

A BILL

i n t i t u l e d

An Act to amend the Customs Act 1967.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Customs (Amendment) (No. 2) Act 2018.

(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 subsection 2(1) by substituting for the definition of “intoxicating liquor” the following definition:

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

Amendment of section 10B

3. Paragraph 10B(3)(c) of the principal Act is amended by inserting before the words “an appeal” the words “a review or”.

Substitution of section 106B

4. The principal Act is amended by substituting for section 106B the following section:

“Power of enforcement, investigation and inspection

106B. For the purposes of this Act, a senior officer of customs shall have all the powers of a police officer of whatever rank as provided for under the Criminal Procedure Code [Act 593] in relation to enforcement, investigation and inspection, and such powers shall be in addition to the powers provided for under this Act and not in derogation thereof.”.

New section 119A

5. The principal Act is amended by inserting after section 119 the following section:

“Court order

119A. (1) Where any person is found guilty of an offence under this Act, the court before which that person is found guilty shall order that person to pay to the Director General the amount of customs duty due and payable or penalty payable under this Act, if any, as certified by the Director General and such customs duty or penalty shall be recoverable in the same manner as provided under section 283 of the Criminal Procedure Code.

(2) For the purpose of subsection (1), the court has civil jurisdiction to the extent of the amount of the customs duty due and payable, and the order is enforceable in all respects as a final judgment of the court in favour of the Director General.

(3) Where any person found not guilty of an offence under this Act has paid the amount of customs duty due and payable or penalty payable pursuant to section 145A in respect of the offence charged, the court may order the amount so paid to be refunded to such person where no notice of appeal is filed.”.

Amendment of section 133

6. Subsection 133(1) of the principal Act is amended—

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

“(c) counterfeits or causes to be counterfeited or falsifies or causes to be falsified any document which is or may be required under this Act or used in the transaction of any business or matter relating to customs, or uses or causes to be used or in any way assists in the use of such counterfeited or falsified document;”;

(b) by substituting for the words “shall, on conviction” the words “shall be guilty of an offence and shall, on conviction”; and

(c) by substituting for the words “five years” the words “seven years”.

Amendment of section 134

7. Subsection 134(1) of the principal Act is amended by substituting for the words “six months or to a fine not exceeding one thousand ringgit” the words “five years or to a fine not exceeding one hundred thousand ringgit”.

Amendment of section 135

8. Section 135 of the principal Act is amended—

(a) in the shoulder note, by substituting for the words “**Penalty for various smuggling offences**” the words “**Penalty relating to smuggling offences, evasion of duty, fraud, etc.**”;

(b) in subparagraph (1)(i)—

(i) by substituting for subparagraph (aa) the following subparagraph:

“(aa) be liable for the first offence to a fine of not less than ten times the amount of the customs duty or fifty thousand ringgit, whichever is the greater amount, and of not more than twenty times the amount of the customs duty or five hundred thousand ringgit, whichever is the greater amount, or to imprisonment for a term not exceeding five years or to both; and”;

(ii) by substituting for subparagraph (bb) the following subparagraph:

“(bb) be liable for a second offence or any subsequent offence to a fine of not less than twenty times the amount of the customs duty or one hundred thousand ringgit, whichever is the greater amount, and of not more than forty times the amount of the customs duty or one million ringgit, whichever is the greater amount, or to imprisonment for a term not exceeding seven years or to both:”;

(c) in the proviso to subparagraph (1)(ii), by deleting the word “and” at the end of the proviso;

(d) in subparagraph (1)(iii)—

(i) by inserting after the words “in the case of prohibited goods” the words “other than cigarettes containing tobacco and intoxicating liquor”;

- (ii) by substituting for subsubparagraph (*aa*) the following subsubparagraph:

“(*aa*) be liable for the first offence to a fine of not less than ten times the value of the goods or fifty thousand ringgit, whichever is the greater amount, and of not more than twenty times the value of the goods or five hundred thousand ringgit, whichever is the greater amount, or to imprisonment for a term not exceeding five years or to both; and”;

