

No. 10 of 2005.

Customs (2006 Budget Provisions Amendment) Act 2005.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 2005.

Customs (2006 Budget Provisions Amendment) Act 2005.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 2005.

AN ACT

entitled

Customs (2006 Budget Provisions Amendment) Act 2005,

Being an Act to amend the *Customs Act* (Chapter 101),

MADE by the National Parliament to come into operation on 15 November 2005.

1. INTERPRETATION (AMENDMENT OF SECTION 1).

Section 1 of the Principal Act is amended –

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

“ “assessment of duty ” includes the determination of the amount of duty payable; ” ; and

(b) by inserting after the definition of “Assistant Commissioner of Customs” the following new definitions:-

“ “authentication code” means any identification or identifying code, password or any other authentication method or procedure which has been assigned to a registered user of the computer service referred to in Section 195 for the purpose of identifying and authenticating the access to and use of the computer service by the registered user;

“ “authorised officer” in relation to this Act, means an officer of Customs authorised in writing by the Commissioner of Customs to exercise the powers or perform the functions of an officer under the Act; ” ; and

(c) by inserting after the definition of “carriage” the following new definition:-

“ “clearance” means the completion of the Customs formalities necessary to allow the goods to enter home consumption or to be exported, as the case may be; ” ; and

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- (d) by inserting after the definition of “the Collector” the following new definitions:-

“ “commercial document” in relation to goods, means a document or other record prepared in the ordinary course of business for the purposes of a commercial transaction involving the goods or the carriage or storage of the goods;” and

- (e) by inserting after the definition of “Commissioner for Customs” the following new definitions:-

“ “container” means a container within the meaning of the Customs Convention on Containers, 1972 signed in Geneva on 2 December 1972, as affected by any amendment of the Convention that has come into force, and includes –

- (a) a trailer or other like receptacle, whether with or without wheels, that is used for the movement of goods from one place to another; and
- (b) any baggage; and
- (c) any other thing that is or could be used for the carriage of goods, whether or not designed for that purpose;

“ “conveyance” means an aircraft, railway rolling stock, vehicle, vessel or container of any kind;

“ “counterfeit trademark goods” includes –

- (a) any goods, including packaging, bearing without authorisation a trademark which is substantially identical or deceptively similar to a well-known mark, a geographical indication or a trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a mark, and which thereby infringes or is likely to infringe the rights of the owner of the mark in question; or
- (b) any trademark designed without authorisation to be applied to goods, whether presented separately or not, in the same circumstances as counterfeit trademark goods; or
- (c) any goods bearing marks which are substantially identical or deceptively similar to protected trademarks, which may be in violation of any law relating to trademarks when used on goods or services differing from those for which a trademark is registered, causing confusion as to source or origin; ”; and

- (f) by inserting after the definition of “the Customs” the following new definition:-

“ “customs formalities” means all the operations which must be carried out by the persons concerned and by the Customs in order to comply with the Customs law;

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“the Customs Act” means this Act and any instruments (including rules, regulations or by-laws) made under this Act and any other Act, and any instruments (including rules, regulations or by-laws) made under any other Act, relating to customs in force within any part of the country;

“Customs Controlled Area” means –

- (a) a port, airport, wharf, boarding station or port of entry that is appointed, and the limits of which are fixed, under Section 7; or
- (b) any place within the fixed limits described in the conditions of a permission granted by a Collector under Section 25; or
- (c) a place described in a licence for warehousing goods that is granted under Sections 54, 54A and 54B; or
- (d) a place that is approved, in writing, by the Commissioner-General as a place for the examination of international mail; or
- (e) any place at which an officer has been stationed on board any vessel or aircraft that has arrived in Papua New Guinea from a place outside Papua New Guinea for the purpose of doing anything he is required or authorised to do in the administration or enforcement of this or any other Act of Parliament;

“Customs-related law” means –

- (a) this Act; or
- (b) any other Act, or any regulations made under any other Act, that relate to the importation or exportation of goods, where the importation or exportation is subject to compliance with any condition or restriction or prohibition or is subject to any tax, duty, levy or charge (however described); or
- (c) any other Act, or any regulations made under any other Act, that relate to the control of people or conveyances, at the border or in or at a Customs Controlled Area where such control is subject to compliance with any condition or restriction or prohibition (however described); or
- (d) the *Excise Act* (Chapter 105) and regulations made under that Act; or
- (e) any other Act, or regulation made under any other Act, that falls within the administration of the Commissioner-General of the Internal Revenue Commission; ”; and

(g) by inserting after the definition of “court” the following new definitions:-

“database report” means any automatic log, journal or other report which is automatically generated by the computer service referred to in Section 195 for the purposes of recording the details of a transaction relating to an electronic notice including the authentication code, date and time of receipt, storage location and any alteration or deletion relating to the notice;

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““declarant” means any person who makes a Goods declaration or in whose name such a declaration is made;”; and

(h) by repealing the definition of “documents” and replacing it with the following :-

““documents” include –

- (a) any paper or other material on which there is writing; and
- (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (c) any paper or other material on which a photographic image or any other image is recorded; and
- (d) any article or material from which sounds, images or writing is capable of being produced with or without the aid of a computer or of some other device;”; and

(i) by inserting after the definition of “drawback” the following new definition:-

““due date” means the date when payment of duty is due;”; and

(j) by repealing the definition of “duty” and replacing it with the following:-

““duty” means all revenue collected by the customs and includes –

- (a) duties of customs imposed under the *Customs Tariff Act 1990*; and
- (b) duties of excise imposed under the *Excise Tariff Act 1992*; and
- (c) goods and services tax imposed under Section 6 of the *Goods and Services Tax Act 2003*,

on goods at the point of import or export and also includes all administrative penalties or interest imposed by the customs for a breach of the Act or Regulations, and “duty of customs” or “customs duty” have a similar meaning;” and

(k) by inserting after the definition of “duty” the following new definition:-

““examination of goods” means the physical inspection of goods by the Customs to satisfy themselves that the nature, origin, condition, quantity and value of the goods are in accordance with the particulars furnished in the goods declaration;”; and

(l) by inserting after the definition of “goods” the following new definition:-

““goods declaration” means a statement made by a person to the Customs, in the required form, and giving such particulars of the goods as are required to be given to the Customs in accordance with Customs-related law;”; and

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- (m) by repealing the definition of “owner” (first occurring) and replacing it with the following:-

“ “owner” in relation to goods, includes any person (other than an officer of Customs acting in an official capacity) being or holding himself out to be the owner, importer, exporter, consignee, agent or person possessed of, or beneficially interested in, or having any control of, or power of disposition over, the goods;” and

- (n) by inserting after the definition of “owner” (second occurring) the following new definition:-

“ “owner of copyright” is as defined in the *Copyright and Neighbouring Rights Act 2000*;” and

- (o) by inserting after the definition of “package” the following new definition:-

“ “person” means both natural and legal persons unless the context otherwise requires;” and

- (p) by inserting after the definition of “pilot” the following new definition:-

“ “pirated copyright goods” includes –

- (a) any goods which are copies made without the consent of the right holder or a person duly authorised by the right holder and where the making of that copy would have constituted an infringement of a copyright or a related right; and,
(b) any implements used or intended to be used in the production of pirated goods;” and

- (q) by inserting after the definition of “port of entry” the following new definitions:-

