person referred to in paragraph 1(b)”;

(d) in subsection (3)—

(i) by substituting for the words “an importer” the words “a licensed manufacturer, licensee or importer”;

(ii) by substituting for the words “such importer” the words “such licensed manufacturer, licensee or importer”; and

(e) by inserting after subsection (4) the following subsection:

“(5) Any person who refuses to give access to any place or premises to any senior officer of excise 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.”.

#### **New section 44B**

**41.** The principal Act is amended by inserting after section 44A the following section:

#### **“Protection against suit and legal proceedings**

**44B.** No action, suit, prosecution or other proceeding shall lie or be brought, instituted or maintained in any court against—

(a) any officer of excise;

(b) any police officer having the powers of a senior officer of excise or officer of excise under section 4A; and

(c) any proper officer,

for or in respect of any act, neglect or default done or committed by him in good faith or any omission omitted by him in good faith in such capacity.”.

#### **Amendment of section 46**

**42.** Section 46 of the principal Act is amended—

(a) in the shoulder note by substituting for the words “**Clerks and servants**” the word “**Employees**”;

(b) by renumbering the existing provision as subsection (1);

(c) in subsection (1) as renumbered—

(i) by substituting for the words “clerk or servant” the word “employee”;

(ii) by substituting for the words “firm:” the words “firm.”; and

(iii) by deleting the proviso; and

(d) by inserting after subsection (1) as renumbered the following subsection:

“(2) Notwithstanding subsection (1), a senior officer of excise may refuse to deal 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.”.

#### **Amendment of section 49**

**43.** Section 49 of the principal Act is amended by deleting the words “any public excise warehouse or in”.



**Amendment of section 51**

**44.** Section 51 of the principal Act is amended by inserting after subsection (2) the following subsections:

“(3) Where by reason of its nature, size or amount it is not practicable to remove any goods, document or thing seized under this section, the officer of excise may, by any means, seal the dwelling house, shop or other building, place, vessel or aircraft or such goods, document or thing in the dwelling house, shop or other building, place, vessel or aircraft in which it is found.

(4) A person who, without lawful authority, breaks, tampers with or damages the seal referred to in subsection (3) or removes the goods, document or thing 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.”.

**Amendment of section 53A**

**45.** Section 53A of the principal Act is amended—

(a) in subsection (2)—

(i) in paragraph (a), by deleting the word “and” at the end of the paragraph; and

(ii) by inserting after paragraph (a) the following paragraph:

“(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”; and

(b) by inserting after subsection (3) the following subsection:

“(4) Any person who contravenes subsection (1) or 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.”.

**Amendment of section 53B**

**46.** Section 53B of the principal Act is amended—

- (a) by renumbering the existing provision as subsection (1);  
and
- (b) by inserting after subsection (1) as renumbered the following subsection:

“(2) A proper officer may use any tracing or tracking device, non-intrusive instruments, or any other form of aids including animals in the performance of his duty under this Act.”.

**Amendment of section 54**

**47.** Section 54 of the principal Act is amended—

- (a) in subsection (1)—
  - (i) by substituting for the words “vehicle, vessel not exceeding two hundred tons nett registered tonnage, or aircraft” the words “conveyance other than vessel not exceeding two hundred tons nett registered tonnage or aircraft engaged in international carriage”; and
  - (ii) by inserting after the words “may be seized by any officer of excise” the words “on the person”;
- (b) in subsection (3)—
  - (i) by substituting for the words “by post at his place of abode, if known:” the words “by registered post in accordance with section 42.”; and
  - (ii) by deleting the proviso.

**Amendment of section 55**

**48.** Section 55 of the principal Act is amended—

(a) in the shoulder note by substituting for the words “**movable property**” the word “**goods**”;

(b) in paragraph (1)(b)—

(i) by inserting after the words “such return being subject to” the words “such terms and conditions as a senior officer of excise may impose and”;

(ii) in subparagraph (ii), by inserting after the word “thereof” the words “, if any”; and

(iii) in subparagraph (iii), by inserting after the words “any written law,” the words “if any,”;

(c) in subsection (2)—

(i) in paragraph (b), by inserting after the words “(1)(a)” the words “or (b)”;

(ii) by substituting for the words “three years or to a fine not exceeding ten thousand ringgit” the words “five years or to a fine not exceeding one hundred thousand ringgit”;

(d) in subsection (3), by inserting after the words “(1)(a)” the words “or (b)”;

(e) in subsection (4), by inserting after the words “(1)(a)” the words “or (b)”.

**Amendment of section 56**

**49.** Section 56 of the principal Act is amended—

(a) by inserting after subsection (2) the following subsection:

“(2A) The proper officer may take or cause to be taken photographs and finger and thumb impressions of any person arrested under subsection (1).”;

- (b) in subsection (4), by substituting for the words “Every person so arrested may be released from custody” the words “Subject to such conditions as the Director General deems fit, every person so arrested may be released from custody”; and
- (c) by inserting after subsection (5) the following subsections:

“(6) 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 excise or above the rank of Senior Assistant Director, be produced before such officer or before any other senior officer of excise for the purpose of investigation, and for such purpose he may be kept in lawful custody for a period not exceeding fourteen days.

(7) A person who is detained in lawful custody under subsection (6) or otherwise under any other written law may—

- (a) at any time be made available to a senior officer of excise 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.”.

### **Amendment of section 61**

**50.** Section 61 of the principal Act is amended—

- (a) by substituting for subsection (5) the following subsection:

“(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 engineer under the Registration of Engineers Act 1967 [*Act 138*];
- (c) a registered geologist under the Geologists Act 2008 [*Act 689*];
- (d) an Inspector of Weights and Measures appointed as such under any written law relating to weights and measures in force in Malaysia;
- (e) an agronomist;
- (f) a botanist;
- (g) a plant pathologist; and
- (h) a plant entomologist.”; and

(b) by inserting after subsection (5) the following subsection:

“(5A) The Minister may, after consultation with the relevant Minister, appoint any qualified person or class of qualified person by notification in the *Gazette* to be an analyst for the purpose of this section.”.

### **New section 61A**

**51.** The principal Act is amended by inserting after section 61 the following section:

#### **“Evidential provisions**

**61A.** (1) For the purposes of any proceeding under this Act, any statement purporting to be signed by the Director General or any officer of excise authorized by the Director General which forms part of or is annexed to the information, demand or 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 excise duty is certified under the hand of the Director General or any

officer of excise 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 74(1)(e), sections 74B and 74C, 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 excise duty or to obtain a refund or drawback of excise 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 excise duty or to obtain a refund or drawback of excise 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 excise 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 excise.

(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 excise in or outside Malaysia.”.

### **Amendment of section 62**

**52.** Section 62 of the principal Act is amended—

- (a) in the shoulder note by deleting the words “**vessels and**”;  
and
- (b) by deleting the words “vessel or”.

### **Amendment of section 62c**

**53.** Section 62c of the principal Act is amended—

- (a) in the shoulder note by substituting for the words “**and anti dumping**” the words “**, anti-dumping and safeguard**”;  
and
- (b) by substituting for the words “or anti dumping duty” the words “**, anti-dumping duty or safeguard duty**”.

**Amendment of section 63A**

**54.** Section 63A of the principal Act is amended—

(a) in subsection (1), by substituting for the words “the name and address” the words “the name, address, identification card number and passport number”; and

(b) in subsection (2)—

(i) by substituting for the words “ten thousand” the words “five hundred thousand”; and

(ii) by substituting for the words “five years” the words “seven years”.

**Substitution of section 64A**

**55.** The principal Act is amended by substituting for section 64A the following section:

**“Confidentiality of information**

**64A.** (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 or classification 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 or classification 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.”.

### **Amendment of section 65**

**56.** Subsection 65(2) of the principal Act is amended by substituting for the words “, conveyances, vessels not exceeding two hundred tons net registered tonnage and aircraft” the words “and conveyances other than vessels exceeding two hundred tons net registered tonnage”.

### **Amendment of section 67**

**57.** Section 67 of the principal Act is amended—

(a) in subsection (1), by substituting for the words “one calendar month from the date” the words “thirty days from the date of the notice”;

(b) by substituting for subsection (3) the following subsection:

“(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 excise shall, on the expiration of the period of thirty days, refer the claim or application to the Director General.”; and

(c) by inserting after subsection (3) the following subsection:

“(3A) Upon reference by the senior officer of excise under subsection (3), the Director General may direct such senior officer of excise—

(a) to release such goods or the proceeds of sale of such goods or the security furnished under paragraph 55(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.”.

### **Substitution of section 69**

**58.** The principal Act is amended by substituting for section 69 the following section:

#### **“Compounding of offences**

**69.** (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 excise 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) On the payment of such amount of money and if any goods are seized and the goods—

(a) are dutiable goods manufactured locally, such goods or the amount secured under paragraph 55(1)(a) or (b) or the amount realized by sale under paragraph 55(1)(c), as the case may be, shall be forfeited and no further proceedings shall be taken against such goods;

(b) are dutiable imported goods, such goods or the amount secured under paragraph 55(1)(a) or (b) or the amount realized by sale under paragraph 55(1)(c), as the case may be, shall be forfeited unless the excise duties payable is paid within thirty days from the date of payment of such amount of money.

(6) Notwithstanding paragraph (5)(a), the Director General may on application of such person release such goods or return the amount realized by sale, as the case may be, on payment of such amount of money and on the terms and conditions which he deems fit.”.

**New section 69A**

**59.** The principal Act is amended by inserting after section 69 the following section:

**“Cost of holding goods, document or thing seized**

**69A.** Where any goods, document or thing seized under this Act is held in the custody of the officer of excise 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.”.

**Amendment of section 74**

**60.** Subsection 74(1) of the principal Act is amended—

(a) in subparagraph (iii)(B), by substituting for the words “five years” the words “seven years”; and

(b) in subparagraph (iv)(B), by substituting for the words “five years” the words “seven years”.

**New sections 74A, 74B and 74C**

**61.** The principal Act is amended by inserting after section 74 the following sections:

**“Penalty for offences relating to data stored in computer**

**74A.** (1) Any person who, without the authority of the Director General—

(a) destroys, damages, erases, 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 excise 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**

**74b.** Any person who obtains, or does anything which causes any other person to obtain, any amount by way of drawback of any excise 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 amount, or to imprisonment for a term not exceeding seven years or to both.

### **Penalty for offence relating to claims for refund**

**74c.** Any person who obtains, or does anything which causes any other person to obtain, the refund of any money under paragraph 11(2)(b) or section 13, 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 amount, or to imprisonment for a term not exceeding seven years or to both.”.

### **Amendment of section 75**

**62.** Section 75 of the principal Act is amended by substituting for the words “a fine not less than two thousand ringgit but not exceeding ten thousand ringgit” the words “a fine not less than five thousand ringgit but not exceeding twenty thousand ringgit”.

### **Amendment of section 78**

**63.** Paragraph 78(1)(a) of the principal Act is amended by substituting for the words “vessel or aircraft or other means of conveyance” the word “conveyance”.

### **Amendment of section 81**

**64.** Section 81 of the principal Act is amended—

(a) by substituting for the scale the following scale:

<b>“Where the fine</b>	<b>the period may extend to</b>
does not exceed five thousand ringgit ...	two months
exceeds five thousand ringgit ... but does not exceed ten thousand ringgit	four months
exceeds ten thousand ringgit ... but does not exceed twenty thousand ringgit	six months”; and

(b) by substituting for the words “for every one hundred ringgit after the first two hundred ringgit” the words “for every ten thousand ringgit after the first twenty thousand ringgit”.

**Amendment of section 82A**

**65.** Section 82A of the principal Act is amended by substituting for the words “excise duty, penalty or surcharge” the words “excise duty, surcharge, penalty, fees or other money”.

**Amendment of section 85**

**66.** Subsection 85(2) of the principal Act is amended—

- (a) by deleting paragraph (h);
- (b) in paragraph (k), by substituting for the words “any person licensed” the words “licensed manufacturer”;
- (c) in paragraph (m), by inserting after the words “kept by” the words “licensed manufacturer and”; and
- (d) in paragraph (p), by inserting after the words “the offences which may be compounded” the words “, the criteria for compounding the compoundable offence”.

**Amendment of section 87**

**67.** Section 87 of the principal Act is amended in the definition of “principal customs area” by substituting for the words “and Tioman” the words “, Tioman and Pangkor”.

**Amendment of section 90B**

**68.** Section 90B of the principal Act is amended by substituting for the words “vessels and aircraft transporting such goods as if Labuan were a place outside Malaysia” the words “vehicles, vessels and aircrafts transporting such goods”.

**Amendment of section 90c**

**69.** Section 90c of the principal Act is amended by substituting for the words “vessels or aircraft” wherever appearing the words “vehicles, vessels or aircraft”.

**Amendment of section 90E**

**70.** Section 90E of the principal Act is amended by substituting for the words “vessels or aircraft” wherever appearing the words “vehicles, vessels or aircraft”.

**Amendment of section 91A**

**71.** Section 91A of the principal Act is amended in the definition of “principal customs area” by substituting for the words “and Tioman” the words “, Tioman and Pangkor”.

**Amendment of section 91DB**

**72.** Section 91DB of the principal Act is amended by substituting for the words “vessels and aircraft transporting such goods as if Langkawi were a place outside Malaysia” the words “vehicles, vessels and aircrafts transporting such goods”.