- (iii) by substituting for subsubparagraph (*bb*) the following subsubparagraph:

“(*bb*) be liable for a second offence or any subsequent offence to a fine of not less than twenty times the value of the goods or one hundred thousand ringgit, whichever is the greater amount, and of not more than forty times the value of the goods or one million ringgit, whichever is the greater amount, or to imprisonment for a term not exceeding seven years or to both:”; and

- (iv) in the proviso to subparagraph (1)(iii), by substituting for the full stop at the end of the proviso a semicolon; and

- (*e*) by inserting after the proviso to subparagraph (1)(iii) the following subparagraphs:

“(iv) in the case of cigarettes containing tobacco or intoxicating liquor included in a class of goods appearing in an order made under subsection 11(1)—

(*aa*) be liable for the first offence to a fine of not less than ten times the amount of the customs duty or one hundred

thousand ringgit, whichever is the greater amount, and of not more than twenty times the amount of the customs duty or five hundred thousand ringgit, whichever is the greater amount, or to imprisonment for a term of not less than six months and not more than five years or to both, and shall be punished with whipping of not more than three strokes; and

(*bb*) be liable for a second offence or any subsequent offence to a fine of not less than twenty times the amount of the customs duty or two hundred thousand ringgit, whichever is the greater amount, and of not more than forty times the amount of the customs duty or one million ringgit, whichever is the greater amount, or to imprisonment for a term of not less than six months and not more than five years or to both, and shall be punished with whipping of not more than three strokes; and

(v) in the case of cigarettes containing tobacco or intoxicating liquor which are prohibited goods—

(*aa*) be liable for the first offence to a fine of not less than ten times the value of the goods or one hundred thousand ringgit, whichever is the greater amount, and of not more than twenty times the value of the goods or five hundred thousand ringgit, whichever is the greater amount, or to imprisonment for a term of not less than six months and not more than five years or to both, and shall be punished with whipping of not more than three strokes; and

(bb) be liable for a second offence or any subsequent offence to a fine of not less than twenty times the value of the goods or two hundred thousand ringgit, whichever is the greater amount, and of not more than forty times the value of the goods or one million ringgit, whichever is the greater amount, or to imprisonment for a term of not less than six months and not more than five years or to both, and shall be punished with whipping of not more than three strokes.”.

Amendment of section 136

9. Section 136 of the principal Act is amended—

- (a) in paragraph (a), by substituting for the words “assaults or obstructs” the words “assaults, obstructs, hinders, threatens or molests”;
- (b) in paragraph (b), by inserting after the words “any goods which have been duly seized” the words “or any person who has been detained”;
- (c) in subparagraph (i), 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 five hundred thousand ringgit”; and
- (d) in subparagraph (ii), by substituting for the words “five years or to a fine not exceeding twenty thousand ringgit” the words “seven years or to a fine not exceeding one million ringgit”.

Amendment of section 137

10. Subsection 137(1) of the principal Act is amended by substituting for the words “a fine not exceeding ten thousand ringgit” the words “a fine not exceeding five hundred thousand ringgit”.

Amendment of section 138

11. Section 138 of the principal Act is amended by substituting for the words “twenty thousand” the words “fifty thousand”.

Amendment of section 142

12. Section 142 of the principal Act is amended by inserting after paragraph (19) the following paragraph:

“(19A) to regulate any matter relating to customs agent;”.

Substitution of section 143

13. The principal Act is amended by substituting for section 143 the following section:

“Review of and appeal against decision of the Director General

143. (1) Subject to subsection (4), any person aggrieved by any decision of the Director General may apply to the Director General to review any of his decision within thirty days from the date the person has been notified of such decision provided that no appeal has been made on the same decision to the Tribunal or High Court.

(2) An application under subsection (1) shall be made in the prescribed form.