“ “registered user” means a person who has been registered with and authorised by the Commissioner General to gain access to and use the computer service referred to in Section 195;

“ “release of goods” means the action by the Customs to permit goods undergoing clearance to be released from Customs control and placed at the disposal of the persons concerned;

“ “right holder” means –

- (a) the registered proprietor of a registered trade mark, a geographical indication or a well-known mark; or
(b) the owner of copyright or other intellectual property right, and includes a duly authorised licensee as well as an individual, a corporation or an association authorised by any of the aforementioned persons to protect its rights;” and

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- (r) by inserting after the definition of “the regulations” the following new definition:-

“ “a security” means security –

- (a) that ensures to the satisfaction of the Commissioner-General that an obligation to the Customs will be fulfilled; and
- (b) is described as ‘general’ when it ensures that the obligations arising from several operations will be fulfilled;”;

- (s) by repealing the definition of “smuggling” and replacing it with the following:-

“ “smuggling” means any unlawful importation, introduction or exportation or attempted unlawful importation, introduction or exportation of any goods subject to duties or any goods the importation or export of which is prohibited, controlled or regulated by or pursuant to this or any other Act of Parliament;”;

- (t) by inserting after the definition of “smuggling” the following new definition:-

“ “third party” means any person who deals directly with the Customs, for and on behalf of another person, relating to the importation, exportation, movement or storage of goods;”.

2. CUSTOMS CONTROL OF GOODS (AMENDMENT OF SECTION 16).

Section 16 of the Principal Act is amended in Subsection (3) by inserting after the word ‘goods’ the following:-

“; or directs or permits another person to move, alter or interfere with goods”.

3. NEW SECTIONS 16A, 16B, 16C, 16D AND 16E.

The Principal Act is amended by inserting after Section 16 the following new sections:-

“16A. ACCESS TO A CUSTOMS CONTROLLED AREA.

(1) The owner or operator of a facility containing a customs controlled area shall not grant or allow to be granted to any person, access to that area, unless that person –

- (a) has been authorised by the Commissioner-General in accordance with any section of this Act or the Regulations; or
- (b) is a prescribed person or a member of a prescribed class of persons as described in the Regulations.

“(2) A person who –

- (a) grants access to a Customs Controlled Area to another person in contravention of Subsection (1); or
- (b) who intentionally directs or permits another person to grant access to a Customs controlled Area to a person in contravention of Subsection (1),

is guilty of an offence.

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Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

“(3) Any person found to be in a restricted area who is not authorized to be in that area, is guilty of an offence and shall be liable upon conviction to a fine not exceeding K10,000.00 for the first offence and a fine to be calculated in increments of up to K5,000.00 for each subsequent offence.

“(4) It is a defence to a prosecution of a person for a contravention of Subsection (1), if that person took reasonable precautions and exercised due diligence, to prevent the grant of access by the employee who is alleged to have granted a person such access to a Customs Controlled Area in contravention of that section.”.

“16B. POWER TO QUESTION PERSONS IN A CUSTOMS CONTROLLED AREA.

- (1) In this section, “appropriate identification” means –
- (a) if a person is a member of the crew of an international ship or aircraft –
 - (i) a current passport; or
 - (ii) a document issued by the shipping or airline company having control of the ship or aircraft concerned setting out the full name and nationality of the person and the passport number or other official identification number of the person; and
 - (b) if the person is not a member of the crew of such a ship or aircraft –
 - (i) a document issued by the employer of the person providing photographic identification of the employee and setting out the person’s full name; or
 - (ii) a document issued by, or by an instrumentality of, the State providing photographic identification of the person and setting out the person’s full name; or
 - (iii) a document, being a temporary visitors pass, issued by the owner or operator of the facility setting out the person’s full name and details of their driver’s licence or other photographic identification document as proof of identity of the person.

“(2) An officer may question any person found in or on a Customs Controlled Area and may –

- (a) request that person to produce appropriate identification for the officer’s inspection, in order to establish –
 - (i) the persons name; and
 - (ii) the person’s reason for being there; and

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- (iii) evidence of the person's identity; and
- (iv) whether any offence against any customs related law is being committed; and
- (b) request the person to leave the area forthwith, if the person, being other than a crew member of an international ship or aircraft, is unable to establish his identity or to explain his presence in the customs controlled area; and
- (c) remove them, using only as much force is necessary in the circumstances, if that person refuses or fails to produce appropriate identification or refuses or fails to leave the area as directed; and
- (d) return a person to a ship or aircraft forthwith to obtain identification if he claims to be a member of the crew of an international ship or aircraft and refuses or fails to produce appropriate identification on request.

"(3) A person, who refuses or fails to answer questions truthfully or to produce on demand appropriate identification to a Customs officer, is guilty of an offence.

Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

"16C. PROVIDING CUSTOMS WITH INFORMATION ABOUT PEOPLE ISSUED WITH SECURITY IDENTIFICATION CARDS.

(1) A person who issues a security identification card to another person in respect of a Customs Controlled Area must provide to an authorised officer, on written request, the required identity information in respect of the person if the authorised officer suspects on reasonable grounds that the other person has committed, or is likely to commit, an offence against Customs-related law.

"(2) The person to whom a request is made under Subsection (1) does not comply with the obligation under that section to provide the information unless he provides it –

- (a) in writing; or
- (b) in such other form as the authorized officer directs in writing; and
- (c) within 5-days after receiving the request.

"(3) A person, who fails to comply with a request from an authorized officer under this section, is guilty of an offence.

Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

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"16D. POWER TO SEARCH AND SEIZE GOODS.

- (1) An officer may detain –
- (a) any person found in or on a Customs Controlled Area; or
 - (b) any person who has had access to a Customs Controlled Area within a reasonable time after that person leaves the area, and may search that person if the officer suspects, on reasonable grounds, that the person has secreted on or about his person –
 - (c) anything in respect of which any Customs-related law has been or might be contravened; or
 - (d) anything that would afford evidence with respect to a contravention of any Customs-related law; or
 - (e) any goods the importation or exportation of which is prohibited, controlled or regulated under this or any other Act of Parliament.

- "(2) An officer may seize any thing found on a person as a result of a search conducted under Subsection (1) that –
- (a) would afford evidence with respect to a contravention of any Customs-related law; or
 - (b) are goods the importation or exportation of which is prohibited, controlled or regulated under this or any other Act of Parliament.

"16E. REQUIREMENT TO DISPLAY SIGNS AT A CUSTOMS CONTROLLED AREA.

(1) The operator of a place containing a Customs Controlled Area is required to display signs, as prescribed, identifying the place and stating that entry into it by unauthorised persons is prohibited by this Act.

"(2) A person, who fails to comply with Subsection (1), is guilty of an offence.

Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00."

4. REPEAL AND REPLACEMENT OF SECTION 17.

Section 17 of the Principal Act is repealed and is replaced with the following:-

"17. POWER TO EXAMINE GOODS.

- (1) An officer may –
- (a) at any time up to the time of release from a Customs Controlled Area, examine any goods that have been imported and open or cause to be opened any package or container of imported goods and take samples of imported goods in reasonable amounts; and

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- (b) at any time up to the time of exportation, examine any goods that have been delivered to a Customs Controlled Area and open or cause to be opened any package or container of such goods and take samples of such goods in reasonable amounts; and
- (c) examine any goods in the custody or possession of a person found in or on, or leaving, a customs controlled area and open or cause to be opened any baggage, package or container and take samples of the goods in reasonable amounts, if the officer suspects on reasonable grounds that this Act or any other Act of Parliament administered or enforced by the officer or any Regulations made under it have been or might be contravened in respect of the goods.

