

Customs Offence and its Consequences

What causes revenue leakage from the borders where FRCA operate from?

The revenue is lost either through fraud and inadvertent errors. Some of this revenue leakage can also be through collusion between traders and Customs agents or even Customs officers at times.

Please elaborate further on Customs fraud.

Customs fraud is simply acts of dishonesty which deprive government of revenue (customs duties and Import VAT) to which it would be entitled for. The fraudulent companies thus gain competitive advantage over honest traders by having lower costs for their products yet selling at the same prices. Little do these companies realize that these customs fraud are heavily punishable under Customs laws.

What are common types of commercial fraud in Fiji?

1. Evasion of the duty and tax payment by under valuing goods, declaring wrong classification of goods or producing false declaration on origin of goods.
2. Evasion of prohibition, restriction or requirements for import and/or export (e.g. not obtaining required permits or license; smuggling and narcotics); or
3. Unauthorized receipt of repayment, subsidy and/or disbursement; or
4. Gaining illicit commercial advantage (e.g. abuse of concession); and
5. Transfer of proceeds of crime using import or export of goods (Trade-based money laundering).

What are common types of common inadvertent errors?

Example: Tariff misclassification; wrong weight (e.g. slight difference in weight on Bill of Lading, when compared to actual goods); incorrect currency , etc.

What are the Custom offences where there is no need to prove intention?

Offence whereby any person:

- (a) Prepares, passes, presents or caused to prepare, pass or present any fake or false document as genuine document for Customs purposes as requirement under any Customs law; or
- (b) Makes any entry, which is false or incorrect in any material particular; or
- (c) Makes any oral declaration or produces any document or any statement to FRCA officer, which is false or incorrect in any material; or
- (d) Misleads FRCA officer in any material particular, which is likely to affect the execution of his or her duties.
- (e) Refuses or fails to give to FRCA officer his or her correct name or correct address;
- (f) Without prior approval from FRCA obtains, sells or intends to sale (or has goods in his or her possession to sell) or intends to use goods for any trade purposes on board aircraft or ship in port; or
- (g) Delivers, removes or withdraws any goods under Customs control from an aircraft, ship, wharf or any other places; prior to examination of FRCA officer or without any authorization from FRCA officer.
- (h) Unlawfully conveys or has in his or her possession any smuggled goods; or
- (i) Refuses or fails to stop or neglects to stop any means of conveyance when called upon to do so by an officer or police officer

What is the penalty for committing the above Customs Offences?

The penalty is a fine not exceeding FJD\$10,000 under Section 137, Customs Act 1986.

What is the penalty for fraudulent evasion of duty (e.g. undervaluation or overvaluation of goods) for assessment of customs duty?

The penalty is a fine not exceeding 3 times the value of the goods or FJD\$20,000 whichever is greater or to imprisonment for 2 years or both such fines and imprisonment and forfeiture of goods, if any under Section 139, Customs Act 1986.

How do you detect customs fraud in Fiji?

Customs fraud is detected through routine execution of Customs work by FRCA officers and alerts sent by informers local or abroad. FRCA is encouraging informers to call on 3243000/3243666 or email on info@frca.org.fj. FRCA encourages community partnership and support of stakeholders in trade facilitation to further strengthen Customs fraud detection.

FRCA detects Customs fraud through routine Customs works. The goods are screened at virtual border, before the goods arrive in Fiji using intelligence risk management system. Once the goods arrive in Fiji, the goods are assessed using Asycuda World (AW) profiles before it is released to the importer. The profiled imports are physically examined for any discrepancies. Where goods have been released by Customs, the goods are further monitored through documentary evidence submitted to FRCA. Thus, Post Clearance Audits are conducted and if any fraud is detected the importer is subjected to full investigation by Customs Investigation Branch (CIB).

Common examples of fraud are false declaration to FRCA officers, submitting false documents to clear goods, making false statements, bribing FRCA officers, interfering with system, abusing Concessions, counterfeiting and obstructing FRCA officer to conduct official duties.

How do you determine if importing companies are avoiding payment of Customs duties?

