

**ovrepublic of vanuatu**  
**Customs Act No. 7 Of 2013**

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## **republic of vanuatu**

**Assent: 14/10/2013**

**Commencement: 04/11/2013**

### **customs ACT NO. 7 OF 2013**

An Act to reform and modernise the law relating to Customs control and enforcement, and to provide for revenue administration, border management, trade and travel.

Be it enacted by the President and Parliament as follows-

#### **part 1 preliminary**

##### **1 Interpretation**

In this Act, unless the context otherwise requires:

**aircraft** means a machine that can derive support in the atmosphere from the reactions of the air;

**appeal** means the act of which a person is directly affected by a decision or omission of Customs and who considers themselves to be aggrieved, seeks redress before a competent authority;

**approved form** means a reference to a form that is approved by an instrument in writing, by the Director;

**arrival** means:

- (a) in relation to a craft - the arrival of a craft in Vanuatu from a point outside of Vanuatu, whether or not the craft lands at, hovers above, berths, moors, anchors, or stops at, or otherwise arrives at any place within the territorial waters or the air space of Vanuatu; and

(b) in relation to a person - the entry of the person by any means, into Vanuatu from a point outside Vanuatu;

**arriving** and **arrived** have similar meanings;

**assessment notice** means the document generated by the Customs computerised entry processing system, advising an importer of the amount of duties and taxes determined as payable on a particular entry;

**authorised person** means any person appointed by the Director under section 5;

**clearance** means the completion of the Customs procedures necessary to allow goods to enter home use, to be exported or to be placed under another Customs procedure;

**counterfeit trademark goods** means any goods including packaging having without authorisation, a trademark, which is identical to a validly registered trademark in respect of such goods or cannot be distinguish in its essential character from such a trademark and by which, infringes the rights of the owner of the trademark in question under the laws of Vanuatu;

**craft** includes any aircraft, ship, boat or other machine or vessel, used or capable of being used for the carriage or transportation of persons or goods, or both, by air or water or over or under water;

**Customs** means the Government service that is responsible for the administration of Customs laws;

**customs broker** means a broker within the meaning of Part 17 of this Act;

**customs control** means measures applied by the Customs to ensure compliance with Customs laws;

**customs controlled area** means an area that is required, for one or more of the purposes described in section 15, to be licensed and that is so licensed;

**customs direction** means a lawful request, order, command or instruction given by a customs officer to any person to do or to refrain from doing an act or to submit to a procedure for the purposes of this Act; and includes any notice, poster or sign publicly displayed in a Customs place or customs controlled area; and includes a direction contained in a form approved under this Act;

**customs law** means the statutory and regulatory provisions under this Act;

**customs officer** or **officer** means any person employed as a customs



officer to discharge any duty connected with the administration of the Customs law or any person authorised by the Director to carry out or to assist to carry out the provisions of this Act;

**customs value**, in relation to goods, means the Customs value of those goods determined in accordance with Schedule II of the Import Duties (Consolidation) Act [CAP 91];

**day** means Monday to Friday excluding public holidays;

**declaration** means the provision of all information to Customs whether verbal or written in a document or in electronic form, by a person relating to:

- (a) the import or export of goods; or
- (b) the arrival or departure of a craft; or
- (c) arrival or departure of a person;

**departing craft** means a craft that is scheduled to depart from Vanuatu to a foreign port or airport;

**Department** means the Department of Customs and Inland Revenue;

**detention** means the restraint of a person or goods, preventing their removal;

**Director** means the Director of the Department of Customs and Inland Revenue;

**document** means any record of information and includes a document in electronic form;

**domestic passenger** means a passenger, not being an international ticketed passenger, who is entitled to travel on a domestic sector of an international flight or voyage;

**drawback** means the amount of import duties and taxes repaid on goods or material contained in them or consumed in their production when they are exported;

**due date** means the date on which the payment of duties or taxes is due;

**dutiable goods** means goods subject to duty within the meaning of this Act;

**duty** means a duty, additional duty, tax, fee, charge or levy imposed on goods under the Import Duties (Consolidation) Act [CAP 91], or the Excise Act [CAP 290];

**entry** means a declaration lodged by an importer or exporter for the clearance of goods from Customs control;

**excisable goods** means good on which excise duty is payable;

**executing officer**, in relation to a search warrant or to a seizure warrant, means:

(a) an authorised person named in the warrant by the judicial officer issuing it as being responsible for executing the warrant; or