“(2) The power to examine goods under this section extends to items imported and exported through the mail. ”.

5. ENTRIES (AMENDMENT OF SECTION 19).

Section 19 of the Principal Act is amended –

- (a) by repealing Subsection (1) and replacing it with the following:-

“(1) Entries may be made for all goods subject to the control of the Customs in accordance with the regulations relating to the requirement to enter goods.”; and

- (b) in Subsection (3) –

- (i) by adding, after the words ‘port or airport’ (thrice occurring) the following respectively:-

“or port of entry”; and

- (ii) by repealing the words “a ship or aircraft” (twice occurring) and replacing them respectively with the following:-

“of a conveyance”.

6. NEW SECTION 19A.

The Principal Act is amended by inserting after Section 19 the following new section:-

“19A. RELEASE OF GOODS WITHOUT ENTRY.

- (1) The owner of goods of a kind referred to in the Regulations that do not require an entry to be made shall provide information relating to those goods at such a time and in such a manner and form as the Regulations specify.

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“(2) Customs shall authorize the delivery into home consumption of those goods as though those goods had been entered.

“(3) A person, who fails to provide information in accordance with Subsection (1), is guilty of an offence.

Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K500.00 and not exceeding K2,000.00.”.

7. REPEAL AND REPLACEMENT OF SECTION 20.

Section 20 of the Principal Act is repealed and is replaced with the following:-

“20. AUTHORITY TO DEAL WITH ENTERED GOODS.

(1) Where an entry has been made in respect of goods, Customs shall give the owner of the goods an entry advice, by document or computer, permitting the goods to be dealt with in accordance with this section.

“(2) Where goods are authorised to be taken into home consumption, to be warehoused or to be transhipped, the authority to deal, whether given by document or computer, must set out –

- (a) subject to Subsection (3), any condition, to which the authority is subject; and
- (b) the date on which the authority is given; and
- (c) such other information as is prescribed.

“(3) An authority to deal with goods may be made to be subject to a condition that a specified permission for the goods to be dealt with be obtained under Customs-related law or another law of Papua New Guinea.

“(4) Where an authority to deal with goods is made subject to the condition that a specified permission be obtained, the authority to deal is taken not to have been given until the permission (proof of such a permission being obtained lies with the owner of the goods), has been obtained.

“(5) At any time before goods authorised to be taken into home consumption, warehoused or transhipped are so dealt with, an officer may cancel that authority by –

- (a) serving or transmitting a notice on the person who made the entry; or
- (b) if that person does not have possession of the goods, on the person who is in possession of the goods,

setting out the reasons for that cancellation.

“(6) A cancellation under Subsection (5) has effect from the moment the notice is served or transmitted, as the case requires.”.

8. DEALING WITH ENTERED GOODS (AMENDMENT OF SECTION 21).

Section 21 of the Principal Act is amended –

- (a) by repealing the word “passed”; and

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- (b) by adding after the words 'in accordance with the entry' the following:-
"advice."

9. NEW SECTION 21A.

The Principal Act is amended by inserting after Section 20 the following new section:-

"21A. APPLICATION FOR MOVEMENT PERMISSION.

- (1) Where goods are subject to Customs control, application may be made to Customs, by document or by computer, for permission to move those goods to a place specified in the application.
- (2) When an application is communicated to Customs under Subsection (1), a Collector must, in a form approved by the Commissioner-General –
- (a) give the applicant permission to move the goods either absolutely or subject to such conditions as are specified in the notice; or
 - (b) refuse the application and set out in the notice the reasons for that refusal.
- (3) Where a person moves goods otherwise than in accordance with a permission issued under Subsection (2), the goods are deemed to have been moved without authority.
- (4) If goods are not moved in accordance with a permission issued under Subsection (2), a Collector may arrange for the goods to be moved to a warehouse.
- (5) Where a Collector has arranged for goods to be moved to a warehouse, Customs has a lien on the goods for any expenses incurred in connection with their removal to the warehouse and for any warehouse rent and charges incurred in relation to the goods."

10. REPEAL AND REPLACEMENT OF SECTION 22A.

Section 22A of the Principal Act is repealed and is replaced with the following:-

"22A. LAND BORDER.

- (1) Subject to this section, every person arriving in or departing from Papua New Guinea through a land border shall, except in such circumstances and such conditions as may be prescribed, enter or depart Papua New Guinea at a port of entry.
- (2) For the purposes of Subsection (1), all persons departing or leaving must present themselves without delay to an officer on duty and answer truthfully any questions asked by the officer.
- (3) All the provisions of this Act relating to passengers, goods and conveyances shall, unless otherwise prescribed, apply to the entry or departure of goods, passengers and conveyances at a port of entry.

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“(4) Sections 30 and 42 are taken to be complied with in respect of the land border if a report is made at the time of arrival or departure at the port of entry to an officer doing duty.”.

11. NEW SECTION 22B.

The Principal Act is amended by inserting after Section 22A the following new section:-

“22B. TRADITIONAL INHABITANTS.

(1) A person who is a traditional inhabitant, as prescribed, shall be exempt from any requirement under this Act to make a declaration or report to Customs in respect of –

- (a) goods that are the personal belongings of that person; or
- (b) goods that are owned by, or are under the control of, that person and have been used, are being used or are intended to be used by him in connection with the performance of traditional activities; or
- (c) any conveyance that has been used, is being used or is intended to be used by that person in connection with the performance of traditional activities.

“(2) For the purposes of Subsection (1), a person ceases to be a traditional inhabitant if he has in his possession any commercial or smuggled goods or allows the conveyance to be used for the carriage of persons or goods not connected to the performance of traditional activities.”.

12. REPEAL AND REPLACEMENT OF SECTION 25.

Section 25 of the Principal Act is repealed and is replaced with the following:-

“25. ENTRY OF SHIPS, AIRCRAFT AND VEHICLES.

(1) The person in charge of a conveyance, who, unless from stress of weather or other reasonable cause, permits his conveyance to enter any place other than a port or airport or port of entry, is guilty of an offence.

Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K500.00 and not exceeding K25,000.00.

“(2) Subsection (1) does not apply if the master, pilot or driver has the permission of a Collector given under Subsection (3).

“(3) A Collector may grant the person in charge of a conveyance, on written application by that person to the Collector, permission to bring the conveyance to, or to remain at, a place other than a port or an airport or a port of entry.

“(4) A permission granted under Subsection (3) shall be issued by notice in writing and is subject to any conditions specified in the notice.

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“(5) The Collector may, at any time by notice in writing served on the person –

- (a) revoke the permission; or
- (b) revoke or vary a condition to which the permission is subject; or
- (c) impose new conditions to which the permission is to be subject.

“(6) A person to whom permission has been given under Subsection (3), who and refuses or fails to comply with any condition to which that permission is subject, is guilty of an offence.

Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K500.00 and not exceeding K25,000.00.”.

13. NEW SECTION 25A.

The Principal Act is amended by inserting after Section 25 the following new section:-

“25A. CONVEYANCES DEEMED TO BE IMPORTED.