**Amendment of section 91DC**

**73.** Section 91DC of the principal Act is amended—

- (a) by substituting for the words “any vessel or aircraft” the words “any vehicle, vessel or aircraft”; and
- (b) by substituting for the words “such vessel or aircraft” the words “such vehicle, vessel or aircraft”.

**Amendment of section 91DE**

**74.** Section 90DE of the principal Act is amended by substituting for the words “vessels or aircraft” wherever appearing the words “vehicles, vessels or aircraft”.

**Amendment of section 91E**

**75.** Section 91E of the principal Act is amended in the definition of “principal customs area” by substituting for the words “and Tioman” the words “, Tioman and Pangkor”.



**Amendment of section 91J**

**76.** Section 91J of the principal Act is amended by deleting the words “as if Tioman were a place outside Malaysia”.

**Amendment of section 91K**

**77.** Section 91K of the principal Act is amended—

(a) by substituting for the words “any vessel or aircraft” the words “any vehicle, vessel or aircraft”; and

(b) by substituting for the words “such vessel or aircraft” the words “such vehicle, vessel or aircraft”.

**Amendment of section 91M**

**78.** Section 91M of the principal Act is amended by substituting for the words “vessels or aircraft” wherever appearing the words “vehicles, vessels or aircraft”.

**New Part XVD**

**79.** The principal Act is amended by inserting after Part XVC the following Part:

“PART XVD

SPECIAL PROVISIONS DEALING WITH PANGKOR

**Interpretation**

**91Q.** 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.

**Dutiable goods in Pangkor**

**91R.** The provisions of this Act shall not apply to goods manufactured in or imported into Pangkor, other than goods which the Minister may from time to time declare by order published in the *Gazette*.

**Goods manufactured in Pangkor shall be deemed to have been manufactured outside Malaysia**

**91s.** Goods subject to excise duty, other than those referred to in section 91R, when manufactured in Pangkor shall be deemed to have been manufactured outside Malaysia and when moved from Pangkor to the other territories in Malaysia shall be deemed to have been imported into those territories and the provisions of the Customs Act 1967 shall apply.

**Goods manufactured in other territories of Malaysia shall be deemed to have been exported when moved into Pangkor**

**91t.** Goods subject to excise duty, other than those referred to in section 91R, manufactured in other territories of Malaysia when moved into Pangkor shall be deemed to have been exported from such territories to a place outside Malaysia for the purpose of section 19 and paragraph 28(d).

**Excise duties relating to Pangkor**

**91u.** (1) Notwithstanding anything to the contrary contained in this Act—

- (a) no excise duty shall be payable upon any goods imported into Pangkor, other than the goods which the Minister may from time to time declare by order published in the *Gazette*;
- (b) excise 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; and

(c) 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 6(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 Pangkor any other excise duty which may be fixed by the Minister under subsection 6(1).

### **Transportation of goods to or from Pangkor from or to the principal customs area**

**91v.** 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 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 X shall apply to goods transported to or from Pangkor from or to the principal customs area and to persons, vehicles, vessels and aircrafts transporting such goods.

### **Declaration of goods transported from Pangkor to the principal customs area**

**91w.** 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**

**91x.** Any dutiable goods, other than goods declared by the Minister under paragraph 91U(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**

**91y.** In making regulations under section 85 the Minister may provide—

- (a) for the collection in Pangkor of excise duties payable in respect of goods transported or about to be transported from or to Pangkor to or from the principal customs area;
- (b) for the limitation or restriction of vehicles, vessels and aircrafts which may be used to transport such goods; and
- (c) for the licensing or control of persons or vehicles, vessels or aircrafts transporting such goods.

**Application of provisions relating to drawback to goods transported to Pangkor**

**91z.** The provisions relating to drawback under this Act shall apply to goods, other than goods declared by the Minister under paragraph 91U(1)(a), transported from the principal customs area to Pangkor as if such goods had been re-exported.”.

**Saving**

**80.** Any compounding of offences under the existing section 69 of the principal Act which is pending immediately before the date of coming into operation of this Act shall, on and after the date of coming into operation of this Act, continue to be a compoundable offence as if section 69 of the principal Act had not been amended by this Act.

## EXPLANATORY STATEMENT

This Bill seeks to amend the Excise Act 1976 (“Act 176”). The main purpose of the amendment is to improve excise procedures in particular relating to the payment of excise duty, obligation to keep records relating to excise matters and warehousing of imported goods. The amendment also seeks to strengthen the enforcement powers of the officers of Excise and to increase the amount of penalty for offences under Act 176.

2. *Clause 1* contains the short title of the proposed Act and the power of the Minister to appoint the commencement date of the proposed Act.

3. *Clause 2* seeks to amend section 2 of Act 176.

*Subclause 2(a)* seeks to provide for new definitions of “road”, “customs control”, “duty free shop”, “public ruling”, “sea”, “licensee”, “transit”, “transhipment”, “conveyance”, “licensed manufacturer”, “surcharge” and by deleting the definitions of “public excise warehouse”, “licensed tobacco manufacturer” and “free zone”. This *subclause* also seeks to amend the definitions of “bottle”, “native liquor”, “officer of excise”, “senior officer of excise”, “owner” and “manufacture”.

*Subclause 2(b)* seeks to introduce a new subsection 2(1A) into Act 176 to clarify that a free zone shall be deemed to be a place outside a principal customs area and the provisions under Parts VII, VIIIA and section 76 shall be applicable to a free zone. *Subclause 2(b)* also seeks to introduce a new subsection 2(1B) into Act 176 providing for the definitions of “free zone” and “principal customs area”.

4. *Clause 3* seeks to amend section 4 of Act 176 to provide that the Deputy Director shall be subject to the general direction of the Director General and to provide that Deputy Director General, Assistant Director General, Director, Deputy Director, Senior Assistant Director and Assistant Director shall have and exercise all powers conferred on the Director General under Act 176 other than the powers conferred by section 18.

5. *Clause 4* seeks to introduce a new section 4A into Act 176 to clarify that the powers exercisable by all police officers are only in relation to Part X of Act 176 (Inspection, Investigation, Search, Seizure and Arrest).

6. *Clause 6* seeks to introduce a new section 5F into Act 176 to empower the Director General to make public rulings on the application of any provision of Act 176.

7. *Clause 7* seeks to delete subsection 6(6) of Act 176 to empower the Minister to recover the surcharge, penalty and other moneys payable as a civil debt in the proposed new section 15B.

8. *Clause 8* seeks to introduce a new section 6A into Act 176 to provide that for the purpose of levying of excise duties, goods *bona fide* in transit, including goods for transhipment, shall not be deemed to be imported unless the goods are or become unexcisable goods.

9. *Clause 9* seeks to amend section 11A of Act 176.

*Subclause 9(c)* seeks to amend subsection 11A(1) of Act 176 as renumbered to empower the Minister to remit the whole or any part of the excise duty, surcharge, penalty, fee or other money payable under this Act.

*Subclause 9(d)* seeks to introduce a new subsection 11A(2) into Act 176 to provide that where a person has paid any of the excise duty, surcharge, penalty, fee or other money payable under this Act to which remission has been granted under subsection 11A(1) as renumbered, he shall be entitled to a refund of such excise duty, surcharge, penalty, fee or other money which had been remitted.

10. *Clause 10* seeks to amend section 13 of Act 176.

*Subclause 10(d)* seeks to amend the proviso to paragraph 13(1)(b) of Act 176 to provide that where any excise duty has been paid under section 8A or pending the result of a review or appeal under section 47 of Act 176, 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, review or appeal is made known to the claimant.

*Subclause 10(e)* seeks to introduce a new subsection 13(2) into Act 176 to provide that a claim under this section shall be supported by such documents as required by the Director General.

11. *Clause 11* seeks to substitute section 14 of Act 176 to provide that if any dutiable goods are damaged, destroyed or lost due to unavoidable accident at any time before removal from excise control, the Director General may remit the whole or any part of the excise duty payable thereon if notice in writing of such damage, destruction or loss due to unavoidable accident supported by sufficient documents, has been given at or before the time of such removal. If any dutiable goods are damaged, destroyed or lost due to unavoidable accident after the removal of such goods from excise control, no abatement of excise duty shall be allowed on such goods.

12. *Clause 12* seeks to amend section 15 of Act 176.

*Subclause 12(b)* seeks to amend subsection 15(1) of Act 176 to provide that where excise duties, surcharges, penalties, fees or other moneys have not been paid or erroneously refunded due to inadvertence, negligence, error, collusion, or misconstruction on the part of any officer of excise or due to misstatement as to the value, quantity, quality or description by any person, the person liable to pay such excise duties, surcharges, penalties, fees or other moneys payable or the deficiency 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 excise duties, surcharges, penalties, fees or other moneys was payable or the deficient excise duties, surcharges, penalties, fees or other moneys was payable or the refund was made, as the case may be.

*Subclause 12(c)* seeks to amend subsection 15(2) of Act 176 to allow the Director General to impose conditions when the amount payable under subsection 15(1) of Act 176 is paid by instalments.

*Subclause 12(d)* seeks to substitute subsections 15(3), (4) and (5) of Act 176 and seeks to introduce new subsections 15(6), (7), (8) and (9) into Act 176.

Subsection 15(3) seeks to provide that if there is default in payment of any instalment under subsection 15(2) of Act 176 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.

Subsection 15(4) provides that subsections 15(2) and (3) of Act 176 shall not prejudice the exercise of the rights and powers of the Director General to seize or, subject to the proposed subsection 15(5), sell any goods under excise control belonging to the person liable to pay such excise duties, surcharges, penalties, fees or other moneys for the recovery of the amount payable under subsection 15(1), (2) or (3) of Act 176, or any outstanding balance thereof.

Subsection 15(5) empowers the Director General to sell the goods under excise control belonging to a person liable to pay the amount due under subsection 15(1) of Act 176 if the excise duties, surcharges, penalties, fees or other moneys or deficiency, or the refund to be repaid remain unpaid by the person, as the case may be, after giving not less than thirty days notice in writing or in the *Gazette*.

The proposed subsection 15(6) provides that the proceeds of sale of any goods under the proposed subsection 15(5) shall be applied to the payment of the excise duty, surcharge, penalty, fee or other money, or recovery of any amount or charges 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 15(1) of Act 176 and if such person cannot be found within one month of the sale, such surplus shall be paid to the Consolidated Fund.

The proposed subsection 15(7) provides that the goods under excise control belonging to a person liable to pay the amount due under the subsection 15(1) of Act 176 shall be forfeited to the Government and shall be disposed of in such manner as the Director General may direct if at the sale of any such goods no sufficient bid is forthcoming to defray the excise duty, surcharge, penalty, fee or other money payable or the refund erroneously paid, as the case may be.

The proposed subsection 15(8) seeks to provide that the Director General may make a demand at any time after six years from the date on which excise duty, surcharge, penalty, fee or other money was payable or excise 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.

The proposed subsection 15(9) seeks to provide for the sale of goods by auction shall be conducted by or in the presence of senior officer of excise.

13. *Clause 13* seeks to amend section 15A of Act 176.

*Subclauses 13(b)* and *(d)* seek to provide that where the Director General has reason to believe that any person is about or is likely to leave Malaysia without paying any excise duty, surcharge, penalty, fee or any other money, the Director General 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 excise duty, surcharge, penalty, fee or other money so payable or furnishes security to the satisfaction of the Director General for its payment. A written statement signed by the Director General stating that all the excise duties, surcharges, penalties, fees or other moneys have been paid or that security has been furnished for its payment, shall be sufficient authority for allowing that person to leave Malaysia.

*Subclause 13(c)* seeks to amend subsection 15A(2) of Act 176 to empower the Director General of Immigration who receives a request under subsection 15A(1) of Act 176 to 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 the person as may be necessary to give effect to the request.

*Subclause 13(e)* seeks to amend subsection 15A(3) of Act 176 to require the Director General to serve a notice of the issuance of a certificate under subsection 15A(1) to be served personally or by registered post at the last known address of the person to whom the certificate relates.

14. *Clause 14* seeks to introduce a new section 15B into Act 176 to allow any excise duty, surcharge, penalty, fee or other money payable under Act 176 to be recovered as a civil debt due to the Government.

15. *Clause 15* seeks to amend section 16 of Act 176 to provide wider scope of the calculation of the rate of excise duty for goods manufactured in Malaysia.

16. *Clause 16* seeks to amend section 19A of Act 176.

*Subclause 16(a)(i)* seeks to provide for the claims of drawback of the excise duty on imported goods other than personal goods or other goods carried by visitors to Malaysia or samples carried by commercial travellers under section 19E of Act 176.

*Subclause 16(a)(ii)* seeks to authorize the senior officer of customs at the customs port or customs airport to identify the goods subject to the claims of drawback before such goods are re-exported.

*Subclause 16(a)(iii)* seeks to increase the minimum value for drawback claims from fifty ringgit to two hundred ringgit.

*Subclause 16(a)(iv)* the seeks to shorten the period during which the goods are to re-exported for the purposes of drawback claim from twelve months to three months from the date the excise duty was paid.



*Subclause 16(b)* seeks to require the amount of drawback allowed to be calculated at the rate of excise duty levied at the time of import only.

17. *Clause 18* seeks to delete section 19D of Act 176 to remove the power of the Director General to allow drawback of excise duty on goods which suffer deterioration or damage which are to be destroyed in the presence of a senior officer of excise.