(3) Where an application for review has been made under subsection (1), the Director General shall, where practicable within sixty days from the date of the receipt of such application, carry out the review and notify the decision of the review to the person.

(4) No review may be made in any matter relating to compound or subsection 128(3).

(5) Any person aggrieved by any decision of the Director General under subsection (3) or any other provision of this Act, except any matter relating to compound or subsection 128(3), may appeal to the Tribunal within thirty days from the date of notification in writing of the decision to the aggrieved person.

(6) Any customs duty payable under this Act shall be paid on the due date notwithstanding that any review or appeal has been made under this section.”.

New section 145A

14. The principal Act is amended by inserting after section 145 the following section:

“Customs duty, etc., to be payable notwithstanding any proceedings, etc.

145A. The institution of proceedings or the imposition of a penalty, fine or term of imprisonment under this Act, or the compounding of an offence under section 131, shall not relieve any person from the liability to pay for customs duty, penalty or surcharge under this Act.”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Customs Act 1967 (“Act 235”). The main purpose of the amendment is to strengthen the enforcement powers of the officers of customs and to increase the 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 subsection 2(1) of Act 235 by amending the definition of “intoxicating liquor”.

4. *Clause 3* seeks to amend paragraph 10B(3)(c) of Act 235 to provide that the Director General may decline to make a customs ruling if in his opinion a review under Act 235 is pending involving the subject matter referred to in the application made under section 10A of Act 235.

5. *Clause 4* seeks to amend section 106B of Act 235 to specify that for the purposes of Act 235, a senior officer of customs shall have all the powers of a police officer of whatever rank as provided for under the Criminal Procedure Code [Act 593] in relation to enforcement, investigation and inspection, and such powers shall be in addition to the powers provided for under Act 235 and not in derogation thereof.

6. *Clause 5* seeks to introduce a new section 119A into Act 235 to require the court before which a person is found guilty of an offence under Act 235 to order that person to pay to the Director General the amount of customs duty due and payable or penalty payable under Act 235 and such customs duty or penalty shall be recoverable in the same manner as provided under section 283 of the Criminal Procedure Code. For the purpose of the proposed new section 119A, the court has civil jurisdiction to the extent of the amount of the customs duty due and payable, and the order is enforceable in all respects as a final judgment of the court in favour of the Director General. When any person has been found not guilty of an offence under Act 235 and he has paid the customs duty due and payable or penalty payable pursuant to the proposed section 145A, the court may order the amount paid to be refunded where no notice of appeal is filed.

7. *Clause 6* seeks to amend section 133 of Act 235.

Subclause 6(a) seeks to amend paragraph 133(1)(c) of Act 235 to make it an offence for any person to cause any document which is or may be required under Act 235 or used in the transaction of any business or matter relating to customs to be counterfeited or falsified or to cause to be used or to assist in the use of counterfeited or falsified document.

Subclause 6(c) seeks to amend subsection 133(1) of Act 235 to increase the imprisonment term for the offences specified under paragraphs 133(1)(a) to (g) of Act 235 from five years to seven years.

8. *Clause 7* seeks to amend subsection 134(1) of Act 235 to increase the penalty for the offence of refusing to give information or furnishing false information from imprisonment for a term not exceeding six months or a fine not exceeding one thousand ringgit or both to imprisonment for a term not exceeding five years or a fine not exceeding one hundred thousand ringgit or both.

9. *Clause 8* seeks to amend section 135 of Act 235.

Subclause 8(b) seeks to amend subparagraph 135(1)(i) of Act 235 to increase the penalty for the offence under subsection 135(1) of Act 235 relating to goods included in the class of goods appearing in an order made under subsection 11(1) of Act 235. For the first offence, the penalty is increased to a fine of not less than ten times the amount of the customs duty or fifty thousand ringgit, whichever is the greater amount, and of not more than twenty times the amount of the customs duty or five hundred thousand ringgit, whichever is the greater amount, or imprisonment for a term not exceeding five years or both. For the second or any subsequent offence, the penalty is increased to a fine of

not less than twenty times the amount of the customs duty or one hundred thousand ringgit, whichever is the greater amount, and of not more than forty times the amount of the customs duty or one million ringgit, whichever is the greater amount or imprisonment for a term not exceeding seven years or both.

