

A BILL

i n t i t u l e d

An Act to amend the Customs Act 1967.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Customs (Amendment) Act 2018.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Amendment of section 2

2. The Customs Act 1967 [*Act 235*], which is referred to as the “principal Act” in this Act, is amended in subsection 2(1)—

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

“customs agent” means any person approved under section 90 to undertake any customs transactions on behalf of another person; and

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

“(c) in the case of petroleum, any process of separation, purification, refining, conversion and blending; and”.

Amendment of section 90

3. Section 90 of the principal Act is amended—

(a) in the shoulder note, by substituting for the words “Control of agents” the words “Customs agent”;

(b) in subsection (1)—

(i) by substituting for the words “an agent shall” the words “a customs agent”;

(ii) in paragraph (a), by inserting before the word “attend” the word “shall”;

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

“(aa) shall be a registered person under the Service Tax Act 2018 [Act];”;

(iv) in paragraph (b)—

(A) by inserting before the word “produce” the word “shall”; and

(B) by deleting the word “and” at the end of the paragraph;

(v) in paragraph (c)—

(A) by inserting before the word “give” the word “shall”;

(B) by substituting for the word “clerks” the word “employees”; and

(C) by substituting for the full stop the words “; and”; and

(vi) by inserting after paragraph (c) the following paragraph:

“(d) shall not have been proved against him or convicted on a charge in respect of—

(i) an offence involving fraud or dishonesty;

(ii) an offence under any written law relating to corruption;

(iii) an offence under any written law relating to taxation; or

(iv) any offence punishable with imprisonment for more than two years.”;

(c) by substituting for subsection (2) the following subsection:

“(2) Subject to subsection (1), any application for approval to act as a customs agent shall be made in the form as determined by the Director General.”;

(d) in subsection (3), by inserting after the words “sufficient knowledge” the words “and experience”;

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

“(3A) The Director General may grant such approval for the application made under subsection (2) subject to such terms and conditions as he deems fit.”;

(f) in subsection (4)—

- (i) by substituting for the words “A senior officer of customs may suspend or cancel any permission granted under this section, if the agent commits any breach” the words “The Director General may suspend or cancel any approval granted under subsection (3A) if the customs agent commits any breach”;
- (ii) by substituting for the words “subsection (2)” the words “subsection (3A)”; and
- (iii) by substituting for the words “by the agent” the words “by the customs agent”;

(g) by deleting subsection (5);

(h) in subsection (6)—

- (i) by substituting for the words “as agent when permission” the words “as customs agent when approval”;
- (ii) by substituting for the words “while such permission” the words “while such approval”; and
- (iii) by substituting for the words “be liable to a fine not exceeding five hundred ringgit” the words “be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one hundred thousand ringgit or to both”;

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

“(6A) The importer, exporter or manufacturer may appoint a customs agent to act on his behalf on matters relating to declaration and clearance of goods or entry or clearance of any vessel or aircraft under this Act.

(6B) For the purpose of subsection (6A), a person is presumed to act as a customs agent without being duly authorized if there is reasonable cause to believe that the proprietor or consignee is not in existence or the existence of the proprietor or consignee is unlawful.”;

(j) in subsection (7)—

- (i) by substituting for the words “clerk or servant” the word “employee”;
- (ii) by deleting the word “generally”;
- (iii) by substituting for the word “firm:” the word “firm.”; and
- (iv) by deleting the proviso; and

(k) by inserting after subsection (7) the following subsection:

“(8) Notwithstanding subsection (7), a senior officer of customs may refuse to transact business with such employee unless such person or firm has furnished a signed authority authorizing such employee to transact business on behalf of such person or firm.”.

Amendment of section 141c

4. Section 141c of the principal Act is amended—

(a) in subsection (1)—

- (i) in paragraph (a), by substituting for the words “a Chairman and a Deputy Chairman” the words “a Chairman and not more than two Deputy Chairmen”;
- (ii) by substituting for paragraph (b) the following paragraph:

“(b) not less than seven other members as the Minister deems fit from amongst the persons who, in the opinion of the Minister, have wide knowledge or extensive experience in any field of activities relating to customs or taxation.”; and

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

“(3) The Minister shall determine the terms and conditions of the appointment of the Chairman, Deputy Chairman and other members of the Tribunal.”.

Amendment of section 141E

5. Subparagraph 141E(c)(iii) of the principal Act is amended by substituting for the words “the Sales Tax Act 1972 [Act 64] or the Service Tax Act 1975 [Act 151]” the words “the Sales Tax Act 2018 [Act] or the Service Tax Act 2018, or the repealed Sales Tax Act 1972 [Act 64], Service Tax Act 1975 [Act 151] or Goods and Services Tax Act 2014 [Act 762]”.