18. *Clause 19* seeks to introduce a new section 19G into Act 176 to provide that where a drawback or refund of excise duties under Act 176 is due to a person who has failed to pay any amount of excise duty, customs duty, *etc.*, the Director General may offset the amount of such drawback or refund against the amount such person has failed to pay.

19. *Clause 22* seeks to delete paragraph 22(1)(b) of Act 176 as a consequential amendment to the deletion of section 24 of Act 176.

20. *Clause 23* seeks to amend section 23A of Act 176.

*Subclause 23(a)* seeks to make it an offence for any liquidator who fails to furnish the relevant documents, books and records provided under the proposed subsection 23(2B). This *clause* also seeks to increase the penalty for the offence of failure to give notice to the Director General and to set aside such sum out of the assets for payment of excise duty under subsection 23A(1) and the offence under the proposed subsection 23A(2B) from a fine not exceeding ten thousand ringgit to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

*Subclause 23(b)* seeks to introduce a new subsection 23A(2B) into Act 176 to require the liquidator to furnish all relevant documents, books and records which are in his possession to the proper officer for the purpose of calculating all duties payable.

21. *Clause 24* seeks to amend section 23B of Act 176.

*Subclause 24(a)* seeks to make it an offence for any receiver who fails to furnish the relevant documents, books and records provided under the proposed subsection 23B(2B). This *clause* also seeks to increase the penalty for the offence of failure to give notice to the Director General and to set aside such sum out of the assets for payment of excise duty under subsection 23B(1) and the offence under the proposed subsection 23B(2B) from a fine not exceeding ten thousand ringgit to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

*Subclause 24(b)* seeks to introduce a new subsection 23B(2B) into Act 176 to require the receiver to furnish all relevant documents, books and records which are in his possession to the proper officer for the purpose of calculating all duties payable.

22. *Clause 25* seeks to delete section 24 of Act 176 to remove the power of the Minister to establish a public excise warehouse to deposit and keep dutiable goods without payment of duty as it is no longer necessary.

23. *Clause 26* seeks to amend section 26 of Act 176 to remove the function of public excise warehouse as a place to store or keep any dutiable goods as a consequential amendment to the deletion of section 24 of Act 176.

24. *Clause 27* seeks to amend section 27A of Act 176.

The proposed subsection 27A(1) seeks to require imported goods, on arrival or landing, to be deposited in a licensed warehouse, a warehouse or other place approved by the Director General except where the duty payable has been paid in accordance with section 28, or the goods have been approved for movement in transit or transshipment under certain conditions, the goods are imported by post, by road or by sea under certain conditions and the goods are personal effects.

The proposed subsection 27A(2) seeks to allow the Director General to require the goods, if it is necessary for the purposes of public interest, to be deposited in a licensed warehouse or in a warehouse or other place approved by the Director General.

The proposed subsection 27A(3) seeks to provide that the goods deposited under the proposed subsection 27A(2) to be deposited at the expense of the owner and to be deemed under excise control. The goods shall not be removed except with the permission of the proper officer of customs.

The proposed subsection 27A(4) seeks to provide that the proposed subsection 27A(1) is not applicable to goods entering principal customs area from a free zone.

25. *Clause 28* seeks to introduce a new section 27AB into Act 176 to empower the Director General to approve a warehouse, not being a licensed warehouse, or other place for depositing dutiable goods subject to such conditions as the Director General deems fit.

26. *Clause 29* seeks to amend section 28 of Act 176 to prohibit the removal of dutiable goods from a licensed warehouse, a warehouse or any other place approved by Director General or excise control except for transit to another licensed warehouse, warehouse or other place approved by Director General or in any other place under excise control or for manufacture in another place licensed under section 20 of Act 176.

27. *Clause 33* seeks to substitute section 40D of Act 176 to provide for the time or period for making declaration on dutiable goods on import in the form as may be prescribed to the proper officer.

28. *Clause 35* seeks to substitute section 41B of Act 176 to require every person to keep full and true records up to date of all transactions which affect or may affect his obligation on any matters under Act 176.

29. *Clause 36* seeks to introduce a new section 41<sup>BA</sup> into Act 176 to empower a senior officer of excise to require the person who had the possession, custody or control of the goods, record, report or document which has been seized, detained, or taken possession to furnish him a translation in the national language or English language within such period as the officer may specify if the goods, record, report or document is in a language other than the national language or English language.

30. *Clause 37* seeks to amend section 41<sup>C</sup> of Act 176 to require the station master at the place of import of goods by rail and at the customs section to which goods are consigned to produce to the proper officer the railway invoices or waybills in respect of such goods without a demand being made and to prohibit cargo from being loaded into or unloaded off the train except with the permission of the proper officer.

31. *Clause 38* seeks to amend section 41<sup>D</sup> of Act 176.

*Subclause 38(a)* seeks to amend subsection 41<sup>D</sup>(1) of Act 176 to increase the sum liable to be paid, on demand, by the master or the agent of the vessel to the proper officer in the case where any goods entered in the manifest of any vessel are not accounted for to the satisfaction of the proper officer within one month of the presentation of the statement of the outturn of the cargo from not exceeding five hundred ringgit to not exceeding five thousand ringgit. In the case where the correct duty cannot be assessed, the sum liable to be paid is increased from not exceeding two thousand ringgit to not exceeding ten thousand ringgit.

*Subclause 38(b)* seeks to introduce a new subsection 41<sup>D</sup>(3) into Act 176 to provide for the definition of “agent of the vessel” which includes a freight forwarder.

32. *Clause 39* seeks to amend subsection 42<sup>A</sup>(2) of Act 176 to allow the baggage of the passenger or any person to be examined and delivered in such manner as the Director General may direct.

33. *Clause 40* seeks to amend section 44 of Act 176.

*Subclause 40(b)* seeks to substitute subsection 44(1) of Act 176 to provide wider access for any senior officer of excise or any officer deputed by him to have access not only to the importer place or premise to carry in his business but also to place or premise of licensed manufacturer, licensee and any person who has dealings with the licensed manufacturer, licensee and importer to carry in their business.

*Subclause 40(c)(i)* seeks to amend paragraph 44(2)(a) of Act 176 to empower the senior officer of excise who enters into the premises to require any books, data, document or other record, or thing to be produced to him by the licensed manufacturer, licensee, importer or person referred to in the proposed paragraph 44(1)(b) of Act 176.

*Subclause 40(c)(ii)* seeks to amend paragraph 44(2)(d) of Act 176 to empower a senior officer of excise who enters into the premises to require questions relating to any books, data, document or other record, *etc.*, to be answered truthfully by the licensed manufacturer, licensee, importer or person referred to in the proposed paragraph 44(1)(b) of Act 176 or any person employed by licensed manufacturer, licensee, importer or person referred to in the proposed paragraph 44(1)(b) of Act 176.

*Subclause 40(c)(iii)* seeks to amend paragraph 44(2)(f) of Act 176 to empower a senior officer of excise to open and examine any packages or any goods or materials in the premises at the risk and expense of the licensed manufacturer, licensee, importer or person referred to in the proposed paragraph 44(1)(b) of Act 176.

*Subclause 40(d)* seeks to amend subsection 44(3) of Act 176 to empower a senior officer of excise to enter any premise and open any receptacle contained in any premises where the licensed manufacturer, licensee, importer or person referred to in proposed paragraph 44(1)(b) of Act 176, carries on his business, if necessary by force when he is unable to obtain free access to such premises or to any receptacle contained in any premises.

*Subclause 40(e)* seeks to introduce a new subsection 44(5) into Act 176 to make it an offence for any person who refuses to give access to any place or premises to any senior officer of excise and to provide punishment for such offence.

34. *Clause 41* seeks to introduce a new section 44B into Act 176 to deal with the protection against any action, suit, prosecution or other proceeding in relation to any officer of excise, any police officer having the powers of a senior officer of excise or officer of excise under the new section 4A of Act 176, or any proper officer in respect of any act, neglect or default done or committed by him in good faith or any omission omitted by him in good faith in the execution of his duty under this Act.

35. *Clause 42* seeks to amend section 46 of Act 176.

*Subclause 42(d)* seeks to introduce a new subsection 46(2) into Act 176 to empower a senior officer of excise to refuse to deal with an employee unless such person or firm has furnished a signed authority authorizing such employee to transact business on its behalf.

36. *Clause 43* seeks to amend section 49 of Act 176 by deleting the words “any public excise warehouse or in” as a consequential amendment to the deletion of section 24 of Act 176.

37. *Clause 44* seeks to amend section 51 of Act 176 by introducing new subsections (3) and (4).

The proposed new subsection 51(3) seeks to empower an officer of excise to seal the dwelling house, shop or other building, place, vessel or aircraft or such goods, document or thing in the dwelling house, shop or other building, place, vessel or aircraft in which it is found if by reason of its nature, size or amount it is not practicable to remove such goods, document or thing seized.

The proposed new subsection 51(4) seeks to make it an offence for any person who without lawful authority, breaks, tampers with or damages the seal referred to in subsection (3) or removes the goods, document or thing under seal, or attempts to do so and to provide punishment for such offence.

38. *Clause 45* seeks to amend section 53A of Act 176.

*Subclause 45(a)(ii)* seeks to introduce a new paragraph 53A(2)(aa) into Act 176 to allow an officer of excise to make copies or take extracts from the recorded information or computerized data as he deems necessary in exercising his powers under sections 51, 52 and 53 of Act 176.

*Subclause 45(b)* seeks to introduce a new subsection 53A(4) into Act 176 to make it an offence for any person who contravenes subsection 53A(1) and paragraph 53A(2)(b) of Act 176 and to provide punishment for such offence.

39. *Clause 46* seeks to amend section 53B of Act 176.

*Subclause 46(b)* seeks to introduce a new subsection 53B(2) into Act 176 to allow a proper officer to use any tracing or tracking device, non-intrusive instrument, or any other form of aids, including animals, in the performance of his duty under Act 176.

40. *Clause 47* seeks to amend section 54 of Act 176.

*Subclause 47(b)(ii)* seeks to delete the proviso to subsection 54(3) of Act 176 to require the seizing officer to give written notice for any seizure made on the person, or in the presence of the offender or the owner or his agent, or in the presence of the master or pilot.

41. *Clause 48* seeks to amend section 55 of Act 176 to provide for the return of goods to the owner of the goods or to the person from whose possession, custody, control the goods were seized.

*Subclause 48(b)(i)* seeks to amend paragraph 55(1)(b) of Act 176 to provide that the return of the goods to the owner of the goods or to the person from whose possession, custody, control the goods were seized is subject to such terms and conditions as senior officer of excise may impose.

*Subclause 48(c)(ii)* seeks to amend subsection 55(2) of Act 176 to increase the punishment from imprisonment for a term not exceeding three years or to a fine not exceeding ten thousand ringgit to imprisonment for a term not exceeding five years or to a fine not exceeding one hundred thousand ringgit.

42. *Clause 49* seeks to amend section 56 of Act 176.

*Subclause 49(a)* seeks to introduce a new subsection (2A) into Act 176 to allow a proper officer to take or cause to be taken photographs and finger and thumb impressions of any person arrested under subsection 56(1) of Act 176.

*Subclause 49(b)* seeks to amend subsection 56(4) of Act 176 to provide that every person arrested may be released from custody subject to such conditions as the Director General deems fit.

*Subclause 49(c)* seeks to introduce new subsections 56(6) and (7) into Act 176.

The proposed subsection 56(6) seeks to allow, upon an order by a senior officer of excise or above the rank of Senior Assistant Director, a person who is arrested for an offence under Act 176 who is serving a sentence of imprisonment or is under detention under any law relating to preventive detention, or is otherwise in lawful custody, to be produced before such officer for the purpose of investigation and the person may be kept in lawful custody for a period not exceeding fourteen days for the purpose of such investigation.

The proposed subsection 56(7) seeks to provide that a person who is detained in lawful custody under the proposed subsection 56(6) to be made available to a senior officer of excise for the purpose of investigation or to 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 Act 176.

43. *Clause 50* seeks to amend subsection 61(5) of Act 176 to provide for a more comprehensive and relevant definition of “analyst”.

44. *Clause 51* seeks to introduce a new section 61A into Act 176 which deals with evidential provisions.

45. *Clause 54* seeks to amend section 63A of Act 176.

*Subclause 54(a)* seeks to amend subsection 63A(1) of Act 176 which deals with the obligation of secrecy in relation to identification card number and passport number of an informer.

*Subclause 54(b)* seeks to amend subsection 63A(2) of Act 176 to increase the punishment for the offence under subsection 63A(1) of Act 176 from a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years to a fine not exceeding one hundred thousand ringgit and imprisonment for a term not exceeding seven years.

46. *Clause 55* seeks to substitute section 64A of Act 176 which deals with the confidentiality of information, documents or declarations relating to importation, exportation, valuation and classification of any goods as confidential. With this amendment any person who commits an offence of communicating such confidential information, document or declaration shall, on conviction, be liable to an imprisonment for a term not exceeding five years or to a fine not exceeding one hundred thousand ringgit or to both.

47. *Clause 57* seeks to amend section 67 of Act 176.

*Subclause 57(a)* seeks to amend subsection 67(1) of Act 176 to provide that if there is no prosecution with regard to any goods seized under the Act 176, such goods or the proceeds of sale of such goods which are held pursuant to paragraph 55(1)(c) of Act 176 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 except where certain requirements are met.