(1) Where a conveyance has entered Papua New Guinea and a Collector, after making such inquiries as he thinks appropriate, has reason to believe that the conveyance might have been imported into Papua New Guinea, he may serve a notice, as prescribed, stating that, if the conveyance remains in Papua New Guinea throughout the period of 30 days commencing on the day on which the notice was served, it shall be deemed to have been imported into Papua New Guinea and shall be forfeited to the State.

“(2) A Collector may extend the period specified in a notice under Subsection (1), if he considers that it is reasonable to do so after having regard to any relevant matter, by serving an amended notice in an approved form specifying the period by which the period has been extended.

“(3) Where a notice under Subsections (1) or (2) has been served, a Collector may, before the expiration of the period specified in the notice, revoke that notice.

“(4) A Collector shall serve a notice under Subsections (1) or (2) in respect of a conveyance by –

- (a) serving it on the owner or operator of the conveyance; or
- (b) causing the notice to be affixed to a prominent part of the conveyance; or
- (c) if circumstances do not allow for service of the notice under Paragraphs (a) and (b), publishing the notice in a newspaper circulating generally in Papua New Guinea.

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“(5) Where –

- (a) a Collector has served a notice under Subsections (1) or (2) in respect of a conveyance; and
- (b) the notice has not been revoked under Subsection (3); and
- (c) the conveyance has remained in Papua New Guinea throughout the period specified in the notice; and
- (d) an entry has not been made in respect of the conveyance during that period,

the conveyance shall, for the purpose of this Act, be deemed to have been imported into Papua New Guinea on the expiration of that period or that period as extended, as the case requires.

“(6) The proceeds of any sale of goods to which this section applies shall be applied to amounts owed by the debtor, any expenses incurred by the State in respect of the goods sold and any duties on the goods, and the surplus, if any, shall be paid to the debtor.”.

14. REPEAL AND REPLACEMENT OF SECTION 28.

Section 28 of the Principal Act is repealed and replaced with the following:-

“28. FACILITATION OF BOARDING BY OFFICERS.

(1) An officer may be stationed on board any conveyance that has arrived in Papua New Guinea from a place outside Papua New Guinea for the purpose of doing anything he is required or authorised to do in the administration or enforcement of this or any other Custom-related law.

“(2) An officer stationed on board a conveyance pursuant to Subsection (1) shall be carried free of charge, and the person in charge of the vessel, aircraft or conveyance shall ensure that the officer is provided with suitable accommodation and food.

“(3) The master of a ship bringing it to port, or the pilot of an aircraft landing at an airport, for boarding by an officer in accordance with this section, who fails to facilitate by all reasonable means boarding by the officer, or fails to comply with Subsections (1) or (2), is guilty of an offence.

Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.”.

15. REPORT OF CARGO (AMENDMENT OF SECTION 30).

Section 30 of the Principal Act is amended in Subsections (1)(a) and (2)(a) by repealing the words “within” and replacing them respectively with the following:-

“not less than”.

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16. REPEAL OF SECTION 34.

Section 34 of the Principal Act is repealed.

17. MAKING OF ENTRIES (AMENDMENT OF SECTION 35).

Section 35 of the Principal Act is amended –

(a) by repealing Subsection (3) and replacing it with the following:-

“(3) Notwithstanding Section 80A, if default is made in the entry of any goods under this section, and if 30 days have expired after the entry relating to those goods was assessed, the Collector may remove the goods to a warehouse.”; and

(b) by repealing Subsection (4) and replacing it with the following:-

“(4) If goods removed under Subsection (3) are not claimed within 30 days from the date the goods were removed, the goods are deemed to be abandoned and are forfeited to the State.”; and

(c) by inserting after Subsection (4) the following new subsection:-

“(4A) The proceeds of any sale of goods subject to this section shall be applied to amounts owed by the debtor, any expenses incurred by the State in respect of the goods sold and any duties on the goods, and the surplus, if any, shall be paid to the debtor.”

18. UNSHIPMENT (AMENDMENT OF SECTION 37).

Section 37 of the Principal Act is amended in Subsection (1) by repealing the words “or an entry that has been passed”.

19. ENTRY OUTWARDS (AMENDMENT OF SECTION 42).

Section 42 of the Principal Act is amended in Subsection (1)(b) by repealing the word “dutiable”.

20. LICENSING OF WAREHOUSE (AMENDMENT OF SECTION 54).

Section 54 of the Principal Act is amended in Subsection (1) –

(a) by repealing Paragraph (a) and replacing it with the following:-

“(a) shall be issued for a warehouse for the storage of goods subject to the control of the Customs upon payment of such fees and subject to such conditions as are prescribed;” and

(b) by repealing Paragraph (b).

21. PRODUCTION OF GENUINE INVOICES (AMENDMENT OF SECTION 97).

Section 97 of the Principal Act is amended –

(a) by repealing Subsection (2) and replacing it with the following:-

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“(2) When an entry is made of goods on which duty is imposed according to value, the owner shall produce to a collector on request the genuine invoice and any supporting documentation relating to the calculation of the value for duty of the goods.”; and

(b) by repealing Subsections (3) and (4).

22. REPEAL AND REPLACEMENT OF SECTION 102.

Section 102 of the Principal Act is repealed and is replaced with the following:-

“102. SHORT PAID DUTY.

(1) When any duty has been short levied or erroneously refunded, the person, who should have paid the amount short levied or to whom the refund has erroneously been made, shall pay the amount short levied or repay the amount erroneously refunded on demand being made by the Collector within five years from the date of the short levy or refund.

“(2) For the purposes of Subsection (1), the fact that the short-levy or refund was made as a result of a Customs process shall not effect the right of Customs to demand payment or remove the obligation of the person to pay the amount.

“(3) Subsection (2) shall not apply if Customs has provided a ruling to a person and the short-levy or erroneous refund was made in keeping with that ruling.

“(4) For the purposes of Subsection (1), a drawback of duty shall be deemed to be a refund of duty.”.

23. STOPPING OF VEHICLES (AMENDMENT OF SECTION 124).

Section 124 of the Principal Act is repealed and is replaced with the following:-

“124. STOPPING OF CONVEYANCES.

(1) An officer may, on reasonable suspicion, stop and search any conveyance for the purpose of ascertaining whether any dutiable or excisable goods or any goods subject to restriction or prohibition under this Act or other Customs-related law are in it.

“(2) An officer may, for the purposes of Subsection (1), direct the person in charge of the conveyance to remove it to a Customs Controlled Area, Police Station or other place to enable the search to be conducted.

“(3) A person, who fails to stop, or permit a search, or remove the conveyance to a place when directed to do so under this section, is guilty of an offence.

Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.”.

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24. SEIZURE OF GOODS (AMENDMENT OF SECTION 125).