Substitution of section 141F

6. The principal Act is amended by substituting for section 141F the following section:

“**141F.** (1) Subject to subsection (2), a member of the Tribunal may at any time resign his office by giving notice in writing to the Minister.

(2) For the purpose of resignation, a member of the Tribunal appointed under paragraph 141c(1)(b) shall give three months’ notice in writing to the Minister.”.

New section 141FA

7. The principal Act is amended by inserting after section 141F the following section:

“Vacation of office

141FA. (1) The office of any member of the Tribunal shall be vacated upon—

(a) his death;

(b) his resignation from office;

(c) expiry of his term of appointment; or

(d) revocation of his appointment by the Minister.

(2) The Minister shall appoint any person in accordance with section 141c to replace the Chairman, Deputy Chairman or any other member during the vacancy in the office of the Chairman, Deputy Chairman or the other member.

(3) The exercise of the powers or the performance of the functions of the Tribunal is not affected only because of there being a vacancy in the membership of the Tribunal.”.

Substitution of section 141j

8. The principal Act is amended by substituting for section 141j the following section:

“Hearing of appeals

141j. (1) The sitting of every appeal shall consist of a panel of three members.

(2) In every appeal proceedings, the Tribunal shall be presided by—

(a) the Chairman;

(b) a Deputy Chairman; or

(c) any other member appointed by the Chairman.

(3) The decision of the Tribunal shall be determined in accordance with the opinion of the majority of the members of the panel.

(4) Where a member of the panel under subsection (1), other than the person presiding over the proceedings referred to in subsection (2), dies or becomes incapable of exercising his functions as a member, the proceedings shall continue before, and decision shall be given by, the remaining members of the panel, and the panel shall, for the purposes of the proceedings, be deemed to be duly constituted notwithstanding the death or incapability of the member as aforesaid.

(5) In the case where two members of the panel under subsection (1), other than the person presiding over the proceedings referred to in subsection (2), die or become incapable of exercising their functions as members, the proceedings shall be continued by the person presiding over the proceedings sitting alone.

(6) In the case under subsection (4), the decision shall be determined in accordance with the opinion of the majority of the remaining members of the panel, and if there is no majority, the person presiding over the proceedings shall have a casting vote.

(7) If the person presiding over the proceedings referred to in subsection (2) dies or becomes incapacitated, or is for any other reason unable to complete or dispose of the proceedings, the appeal shall be heard afresh, unless the parties agree that the presiding person be replaced—

(a) in the case where the presiding person is the Chairman, by a Deputy Chairman, or any other member appointed by the Deputy Chairman;

(b) in the case where the presiding person is a Deputy Chairman, by the Chairman or another Deputy Chairman, or any other member appointed by the Chairman; or

(c) in the case where the presiding person is the member appointed by the Chairman, by the Chairman or a Deputy Chairman, or any other member appointed by the Chairman.

(8) Where the term of appointment of any member of the panel expires during the pendency of any proceedings in respect of an appeal, the term of his appointment shall be deemed to be extended until the final disposal of the appeal.

(9) The Tribunal may sit in one or more sittings on such day and at such time and place as the Chairman may determine.”

Substitution of section 141k

9. The principal Act is amended by substituting for section 141k the following section:

“Hearing by single member

141k. Notwithstanding section 141j, if the Chairman deems it fit in the interest of achieving expeditious and efficient conduct of the appeal, the proceedings of the appeal shall be presided over by any of the following persons sitting alone:

- (a) the Chairman;
- (b) any of the Deputy Chairmen; or
- (c) any other member of the Tribunal as the Chairman may determine.”.

Amendment of section 141m

10. Subsection 141m(1) of the principal Act is amended by substituting for the words “subsection 68(2) of the Sales Tax Act 1972 and subsection 50(2) of the Service Tax Act 1975” the words “subsection 96(5) of the Sales Tax Act 2018, section 81 of the Service Tax Act 2018, and section 126 of the repealed Goods and Services Tax Act 2014 as provided under section 5 of the Goods and Services Tax (Repeal) Act 2018 [Act]”.

Substitution of section 141q

11. The principal Act is amended by substituting for section 141q the following section:

“Representation at hearing

141q. For the purpose of an appeal before the Tribunal—

- (a) the Director General may be represented by any officer authorized by him; and
- (b) the appellant may conduct the appeal himself or be represented by any person duly authorized by him.”.