*Subclause 57(b)* seeks to amend subsection 67(3) of Act 176 to require a senior officer of excise to refer the claim or the written application relating to such goods seized or the proceeds of such goods to the Director General if the claim or the written application made within the period of thirty days and there is no prosecution with regard to the goods.

*Subclause 57(c)* seeks to introduce a new subsection 67(3A) into Act 176 to empower the Director General to direct such senior officer of excise to release such goods or the proceeds of sale of such goods or the security furnished under paragraph 55(1)(a) or (b) of Act 176 or to refer the matter to a Magistrate for his decision.

48. *Clause 58* seeks to amend section 69 of Act 176 to empower any senior officer of excise to compound any offence which is prescribed to be a compoundable offence committed by any person under Act 176 with the written consent of the Public Prosecutor. The amount compounded shall not exceed fifty per centum of the amount of the maximum fine for that offence.

49. *Clause 59* seeks to introduce a new section 69A into Act 176 to provide that where any goods, document or thing seized under Act 176 is held in the custody of the officer of excise pending completion of any proceedings in respect of an offence under Act 176, the cost of holding such goods, document or thing in custody shall, in the event of any person found guilty of an offence, to be a debt due to the Government by such person and shall be recoverable accordingly.

50. *Clause 60* seeks to amend section 74 of Act 176.

*Subclause 60(a)* seeks to amend subparagraph 74(1)(iii)(B) of Act 176 to increase the term of imprisonment from five years to seven years for a second offence or any subsequent offence under subsection 74(1) of Act 176 in the case of locally manufactured cigarettes or intoxicating liquor.

*Subclause 60(b)* seeks to amend subparagraph 74(1)(iv)(B) of Act 176 to increase the term of imprisonment from five years to seven years for a second offence or any subsequent offence under subsection 74(1) of Act 176 in the case of imported cigarettes or intoxicating liquor.

51. *Clause 61* seeks to introduce new sections 74A, 74B and 74C into Act 176.

The proposed section 74A seeks to provide for offences relating to data stored in computer and its penalty.

The proposed section 74B seeks to provide for the offence relating to the claim for drawback and its penalty.

The proposed section 74C seeks to provide for the offence relating to the claim for refund and its penalty.

52. *Clause 62* seeks to amend section 75 of Act 176 to increase the penalty for the offence under section 75 of Act 176 from a fine not less than two thousand ringgit but not exceeding ten thousand ringgit to a fine not less than five thousand ringgit but not exceeding twenty thousand ringgit.

53. *Clause 64* seeks to amend section 81 of Act 176 to substitute the scale consisting of the new threshold of fine and the maximum period of imprisonment imposed by any court in respect of non-payment of any fine under Act 176.

54. *Clause 66* seeks to amend section 85 of Act 176.

*Subclause 66(a)* seeks to delete paragraph 85(h) of Act 176 as a consequential amendment to the deletion of section 24 of Act 176.

*Subclause 66(c)* seeks to amend paragraph 85(p) of Act 176 to empower the Minister to prescribe the criteria for compounding the compoundable offence.

55. *Clause 67, 71 and 75* seeks to amend sections 87, 91A and 91E of Act 176 to exclude Pangkor from the principal customs area. With this amendment, Pangkor shall be regarded as a duty free island similar to Labuan, Langkawi and Tioman.

56. *Clause 68, 72 and 76* seeks to amend sections 90B, 91DB and 91J of Act 176 to clarify that Labuan, Langkawi and Tioman is not a place outside Malaysia. This is in line with the introduction of new subsections 2(1A) and (1B) into Act 176 which provides that Labuan, Langkawi and Tioman is a place outside principal customs area.

57. *Clause 73* seeks to amend section 91DC of Act 176 to require the person in charge of any vehicle, vessel or aircraft on which goods are transported from Langkawi to the principal customs area to make a declaration in the prescribed form giving particulars of the goods transported in such vehicle, vessel or aircraft.

58. *Clause 77* seeks to amend section 91K of Act 176 to require the person in charge of any vehicle, vessel or aircraft on which goods are transported from Tioman to make a declaration in the prescribed form giving particulars of the goods transported in such vehicle, vessel or aircraft.

59. *Clause 79* seeks to introduce a new Part XV<sub>D</sub> (Special Provisions dealing with Pangkor) into Act 176.

The proposed new section 91Q seeks to provide for the definitions of “Pangkor” and “principal customs area”.



The proposed new section 91R seeks to provide for non-application of the provisions of Act 176 to goods manufactured in or imported into Pangkor, other than goods which the Minister may, from time to time, declare by an order published in a *Gazette*.

The proposed new section 91S seeks to provide that goods subject to excise duty, other than the goods referred to in the proposed new section 91R, when manufactured in Pangkor to be deemed as manufactured outside Malaysia and when moved from Pangkor to the other territories in Malaysia to be deemed as imported into those territories.

The proposed new section 91T seeks to provide that goods subject to excise duty, other than the goods referred to in the proposed new section 91R, manufactured in other territories of Malaysia when moved to Pangkor to be deemed as exported from such territories to a place outside Malaysia for the purpose of section 19 and paragraph 28(d) of Act 176.

The proposed new section 91U seeks to provide for the treatment of excise duty in Pangkor relating to the importation and transportation of goods.

The proposed new section 91V seeks to provide for the application of the provisions of Act 176 where goods are transported from Pangkor to the principal customs area or from the principal customs area to Pangkor. The proposed section 91V also seeks to provide for the application of Part X of Act 176 to goods transported to or from Pangkor from or to the principal customs area, and to persons and vessels and aircrafts transporting such goods.

The vehicle, proposed new section 91W seeks to require the person in charge of any vehicle, vessel or aircraft on which goods are transported from Pangkor to the principal customs area to make a declaration of the goods transported in such vehicle, vessel or aircraft.

The proposed new section 91X seeks to provide that dutiable goods, other than goods declared by the Minister under the proposed paragraph 91U(1)(a), are deemed to be non-dutiable goods while in Pangkor.

The proposed new section 91Y seeks to empower the Minister to make regulations under section 85 of Act 176 to provide for certain matters in relation to Pangkor.

The proposed new section 91Z seeks to provide for the application of the provisions of Act 176 which deals with drawback to goods, other than goods declared by the Minister under the proposed paragraph 91U(1)(a), transported from the principal customs area to Pangkor.

60. *Clause 80* seeks to provide for saving provision.

61. Other amendments not specifically dealt with in this statement are minor or consequential in nature.

*FINANCIAL IMPLICATIONS*

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

[PN(U2)3162]

A BILL

*i n t i t u l e d*

An Act to amend the Free Zones Act 1990.

[ ]

**ENACTED** by the Parliament of Malaysia as follows:

**Short title and commencement**

**1.** (1) This Act may be cited as the Free Zones (Amendment) Act 2019.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

**Amendment of section 2**

**2.** The Free Zones Act 1990 [*Act 438*], which is referred to as the “principal Act” in this Act, is amended in section 2—

(a) in subsection (1)—

(i) in the definition of “commercial activity”, by substituting for the words “, relabelling and transit” the words “and relabelling”;

- (ii) by inserting after the definition of “operation” the following definitions:

‘ “owner” in relation to goods, includes any person 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;

“Pangkor” shall have the same meaning assigned to it under section 163Q of the Customs Act 1967;’; and

- (iii) in the definition of “principal customs area”, by substituting for the words “and Tioman” the words “, Tioman and Pangkor”; and

- (b) by inserting after subsection (2) the following subsection:

“(2A) For the purpose of the definition of “owner”, “exporter” and “importer” shall have the same meaning assigned respectively to them under section 2 of the Customs Act 1967.”.

### **Amendment of section 7**

- 3.** Section 7 of the principal Act is amended—

- (a) by renumbering the existing section 7 as subsection (1); and

- (b) by inserting after subsection (1) as renumbered the following subsection:

“(2) Custom duty, if any, on any goods deemed to be exported from or imported into Malaysia shall be payable.”.

**New sections 8A and 8B**

4. The principal Act is amended by inserting after section 8 the following sections:

**“Declaration to give full and true account**

**8A.** Any person who makes any declaration under this Act or any regulations made thereunder for the purpose of obtaining approval from the proper officer of customs or proper officer of the Authority shall give a full and true account relating to—

- (a) the number and description of the packages;
- (b) the description of the goods;
- (c) the weight, measure or quantity of the goods;
- (d) the value of all of the goods; and
- (e) the country of origin of the goods.

**Goods unaccounted for**

**8B.** (1) Where in any shop or warehouse, or other building, place or premises in a free zone the quantity of any goods which ought to be kept there, is found by a proper officer of customs to be short and the deficiency is not accounted for to the satisfaction of such officer, the owner of such goods or the operator of such shop or warehouse, or other building, place or premises shall, until the contrary is proved, be deemed to have illegally removed such goods from the free zone into the principal customs area, and shall, until the contrary is proved, be deemed to have knowledge of the removal.

(2) Where the goods deemed illegally removed from the free zone into the principal customs area under subsection (1) are subject to taxes, duties or payment under any written law, the owner of such goods or the operator of such shop or warehouse, or other building, place or premises shall be liable to pay to the proper officer of customs such taxes,

duties or payment on demand being made within six years from the date on which such taxes, duties or payment was payable or the deficient taxes, duties or payment was paid unless the owner of such goods or the operator of such shop or warehouse, or other building, place or premises can show to the satisfaction of the Director General that such deficiency has been caused by unavoidable leakage, breakage or other accident.

(3) Nothing in subsection (2) prevents the Director General from making a demand at any time after six years whenever any payment of taxes, duties or payment is not paid or short paid due to any form of fraud or default committed by or on behalf of any person.

(4) For the purposes of this section, “operator” means any person who has been given the approval under the regulations made under this Act to carry out any activity in a free zone.”.

### **Substitution of section 9**

**5.** The principal Act is amended by substituting for section 9 the following section:

#### **“Penalty**

**9.** (1) Any person who contravenes section 5, 6A or 8 shall be guilty of an offence and shall, on conviction, be liable—

(a) 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

(b) 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.

(2) If the value of the goods under subsection (1) cannot be ascertained, the penalty may amount to a fine of not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.”.

**New section 10A**

6. The principal Act is amended by inserting after section 10 the following section:

**“Record of activity**

**10A.** (1) Every person carrying out any activity in a free zone who has possession of documents and records pertaining to the activity of importation, exportation or manufacturing of goods, shall preserve for a period of seven years all documents and records relating to such activity.

(2) Any person who contravenes subsection (1) 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.”.

**Amendment of section 14**

7. Section 14 of the principal Act is amended by deleting the word “industrial” wherever appearing.

**Amendment of section 15**

8. Section 15 of the principal Act is amended—

(a) in the shoulder note, by deleting the word “**industrial**”;  
and

(b) in subsection (1), by deleting the word “industrial”.

**Amendment of section 17**

9. Section 17 of the principal Act is amended—

(a) in subsection (2)—

(i) by substituting for the words “if so directed by the Minister shall present to him” the words “shall furnish to the Minister”; and

(ii) by substituting for the word “prescribe” the word “direct”; and

(b) by inserting after subsection (2) the following subsection:

“(3) The reports and information referred to in subsection (2) shall be in such form as the Minister may specify.”.

**Amendment of section 18**

10. Section 18 of the principal Act is amended—

(a) by renumbering the existing section as subsection (1);  
and

(b) by inserting after subsection (1) as renumbered the following subsection:

“(2) When any information or document given or produced under subsection (1) is proved to be untrue or incorrect in whole or in part it shall be no defence to allege that the information or document or any part of the information or document was furnished inadvertently or without criminal or fraudulent intent, or was misinterpreted or not fully interpreted by an interpreter provided by the person who has given such information or produced such document.”.



**Amendment of section 19**

**11.** Section 19 of the principal Act is amended by substituting for the words “not exceeding five thousand ringgit” the words “not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both”.

**New section 20A**

**12.** The principal Act is amended by inserting after section 20 the following section:

**“Access to shop or warehouse, or other building, place or premises**

**20A.** (1) Any senior officer of customs shall for the purposes of this Act at all times have full and free access to any shop or warehouse, or other building, place or premises in the free zone where any person carries on his activity.

(2) Where any senior officer of customs enters upon any shop or warehouse, or other building, place or premises in accordance with this section, he may—

- (a) require any person to produce any goods, document or thing which relates to the person’s activity and any documents and records which are required to be kept under section 10A;
- (b) examine any goods, document or thing;
- (c) seize and detain any goods, document or thing if in his opinion it may afford evidence of the commission of any offence under this Act or any regulations made thereunder;
- (d) require any person to answer any question relating to any goods, document or thing;
- (e) require any container, envelope or other receptacle in the shop or warehouse, or other building, place or premises to be opened;

- (f) at the risk and expense of the person carrying out activity in the shop or warehouse, or other building, place or premises, open and examine any package, or any goods or material in the shop or warehouse, or other building, place or premises; or
- (g) take samples of any goods or material and make copies or extracts of any document, if he deems it necessary.

(3) Where any senior officer of customs is unable to obtain full and free access to the shop or warehouse, or other building, place or premises under subsection (1) or to any container, envelope or other receptacle contained therein, he may, at any time, enter the shop or warehouse, or other building, place or premises and open the container, envelope or other receptacle and by force, if necessary.

(4) Any person who refuses to permit any senior officer of customs to enter upon any shop or warehouse, or other building, place or premises in accordance with this section 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 three years or to both.”.