Section 125 of the Principal Act is amended –

(a) in Subsection (1), by repealing Paragraphs (a) and (b) and replacing them with the following:-

“(a) any goods which are forfeited or which he has reasonable cause to believe are forfeited; or

(b) any conveyance that he has reasonable cause to believe was made use of in respect of the forfeited goods, whether at or after the time of contravention; and

(c) anything found during the course of seizing any conveyance or goods which he has reasonable cause to believe will afford evidence of any offence against this Act or any other Customs-related law.”; and

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

“(3) For the purposes of Subsection (1)(a) –

(a) an officer may detain the goods without seizure only for so long as is necessary to determine if they are forfeited, and in any case for a detention period not exceeding five days; and

(b) if at the expiration of the detention period a determination has not been made in relation to the status of the goods, the officer shall –

(i) release the goods to the owner immediately; or

(ii) make an application to a Magistrate to extend the detention period until such time a determination can be made; and

(c) a Magistrate may make an order allowing for the further detention of goods for a period of time not exceeding 30 days, if the Magistrate is satisfied that the retention of the goods be continued –

(i) for the purposes of determining if the goods are forfeited; or

(ii) to allow the goods to be examined by an expert, in order to make a determination under Subparagraph (i); and

(iii) there has been no unavoidable delay in conducting such a determination; and

(iv) the applicant has demonstrated the necessity, in all the circumstances, for the goods to be detained.”.

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25. NOTICE OF SEIZURE (AMENDMENT OF SECTION 126).

Section 126 of the Principal Act is amended –

(a) by repealing Subsection (1) and replacing it with the following:-

“(1) Where a conveyance or goods have been seized as forfeited, the seizing officer shall give written notice of the seizure, and the cause of it, to the owner of the conveyance or goods, or if the owner cannot be identified after reasonable inquiry, on the person who was in possession or who was in control of the conveyance or goods when they were seized, by delivering or transmitting the notice to him –

(a) personally; or

(b) by post and addressed to him at his last-known place of abode or business.”; and

(b) in Subsection (2) by repealing the words “The ship, boat, aircraft” and replacing them with the following:-

“The conveyance”; and

(c) by inserting after Subsection (3) the following new subsection:-

“(4) For the purposes of Subsection (1) the seizure of a conveyance or goods shall not be deemed invalid solely because of any error contained in the form of notice.”.

26. REQUIREMENT BY COLLECTOR OF LEGAL PROCEEDINGS FOR RETURN OF SEIZED GOODS (AMENDMENT OF SECTION 129).

Section 129 of the Principal Act is amended in Subsection (2) by repealing the words “four months” and replacing them with the following:-

“30 days ”.

27. REPEAL AND REPLACEMENT OF SECTION 131A.

Section 131A of the Principal Act is repealed and replaced with the following:-

“131A. PERSON TO KEEP RECORDS.

(1) A person who imports or exports goods shall keep sufficient records to enable an authorised officer to inspect, audit, examine the documents, property or processes of that person to obtain or verify the information on which a determination of the amount of the duties paid, payable, deferred or relieved was made, and shall retain these records for a period of five years after the completion of the transactions, acts or operations to which they relate.

“(2) This section does not require the preservation of any records –

(a) in respect of which the Commissioner has notified the owner of the goods that their preservation is not required; or

(b) of a company that has gone into liquidation and which has been finally dissolved.

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“(3) A person who causes goods to be imported or exported, or receives goods that have been imported or are to be exported, must retain all the relevant commercial documents and records that come into the owner's possession or control at any time and relate to the goods concerned or to their carriage to enable an authorised officer to inspect, audit, examine the documents, property or processes of a person to determine –

(a) whether the person is complying with a Customs-related law;
or

(b) as to the correctness of information communicated by, or on behalf of, the person to Customs (whether in documentary or other form),

and shall retain the records for a period of five years from the time when the goods were imported into, or exported from, Papua New Guinea.

“(4) A person who is required by this section to retain a commercial document or records relating to particular goods may keep the document at any place within Papua New Guinea, must keep the document in its original form and must store it in a manner that will ensure access, reliability and readability of the information recorded.

“(5) A person, who –

(a) destroys, or renders incapable of identification, a document or thing; or

(b) renders illegible or indecipherable such document or thing; or

(c) alters or defaces a document, other than to merely make a notation or marking on it in accordance with ordinary commercial practice; or

(d) places or conceals on his or her body, or in any clothing worn by the person, such a document or thing,

so as to prevent it from being inspected, audited, examined, copied or seized by an authorised officer in the exercise of the officer's powers under this section, is guilty of an offence.

Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K5,000.00 and not exceeding K50,000.00 or a term of imprisonment not exceeding one year, or both.

“(6) A person who fails to keep records as specified by this Act, to make them available for inspection, audit or examination or to comply with a request to produce documents or information, is guilty of an offence.

Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K5,000.00 and not exceeding K50,000.00 or a term of imprisonment not exceeding one year, or both.

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“(7) Without limiting the types of documents or records required to be retained, this section relates to traditional books and records, including supporting source documents produced and retained in paper format, working papers and other supporting documents whether in writing or any other form that may assist in the determination of duty or GST obligations and entitlements, and records retained in an electronically readable format that can be related back to the source documents and that are supported by a system capable of producing accessible and usable copy.

“(8) A person who keeps documents or records whether in writing or any other form in accordance with this section –

- (a) is not relieved of any of the record keeping, readability, retention, and access responsibilities only because he contracts out the record keeping function to a third party including a book keeper, accountant, service bureau or other such arrangements; and
- (b) shall ensure that the requirements for record keeping, readability, retention, and access are continued to be met in the event of third party changes such as software and/or hardware conversions and upgrades, bankruptcy or migration to/from a third party; and
- (c) is responsible for keeping the records and for providing access to authorised persons.”.

28. REPEAL AND REPLACEMENT OF SECTION 131B.

Section 131B of the Principal Act is repealed and is replaced with the following:-

“131B. AUTHORISED OFFICER MAY REQUIRE PERSON TO PRODUCE DOCUMENTS.

(1) Where a person required to keep records under Section 131A fails to comply with any of the provisions of that section, an authorised officer may, by notice in writing, require the person to furnish him with such information as he may require within a period specified in the notice –

- (a) where the document is in writing, the document, or
- (b) where the information is stored in magnetic tapes or computer disks or other information or storage devices, a production of the information in a document setting out the information in a form the authorised officer can understand.

“(2) A person, who fails to produce any information following a requirement made to him under Subsection (1), is guilty of an offence.

Penalty: A fine of not less than K5,000.00 or imprisonment for a period not exceeding one year.

“(3) The period that may be specified in a notice given under Subsection (1) shall be not less than 14 working days after the notice is given but may be extended for up to an additional 14 days by the Commissioner upon request.”.

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29. REPEAL AND REPLACEMENT OF SECTION 131C.

Section 131C of the Principal Act is repealed and is replaced with the following:-

“131C. ACCESS, ETC, TO BOOKS, ETC.,

(1) Subject to this section, an authorised officer, shall at all times have full and free access to all buildings, places, computers, books, documents, records, papers and other information storage devices for any of the purposes of this Act, and for that purpose may inspect, audit, examine the documents, property or processes of a person that may be relevant in determining the obligations of that or any other person, or to ensure compliance of that or any other person with the Act, and, in so doing, the officer may seize, retain and remove for inspection or make extracts from or copies of any such computer, book, documentary or paper records.

“(2) A person, who, on demand, fails to make available to an authorised officer any documents or records necessary for that officer to conduct an inspection, audit or examination at a premises, is guilty of an offence.

Penalty: Subject to Sections 163, 164 and 165, a fine not exceeding K5,000.00.