Amendment of section 141R

12. Section 141R of the principal Act is amended—

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

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

“(2) Notwithstanding subsection (1), where the Tribunal is of the opinion that it would be in the interest of the public, the Tribunal may allow the publication of the facts of the appeal, decision of the appeal and reasons for the decision.

(3) Notwithstanding subsection (2), the Tribunal shall not publish information the disclosure of which is prohibited or restricted by or under this Act or any other written law.”.

New section 141TA

13. The principal Act is amended by inserting after section 141T the following section:

“Provisions relating to costs and expenses

141TA. The Tribunal may make an award as to costs and expenses as may be prescribed and may determine to what extent the costs and expenses are to be paid—

(a) by the appellant, if the Tribunal is satisfied that the appellant had conducted his case in a frivolous or vexatious manner; or

(b) by any party to the appeal, if the Tribunal is satisfied that in all circumstances of the case it would be unjust and inequitable not to award the costs and expenses.”.

Saving

14. Any appeal before the Tribunal heard by a member of the Tribunal sitting alone or a panel of three members which is pending immediately before the date of coming into operation of this Act shall, on or after the date of coming into operation of this Act, continue to be heard and decided by the member of the Tribunal sitting alone or the panel of three members, as the case may be, as if the principal Act had not been amended by this Act.

EXPLANATORY STATEMENT

This Bill seeks to amend the Customs Act 1967 ("Act 235"). This amendment is principally consequential to the implementation of the new tax system namely sales tax and service tax as proposed under the Sales Tax Bill 2018 and Service Tax Bill 2018 which will replace the goods and services tax imposed under the Goods and Services Tax Act 2014 [Act 762]. The main amendment under this Bill relates to the membership of the Customs Appeal Tribunal and its proceedings.

2. *Clause 1* contains the short title of the proposed Act and the power of the Minister to appoint the commencement date of the proposed Act.
3. *Clause 2* seeks to amend section 2 of Act 235. *Subclause 2(a)* seeks to provide for a new definition of "customs agent" and to amend the definition of "manufacture".
4. *Clause 3* seeks to amend section 90 of Act 235.

Paragraph 3(b)(v) seeks to introduce a new paragraph 90(1)(d) into Act 235 to provide a requirement that any person who intends to act as a customs agent shall not have been proved against him or convicted on a charge in respect of certain type of offences.

Subclause 3(c) seeks to substitute subsection 90(2) of Act 235 to require the application of approval to act as a customs agent to be made in the form as determined by the Director General.

Subclause 3(e) seeks to introduce a new subsection 90(3A) into Act 235 to provide that the Director General may grant the approval to act as a customs agent subject to such terms and conditions as he deems fit.

Subclause 3(f) seeks to amend subsection 90(4) of Act 235 to empower the Director General to suspend or cancel any approval to act as a customs agent if the customs agent commits any breach of Act 235 or of any regulations made under Act 235 or if he fails to comply with the terms and conditions imposed under subsection 90(2) of Act 235 or any direction given by an officer of customs with regard to the business transacted by the customs agent.

Subclause 3(g) seeks to delete subsection 90(5) of Act 235 as a senior officer of customs no longer makes decision for the application to act as a customs agent under section 90 of Act 235. Any person aggrieved by the decision of the Director General under section 90 of Act 235 may appeal to the Tribunal under section 143 of Act 235.

Paragraph 3(h)(iii) seeks to amend subsection 90(6) of Act 235 to increase the penalty for the offence relating to a customs agent acting without approval from the present fine of not exceeding five hundred ringgit to imprisonment for a term not exceeding five years or to a fine not exceeding one hundred thousand ringgit or to both.

Subclause 3(i) seeks to introduce new subsections 90(6A) and (6B) into Act 235.

The proposed new subsection 90(6A) seeks to allow the importer, exporter or manufacturer to appoint a customs agent to act on his behalf on matters relating to declaration and clearance of goods, or the entry or clearance of any vessel or aircraft, under Act 235.

The proposed new subsection 90(6B) seeks to provide that a person is presumed to act as a customs agent without being duly authorized if there is reasonable cause to believe that the proprietor or consignee is not in existence or the existence of the proprietor or consignee is unlawful.

Subclause 3(k) seeks to introduce a new subsection 90(8) into Act 235 to empower a senior officer of customs to refuse employee to transact business on behalf of a person or firm unless such person or firm has furnished a signed authority authorizing such employee to transact business on its behalf.

5. *Clause 4* seeks to amend section 141c of Act 235.

Paragraph 4(a)(i) seeks to amend paragraph 141c(1)(a) of Act 235 to specify the number of the Deputy Chairman of the Tribunal that can be appointed shall not be more than two. *Paragraph 4(a)(ii)* seeks to amend paragraph 141c(1)(b) of Act 235 to increase the minimum number of other members of the Tribunal from two persons to seven persons who has wide knowledge or extensive experience in any field of activities relating to customs or taxation.

