

CUSTOMS ACT 1986
(BILL NO. 30 OF 2017)

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BILL NO. 30 OF 2017

A BILL

FOR AN ACT TO AMEND THE CUSTOMS ACT 1986

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

- 1.—(1) This Act may be cited as the Customs (Budget Amendment) Act 2017.
- (2) This Act comes into force on 30 June 2017.
- (3) In this Act, the Customs Act 1986 is referred to as the “Principal Act”.

Section 11A amended

2. Section 11A(5) of the Principal Act is amended by deleting “\$10,000” and substituting “\$25,000 or to imprisonment for a term not exceeding 10 years, or both”.

Section 13 amended

3. Section 13 of the Principal Act is amended by deleting “\$20,000 or to imprisonment for 4 years or to both such fine and imprisonment” and substituting “\$25,000 or to imprisonment for a term not exceeding 10 years, or both”.

Section 14 amended

4. Section 14(4) of the Principal Act is amended by deleting “\$20,000 or to imprisonment for 4 years or to both such fine and imprisonment” and substituting “\$25,000 or to imprisonment for a term not exceeding 10 years, or both”.

Section 16 amended

5. Section 16(2) of the Principal Act is amended by deleting “\$10,000” and substituting “\$25,000 or to imprisonment for a term not exceeding 10 years, or both”.

Section 17 amended

6. Section 17(2) of the Principal Act is amended by deleting “\$10,000” and substituting “\$25,000 or to imprisonment for a term not exceeding 10 years, or both”.

Section 27 amended

7. Section 27(2) of the Principal Act is amended by deleting “\$5,000” and substituting “\$25,000 or to imprisonment for a term not exceeding 10 years, or both”.

Section 31 amended

8. Section 31(3) of the Principal Act is amended by deleting “\$10,000” and substituting “\$25,000 or to imprisonment for a term not exceeding 10 years, or both”.

Section 37 amended

9. Section 37(3) of the Principal Act is amended by deleting “\$10,000” and substituting “\$25,000 or to imprisonment for a term not exceeding 10 years, or both”.

Section 38 amended

10. Section 38 of the Principal Act is amended by—

- (a) in subsection (5) deleting “\$10,000” and substituting “\$25,000 or to imprisonment for a term not exceeding 10 years, or both”; and
- (b) in subsection (6) deleting “\$10,000” and substituting “\$25,000 or to imprisonment for a term not exceeding 10 years, or both”.

Section 40 amended

11. Section 40(3) of the Principal Act is amended by deleting “\$10,000” and substituting “\$25,000 or to imprisonment for a term not exceeding 10 years, or both”.

Section 47 amended

12. Section 47(5) of the Principal Act is amended by deleting “\$20,000 or imprisonment for 4 years or to both such fine and imprisonment” and substituting “\$25,000 or to imprisonment for a term not exceeding 10 years, or both”.

Section 55 amended

13. Section 55 of the Principal Act is amended by deleting “\$10,000 or to imprisonment for a term of 4 years or to both such fine and imprisonment” and substituting “\$25,000 or to imprisonment for a term not exceeding 10 years, or both”.

Section 63G amended

14. Section 63G of the Principal Act is amended by deleting “to a fine of \$20,000” and substituting “to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both”.

Section 65 amended

15. Section 65(2) of the Principal Act is amended by deleting “6 years” and substituting “10 years”.

Section 66H amended

16. Section 66H(1)(b) of the Principal Act is amended by deleting “6 years” and substituting “10 years”.

Section 71 amended

17. Section 71 of the Principal Act is amended by—

- (a) deleting “\$20,000” and substituting “\$25,000”; and
- (b) after “declaration” inserting “or to imprisonment for a term not exceeding 10 years, or both”.

Section 72 amended

18. Section 72(5) of the Principal Act is amended by—

- (a) deleting “\$20,000” and substituting “\$25,000”; and
- (b) deleting “2 years” and substituting “10 years”.

Section 74 amended

19. Section 74(2) of the Principal Act is amended by deleting “3 years” and substituting “10 years,”.

Section 95D amended

20. Section 95D(1) of the Principal Act is amended by—

- (a) deleting “\$5,000” and substituting “\$25,000”; and
- (b) deleting “6 months” and substituting “10 years”.