“(3) An authorised officer may request a person with knowledge of a computer or a computer system to assist access by providing any information or assistance that is reasonable to allow the officer to do one or more of the following:-

- (a) access the data held in, or accessible from, a computer that is on the audit premises;
- (b) copy the data to a data storage device; and
- (c) convert the data into documentary form,

and, for the purposes of this Subsection, “accessible data ” includes data held on premises other than the audit premises, but that can be accessed via a computer on the audit premises.

“(4) A person who fails to provide such information or assistance to an authorised officer in accordance with Subsection (3), is guilty of an offence.

Penalty: Subject to Sections 163, 164 and 165, a fine not exceeding K5,000.00.

“(5) An officer is not entitled to remain on or in any building or place under this section if, on being requested by the occupier of the building or place for proof of authority, the officer does not produce an authority in writing signed by the Commissioner of Customs stating that the officer is authorised to exercise powers under this section.

“(6) The occupier of a building or place entered or proposed to be entered by an authorised officer under Subsection (1), shall provide the officer with all reasonable facilities and assistance for the effective exercise of powers under this section.”.

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“(7) A person, who contravenes Subsection (6), is guilty of an offence.

Penalty: Subject to Sections 163, 164 and 165, a fine not exceeding K5,000.00.”.

30. NEW SECTION 131D.

The Principal Act is amended by inserting after Section 131C the following new section:-

“131D. CERTIFIED COPIES OF DOCUMENTS.

(1) Where, in accordance with the requirement of any law or with ordinary commercial practice, a document that would be required to be kept in accordance with Section 131A is required by that law or practice to be surrendered to another person, this section shall be taken to be complied with if a true copy of the document, certified in accordance with Subsection (2), is kept in its stead.

“(2) For the purposes of Subsection (1) a person must make and retain a true copy of that document and attach to the copy a certificate, signed by that person, stating that –

- (a) the copy is a true copy of the original document, together with the time and date the copy was made and name of the person making the copy; and
- (b) the name of the department or organisation that the original document has been surrendered to; and
- (c) particulars of the reason for that surrender, the time and date of the surrender and the name of the person surrendering the document,

and the certified copy shall be treated by the Commissioner of Customs or an authorised officer, and shall be admissible in all courts, as if it were the original document.”.

31. FURTHER PROOF OF PROPER ENTRY (AMENDMENT OF SECTION 133).

Section 133 of the Principal Act is amended by repealing Subsection (2) and replacing it with the following:-

“(2) The Collector may withhold from the owner the assessment of an entry and refuse the release of goods for home consumption pending receipt of proof, to the satisfaction of the Collector, required under Subsection (1).”.

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32. REPEAL AND REPLACEMENT OF SECTION 136.

Section 136 of the Principal Act is repealed and replaced with the following:-

“136. POWER TO QUESTION.

(1) An officer may, other than in accordance with any other provision of this Act, question any person to determine whether that person, or any other person is complying with this Act or any other Custom-related law, and the person must answer questions put to him truthfully and to the best of his knowledge or belief.

“(2) A person, who fails to answer questions put to him under this section or provides false or misleading answers, is guilty of an offence.

Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.

“(3) Notwithstanding Subsections (1) and (2), a person is not bound to answer questions put to him if the answers would tend to incriminate him.”.

33. REPEAL AND REPLACEMENT OF SECTION 138.

Section 138 of the Principal Act is repealed and replaced with the following:-

“138. ARREST OF PERSONS SUSPECTED OF SMUGGLING, ETC.,

(1) An officer may arrest without warrant any person who he believes on reasonable grounds –

- (a) is committing or has committed an offence against a Customs-related law; and
- (b) that proceedings against the person by summons would not be effective.

“(2) A person, who, physically or otherwise, does or attempts to resist, interfere with, hinder or prevent the arrest of any person under Subsection (1), is guilty of an offence.

Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K5,000.00 and not exceeding K15,000.00, or imprisonment for a period not exceeding six months.

“(3) An officer who arrests a person for an offence against a Customs-related law, or who is present at such an arrest, may conduct a search of the arrested person at the time of arrest or soon after, and seize –

- (a) any evidential material in relation to that or another offence against the Customs-related law; and
- (b) any seizable item; and
- (c) any weapons or other things capable of being used to inflict bodily harm or help the person escape,

found as a result of the search.

“(4) A person arrested may be detained until such time as he can, without undue delay, be taken before a magistrate.

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- “(5) A magistrate before whom a person is brought under Subsection (4) may –
- (a) commit the person to custody until he can be brought before a court to be dealt with according to law; or
 - (b) admit him to bail on his giving sufficient security for his appearance before a court at the time and place appointed for the hearing of the charges laid against him.”.

34. FORFEITED GOODS (AMENDMENT OF SECTION 146).

Section 146 of the Principal Act is amended –

(a) in Subsection (1) –

(i) by inserting after Paragraph (c) the following new paragraph:-

“(ca) all goods which are counterfeit trademark goods or are pirated copyright goods or goods infringing intellectual property right or protection defeating devices; and”; and

(ii) in Paragraphs (d),(e) and (f) by repealing the words ‘ship, boat or aircraft’ and replacing them respectively with the following:-

“conveyance”; and

(iii) in Paragraph (f) by inserting after the word ‘airport’ the words “or a port of entry”; and

(iv) by inserting after Paragraph (j) the following new paragraph:-

“(ja) all goods that in accordance with any section of this Act are deemed to have been abandoned; and”; and

(b) in Subsection (2), by removing the words ‘ship, boat or aircraft’ and replacing them with the following:-

“conveyance”; and

(c) by inserting after Subsection (2) the following new subsection:-

“(3) Goods which are forfeited under this section shall not be deemed otherwise merely because they have been released from Customs control as a result of a Customs process.”.

35. INTERPRETATION (AMENDMENT OF SECTION 147A).

Section 147A of the Principal Act is amended –

(a) in the definition of “materially incorrect” –

(i) in Paragraphs (a), (b) and (c) by inserting after the word ‘identity’ the following respectively:-

“and full address”; and

(ii) by inserting after Paragraph (r) the following new paragraph :-

“(s) the Customs Procedure Code.”; and

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- (b) by inserting immediately following the definition of “materially incorrect ” the following new definition :-

““Technical offence” means a breach of the Act or Regulations in respect of any obligation for a person to –

- (a) communicate information to Customs; or
- (b) deal with goods in accordance with the Act; or
- (c) deal with a conveyance in accordance with the Act; or
- (d) keep, retain or produce documents or records; or
- (e) comply with any term or condition of a licence issued under this Act; or
- (f) allow or permit unauthorised entry to a Customs Controlled Area; or
- (g) answer questions or make any statement to a Customs officer,

and includes a breach by a person arriving in Papua New Guinea who is required to make a statement to Customs by virtue of the *Customs (Personal Effects) Regulation* (Chapter 101).”.

36. ADMINISTRATIVE PENALTIES (AMENDMENT OF SECTION 147B).

Section 147B of the Principal Act is amended in Subsection (1) –

- (a) by repealing the words “within 12 months” and replacing them with the following:-

“within 5 years”; and

- (b) by inserting at the end of the subsection after the words “5 percent of the value of the goods” the following:-

“or, where the entry is otherwise materially incorrect, a penalty of not more than 5 percent of the value of the goods.”.

37. REPEAL AND REPLACEMENT OF SECTIONS 147C AND 147D.

Sections 147C and 147D of the Principal Act are repealed and are replaced with the following new sections:-

“147C. SECTION 147B NOT TO APPLY IN CERTAIN CASES.