The valuation fraud is determined through the cause of routine Customs examination. For example: documentary check of submitted import documents and physical check of actual consignments using Risk Management Targeting tactics. The Risk Management System allows FRCA to do smart targeting of non-compliant importers without disrupting or delaying

legitimate trade. However, Post Clearance Audit is a Risk Management tool used by FRCA to correctly identify non-compliant traders.

How can a person's actions obstruct FRCA officer from effectively conducting routine Customs duties?

Any person:

- (a) Hinders, molests, assaults, uses threatening language, attempts to intimidate or bribes any FRCA officer duly engaged in the performance of any duty or any person acting in his or her aid; or
- (b) Any impediments or intention to obstruct FRCA officer to carry out any search for anything liable to detention or seizure under Customs legislations; or
- (c) Any rescues, damages or destroys anything so liable to forfeiture; or
- (d) Any intend to prevent the procuring or giving of evidence as to whether or not anything is so liable to forfeiture; or
- (e) Any act to intentional impair the effectiveness of Custom use or intended use for Customs purposes, or
- (f) Anyone who prevents the arrest of any person during cause of Customs duties by FRCA officer.

What is the penalty of obstructing and assaulting FRCA officer?

The penalty is a fine not exceeding \$20,000.00 or imprisonment for 4 years or to both such fine and imprisonment under Section 123(g), Customs Act 1986.

What happens if someone makes false statements to FRCA for Customs purposes?

The penalty is equal to twice the excess amount of the duty, or penalty if FJD\$1,000 or whichever is greater under Section 137(a), Customs Act 1986.

What happens to a person who violates the conditions of duty concession awarded to him or her?

The penalty is a fine not exceeding \$10,000.00 under Section 17, Customs Act 1986.

What is the penalty for counterfeiting (any seal, signature, initials or other mark) of or used by any officer for the Customs verification purposes?

The penalty is a fine not exceeding FJD\$20,000 or to imprisonment for 2 years or both such fines and imprisonment under Section 138, Customs Act 1986.

It is an offence when a person aids, abets, counsels or procures; or by act or omission is in any way directly or indirectly concerned in the commission of any offence. What is the penalty under Custom legislation for such offences?

The guilty person or people are punishable Section 141, Customs Act 1986 (Revised 2013) and is liable to fine not exceeding FJD\$10,000 and subject to forfeiture of the goods, if any under Section 143, Customs Act 1986.

What is the penalty for interfering with systems used for Customs purposes to collect correct duty?

Penalty is fine of FJD\$20,000 and to imprisonment for 2 years under Section 143A, Customs Act 1986.

What happens to a person who intends to mislead FRCA officer by disguise?

The penalty is a forfeiture of goods and is liable to imprisonment for 2 years or to a fine not exceeding \$20,000.00 or to both such fine and imprisonment under Section 124(3), Customs Act 1986.

What penalties can be imposed on a person for prevents seizures or prevents securing goods for seize or attempts to rescue arrest person from FRCA custody?

The penalty is a fine not exceeding \$20,000.00 or imprisonment for 2 years or to both such fine and imprisonment under Section 124(3)(b), Customs Act 1986.

What happens when a person colluding, conspiring or conniving with any person to commit a Customs offence?

Any person who—

- (a) Colludes with an officer, importer, exporter, or any agent, or any person whatsoever or whatsoever, corporate or unincorporated, to violate or to breach any customs law;
- (b) Colludes either directly or indirectly to deliver up or not to seize any aircraft, ship or goods required by this Act to be delivered up or to be seized;
- (c) (Conspires or connives with any person to import or export contrary to this Act or the Excise Act; or
- (d) Is in any way concerned in the importation or exportation of any goods for the purpose of preventing seizure of any aircraft or ship or goods and obtaining any reward for preventing such seizure, commits an offence and is liable on conviction to a fine not exceeding \$200,000 or to imprisonment for 12 years or to both such fine and imprisonment and the subject matter of the offence shall be liable to forfeiture under Section 135A, Customs Act 1986.