Section 100 amended

21. Section 100 of the Principal Act is amended by—

- (a) in subsection (1)—
 - (i) deleting “\$10,000” and substituting “\$25,000”; and
 - (ii) after “whichever is the greater” inserting “or to a term of imprisonment not exceeding 10 years, or all such fines and penalties”; and
- (b) in subsection (2), deleting “\$10,000” and substituting “\$25,000 or a term of imprisonment not exceeding 10 years, or both”.

Section 102 amended

22. Section 102 of the Principal Act is amended by—

- (a) in subsection (1), deleting “5 years” and substituting “7 years”; and
- (b) in subsection (3), deleting “\$10,000 or to imprisonment for 4 years or to both such fine and imprisonment” and substituting “\$25,000 or a term of imprisonment not exceeding 10 years, or both”.

Section 103 amended

23. Section 103(4) of the Principal Act is amended by—

- (a) in paragraph (a) after “\$40,000”, inserting “or to a term of imprisonment not exceeding 10 years, or both,”;
- (b) in paragraph (b) after “\$200,000”, inserting “or to a term of imprisonment not exceeding 10 years, or both”.

Section 104 amended

24. Section 104 of the Principal Act is amended—

- (a) in subsection (4) deleting “\$10,000” and substituting “\$25,000 or a term of imprisonment not exceeding 10 years, or both”; and
- (b) in subsection (5)—
 - (i) deleting “\$10,000” and substituting “\$25,000”; and
 - (ii) after “whichever is the greater” inserting “or to a term of imprisonment not exceeding 10 years, or all penalties”.

Section 113 amended

25. Section 113(1) of the Principal Act is amended after “offence” by inserting “and is liable upon conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both”.

Section 114A amended

26. Section 114A(2) of the Principal Act is amended in by deleting “5 years” and substituting “7 years”.

Section 116 amended

27. Section 116(3) of the Principal Act is amended by—

- (a) deleting “\$10,000” and substituting “\$25,000”; and
- (b) after “liable to forfeiture” inserting “or to imprisonment for a term not exceeding 10 years, or all penalties”.

Section 122 amended

28. Section 122(2) of the Principal Act is amended by deleting “\$10,000 or imprisonment for 3 years or to both such fine and imprisonment” and substituting “\$25,000 or to imprisonment for a term not exceeding 10 years, or both”.

New section 122B inserted

29. The Principal Act is amended after section 122A by inserting, the following new section—

“Search and examination by proper officers

122B.—(1) In exercising any powers of boarding, entry, search or examination conferred under this Act, a proper officer may use x-ray or imaging equipment, other electronic devices or any other equipment authorised by the Comptroller.

(2) An examination carried out pursuant to subsection (1) and in accordance with section 114 of this Act—

- (a) may include the physical or chemical testing of the goods; and
- (b) may be facilitated by any means, including but not limited to, a Customs dog, a chemical substance, x-ray or imaging equipment, or any other mechanical, electrical or electronic device.”.

Section 123 amended

30. Section 123 of the Principal Act is amended by deleting “\$20,000 or imprisonment for 4 years or to both such fine and imprisonment” and substituting “\$25,000 or to imprisonment for a term not exceeding 10 years, or both”.

Section 123A amended

31. Section 123A(2) of the Principal Act is amended by deleting “imprisonment for a term not exceeding 2 years or to a fine not exceeding \$15,000 or to both” and substituting “a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both”.

Section 124 amended

32. Section 124 of the Principal Act is amended by—

- (a) in subsection (1), deleting “imprisonment for 10 years” and substituting “a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both”;
- (b) in subsection (2), deleting “imprisonment for 7 years” and substituting “a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both”;
- (c) in subsection (3), deleting “imprisonment for 2 years or to a fine not exceeding \$20,000 or to both such fine and imprisonment” and substituting “a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both”; and
- (d) in subsection (4), deleting “\$20,000 or imprisonment for 2 years or to both such fine and imprisonment” and substituting “\$25,000 or to imprisonment for a term not exceeding 10 years, or both”.

Section 126 amended

33. Section 126 of the Principal Act is amended by deleting “imprisonment for 4 years” and substituting “a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both”.

Section 127 amended

34. Section 127 of the Principal Act is amended by deleting “\$20,000 or to imprisonment for 2 years or to both such fine and imprisonment” and substituting “\$25,000 or to imprisonment for a term not exceeding 10 years, or both”.