(b) if that authorised person does not intend to be present at the execution of the warrant - any authorised person whose name has been written in the warrant by the authorised person so named; or

(c) another authorised person whose name has been written in the warrant by the authorised person last named in the warrant;

**exportation** means the movement of goods from Vanuatu to a point outside Vanuatu;

**exporter** means a person by or for whom goods are exported;

**forfeited goods** means goods that are forfeited to the State under section 180;

**goods** means all kinds of movable personal property including animals, documents and self transported craft;

**goods declaration** means a statement made in the manner approved by Customs for the importation or exportation of goods;

**importation**, in relation to any goods, means the arrival of the goods in Vanuatu in any manner, from a point outside of Vanuatu;

**importer** means the consignee, owner, agent, buyer or any person holding a beneficial interest in the goods when they arrive in Vanuatu and includes any person making a declaration under Customs law concerning those goods;

**international cargo** means any cargo that has arrived from a point outside of Vanuatu or is destined to be exported from Vanuatu;

**international crew** means the crew or any member of the crew of a craft that is on a journey that:

(a) began outside Vanuatu; or

(b) began in Vanuatu and is to continue outside Vanuatu;

**international passenger** means a person who is entitled to travel on a craft within Vanuatu where that travel is part of an international journey that:

(a) began outside Vanuatu; or

(b) began in Vanuatu and is to continue outside Vanuatu;

**judicial officer** means a judge or a magistrate as defined in the Judicial Services and Courts Act [CAP 270];

**manufacture** means all processes of the manufacture of excisable goods;

**manufacturing area** means a place licensed under section 17 for the purposes described in paragraph 15(a);

**master** means the person in charge or in command of a ship or aircraft;

**Minister** means the minister responsible for Customs;

**operator:**

(a) in relation to a business includes the person actively engaged, whether alone or with others, in the carrying on of the business; or

(b) in relation to a body corporate, includes a director, manager, secretary or other similar officer engaged in the direct control or management of its business, and a person who purports to act in any of those capacities;

**owner** means a person:

(a) being or claiming to be the owner, importer, exporter, consignee, agent, buyer of goods; or

(b) in possession of or beneficially interested in or having control of or power of disposition over the goods;

**passed** in relation to an entry, means the approval of all required Customs processes;

**person** means both natural and legal persons including individuals, entities, partnerships, businesses, and corporations;

**prohibited exports** means goods that are prohibited to export, under section 66;

**prohibited goods** means goods prohibited to export or prohibited import;

**prohibited imports** means goods that are prohibited to be imported into Vanuatu under section 65;

**protected information** means information that comes to the knowledge of or into the possession of a customs officer or authorised person while performing his or her duties

**release of goods** means the lawful release of goods from customs control;

**securities** means the surety for the payment of duty that is payable under the provisions of this Act including any additional costs incurred by the Customs in administering such surety;

**security** means that which ensures to the satisfaction of Customs that an obligation to Customs will be fulfilled;

**ship** means any vessel used in navigation in water not propelled by oars only;

**stores** means stores for consumption or stores to be taken away;

**tax** means any tax imposed by any law of Vanuatu;

**time of exportation** means the time deemed to occur when a craft departs the limits of the last port or airport in Vanuatu with the intention of making an international voyage or flight;

**time of importation** means the time deemed to occur when a craft carrying the goods arrives at the first port or airport in Vanuatu or at the time the goods are unloaded in Vanuatu, whichever occurs first;

**tribunal** means the customs appeals tribunal established under section 196;

**uncustomed goods** means goods on which duty has become due and payable but is unpaid;

**unlawfully exported** means exported in breach of this Act or any other Act;

**unlawfully imported** means imported in breach of this Act or any other Act;

**vehicle** means a conveyance for use on land, whether or not it is also capable of being used on or over water.

## **PART 2 ADMINISTRATION**

### **2 Director of Customs**

(1) The Director is responsible for the administration and efficient working of

Customs.

(2) The Minister may give general or special directions to the Director in relation to the administration of this Act provided that the directions are not inconsistent with the provisions of this Act or any other Act.

(3) The person employed as the Director on the commencement of this Act is to continue to be employed as the Director on the same terms and conditions of service.

### **3 Director's powers**

Without limiting subsection 2(2), the Director may, in writing, approve any matter relating to the administration of this Act including the approval of documents, forms and fees.

### **4 Customs officers and other staff**

(1) A customs officer must act on any lawful direction of the Director.