Subclause 4(b) seeks to introduce a new subsection 141c(3) into Act 235 to empower the Minister to determine the terms and conditions of the appointment of all members of the Tribunal.

6. *Clause 5* seeks to amend subparagraph 141E(c)(iii) of Act 235 to empower the Minister to revoke the appointment of a member of the Tribunal if such member commits an offence under the proposed Sales Tax Act 2018 or the Service Tax Act 2018, or the repealed Sales Tax Act 1972 [Act 64], Service Tax Act 1975 [Act 151] or Goods and Services Tax Act 2014.

7. *Clause 6* seeks to substitute section 141F of Act 235 to require a member of the Tribunal to give notice in writing before resigning his office.

8. *Clause 7* seeks to introduce a new section 141FA into Act 235 to provide for the circumstances in which the office of any member of the Tribunal is vacated. This *clause* further seeks to require the Minister to replace any member in the case of vacancy.

9. *Clause 8* seeks to substitute section 141J of Act 235.

The proposed subsection 141J(1) seeks to provide that the sitting of every appeal before the Tribunal shall consist of a panel of three members. Currently, the sitting of the Tribunal consists of a member sitting alone.

The proposed subsection 141J(2) seeks to provide for every appeal proceeding to be presided by the Chairman, or a Deputy Chairman or any other members appointed by the Chairman.

The proposed subsection 141J(3) seeks to provide for the manner in which decisions are to be made by the panel.

The proposed subsection 141J(4) seeks to allow for appeal proceedings to be continued by the remaining members of the panel, in the event that a member of the panel under the proposed subsection 141J(1), other than the person presiding over appeal proceedings referred to in the proposed subsection 141J(2), dies or becomes incapable of exercising his functions as a member.

The proposed subsection 141J(5) seeks to provide that appeal proceedings shall be continued by the person presiding over the proceedings sitting alone where two members of the panel under the proposed subsection 141J(1), other than the person presiding over appeal proceedings referred to in the proposed subsection 141J(2), die or become incapable of exercising their functions as members.

The proposed subsection 141J(6) seeks to provide that the decision of the Tribunal shall be determined in accordance with the opinion of the majority of the remaining members of the panel, and if there is no majority, the person presiding over the proceedings shall have a casting vote.

The proposed subsection 141J(7) seeks to provide that the proceedings of an appeal shall be heard afresh in the event that the person presiding over appeal proceedings dies or becomes incapacitated, or is for any other reason unable to complete or dispose of the proceedings.

The proposed subsection 141J(8) seeks to provide that if the term of appointment of any member of the panel expires during the pendency of any proceedings in respect of an appeal, the term of his appointment shall be deemed to be extended until the final disposal of the appeal.

The proposed subsection 141J(9) seeks to provide that the Tribunal may sit in one or more sittings on such day and at such time and place as the Chairman may determine.

10. *Clause 9* seeks to substitute section 141K of Act 235 to empower the Chairman to determine the sitting of an appeal to be presided by one member sitting alone if the Chairman deems it fit in the interest of achieving expeditious and efficient conduct of the appeal.

11. *Clause 10* seeks to amend subsection 141M(1) of Act 235 to expand the jurisdiction of the Tribunal to determine appeals made under the proposed Sales Tax Act 2018 and the Service Tax Act 2018, and the repealed Goods and Services Tax Act 2014.

12. *Clause 11* seeks to substitute section 141Q of Act 235 to provide that the Director General may be represented by any officer authorized by him and the appellant may conduct the appeal himself or be represented by any person duly authorized by him. With this proposed amendment an advocate and solicitor may represent an appellant at the hearing of an appeal before the Tribunal.

13. *Clause 12* seeks to amend section 141R of Act 235. *Subclause 11(b)* seeks to introduce new subsections 141R(2) and (3) into Act 235. The proposed new subsection 141R(2) seeks to allow the Tribunal to publish the facts of an appeal, decisions of an appeal and reasons for the decision if it is in the interest of the public to do so. However, the proposed new subsection 141R(3) seeks to prohibit the publication of information the disclosure of which is prohibited or restricted by or under Act 235 or any other written law.

14. *Clause 13* seeks to introduce a new section 141TA into Act 235 to empower the Tribunal to make an award as to costs and expenses as prescribed and determine the extent of costs and expenses to be paid by the appellant or any party to the appeal.

15. *Clause 14* seeks to provide for saving provision.

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

FINANCIAL IMPLICATIONS

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

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