Subclause 8(d) seeks to amend subparagraph 135(1)(iii) of Act 235 to increase the penalty for the offence under subsection 135(1) of Act 235 relating to prohibited goods other than cigarettes containing tobacco and intoxicating liquor. For the first offence, the penalty is increased 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 imprisonment for a term not exceeding five years or both. For the second or any subsequent offence, the penalty is increased 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 imprisonment for a term not exceeding seven years or both.

Subclause 8(e) seeks to introduce new subparagraphs 135(1)(iv) and (v) into Act 235. The proposed subparagraph 135(1)(iv) seeks to provide a specific penalty for the offence 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. The proposed subparagraph 135(1)(v) seeks to provide a specific penalty for the offence under subsection 135(1) of Act 235 relating to cigarettes containing tobacco or intoxicating liquor which are prohibited goods. These amendments are made to deter the smuggling of cigarettes containing tobacco and intoxicating liquor which is currently increasing, and to prevent the loss of revenue to the Government.

10. *Clause 9* seeks to amend section 136 of Act 235.

Subclause 9(a) seeks to amend paragraph 136(a) of Act 235 to provide that every person who hinders, threatens or molests any officer of customs or other public servant or any person acting in his aid or assistance or duly employed for the prevention of smuggling, commits an offence.

Subclause 9(b) seeks to amend paragraph 136(b) of Act 235 to provide that every person who rescues or endeavours to rescue, or causes to be rescued any person who has been detained, commits an offence.

Subclauses 9(c) and *(d)* seek to amend subparagraphs 136(i) and (ii) of Act 235 to increase the penalty for the offences under paragraphs 136(a), (b) and (c) of Act 235. For the first conviction, the penalty is increased from imprisonment for a term not exceeding three years or a fine not exceeding ten thousand ringgit or both to imprisonment for a term not exceeding five years or a fine not exceeding five hundred thousand ringgit or both. For the second or subsequent conviction, the penalty is increased from imprisonment for a term not exceeding five years or a fine not exceeding twenty thousand ringgit or both to imprisonment for a term not exceeding seven years or a fine not exceeding one million ringgit or both.

11. *Clause 10* seeks to amend subsection 137(1) of Act 235 to increase the fine for the offences under paragraphs 137(1)(a), (b) and (c) of Act 235 from a fine not exceeding ten thousand ringgit to a fine not exceeding five hundred thousand ringgit.

12. *Clause 11* seeks to amend section 138 of Act 235 to increase the general penalty for the offences against Act 235 in respect of which no penalty is expressly provided from a fine not exceeding twenty thousand ringgit to a fine not exceeding fifty thousand ringgit.

13. *Clause 12* seeks to introduce a new paragraph 142(19A) into Act 235 to empower the Minister to regulate any matter relating to customs agent.

14. *Clause 13* 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 to review any of his decision within thirty days from the date the person has been notified of such decision provided that no appeal has been made on the same decision to the Tribunal or High Court. The proposed section 143 disallows review to be made in any matter relating to compound or subsection 128(3) of Act 235. This provision also allows any person aggrieved by any decision of the Director General on the review or under any other provision of Act 235, except any matter relating to compound or subsection 128(3) of Act 235, 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 customs duty payable under Act 235 shall be paid on the due date notwithstanding that any review or appeal has been made under the proposed section.

15. *Clause 14* seeks to introduce a new section 145A into Act 235. The proposed section 145A provides that the institution of proceedings or the imposition of a penalty, fine or term of imprisonment under Act 235, or the compounding of an offence under section 131 of Act 235, shall not relieve any person from the liability to pay for customs duty, penalty or surcharge under Act 235.

16. 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)2997]