(2) A person who is employed as a customs officer on the commencement of this Act, is to continue to be employed as a customs officer on the same terms and conditions of service.

(3) Any other person who is employed at the Department on the commencement of this Act, is to continue to be employed at the Department on the same terms and conditions of service.

### **5 Authorised persons**

The Director may, in writing, appoint:

- (a) a suitably qualified and trained person who is not a customs officer; or
- (b) a category of persons who are not customs officers,

to be authorised persons or officers to perform or exercise any functions or powers that may be performed or exercised by a customs officer under this Act for a period of time as determined by the Director .

### **6 Delegation by Director**

(1) The Director may, in writing, delegate to a customs officer or an Inland Revenue officer or a Police officer, any of the Directors powers or functions under the Act, other than the power of delegation.

(2) A delegation may be in relation to a particular matter or a class of matters.

(3) The Director may at any time revoke or vary a delegation.

(4) The Director may exercise a function or power despite delegating the function or power under this section.

## **7 Assistance by the police**

(1) A customs officer may request a police officer to assist in the performance of a function or the exercise of a power of a customs officer under this Act or any other Act.

(2) A police officer must assist a customs officer if requested to do so by a customs officer.

## **8 Disclosure of protected information**

A customs officer or an authorised person must not disclose to any person any protected information except as authorised under section 9.

## **9 Authority to disclose information**

(1) The Director may in writing, authorise disclosure of information or a class of information for any permissible purpose to:

- (a) any Government Department: or
- (b) any agency of a foreign government; or
- (c) any regional or international organisation.

(2) An authorisation approved under subsection (1) is to specify the manner in which or the conditions by which the disclosure is to be made and the Director is satisfied that:

- (a) the Government Department; or
- (b) the agency of a foreign government; or
- (c) the international organisation,

will not use or further disclose such information or class of information except for the purposes for which the disclosure is authorised.

## **10 Permissible purpose**

For the purposes of subsection 9(1) a **permissible purpose** includes any of the following:

- (a) the administration or enforcement of a law of Vanuatu or of another country that relates to:
  - (i) criminal law; or
  - (ii) a law imposing a pecuniary penalty or providing for the forfeiture of property;
- (b) the prevention of crime or the detection or analysis of criminal conduct, in respect of the laws referred to in paragraph (a);

- (c) a purpose relating to the protection of public health, or prevention or elimination of risks to the life or safety of an individual or a group of individuals;
- (d) the protection of the revenue of the Republic of Vanuatu;
- (e) a purpose relating to the law of Customs;
- (f) a purpose relating to immigration, quarantine or border control between Vanuatu and another country;
- (g) the administration or enforcement of laws with respect to commerce between Vanuatu and another country.

### **11 Identity cards**

If an officer is performing a function or exercising a power for the purposes of any of the customs laws, the officer must, on the demand of a person produce to that person:

- (a) an identity card issued by the Department; or
- (b) another document establishing his or her identity as a customs officer or authorised person.

### **12 Customs flag**

The Customs flag is the Vanuatu flag with the addition in the fly of the Departments logo.

### **13 Working days and hours**

- (1) The regulations may prescribe the days and hours of work for Customs.
- (2) A customs officer must not perform work outside of the prescribed days and hours, including work in relation to:
  - (a) embarkation or disembarkation of passengers; or
  - (b) the discharge, landing, loading or receipt of cargo or other goods,unless he or she is permitted by the Director to do so.
- (3) If, at the request of a person, the Director permits any work to be performed outside of the prescribed days or hours, the person must pay to the Department, the prescribed charges and costs of the attendance and services of customs officers involved in the work.

## **PART 3 PORTS, AIRPORTS AND CUSTOMS CONTROLLED AREAS**

### **Division 1 Declaration of Ports and Airports**

#### **14 Declaration of ports and airports**

(1) The Minister may, by Order in writing, for the purposes of customs laws, declare:

- (a) a port and specify the limits of that port; or
- (b) an airport and specify the limits of that airport.

(2) A declaration is subject to such terms and conditions specified in the Order.

(3) The ports known as:

- (a) Port Vila, on the island of Efate; and
- (b) Luganville on the island of Espiritu Santo; and
- (c) Sola on the island of Vanualava; and
- (d) Lenakel on the island of Tanna,

are taken to be declared as ports under subsection (1).

(4) The airports known as:

- (a) Bauerfield Port Vila International airport on the island of Efate; and
- (b) Pekoa airport, on the island of Santo; and
- (c) Whitegrass airport, on the island of Tanna;

are taken to have been declared as airports under subsection (1).