Section 128 amended

35. Section 128 of the Principal Act is amended by—

- (a) in subsection (2), after “offence” inserting “and is liable to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 10 years, or both”; and
- (b) in subsection (4), deleting “3 years” and substituting “10 years.”.

Section 134 amended

36. Section 134(1) of the Principal Act is amended by deleting “\$10,000” and substituting “\$25,000 or to imprisonment for a term not exceeding 10 years, or both”.

Section 136 amended

37. Section 136 of the Principal Act is amended by deleting “\$10,000” and substituting “\$25,000 or a term of imprisonment not exceeding 10 years, or both”.

Section 137 amended

38. Section 137 of the Principal Act is amended by deleting “\$10,000” and substituting “\$25,000 or a term of imprisonment not exceeding 10 years, or both”.

Section 138 amended

39. Section 138 of the Principal Act is amended by—

- (a) deleting “\$20,000” and substituting “\$25,000”; and
- (b) deleting “2 years or to both such fine and imprisonment” and substituting “a term of imprisonment not exceeding 10 years, or both”.

Section 139 amended

40. Section 139 of the Principal Act is amended by deleting “\$20,000 whichever is the greater or to imprisonment for 2 years or to both such fine and imprisonment” and substituting “\$25,000 or a term of imprisonment not exceeding 10 years, or both”.

Section 140 amended

41. Section 140(3) of the Principal Act is amended by deleting “\$10,000” and substituting “\$25,000 or a term of imprisonment not exceeding 10 years, or both”.

Section 143 amended

42. Section 143 of the Principal Act is amended by deleting “\$10,000” and substituting “\$25,000 or a term of imprisonment not exceeding 10 years, or both.”.

Section 143A amended

43. Section 143A of the Principal Act is amended by deleting “\$20,000 and to imprisonment for 2 years” and substituting “\$25,000 or a term of imprisonment not exceeding 10 years, or both”.

Section 149 amended

44. Section 149(4) of the Principal Act is amended by deleting “\$10,000” and substituting “\$25,000 or a term of imprisonment not exceeding 10 years, or both”.

Section 154A amended

45. Section 154A(1)(e) of the Principal Act is amended by deleting “section 15A(3)” and substituting “section 154A(3)”.

Section 165A amended

46. Section 165A(1) of the Principal Act is amended by deleting “5 years” and substituting “7 years”.

Section 167 deleted

47. The Principal Act is amended by deleting “section 167”.

New section 167A inserted

48. The Principal Act is amended after section 167 by inserting the following new section—

“Burden of proof

167A. In any proceedings under this Act, the burden of proof lies with the defendant in the proceedings.”.

Schedule amended

49. The Schedule to the Principal Act is amended by—

- (a) in paragraph (v), deleting “.” and substituting “,”; and
- (b) after paragraph (v), inserting the following new paragraph—
“(vi) customs rulings, in accordance with section 154G.”.

CUSTOMS (BUDGET AMENDMENT) BILL 2017

EXPLANATORY NOTE

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

1.0 BACKGROUND

1.1 The Customs (Budget Amendment) Bill 2017 (**'Bill'**) seeks to amend the Customs Act 1986 (**'Act'**).

2.0 CLAUSES

2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the amending legislation will come into force on 30 June 2017.

2.2 Clauses 2 to 49 of the Bill allow for—

- (a) the alignment of the penalties in the Act for the purposes of consistency and also provide for the increase from 5 to 7 years for all all business records, electronic documents; invoices and other prescribed information for at least 7 years and not 5 years to be in line with the Companies Act 2015 and the Tax Administration Act 2009.;
- (b) the shift in the burden of proof to shift of the burden of proof to the defendant for any proceedings under the Act, given the growing concern of under declarations, undervaluation and misclassifications and the complexities of trade and the fact that the Authority is promoting voluntary compliance and self-assessment which is vital for effective and modern administration of the customs laws; and
- (c) the power examine goods, cargo and people in the customs control areas using , where appropriate, a chemical substance, x-ray or imaging equipment or any other mechanical, electrical or electronic device.

3.0 MINISTERIAL RESPONSIBILITY

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

A. SAYED-KHAIYUM
Attorney-General