### **Amendment of section 21**

**13.** Section 21 of the principal Act is amended by substituting for the words “shop, warehouse or other building or place”, “shop, warehouse, building or place” and “place” wherever appearing the words “shop or warehouse, or other building, place or premises”.

### **Amendment of section 22**

**14.** Section 22 of the principal Act is amended by substituting for the words “shop, warehouse or other building or place” wherever appearing the words “shop or warehouse, or other building, place or premises”.

**Amendment of section 23A**

**15.** Subsections 23A(1) and (2) of the principal Act are amended by inserting after the words “his powers under sections” the word “20A,”.

**Substitution of section 33**

**16.** The principal Act is amended by substituting for section 33 the following section:

**“Compounding of offences**

**33.** (1) 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 by the Minister to be a compoundable offence by making a written offer to the person suspected of committing the offence to compound the offence on 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 time specified in the offer.

(2) An offer under subsection (1) 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 time 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.

(3) Where an offence has been compounded under subsection (1), no prosecution shall after that be instituted in respect of the offence against the person to whom the offer to compound was made.

(4) Upon payment of such compound under subsection (1), any property seized shall be released and no further proceedings shall be taken against such property except that if the property seized consists of goods the import of which into Malaysia is absolutely or conditionally prohibited under any written law and no import licence has been issued, such goods

or the amount secured under paragraph 27(1)(a) or (b) or the amount realized by sale under paragraph 27(1)(c), as the case may be, shall be forfeited.

(5) All sums of money received by the Director General under this section shall be paid into and form part of the Federal Consolidated Fund.”.

### **New section 41A**

17. The principal Act is amended by inserting after section 41 the following section:

#### **“Recovery of duty or tax as a civil debt**

**41A.** (1) Without prejudice to any other remedy, any tax, duty or payment 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 the State.

(2) In any proceedings to recover any other remedy, any tax, duty or payment under subsection (1), the production of a certificate signed by the Director General—

(a) stating that any other remedy, any tax, duty or payment 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 any other remedy, any tax, duty or payment as payable in any assessment or notice and shall be sufficient authority for the court to give judgement for that amount.”.

**Saving provisions**

**18.** (1) The amendment to sections 14 and 15 of the principal Act in sections 7 and 8 of this Act shall not affect—

- (a) any erection of building or other structures in a free commercial zone before the date of coming into operation of this Act which on the coming into operation of this Act is still under construction;
- (b) any person who has taken, held or enjoyed movable and immovable property of every description in a free commercial zone before the date of coming into operation of this Act; and
- (c) any person who has been residing within a free commercial zone before the date of coming into operation of this Act.

(2) On the date of coming into operation of this Act—

- (a) such building or other structures mentioned in paragraph (1)(a) may be continued and completed as if section 14 of the principal Act had not been amended by this Act;
- (b) such person mentioned in paragraph (1)(b) may continue to take, hold or enjoy such movable and immovable property, as if section 14 of the principal Act had not been amended by this Act, subject to such conditions as imposed by the Authority; and
- (c) such person mentioned in paragraph (1)(c) may continue to reside within such free commercial zone, as if section 15 of the principal Act had not been amended by this Act, subject to such conditions as imposed by the Authority.

(3) Any compounding of offences under the existing section 33 of the principal Act which is pending before the date of coming into operation of this Act shall, after the date of coming into operation of this Act, be continued and concluded as if the principal Act had not been amended by this Act.

## EXPLANATORY STATEMENT

This Bill seeks to amend the Free Zones Act 1990 (“Act 438”).

2. *Clause 1* contains the short title of the proposed Act and the power of the Minister to appoint the date of coming into operation of the proposed Act.

3. *Clause 2* seeks to amend section 2 of Act 438 to amend certain existing definitions and introduce the definition of “owner” and “Pangkor”.

4. *Clause 3* seeks to amend section 7 of Act 438 to provide that any custom duty, if any, arising from the goods taken out from any part of the principal customs area into a free zone that is deemed to be exported from Malaysia and goods brought out from the free zone into the principal customs area that is deemed to be imported into Malaysia, shall be payable.

5. *Clause 4* seeks to introduce new sections 8A and 8B into Act 438.

The new section 8A seeks to impose a responsibility on any person making any declaration under Act 438 to give a full and true account of the goods relating to the declaration and their country of origin.

The new section 8B seeks to impose responsibility on the owner of the goods or operator of a shop or warehouse, other building, place or premises in a free zone to account for all goods kept at the shop or warehouse, other building, place or premises. If the goods are found to be short in quantity, the owner of the goods or operator of the shop or warehouse, other building, place or premises is deemed to have illegally removed the goods from the free zone into the principal customs area and the goods are deemed to be uncustomed goods and are to be subjected duty.

6. *Clause 5* seeks to amend section 9 of Act 438 to provide for a more deterrent penalty to prevent the misuse and manipulation of the facilities and customs procedures in the free zone.

7. *Clause 6* seeks to introduce a new section 10A into Act 438 which seeks to require every person to preserve for a period of seven years all documents and records that relate to the activity of importation, exportation or manufacturing of goods in the free zone.

8. *Clause 7* seeks to amend section 14 of Act 438 to extend to the Authority power to approve erection of building and other structures within both the free industrial zone and free commercial zone.

9. *Clause 8* seeks to amend section 15 of Act 438 to extend to the Authority power to prohibit any person from entry into or to reside within both the free commercial zone and free industrial zone.

10. *Clause 9* seeks to amend subsection 17(2) of Act 438 to make it mandatory for the Authority to present the annual report on the free zone to the Minister and the Minister may specify the form of the reports and information required.

11. *Clause 10* seeks to amend section 18 of Act 438 to provide that any allegation that any information or any part of any information was furnished inadvertently or without criminal or fraudulent intent, or was misinterpreted or not fully interpreted by an interpreter provided by the person required to give such information and produce such documentation, shall not be a defence.

12. *Clause 11* seeks to amend section 19 of Act 438 on general penalty to introduce the penalty of imprisonment and to increase the amount of fine.

13. *Clause 12* seeks to introduce a new section 20A into Act 438 to allow a senior officer of customs access to any shop or warehouse, or other building, place or premises in the free zone in carrying out any investigation and if necessary, to use force.

14. *Clauses 13 and 14* seek to amend sections 21 and 22 of Act 438 to include other places or premises for the purpose of a search with or without warrant.

15. *Clause 15* seeks to amend section 23A of Act 438 to provide that any officer of customs exercising his powers under sections 20A, 21, 22 and 23 shall be given access to any recorded information or computerized data.

16. *Clause 16* seeks to substitute section 33 of Act 438 to regularise the provision on compounding of offences.

17. *Clause 17* seeks to introduce a new section 41A into Act 438 to provide for the recovery of any unpaid tax, duty money or payment as a civil debt. The new section 41A also provides that if the customs duty is a duty assigned to the State under Article 112C of the Federal Constitution, it shall be paid to the State Government. The new section 41A is consistent with section 22B of the Customs Act 1967 [Act 235].

18. *Clause 18* seeks to provide saving provisions for a person who before the coming into operation of the amendments to sections 14 and 15 of Act 438 is already a resident within a free commercial zone, to be allowed to continue to take, hold or enjoy any movable or immovable property and saving provisions relating to any building which on the coming into operation of the proposed Act is still under construction. *Subclause 18(3)* seeks to save any pending compounding of offences before the date of coming into operation of the proposed Act.

*FINANCIAL IMPLICATIONS*

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

[PN(U2)3163]

A BILL

*i n t i t u l e d*

An Act to amend the Sales Tax Act 2018.

[ ]

**ENACTED** by the Parliament of Malaysia as follows:

**Short title and commencement**

**1.** (1) This Act may be cited as the Sales Tax (Amendment) Act 2019.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

**Amendment of section 2**

**2.** The Sales Tax Act 2018 [*Act 806*], which is referred to as the “principal Act” in this Act, is amended in section 2—

(a) in the definition of “designated areas”, by substituting for the words “and Tioman” the words “, Tioman and Pangkor”;



- (b) in the definition of “special areas”, by substituting for the words “and the Joint Development Area” the words “the Joint Development Area, and a petroleum supply base licensed under section 77B of the Customs Act 1967”; and
- (c) by inserting after the definition of “taxable person” the following definition:

‘ “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;’.

### **Amendment of section 3**

**3.** The principal Act is amended by substituting for paragraph 3(1)(b) the following paragraph:

“(b) in relation to petroleum, the process of refining that includes the separation, conversion, purification and blending of refinery streams or petrochemical streams.”.

### **Amendment of section 9**

**4.** Subsection 9(2) of the Principal Act is amended by substituting for the words “sale value” the word “value”.

### **Amendment of section 26**

**5.** Section 26 of the Principal Act is amended—

- (a) by renumbering the existing subsection (8) as subsection (9);
- (b) by renumbering the existing subsection (9) as subsection (8);
- (c) in subsection (10)—
  - (i) by substituting for the words “subsection (8)” the words “subsection (9)”; and

- (ii) by substituting for the words “paragraph 9(c)” the words “paragraph 8(c)”;

(d) in subsection (11)—

- (i) by substituting for the words “The court” the words “In addition to any fine imposed by the court under subsection (9), the court”;
- (ii) by substituting for the words “subsection (8)” the words “subsection (9)”;
- (iii) by substituting for the words “subsection (9)” the words “subsection (8)”;

(e) in subsection (12)—

- (i) by substituting for the words “subsection (8)” the words “subsection (9)”;
- (ii) by substituting for the words “subsection (9)” wherever appearing the words “subsection (8)”.

### **New section 27A**

**6.** The principal Act is amended by inserting after section 27 the following section:

#### **“Offsetting unpaid tax against refund or drawback**

**27A.** Notwithstanding any provision of this Act, where any person has failed to pay, in whole or in part—

- (a) any amount of sales tax due and payable, any surcharge accruing, or any penalty, fee or other money payable under this Act;
- (b) 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*];
- (c) any amount of service tax due and payable, any surcharge accruing, or any penalty or any money payable under the Service Tax Act 1975 [*Act 151*];

- (d) 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];
- (e) any amount of goods 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 customs duty, or any surcharge accruing, or any penalty, fee or other money payable under the Customs Act 1967; or
- (g) any amount of excise duty, or any surcharge accruing, or any penalty, fee or other money payable under the Excise Act 1976,

the Director General may offset, against the unpaid amount referred to in paragraph (a), (b), (c), (d), (e), (f) and (g), any amount or any part of any amount of refund or drawback due to that person and the Director General shall treat the amount offset as payment or part payment received from that person.”.

#### **Amendment of section 41A**

#### **7. Section 41A of the principal Act is amended—**

- (a) by substituting for the shoulder note the following shoulder note:

**“Application for deduction of sales tax by registered manufacturer”;**

- (b) in subsection (1), by substituting for paragraph (a) the following paragraph:

**“(a) any percentage of sales tax to be deducted in respect of taxable goods purchased by any registered manufacturer;”;**

(c) in subsection (2), by substituting for the words “components or packaging materials” the words “components, or packing and packaging materials”; and

(d) by inserting after subsection (2) the following subsections:

“ (2A) A registered manufacturer may make an application to the Director General for a deduction on the amount of sales tax paid in the form and manner as prescribed under subsection (1).

(2B) Where the Director General approves the application for deduction of sales tax under subsection (2A), such deduction shall be in accordance with the percentage and conditions as prescribed by the Minister under subsection (1).”.

#### **New section 84A**

8. The principal Act is amended by inserting after section 84 the following section:

#### **“Imprisonment for non-payment of fine**

**84A.** Notwithstanding sections 283 and 284 of the Criminal Procedure Code, 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 period as follows:

(a) where the fine does not exceed five thousand ringgit, the maximum period shall be two months;

(b) where the fine exceeds five thousand ringgit but does not exceed ten thousand ringgit, the maximum period shall be four months;

- (c) where the fine exceeds ten thousand ringgit but does not exceed twenty thousand ringgit, the maximum period shall be six months,

with two additional months for every ten thousand ringgit after the first twenty thousand ringgit of the fine.”.

### **New section 86A**

9. The principal Act is amended by inserting after section 86 the following section:

#### **“Evasion of sales tax on taxable goods imported**

**86A.** (1) Any person who, with intent to evade or to assist any other person to evade sales tax on importation of taxable goods commits an offence.

(2) Any person who commits an offence under subsection (1) shall, on conviction—

- (a) be liable for the first offence, to a fine of not less than ten times the amount of the sales tax or fifty thousand ringgit, whichever is the higher amount, and of not more than twenty times the amount of the sales tax or five hundred thousand ringgit, whichever is the higher amount, or to imprisonment for a term not exceeding five years or to both; and
- (b) be liable for a second offence or any subsequent offence, to a fine of not less than twenty times the amount of the sales tax or one hundred thousand ringgit, whichever is the higher amount, and of not more than forty times the amount of the sales tax or one million ringgit, whichever is the higher amount, or to imprisonment for a term not exceeding seven years or to both.”.