(5) Despite section 15, ports and airports declared under this Part are considered customs controlled areas for the purpose of this Act.

## **Division 2 Customs controlled areas**

### **15 Customs controlled areas**

All areas used for;

- (a) manufacture of excisable goods; or
- (b) the deposit, keeping or securing of imported or excisable goods without payment of duty on the goods, pending the export of those goods or their entry for home use; or
- (c) the temporary holding of imported goods for the purposes of the examination of those goods by Customs; or
- (d) the disembarkation, embarkation or processing of persons arriving in or departing from Vanuatu; or



(e) the processing of craft arriving in or departing from Vanuatu or the loading or unloading of goods onto or from such craft; or

(f) any other approved purposes,

are to be licensed as customs controlled areas.

### **16 Application for licence to operate customs controlled area**

A person who wishes to operate a customs controlled area may apply to the Director in the approved form for a licence to declare an area as a customs controlled area if that person is:

(a) the owner of the area; or

(b) the occupier of the area; or

(c) is operating in the area.

### **17 Issuance of licence to operate customs controlled area**

(1) On receipt of an application for a licence under section 16, the Director may issue a licence:

(a) if the application is made in the prescribed form and all the matters required to be filled out in the prescribed form are met; and

(b) the prescribed licence fee is paid.

(2) The Director in considering an application, may request additional information from an applicant.

(3) A licence granted under this section must:

(a) specify the area in respect of which it is granted; and

(b) specify the applicant as the licensee; and

(c) specify the purpose or purposes described; and

(4) The Director is to specify the terms and conditions of the licence which the Director considers necessary.

### **18 Revocation or suspension of licence**

A licence issued under section 17 may be revoked or suspended in writing by the Director if:

(a) a term, condition or restriction specified in the licence has been contravened; or

(b) the area in respect of which the licence was granted ceases to be used for any of the purposes approved; or

(c) the licensee ceases to be the owner or occupier of, or operator in, the area in respect of which the licence was granted; or

(d) the Director considers that the licensee is no longer a fit and proper person to hold a licence; or

(e) the prescribed annual fee is due and has not been paid.

### **19 Surrender of licence**

A licensee may surrender his or her licence by giving 1 month written notice to the Director.

### **20 Closing of customs controlled area**

(1) If a licence issued under section 17 is suspended, revoked or surrendered, duty becomes due and payable on all goods located within that area that are or were subject to the control of Customs, immediately prior to the suspension, revocation or surrender.

(2) Subsection (1) does not apply if the Director permits the goods to be removed to another customs controlled area or to be exported.

### **21 Liabilities not affected by ceasing to act as licensee**

The obligations and liabilities of a licensee in respect of anything done or omitted to be done by the licensee while licensed will not be affected if the licensee ceases to act as such or by the fact that the licence is surrendered or suspended or revoked.

### **22 Customs facilities in customs controlled areas**

(1) A licensee of a customs controlled area is to provide and maintain such operating areas, accommodation, facilities, buildings, equipment and storage that the Director determines to be necessary and suitable for the carrying out of the functions and responsibilities of Customs.

(2) A charge, lease or rent must not be levied on Customs in respect of an area operated in a customs controlled area, if that operating area is used for.

(a) the processing of the persons arriving or departing from Vanuatu; or

(b) the processing of craft arriving or departing from Vanuatu; or

(c) the processing of postal articles arriving or departing from Vanuatu.

### **23 Failure to comply with conditions of licence**

A person who fails to comply with or acts in contravention of any term, condition, or restriction of a licence issued under section 17, commits an offence punishable on conviction to a fine not exceeding VT5,000,000.

#### **24 Use of customs controlled area without licence**

A person who carries out an activity specified under section 15 without a licence, commits an offence punishable on conviction to a fine not exceeding VT5,000,000.

#### **25 Unauthorised presence in customs controlled areas**

A person who, without permission of a customs officer, enters into or remains in a customs controlled area when directed by a customs officer to leave, commits an offence punishable on conviction to a fine not exceeding VT500,000.