(1) Where the owner of goods or his agent is uncertain whether particular information included in a statement made in respect of those goods might be regarded as false or misleading in a material particular, that owner or agent may, by writing included in the statement, nominate that information as information of which the owner or agent is uncertain and set out the reasons for that uncertainty, and, where the owner or agent does so to the satisfaction of the Collector, no penalty shall be imposed under Section 147B in relation to that information.

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“(2) Where the owner of goods or the agent of the owner is uncertain whether, by reason of the omission of particular information from a statement made in respect of those goods, that statement might be regarded as misleading in a material particular, that owner or his agent may, by writing included in the statement, specify the information that has been omitted and set out the reasons for uncertainty concerning the effect of the omission and where the owner or agent does so to the satisfaction of the Collector, no penalty shall be imposed under Section 147B in relation to that omission.”

“147D. PENALTY FOR TECHNICAL OFFENCES.

(1) Where a person has committed a technical offence against this Act, the Commissioner-General may, by notice in writing within 14 days of the alleged breach being detected, require that person to pay within 30 days after service of the notice, a penalty as prescribed.

“(2) Subject to this section, a person on whom a notice of a penalty has been served under Subsection (1) and payment of which remains outstanding after the completion of the 30 day period, shall pay, in addition to the penalty, interest at the rate of 8% of the amount of unpaid penalty for each 5 day period or part thereof, beginning on the day after the notice was served on the person and ending on the day the penalty has been paid in full.

“(3) Where the Commissioner-General serves a notice under Subsection (1) in relation to a technical offence, a customs prosecution in respect of that offence may only be commenced if the penalty remains unpaid 30 days after payment was due, and the Court may take account of any unpaid penalty and interest accrued when imposing a penalty in respect of such action.”

“147E. POWER TO IMPOSE ADMINISTRATIVE PENALTIES EXTENDS TO TRAVELLERS.

(1) Where an officer is satisfied that a person arriving in or departing from Papua New Guinea has committed a technical offence against this Act resulting in duty or GST being short-paid, the officer, in place of the penalty provisions outlined under Section 147D, may –

- (a) if the goods were found in the course of a search of the baggage of a person, issue that person with a penalty notice for an amount equal to the amount of the duty or GST that, in the opinion of the officer issuing the notice, the person has sought to evade; or
- (b) if the goods found were concealed in any manner likely to have deceived the officer, issue that person with a penalty notice for an amount equal to twice the amount of the duty or GST that, in the opinion of the officer issuing the notice, the person has sought to evade.

“(2) Any penalty charged under Subsection (1) is in addition to any duty or GST payable on the goods.

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“(3) An officer may detain any goods subject to Subsection (1) until such time as the penalty and any short-paid duty or GST is paid in full, whereupon the goods may be released to the owner in accordance with any provision of this Act.

“(4) Notwithstanding the provisions of Section 147D(2), where a person does not fully pay the penalty and any short-paid duty or GST within 30 days after service of the penalty notice, the goods are taken to be forfeited goods.

“(5) A reference in this section to the baggage of a person who has arrived in Papua New Guinea shall be read as including a reference to goods on his person or otherwise with him.

“(6) This section does not apply to prohibited imports or exports.”.

“147F. REMISSION OF PENALTIES.

(1) Where a penalty is payable under this Division, the Commissioner-General may, on the basis of a written application, remit the whole or any part of the penalty.

“(2) For the purposes of Subsection (1), an application for remission of a penalty –

- (a) must be made by the person liable to pay the penalty; and
- (b) must be made within 30 days from the date of service of the penalty notice for which the application is made; and
- (c) may only be made after payment of the penalty,

and failure to comply with these conditions are grounds for the application to be dismissed.

“(3) The Commissioner-General shall inform the applicant of his decision in relation to the application within 30 days after receiving an application for remission of penalty.

“(4) In considering to remit the whole or a part of an administrative penalty referred to in this Division, the Commissioner-General may have regard to the following matters:-

- (a) whether the applicant or his agent, as the case may be, has voluntarily admitted that a statement or omission, is false or misleading;
- (b) the risk to revenue occasioned by such a statement or omission or act or conduct;
- (c) the capacity of the applicant or his agent to have avoided making such a statement or omission or engage in such an act or conduct, as the case may be, and the extent to which that capacity was exercised; and
- (d) the history of the applicant or his agent resulting in previous revenue loss or any Customs prosecution instituted against the applicant or his agent.”.

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“147G. DISPUTES AS TO THE APPLICATION OF THIS DIVISION.

(1) Where a person who has been issued a notice of penalty disputes the decision of the Commissioner-General made under Section 147F, that person may make an application under Sections 177 or 178 for a review of the decision.

“(2) Notwithstanding the general provisions of Sections 177 and 178, an application in respect of an administrative penalty, issued under this Division, may only be made if the applicant has first exhausted a claim for remittance under Section 147F.

“(3) Where a decision of the Commissioner-General under Section 177 or Section 178 results in the penalty being remitted in part or in whole, the Commissioner-General shall remit any penalty paid under this Division to the extent necessary to give effect to the decision of the Commissioner-General.

“(4) Nothing in this Division affects the right of a person to appeal any decision of the Commissioner-General to the National Court.

“(5) Where a person makes an application to the National Court for a review of a decision made under this Division –

- (a) the period commencing on the making of that application and ending on the final determination by a Court on appeal from the decision of the Commissioner-General, shall not be taken into account in computing the time periods referred to in this division; and
- (b) where a decision of a Court on an appeal results in the penalty amount being remitted in part or whole, the Commissioner-General shall remit any penalty paid under this Division to the extent necessary to give effect to the decision of the Commissioner-General or of the Court.”.

38. REPEAL AND REPLACEMENT OF SECTION 149.

Section 149 of the Principal Act is repealed and is replaced with the following:-

“149. SMUGGLING.

(1) A person, who smuggles or attempts to smuggle any goods into Papua New Guinea, whether clandestinely or not, is guilty of an offence.

“(2) A person, who conveys or has in his possession any smuggled goods, is guilty of an offence.

“(3) A person who conveys or has in his possession any smuggled goods shall be deemed to convey them, or have them in his possession, as the case may be, unlawfully.

“(4) Merchandise on board a ship or aircraft calling at any port or airport in the country but intended for, and consigned to, a port, airport or place outside the country shall not be deemed to be unlawfully imported into the country if the goods –

- (a) are specified on the ship's or aircraft's manifest; and

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(b) are not transhipped or landed in the country, or are transhipped or landed by authority.

- “(5) The penalty for a breach of Subsections (1), (2) or (3) –
- (a) subject to Sections 163, 164 and 165, a fine not less than K5,000.00 and not exceeding K50,000.00 or imprisonment for a period not exceeding 10 years, or both; or
 - (b) if the offence is committed in relation to goods that are narcotic drugs - as provided by Section 160.”

39. REPEAL AND REPLACEMENT OF SECTION 150.

Section 150 of the Principal Act is repealed and is replaced with the following:-

“150. USE OF CONVEYANCE FOR SMUGGLING.

The owner of a conveyance, who uses it or knowingly permits it to be used in smuggling, to convey smuggled goods or to enable any contravention of Customs-related law by any person, is guilty of an offence.