**New section 101A**

**10.** The principal Act is amended by inserting after section 101 the following section:

**“Service of summons**

**101A.** (1) Every summons issued by a court against any person in connection with any civil or criminal proceedings under this Act may be served on the person named therein—

- (a) by delivering the summons to the person or any adult member of his family or any of his servants residing with him at his usual or last-known place of residence;
- (b) by leaving the summons at his usual or last-known place of residence or business in an envelope addressed to the person;
- (c) by sending the summons by registered post addressed to the person at his usual or last-known place of residence or business; or
- (d) where the person is a company, a limited liability partnership, a firm, a society, an association or other body of persons—
  - (i) by delivering the summons to the secretary or other like officer of the company, limited liability partnership, firm, society, association or other body of persons at its registered office or principal place of business; or
  - (ii) by sending the summons by registered post addressed to the company, limited liability partnership, firm, society, association or other body of persons at its registered office or principal place of business.

(2) Any summons sent by registered post to any person in accordance with subsection (1) or by delivering the summons to the person or to any adult member of his family or any of his servant residing with him shall be deemed to be duly served on the person.

(3) When a summons issued by a court is served, an affidavit of the service purporting to be made before an officer duly authorized to administer an oath shall be admissible in evidence.”.

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#### EXPLANATORY STATEMENT

This Bill seeks to amend the Sales Tax Act 2018 [Act 806].

2. *Clause 1* contains the short title and the provision on the commencement of the proposed Act.
3. *Clause 2* seeks to amend section 2 of Act 806. *Subclauses 2(a)* and *(b)* seeks to amend the definition of “designated areas” to include Pangkor as one of the designated areas and the definition of “special areas” to include a petroleum supply base as one of the special areas. *Subclause 2(c)* seeks to introduce a new definition of “Pangkor” into section 2 of Act 806.
4. *Clause 3* seeks to substitute paragraph 3(1)(b) of Act 806 to provide clarity to the meaning of manufacture in petroleum where the refining process is the main process.
5. *Clause 4* seeks to amend subsection 9(2) of Act 806 to provide clarity to the valuation of imported taxable goods which is based on the value as provided in the Customs (Rules of Valuation) Regulations 1999 [P.U. (A) 507/99] made under the Customs Act 1967 [Act 235].
6. *Clause 6* seeks to introduce a new section 27A into Act 806 to provide that where a refund or drawback of sales tax under Act 806 is due to a person who has failed to pay any amount of sales tax, service tax, customs duty, etc., the Director General may offset the amount of such refund or drawback against the amount such person has failed to pay.
7. *Clause 7* seeks to amend section 41A of Act 806 to clarify the existing provision and to empower the Director General to approve any application for deduction of sales tax.
8. *Clause 8* seeks to introduce a new section 84A into Act 806 to provide for the period of imprisonment to be imposed by any court in respect of non-payment of fines.
9. *Clause 9* seeks to introduce a new section 86A into Act 806 to make it an offence and provide penalty for any person who evades sales tax on taxable goods imported.

10. *Clause 10* seeks to introduce a new section 101A into Act 806 which deals with the manner of service of summons.

11. Other amendments not specifically dealt with in this Statement are amendments which are minor or consequential in nature.

*FINANCIAL IMPLICATIONS*

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

[PN(U2)3166]



D.R. 6/2019  
AMENDMENT IN COMMITTEE  
SERVICE TAX (AMENDMENT) BILL 2019

ENGLISH LANGUAGE TEXT

The Bill is amended in subclause 6(d), in the proposed subsection 11(5), by substituting for the words "with effect from" the word "after".

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EXPLANATORY STATEMENT

Subclause 6(d) of the Bill is amended to make paragraph 11(3)(c) of the Act to not be applicable to a service which is prescribed as a taxable service after 1 September 2018.

A BILL

*i n t i t u l e d*

An Act to amend the Service Tax Act 2018.

[ ]

**ENACTED** by the Parliament of Malaysia as follows:

**Short title and commencement**

**1.** (1) This Act may be cited as the Service Tax (Amendment) Act 2019.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette* and the Minister may appoint different dates for the coming into operation of different provisions or Parts of this Act.

(3) Notwithstanding subsection (2), the Minister may, by notification in the *Gazette*, appoint the effective date for the charging and levying of service tax on digital services under this Act.

**New section 1A**

2. The Service Tax Act 2018 [Act 807], which is referred to as the “principal Act” in this Act, is amended by inserting after section 1 the following section:

**“Territorial and extra-territorial application**

**1A.** (1) This Act and its subsidiary legislation shall apply both within and outside Malaysia.

(2) Notwithstanding subsection (1), this Act and its subsidiary legislation shall apply to any person of whatever nationality or citizenship, beyond the geographical limits of Malaysia and the territorial waters of Malaysia, if the person—

(a) is a foreign service provider; or

(b) is registered under section 56C as a foreign registered person.”.

**Amendment of section 2**

3. Subsection 2(1) of the principal Act is amended—

(a) in the definition of “designated areas”, by substituting for the words “and Tioman” the words “, Tioman and Pangkor”;

(b) in the definition of “special areas”, by substituting for the words “and the Joint Development Area” the words “the Joint Development Area, and a petroleum supply base licensed under section 77B of the Customs Act 1967”;

(c) by inserting after the definition of “registered person” the following definition:

‘ “foreign registered person” means any foreign service provider who is registered under section 56c;’

(d) by inserting after the definition of “taxable person” the following definition:

‘ “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;’;

(e) by inserting after the definition of “senior officer of service tax” the following definitions:

‘ “foreign service provider” means any person who is outside Malaysia providing any digital service to a consumer and includes any person who is outside Malaysia operating an online platform for buying and selling goods or providing services (whether or not such person provides any digital services) and who makes transactions for provision of digital services on behalf of any person;

“consumer” means any person who fulfils any two of the following:

(a) makes payment for digital services using credit or debit facility provided by any financial institution or company in Malaysia;

(b) acquires digital services using an internet protocol address registered in Malaysia or an international mobile phone country code assigned to Malaysia;

(c) resides in Malaysia;’; and

(f) by inserting after the definition of “imported taxable service” the following definition:

‘ “digital service” means any service that is delivered or subscribed over the internet or other electronic network and which cannot be obtained without the use of information technology and where the delivery of the service is essentially automated;’.

**Amendment of section 9**

4. Section 9 of the principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) Notwithstanding paragraphs (1)(a) and (b), where taxable service is provided by a taxable person and payment for such service is made to any machine or device operated by coins, tokens or the like, the value of such taxable service shall be as prescribed.”.

**Amendment of section 10**

5. Subsection 10(1) of the principal Act is amended by deleting the word “provided”.

**Amendment of section 11**

6. Section 11 of the principal Act is amended—

(a) by inserting after subsection (1) the following subsection:

“(1A) The Director General may, upon application in writing by any registered person and subject to such conditions as he deems fit, approve the service tax in respect of the taxable service provided by the registered person to be due at the time the invoice is issued.”;

(b) in subsection (2), by substituting for the words “of the invoice for the taxable service provided,” the words “the taxable service was provided, the”;

(c) by inserting after paragraph (3)(a) the following paragraph:

“(aa) where any taxable service is provided by any registered person and payment for such taxable service is made to any machine or device operated by coins, tokens or the like, the service tax required to be accounted shall be due on the day when the coins, tokens or the like are collected from such machine or device;” and

(d) by inserting after subsection (4) the following subsection:

“(5) Paragraph (3)(c) shall not apply to a service which is prescribed as a taxable service with effect from 1 September 2018.”.

### **Amendment of section 12**

7. Section 12 of the principal Act is amended by inserting after subsection (4) the following subsection:

“(5) This section shall not apply to a foreign service provider.”.

### **Amendment of section 13**

8. Section 13 of the principal Act is amended by inserting after subsection (5) the following subsection:

“(6) This section shall not apply to a foreign service provider.”.

### **Amendment of section 14**

9. Section 14 of the principal Act is amended by inserting after subsection (2) the following subsection:

“(3) This section shall not apply to a foreign service provider.”.

### **Amendment of section 15**

10. Section 15 of the principal Act is amended by inserting after subsection (11) the following subsection:

“(12) This section shall not apply to a foreign registered person.”.

**Amendment of section 16**

**11.** Section 16 of the principal Act is amended by inserting after subsection (10) the following subsection:

“(11) This section shall not apply to a foreign registered person.”.

**Amendment of section 17**

**12.** Section 17 of the principal Act is amended by inserting after subsection (6) the following subsection:

“(7) This section shall not apply to a foreign registered person.”.

**Amendment of section 18**

**13.** Section 18 of the principal Act is amended by inserting after subsection (2) the following subsection:

“(3) This section shall not apply to a foreign registered person.”.

**Amendment of section 19**

**14.** Section 19 of the principal Act is amended by inserting after subsection (2) the following subsection:

“(3) This section shall not apply to a foreign registered person.”.

**Amendment of section 20**

**15.** Section 20 of the principal Act is amended by inserting after subsection (4) the following subsection:

“(5) This section shall not apply to a foreign registered person.”.

**Amendment of section 21**

**16.** Section 21 of the principal Act is amended—

(a) in subsection (1), by inserting after the word “shall” the words “, within one year from the date the taxable service was provided or such extended period as may be approved by the Director General,”;

(b) by inserting after subsection (1) the following subsection:

“(1A) Notwithstanding subsection (1), the Director General may, upon request in writing by a registered person and subject to such conditions as he deems fit, approve an invoice to not be issued if the Director General is satisfied that it will not be appropriate for the registered person to issue an invoice.”;

(c) by inserting after subsection (3) the following subsection:

“(3A) Notwithstanding subsection (3), where the payment for taxable services are made to any machine or device operated by coins, tokens or the like, the amount of payment shall include the amount of service tax chargeable.”; and

(d) by inserting after subsection (4) the following subsection:

“(5) This section shall not apply to a foreign registered person.”.

**Amendment of section 22**

**17.** Section 22 of the principal Act is amended—

(a) by renumbering the existing provision as subsection (1); and

(b) by inserting after subsection (1) as renumbered the following subsection:

“(2) This section shall not apply to a foreign registered person.”.



**Amendment of section 23**

**18.** Section 23 of the principal Act is amended—

(a) by renumbering the existing provision as subsection (1);  
and

(b) by inserting after subsection (1) as renumbered the following subsection:

“(2) This section shall not apply to a foreign registered person.”.

**Amendment of section 24**

**19.** Section 24 of the principal Act is amended by inserting after subsection (6) the following subsection:

“(7) This section shall not apply to a foreign registered person.”.

**Amendment of section 25**

**20.** Section 25 of the principal Act is amended by inserting after subsection (4) the following subsection:

“(5) This section shall not apply to a foreign registered person.”.

**Amendment of section 26**

**21.** Section 26 of the principal Act is amended—

(a) by renumbering the existing subsection (7) as subsection (8);

(b) by renumbering the existing subsection (8) as subsection (7);

(c) in subsection (9)—

- (i) by substituting for the words “subsection (7)” the words “subsection (8)”; and
- (ii) by substituting for the words “paragraph (8)(c)” the words “paragraph (7)(c)”;

(d) in subsection (10)—

- (i) by substituting for the words “The court” the words “In addition to any fine imposed by the court under subsection (8), the court”;
- (ii) by substituting for the words “subsection (7)” the words “subsection (8)”; and
- (iii) by substituting for the words “subsection (8)” the words “subsection (7)”;

(e) in subsection (11)—

- (i) by substituting for the words “subsection (7)” the words “subsection (8)”; and
- (ii) by substituting for the words “subsection (8)” the words “subsection (7)” wherever appearing; and

(f) by inserting after subsection (11) the following subsection:

“(12) This section shall not apply to a foreign registered person.”.

### **Amendment of section 26A**

**22.** Section 26A of the principal Act is amended—

- (a) by renumbering the existing subsection (3) as subsection (4);
- (b) by renumbering the existing subsection (4) as subsection (3);
- (c) in subsection (3) as renumbered, by deleting the word “taxable”;

(d) in subsection (5)—

- (i) by substituting for the words “subsection (3)” the words “subsection (4)”; and
- (ii) by substituting for the words “paragraph (4)(c)” the words “paragraph (3)(c)”;

(e) in subsection (6)—

- (i) by substituting for the words “The court” the words “In addition to any fine imposed by the court under subsection (4), the court”;
- (ii) by substituting for the words “subsection (3)” the words “subsection (4)”; and
- (iii) by substituting for the words “subsection (4)” the words “subsection (3)”; and

(f) in subsection (7)—

- (i) by substituting for the words “subsection (3)” the words “subsection (4)”; and
- (ii) by substituting for the words “subsection (4)” the words “subsection (3)” wherever appearing.

### **Amendment of section 27**

**23.** Section 27 of the principal Act is amended—

(a) in subsection (1)—

- (i) in subparagraph (a)(iii), by deleting the word “or” at the end of the subparagraph;
- (ii) by inserting after paragraph (a) the following paragraphs:

“(aa) any foreign service provider fails to apply for registration under section 56c;

(ab) any foreign registered person—

- (i) fails to furnish a return under section 56H; or
- (ii) furnishes a return which appears to the Director General to be incomplete or incorrect; or”;
- (iii) by substituting for the words “or 26A(4)” the words “, 26A(4) or 56I(2)”;
- (iv) by substituting for the words “by the taxable person or” the words “by the taxable person or foreign registered person or the”;

(b) in paragraph (5)(b), by inserting after the words “a taxable person” the words “or foreign registered person”.

**New section 27A**

**24.** The principal Act is amended by inserting after section 27 the following section:

**“Offsetting unpaid tax against refund**

**27A.** Notwithstanding any provision of this Act, where any person has failed to pay, in whole or in part—

- (a) any amount of service tax due and payable, any surcharge accruing, or any penalty, fee or other money payable under this Act;
- (b) 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];
- (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 sales tax due and payable, any surcharge accruing, or any penalty, fee or other money payable under the Sales Tax Act 2018 [Act 806];

- (e) any amount of goods and services tax due and payable, any surcharge accruing, or any penalty or other money payable under the Goods and Services Tax 2014 [*Act 762*];
- (f) any amount of customs duty, or any surcharge accruing, or any penalty, fee or other money payable under the Customs Act 1967; or
- (g) any amount of excise duty, or any surcharge accruing, or any penalty, fee or other money payable under the Excise Act 1976 [*Act 176*],

the Director General may offset, against the unpaid amount referred to in paragraph (a), (b), (c), (d), (e), (f) or (g), any amount or any part of any amount refundable under this Act to that person and the Director General shall treat the amount offset as payment or part payment received from that person.”.

### **Amendment of section 28**

**25.** Section 28 of the principal Act is amended—

- (a) in subsection (2), by inserting after the words “taxable service” the words “or digital service” wherever appearing; and
- (b) in subsection (3)—
  - (i) in paragraph (a), by substituting the words “or 22” the words “, 22 or 56G”;
  - (ii) in paragraph (b), by inserting after the words “taxable service” the words “or digital service” wherever appearing; and
  - (iii) in paragraph (c), by inserting after the words “registered person” the words “or foreign registered person”.

**Amendment of section 29**

**26.** Section 29 of the principal Act is amended—

- (a) in the shoulder note, by inserting after the words “**taxable person**” the words “**or foreign registered person**”; and
- (b) by inserting after the words “taxable person” the words “or foreign registered person” wherever appearing.

**Amendment of section 31**

**27.** Subsection 31(1) of the principal Act is amended—

- (a) in paragraph (a), by inserting after the words “26(4)” the words “or 26A(1)”; and
- (b) in paragraph (b), by inserting after the words “26(8)” the words “or 26A(4)”.

**Amendment of section 32**

**28.** Section 32 of the principal Act is amended—

- (a) in subsection (2), by inserting after the words “subsection 26(8)” the words “or 26A(4)”; and
- (b) by inserting after section (3) the following subsection:
  - “(4) This section shall not apply to a foreign registered person.”.

**Amendment of section 34**

**29.** Section 34 of the principal Act is amended—

- (a) in subsection (1)—
  - (i) by inserting after the words “taxable service” the words “or digital service”; and
  - (ii) by inserting after the word “provided” the words “or any imported taxable service acquired”;

(b) in paragraph 3(a)—

- (i) by inserting after the words “taxable service” the words “or digital service”; and
- (ii) by inserting after the word “provided” the words “or any imported taxable service acquired”; and

(c) in subsection (4)—

- (i) by inserting after the words “any taxable service” the words “or a foreign registered person provides any digital service”;
- (ii) by inserting after the words “the registered person” the words “or the foreign registered person”; and
- (iii) by substituting for the words “on such taxable service” the words “on such taxable service or digital service”.

### **Amendment of section 35**

**30.** Section 35 of the principal Act is amended by inserting after subsection (4) the following subsection:

“(5) This section shall not apply to a foreign registered person.”.

### **Amendment of section 36**

**31.** Section 36 of the principal Act is amended—

- (a) by renumbering the existing provision as subsection (1); and
- (b) by inserting after subsection (1) as renumbered the following subsection:

“(2) This section shall not apply to a foreign registered person.”.

**Amendment of section 39**

**32.** Section 39 of the principal Act is amended by inserting after subsection (2) the following subsection:

“(3) This section shall not apply to a foreign registered person.”.

**Amendment of section 40**

**33.** Section 40 of the principal Act is amended by inserting after subsection (3) the following subsection:

“(4) This section shall not apply to a foreign registered person.”.

**New section 40A**

**34.** Part VII of the principal Act is amended by inserting before section 41 the following section:

**“Non-application of Part VII**

**40A.** This Part shall not apply to a foreign registered person.”.

**New section 46A**

**35.** Part VIII of the principal Act is amended by inserting before section 47 the following section:

**“Non-application of Part VIII**

**46A.** This Part shall not apply to a foreign registered person.”.

**New section 51A**

**36.** Part IX of the principal Act is amended by inserting before section 52 the following section:

**“Non-application of Part IX**

**51A.** This Part shall not apply to a foreign registered person.”.



**New Part IXA**

**37.** The principal Act is amended by inserting after Part IX the following part:

“PART IXA

DIGITAL SERVICES

**Imposition of service tax on digital services**

**56A.** (1) Notwithstanding any provision of this Act, service tax shall be charged and levied on any digital service provided by a foreign registered person to any consumer.

(2) The value of digital services on which the service tax is payable shall be the value charged by the foreign registered person.

(3) Service tax on digital services shall be charged and levied at the rate fixed in accordance with subsection 10(2) by reference to the value charged by the foreign registered person.

(4) The service tax charged on the digital service provided to the consumer shall be due at the time when the payment for the digital service is received by the foreign registered person.

(5) Any foreign registered person who contravenes subsection (1) commits 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.

**Liability to be registered**

**56B.** (1) The Minister may prescribe the total value of digital services for the purpose of registration of a foreign service provider under this Part.

(2) Any foreign service provider who provides any digital service to a consumer is liable to be registered at the following time, whichever is the earlier:

- (a) at the end of any month, where the total value of all digital services provided by him in that month and the eleven months immediately preceding that month has exceeded the total value of the digital service prescribed under subsection (1); or
- (b) at the end of any month, where there are reasonable grounds for believing that the total value of all digital services provided by him in that month and the eleven months immediately succeeding that month will exceed the total value of the digital service prescribed under subsection (1).

(3) The total value of all digital services provided by a foreign service provider to a consumer in the month and the eleven months immediately preceding that month referred to in paragraph (2)(a) shall be disregarded if—

- (a) the registration of the foreign service provider was cancelled, otherwise than under subsection 56F(3), during that period; and
- (b) the Director General is satisfied that before the registration of the foreign service provider was cancelled, the foreign service provider had given all information required by the Director General in order to determine whether or not to cancel the registration.

### **Application for registration of foreign service provider**

**56c.** (1) Any foreign service provider who is liable to be registered under subsection 56B(2) shall apply to the Director General for registration in the prescribed form not later than the last day of the month following the month in which he is liable to be registered as referred in paragraph 56B(2)(a) or (b).

(2) Upon receipt of the application under subsection (1), the Director General may approve the registration from such date as he may determine and subject to such conditions as he deems fit.

(3) The Director General shall register the foreign service provider under subsection (1) with effect from the first day of the month following the month in which the application under subsection (1) is made or from such earlier date as the Director General may determine but such date shall not be earlier than the date the foreign service provider becomes liable to be registered.

(4) Any foreign service provider who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

### **Cessation of liability to be registered**

**56D.** Any foreign registered person shall cease to be liable to be registered where—

- (a) the Director General is satisfied that he ceases to provide digital services; or
- (b) he has been registered under subsection 13(2) or (4).

### **Notification of cessation of liability**

**56E.** (1) A foreign registered person who—

- (a) ceases to provide digital services; or
- (b) has been registered under section 13,

shall notify the Director General in writing of that fact and the date of cessation within thirty days from the date of cessation.

(2) Any foreign registered person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

### **Cancellation of registration**

**56F.** (1) Where a foreign registered person makes a notification under section 56E, the Director General may cancel the foreign registered person's registration from the date the foreign registered person ceased to be liable to be registered under section 56D or from such later date as the Director General may determine if Director General is satisfied that the foreign registered person can be deregistered.

(2) Where there is no notification made under section 56E and the Director General is satisfied that a foreign registered person has ceased to be liable to be registered under section 56D, the Director General may cancel the registration of the foreign registered person from the date the foreign registered person ceased to be liable to be registered under section 56D or from such later date as the Director General may determine.

(3) Where the Director General is satisfied that on the day on which a foreign service provider was registered, such foreign service provider was not liable to be registered under section 56C or has ceased to be liable to be registered under section 56D, the Director General may cancel the registration of such foreign service provider with effect from the date as determined by the Director General in the notification in writing to such foreign service provider.

### **Issuance of invoice**

**56G.** (1) Every foreign registered person who provides any digital service shall issue an invoice or a document containing prescribed particulars to the consumer in respect of the transaction.

(2) The invoice or document referred to in subsection (1) may be issued electronically or in paper form.

(3) Any foreign registered person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

### **Taxable period and accounting for service tax**

**56H.** (1) The taxable period for a foreign registered person shall be a period of three months ending on the last day of any month of any calendar year.

(2) A foreign registered person may apply in writing to the Director General for a taxable period other than the period as determined under subsection (1).

(3) The Director General may, upon receiving any application under subsection (2)—

- (a) allow the application and the taxable period shall be the period as applied for;
- (b) refuse the application and the taxable period shall remain as determined under subsection (1); or
- (c) vary the length of the taxable period.

(4) A foreign registered person shall, in respect of his taxable period, account for the service tax due in a return as may be prescribed and the return shall be furnished to the Director General in the prescribed manner not later than the last day of the month following the end of his taxable period to which the return relates.

(5) Where a taxable period has been varied under paragraph (3)(c) and notwithstanding subsection (4), the return shall be furnished not later than the last day of the month following the end of the varied taxable period.

(6) The return referred to in subsections (4) and (5) shall be furnished whether or not there is service tax to be paid.

(7) Any foreign registered person who—

(a) contravenes subsection (4) or (5); or

(b) furnishes an incorrect return,

commits 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.

### **Payment of service tax**

**56i.** (1) Any foreign registered person shall, in respect of the taxable period, pay to the Director General the amount of service tax due and payable not later than the last day of the month following after the end of his taxable period to which the return relates.

(2) Where any service tax due and payable is not paid wholly or partly by the foreign registered person after the last day on which it is due and payable under subsection (1) and no prosecution is instituted, the foreign registered person shall pay—

(a) for the first thirty-day period that the service tax is not paid wholly or partly after the expiry of the period specified under subsection (1), a penalty of ten percent of the amount of service tax remains unpaid;

(b) for the second thirty-day period that the service tax is not paid wholly or partly after the expiry of the period specified under subsection (1), an additional penalty of fifteen percent of the amount of service tax remains unpaid; and

(c) for the third thirty-day period that the service tax is not paid wholly or partly after the expiry of the period specified under subsection (1), an additional penalty of fifteen per cent of the amount of service tax remains unpaid.

(3) Any foreign registered person who fails to pay the Director General the amount of service tax due and payable under subsection (1) commits 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.

(4) Subject to subsection (6), prosecution for the offence under subsection (3) may be instituted after the expiry of the period specified in paragraph (2)(c).

(5) In addition to any fine imposed by the court under subsection (3), the court may order that any foreign registered person who is convicted for the offence under subsection (3) to pay the penalty as specified in subsection (2).

(6) No prosecution for the offence under subsection (3) shall be instituted against the foreign registered person who has paid the amount of service tax due and payable and the penalty specified under subsection (2) within the period specified in subsection (2).

### **Duty to keep records**

**56j.** (1) Every foreign registered person shall keep complete and true records written up to date of all transactions which affect or may affect his liability to service tax, including the following records:

(a) all records of provision of digital service by the foreign registered person including invoices and receipts; and

(b) all other records as the Director General may determine.

(2) Any record kept under this section shall be preserved for a period of seven years from the latest date to which the record relates.

(3) 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 in writing.

(4) A copy of the record shall be admissible in evidence in any proceedings to the same extent as the record itself.

(5) Any foreign registered person who contravenes subsection (1), (2) or (3) commits 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.

### **Service of notice, etc, on foreign registered person**

**56k.** Every notice, direction or any other document required by this Act to be served on a foreign registered person may be served by electronic service under section 87.”.

### **Amendment of section 65**

**38.** Section 65 of the principal Act is amended—

(a) in paragraph (b), by inserting after the word “return” the words “or declaration”; and

(b) in paragraph (c), by inserting after the word “return” the words “, declaration”.

### **Amendment of section 68**

**39.** Section 68 of the principal Act is amended—

(a) by inserting after paragraph (b) the following paragraph:

“(ba) any service acquired by any person in Malaysia from any person who is outside Malaysia is not liable to service tax chargeable under this Act;” and

(b) by deleting the words “in the prosecution”.



**New section 69A**

**40.** The principal Act is amended by inserting after the section 69 the following section:

**“Imprisonment for non-payment of fine**

**69A.** Notwithstanding sections 283 and 284 of the Criminal Procedure Code, 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 period as follows:

- (a) where the fine does not exceed five thousand ringgit, the maximum period shall be two months;
- (b) where the fine exceeds five thousand ringgit but does not exceed ten thousand ringgit, the maximum period shall be four months;
- (c) where the fine exceeds ten thousand ringgit but does not exceed twenty thousand ringgit, the maximum period shall be six months,

with two additional months for every ten thousand ringgit after the first twenty thousand ringgit of the fine.”.

**Amendment of section 71**

**41.** Section 71 of the principal Act is amended—

- (a) in paragraph (1)(b), by inserting after the word “return,” the words “declaration,”; and
- (b) in subsection (4), by substituting for the words “where the return” the words “or declaration, as the case may be, which”.