- Penalty: (a) subject to Sections 163, 164 and 165, a fine not less than K5,000.00 and not exceeding K50,000.00 or imprisonment for a period not exceeding 10 years, or both; or
- (b) if the offence is committed in relation to goods that are narcotic drugs –as provided by Section 160.”.

40. MISCELLANEOUS OFFENCES (AMENDMENT OF SECTION 153).

Section 153 of the Principal Act is amended by inserting after Paragraph (j) the following new paragraph:-

- “(k) who is not a right holder and who imports, exports or transits any goods which are –
- (i) counterfeit trademark goods; or
 - (ii) pirated copyright goods; or
 - (iii) goods infringing intellectual property right; or
 - (iv) protection defeating devices.”.

41. NEW SECTION 169A.

The Principal Act is amended by inserting after Section 69 the following new section:-

“169A. OFFENCES BY COMPANIES AND LIABILITY FOR ACTS OF AGENTS OR EMPLOYEES.

(1) Where an offence under this Act or the Regulations is committed by a body corporate, and it is proved to have been committed with the consent or connivance of, or to be attributable to any act or default on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, that person, and the body corporate, are severally guilty of that offence.

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“(2) Whenever any agent or employee in the course of his employment does or omits to do an act, the doing of which or omission to do which by his principal or employer would be an offence, the agent or employee shall be guilty of that offence.

“(3) In any proceedings jointly against the body corporate and a director or officer thereof for an offence under this Act, any evidence that the body corporate was guilty of such an offence shall be deemed to be evidence that the director or officer was guilty of that offence.

“(4) Any person who would have been guilty of an offence if anything had been done or omitted to be done by him personally shall be guilty of that offence and shall be liable to the same penalty if that thing had been done or omitted to be done by his partner, agent or employee in the course of the partnership business or in the scope of his employment, as the case may be, unless he proves to the satisfaction of the court that the offence was committed without his knowledge and that he took all reasonable precautions to prevent that act or omission.”.

42. AUTHORISED AGENTS (AMENDMENT OF SECTION 184).

Section 184 of the Principal Act is amended by inserting after Subsection (2) the following new subsections:-

“(3) For the purposes of Subsection (1), an authorized agent shall obtain from the owner of the goods a written authority authorizing that agent to act on behalf of the owner in respect of those goods, such authority to be for a particular shipment or shipments or for an ongoing period.

“(4) The written authority shall be in a form approved by the Commissioner-General and shall be retained by the authorised agent for a period of five years from the transaction to which the written authority relates.

“(5) An authorized agent, who fails to comply with Subsections (3) or (4), is guilty of an offence.

Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K1,500.00 and not exceeding K5,000.00.”.

43. REPEAL AND REPLACEMENT OF SECTION 191.

Section 191 of the Principal Act is repealed and is replaced with the following:-

“191. RECOVERY OF DUTY.

(1) Customs duty is a debt to the State and is –

- (a) charged on the goods in respect of which it is payable; and
- (b) payable by the owner of the goods,

and may be recovered at any time in any court of competent jurisdiction by proceedings in the name of the Commissioner.

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“(2) In pursuing a debt to the State, the Commissioner may withhold from the debtor the assessment of an entry and refuse the release of goods for home consumption until such time as the debt has been discharged or dealt with to the satisfaction of the Commissioner.

“(3) Goods that are subject to Subsection (2) that have not lawfully been removed from the control of customs within a period of 30 days after their importation are, at the termination of that period, deemed to have been abandoned by the owner and are forfeited to the State.

“(4) The proceeds of any sale of goods subject to this section shall be applied to amounts owed by the debtor, any expenses incurred by the State in respect of the goods sold and any duties on the goods, and the surplus, if any, shall be paid to the debtor.”.

44. NEW SECTION 195.

The Principal Act is amended by inserting after Section 194 the following new section:-

“195. COMPUTER SERVICE.

(1) The Commissioner-General may establish and operate a computer service and make provision for any manifest, return, list, statement, declaration, direction, notice, permit, receipt or other document required or authorised by this Act to be made, served or submitted by electronic transmission (referred to in this Act as an electronic notice).

“(2) A registered user may, in accordance with the conditions set by the Commissioner-General under Subsection (12), make and serve an electronic notice to the computer account of the Commissioner-General.

“(3) The Commissioner-General or any person authorised by him may, in accordance with the conditions set under Subsection (12), make and serve an electronic notice to the computer account of a registered user.

“(4) Where an electronic notice is transmitted to the computer account of the Commissioner-General using the authentication code assigned to a registered user –

- (a) with or without the authority of the registered user; and
- (b) before the notification to the Commissioner-General by the registered user in the required manner, of cancellation of the authentication code, that notice shall, for the purposes of this Act, be presumed to be made by the registered user unless he provides evidence to the contrary.

“(5) Where the registered user alleges that he has transmitted no such electronic notice referred to in Subsection (4), the burden of proof to provide evidence of that fact is on the user.

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“(6) For the purposes of this Act, an electronic notice or a copy thereof shall not be inadmissible in evidence merely on the basis that it was transmitted without the making or delivery of any equivalent document or counterpart in paper form.

“(7) Notwithstanding any other written law, in any proceedings under this Act, an electronic notice or a copy thereof (including a print-out of that notice or copy) or any database report (including a print-out of that report) relating to that notice —

- (a) certified by the Commissioner-General to contain all or any information transmitted in accordance with this section; and
- (b) duly authenticated in the manner specified in Subsection (8) or is otherwise duly authenticated by showing that there is copy thereof certified by the Commissioner,

shall be admissible as evidence of the facts stated or contained therein.

“(8) For the purposes of this section, a certificate —

- (a) giving the authentication code and other particulars of any user and device (if known) involved in the production and transmission of, and identifying the nature of, the electronic notice or copy thereof; and
- (b) purporting to be signed by the Commissioner or by a person occupying a responsible position in relation to the operation of the computer service at the relevant time,

shall be sufficient evidence that the electronic notice or copy thereof has been duly authenticated, unless the court, in its discretion, calls for further evidence on this issue.

“(9) Where an electronic notice or a copy thereof is admissible under Subsection (7), it shall be presumed, until the contrary is proved, that the contents of the electronic notice or copy thereof have been accurately transmitted.

“(10) The Commissioner may, for the purpose of facilitating any electronic transmission under this section, approve the use in any such electronic transmission of symbols, codes, abbreviations or other notations to represent any particulars or information required under this Act.

“(11) Any person transmitting an electronic notice on behalf of another person shall not divulge or disclose the contents of any electronic notice or a copy thereof without the prior written consent of the Commissioner-General.

“(12) The Commissioner may provide written conditions for —

- (a) subscription to the computer service, including the manner in which the authentication codes are to be assigned; and
- (b) the manifests, returns, lists, statements, declarations, directions, notices, permits, receipts or any other document which may be transmitted through the computer service including the form and manner in which they are to be transmitted; and

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- (c) the correction of errors in or amendments to electronic notices; and
- (d) the procedure for use of the computer service including the procedure in circumstances where there is a breakdown or interruption in the service; and
- (e) generally for the better provision of the computer service.”.

I hereby certify that the above is a fair print of the ***Customs (2006 Budget Provisions Amendment) Act 2005*** which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the ***Customs (2006 Budget Provisions Amendment) Act 2005*** was made by the National Parliament on 22 November 2005.

Speaker of the National Parliament.