**Amendment of section 75**

**42.** Section 75 of the principal Act is amended—

- (a) in the shoulder note, by substituting for the words “**taxable person**” the words “**any person**”;
- (b) in subsection (1), by inserting after the words “taxable person,” the words “or any person other than a taxable person who, in carrying on his business, acquires any imported taxable service, or any foreign registered person”; and
- (c) in subsection (2)—
  - (i) by substituting for the words “a taxable person” the words “the person referred to in that subsection”; and
  - (ii) in paragraphs (a) and (b), by deleting the word “taxable” wherever appearing.

**Amendment of section 76**

**43.** Paragraph 76(a) of the principal Act is amended by inserting after the words “taxable person” the words “or foreign registered person”.

**Amendment of section 81**

**44.** Section 81 of the principal Act is amended by inserting after subsection (6) the following subsection:

“(7) This section shall not apply to a foreign registered person.”.

**Amendment of section 82**

**45.** Section 82 of the principal Act is amended by inserting after subsection (4) the following subsection:

“(5) This section shall not apply to a foreign registered person.”.

**Amendment of section 83**

**46.** Section 83 of the principal Act is amended by inserting after subsection (4) the following subsection:

“(5) This section shall not apply to a foreign registered person.”.

**Amendment of section 84**

**47.** Section 84 of the principal Act is amended—

(a) by renumbering the existing provision as subsection (1);  
and

(b) by inserting after subsection (1) as renumbered the following subsection:

“(2) This section shall not apply to a foreign registered person.”.

**Amendment of section 86**

**48.** Section 86 of the principal Act is amended by inserting after subsection (3) the following subsection:

“(4) This section shall not apply to a foreign registered person.”.

**New section 86A**

**49.** The principal Act is amended by inserting after section 86 the following section:

**“Service of summons**

**86A.** (1) Every summons issued by a court against any person in connection with any civil or criminal proceedings under this Act may be served on the person named therein—

(a) by delivering the summons to the person or any adult member of his family or any of his servants residing with him at his usual or last-known place of residence;

- (b) by leaving the summons at his usual or last-known place of residence or business in an envelope addressed to the person;
- (c) by sending the summons by registered post addressed to the person at his usual or last-known place of residence or business; or
- (d) where the person is a company, a limited liability partnership, a firm, a society, an association or other body of persons—
  - (i) by delivering the summons to the secretary or other like officer of the company, limited liability partnership, firm, society, association or other body of persons at its registered office or principal place of business; or
  - (ii) by sending the summons by registered post addressed to the company, limited liability partnership, firm, society, association or other body of persons at its registered office or principal place of business.

(2) Any summons sent by registered post to any person in accordance with subsection (1) or by delivering the summons to the person or to any adult member of his family or any of his servant residing with him shall be deemed to be duly served on the person.

(3) When a summons issued by a court is served, an affidavit of the service purporting to be made before an officer duly authorized to administer an oath shall be admissible in evidence.”.

### **Amendment of section 91**

**50.** Subsection 91(2) of the principal Act is amended—

- (a) in paragraph (2)(d), by inserting after the word “returns” the words “, declarations”;

(b) in paragraph (2)(k), by deleting the word “or” at the end of the paragraph;

(c) in paragraph (2)(l)—

(A) by substituting for the full stop at the end of the paragraph the words “; or”; and

(B) by inserting after paragraph (l) the following paragraph:

“(m) all matters relating to digital services.”.

### **Registration before effective date**

**51.** (1) A foreign service provider who provides digital services before the coming into operation of Part IXA as introduced in section 37 of this Act (“Part IXA”) shall be liable to be registered under this Act if there are reasonable grounds for believing that the total value of his digital services provided in the month of the coming into operation of Part IXA and eleven months immediately succeeding such month will exceed the total value of digital service as prescribed under section 56B as introduced in section 37 of this Act.

(2) Any foreign service provider who is liable to be registered under subsection (1) shall apply to the Director General to be registered as a foreign registered person and the application shall be made three months before the date of coming into operation of Part IXA.

(3) The Director General may register the foreign service provider under subsection (1) with effect from the effective date appointed under section 1 of this Act or from a later date as the Director General may determine.

(4) Any foreign service provider who contravenes subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

**Digital services provided before commencement date**

**52.** (1) Where any digital service is provided before the date of coming into operation of Part IXA as introduced in section 37 of this Act (“Part IXA”) and the provision of the digital services is spanning after the date of coming into operation of Part IXA, service tax shall be charged on the proportion of the digital service which is attributed to the part of the period after the date of coming into operation of Part IXA.

(2) Where any payment is received before the date of coming into operation of Part IXA in connection with the provision of digital services that will be provided on or after the date of coming into operation of Part IXA, no service tax shall be charged on the payment received.

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**EXPLANATORY STATEMENT**

This Bill seeks to amend the Service Tax Act 2018 (“Act 807”).

2. *Clause 1* contains the short title of the proposed Act and the power of the Minister to appoint the commencement date of the proposed Act. *Clause 1* also empowers the Minister to appoint the effective date for the charging and levying of service tax on digital services under the proposed Act.

3. *Clause 2* seeks to introduce a new section 1A into Act 807 to provide for territorial and extra-territorial application of Act 807 and its subsidiary legislation.

4. *Clause 3* seeks to amend section 2 of Act 807 to amend the definitions of “designated areas” and “special areas”, and to provide for new definitions of “foreign registered person”, “Pangkor”, “foreign service provider”, “consumer” and “digital service”.

5. *Clause 4* seeks to amend section 9 of Act 807 to introduce a new subsection (1A). The proposed subsection (1A) provides that the value of service tax in relation to taxable services where payment for the taxable services are made to a machine or device operated by coin, tokens or the like shall be as prescribed by the Minister through regulations.

6. *Clause 5* seeks to amend subsection 10(1) of Act 807 to make the provision applicable to imported taxable services.

7. *Clause 6* seeks to amend section 11 of Act 807.

*Subclause 6(a)* seeks to introduce a new subsection (1A). The proposed subsection (1A) seeks to empower the Director General, upon application, to approve service tax in respect of the taxable services provided by a registered person to be due at the time the invoice is issued. The approval granted may be subject to such conditions as the Director General deems fit.

*Subclause 6(b)* seeks to amend subsection (2) to provide that where the whole or any part of the payment for any taxable service provided by the registered person is not received from the customer within a period of twelve months from the date the taxable service was provided, the service tax shall be due on the day following that period of twelve months.

*Subclause 6(c)* seeks to introduce a new paragraph (*aa*) into subsection (3). The proposed paragraph (*aa*) deals with the time when service tax is due for taxable services which payment for the taxable services is made to any machine or device operated by coin, token or the like.

*Subclause 6(d)* seeks to introduce a new subsection (5) to provide that the taxable service referred to in paragraph (3)(c) shall not be applicable to a service which is prescribed as a taxable service with effect from 1 September 2018.

8. *Clauses 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 30, 31, 32, 33, 44, 45, 46, 47 and 48* amend sections 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 35, 36, 39, 40, 81, 82, 83, 84 and 86, respectively, and *subclauses 16(d), 21(f) and 28(b)* amend sections 21, 26 and 32, respectively, and *clauses 34, 35 and 36* introduce new sections 40A, 46A and 51A, respectively, to provide that those sections shall not apply to a foreign service provider or foreign registered person, as the case may be.

9. *Clause 16* seeks to amend section 21 of Act 807.

*Subclause 16(a)* seeks to amend subsection (1) to provide that an invoice in respect of any taxable service shall be issued within one year from the date of the taxable service was provided or such extended period as may be approved by the Director General.

*Subclause 16(b)* seeks to introduce a new subsection (1A) into section 21. The proposed subsection (1A) seeks to empower the Director General, upon request in writing, to approve an invoice not to be issued by a registered person if the Director General is satisfied that it will not be appropriate for the registered person to issue an invoice.

*Subclause 16(c)* seeks to introduce a new subsection (3A). The proposed subsection (3A) seeks provide that the amount of payment for taxable services which are made to any machine or device operated by coins, tokens or the like shall include the amount of service tax chargeable.

10. *Clause 23* seeks to amend section 27 of Act 807 to provide that the Director General may assess the amount of service tax due and payable, and the penalty payable, in respect of a foreign service provider who fails to apply for registration under section 56C or fails to furnish a return under section 56H.

11. *Clause 24* seeks to introduce a new section 27A into Act 807 to provide that where a refund of service tax under Act 807 is due to a person who has failed to pay any amount of service tax, sales tax, customs duty, etc., the Director General may offset the amount of such refund against the amount such person has failed to pay.

12. *Clause 25* seeks to amend section 28 of Act 807 to provide for the recovery of any service tax due and payable, any surcharge accruing, or any penalty, fee or other money payable, under Act 807, in respect of digital services, as a civil debt due to the Government.

13. *Clause 26* seeks to amend subsection 29 of Act 807 to empower the Director General to collect service tax, surcharge, penalty, fee or other money from any person holding money for or owing money due to a foreign registered person.

14. *Clause 27* seeks to amend subsection 31 of Act 807 to provide for measures to prevent any person other than a taxable person who, in carrying on his business acquires any imported taxable service, from leaving Malaysia if the Director General has reason to believe that such person is about or likely to leave Malaysia without paying any service tax due and payable, any surcharge accrued, or any penalty or fee payable, by him, or any other money recoverable from him.

15. *Clause 28* seeks to amend section 32 of Act 807 to provide that where payment by instalments of any service tax due and payable or penalty by a person other than a taxable person who, in carrying on his business, acquires any imported taxable service is allowed by the Director General, the penalty imposed under subsection 26A(4) of Act 807 shall cease to be calculated from the date the payment by instalments is allowed.

16. *Clause 29* seeks to amend section 34 of Act 807 to empower the Minister to exempt any person or class or person from payment of the whole or any part of the service tax which may be charged and levied on any imported taxable service acquired or digital services provided.

17. *Clause 37* seeks to introduce a new Part IXA into Act 807 containing new sections 56A, 56B, 56C, 56D, 56E, 56F, 56G, 56H, 56I, 56J and 56K.

The proposed section 56A seeks to provide that service tax shall be charged and levied on any digital service provided by a foreign registered person to any consumer.



The proposed section 56B seeks to empower the Minister to prescribe the total value of digital services for the purpose of determining the liability to be registered under the proposed Part IXA. The proposed section also seeks to provide for the time when a foreign service provider who provides digital services is liable to be registered.

The proposed section 56C seeks to require any foreign service provider who is liable to be registered under the proposed section 56B to apply for registration as a foreign registered person to the Director General in the prescribed form.

The proposed section 56D deals with the cessation of liability to be registered under Act 807.

The proposed section 56E seeks to require any foreign registered person to notify the Director General in writing within thirty days from the date of cessation if he ceases to provide digital services or has been registered under section 13 of Act 807.

The proposed section 56F deals with cancellation of registration of a foreign registered person and the effective date of such cancellation.

The proposed section 56G seeks to require a foreign registered person who provides any digital service to issue an invoice containing the prescribed particulars to the consumer in respect of the transaction.

The proposed section 56H seeks to provide for a taxable period of a foreign registered person and the power of the Director General to vary the taxable period. The proposed section further requires the foreign registered person to account for service tax due in a return in respect of his taxable period and to furnish the return to the Director General.

The proposed section 56I provides that a foreign registered person shall pay to the Director General the amount of service tax due and payable by him in respect of the taxable period to which a return relates.

The proposed section 56J seeks to impose a duty on a foreign registered person to keep complete and true records of all transactions in relation to his service tax liability.

The proposed section 56K deals with the service of notices, directions or other documents required under Act 807 on a foreign registered person.

18. *Clause 38* seeks to amend section 65 of Act 807 to provide that any certificate signed by the Director General relating to any declaration under paragraphs 65(b) and (c) to be *prima facie* evidence of the fact stated in the certificate.

19. *Clause 39* seeks to amend section 68 of Act 807 to introduce a new paragraph (*ba*) into section 68. The proposed paragraph (*ba*) provides that where any dispute arises in any prosecution as to whether any service acquired by any person in Malaysia from any person who is outside Malaysia is not liable to service tax chargeable under Act 807, the burden of proof of such dispute shall lie on the accused.

20. *Clause 40* seeks to introduce a new section 69A into Act 807 to provide for the period of imprisonment to be imposed by any court for non-payment of fines.

21. *Clause 41* seeks to amend section 71 of Act 807.

*Subclause 41(a)* seeks to amend paragraph (*b*) of subsection 71(1) to make it an offence for any person who intends to evade, or assists other person to evade, service tax by making a false statement or entry in any declaration.

*Subclause 41(b)* seeks to amend subsection (4) to make it an offence for any person who assists in, or advises with respect to, the preparation of any declaration which results in an understatement of the liability for service tax of another person.

22. *Clause 42* seeks to amend section 75 of Act 807 to prohibit a person from transacting any business on behalf of a foreign registered person, or a person other than a taxable person who, in carrying on his business, acquires any imported taxable service except on matters with regard to any refund, remission, exemption or any other matters as approved by the Director General.

23. *Clause 43* seeks to amend section 76 of Act 807 to deal with offences committed by an employee of a foreign registered person.

24. *Clause 49* seeks to introduce a new section 86A into Act 807. The proposed section 86A deals with the manner of service of summons.

25. *Clause 50* seeks to amend section 91 of Act 807 to empower the Minister to prescribe any matters relating to digital services.

26. *Clauses 51* and *52* deal with transitional provisions consequential to the implementation of service tax on digital services.

27. Other amendments not specifically dealt with in this Statement are minor or consequential in nature.

*FINANCIAL IMPLICATION*

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.