### **PART 4 ARRIVAL AND DEPARTURE OF GOODS, PERSONS AND CRAFTS**

#### **26 Goods subject to control of Customs**

(1) All Goods are subject to the control of Customs in the following circumstances:

(a) if:

(i) the goods have been imported- from the time of importation until the goods are lawfully removed from a customs controlled area; and

(ii) the goods are removed under a conditional permit granted pursuant to paragraph 58(1)(c), until such time as the Director is satisfied that the conditions of the permit have been met; or

(b) if the goods are to be exported under drawback, from the time of the lodgement with Customs of the claim for drawback until the exportation of the goods; or

(c) if the goods are to be exported otherwise than under drawback, from the time when goods are brought to a customs controlled area for export; or

(d) if the goods are on board a craft that has arrived in Vanuatu from a point outside Vanuatu; or

(e) if the goods are manufactured in a customs controlled area, from the time of manufacture until:

(i) the goods are lawfully removed for home consumption from a customs controlled area; or

(ii) the goods are exported; or

(f) if the goods are owned by or in the possession of:

(i) an internationally ticketed passenger, or an international crew member who is using air or sea travel for a domestic sector; or

(ii) a domestic passenger who is using air or sea travel for a domestic sector,

and the goods are brought into a customs controlled area licensed for the disembarkation, embarkation or processing of persons arriving in or departing from Vanuatu.

(2) Customs control extends to postal articles and to goods contained in postal articles in the same manner as this provision applies to other goods.

### **27 Advice of arrival**

(1) The Master in charge of a craft that is en route to Vanuatu must unless otherwise advised by the Director:

(a) provide to Customs, in such form and manner as may be approved by the Director, advance notice of a minimum 3 hours for aircraft and a minimum 24 hours for vessels, any or all of the following:

(i) the impending arrival of the craft;

(ii) its voyage;

(iii) its passengers;

(iv) its cargo for discharge within Vanuatu;

(v) its cargo not intended for discharge within Vanuatu (if any);

(vi) the appointed port or airport at which the craft will arrive; and

(b) upon arriving within Vanuatu, proceed directly to a port or airport unless directed elsewhere by a customs officer or an authorised person.

(2) The owner or operator of the craft referred to in subsection (1) or an agent of the owner or operator, may provide the information referred to in paragraph (1)(a) to Customs on behalf of the person in charge of the craft.

(3) A Master of any craft who fails to comply with subsection (1) or any direction given by a customs officer or authorised person under paragraph subsection (1)(b), commits an offence and is liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding VT5,000,000, or both.

### **28 Requirement to answer questions**

(1) This section applies to:

(a) a craft that has arrived in Vanuatu;

(b) a departing craft;

(c) a craft that is carrying international cargo or international crew or international passengers;

(d) any other craft that a customs officer has reasonable cause to suspect has been, or is about to be, involved in:

(i) the commission of an offence against this Act; or

(ii) the importation or exportation of any dutiable, uncustomed, prohibited or forfeited goods.

(2) The person in charge of, the owner of, any member of the crew of, and any passenger on a, craft to which this section applies must:

(a) answer any questions asked by a customs officer or authorised person relating to the craft and its voyage and any persons or goods that are or have been carried by the craft; and

(b) at the request of a customs officer or authorised person, immediately produce any document within that person's possession or control relating to any of those matters.

(3) The Master, owner of, or a member of the crew of, or a passenger on, any craft who:

(a) refuses to answer any question put to that person by a customs officer under paragraph (2)(a) or knowingly gives a false answer to the question; or

(b) fails to comply with any request made under paragraph (2)(b),

commits an offence and is liable on conviction to a fine not exceeding VT3,000,000.

## **29 Bringing-to of ship**

(1) The master of a ship arriving in Vanuatu must, upon being directed by a customs officer or authorised person:

(a) stop and bring the ship for boarding by a customs officer or authorised person; and

(b) ensure that the ship remains stopped until a customs officer or authorised person or the Director, directs that the ship may proceed.

(2) The craft carrying the customs officer or authorised person is to identify itself as being a craft in the service of the State.

(3) The master of the ship or the person in charge must by all reasonable means facilitate the boarding of the ship by the customs officer or authorised person.

(4) The master of a ship in Vanuatu must, if directed by a customs officer or authorised person, cause that ship to leave Vanuatu immediately.

(5) The master of a ship, who fails to comply with any direction of a customs officer or an authorised person under subsection (1), (3) or (4), commits an offence and is liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding VT5,000,000, or both.

### **30 Craft to arrive at declared port or airport**

(1) Subject to section 31, the Master in charge of a craft that is due to arrive in Vanuatu and is carrying persons or goods subject to the control of Customs, must ensure that the craft lands, anchors or otherwise arrives at a declared port or airport.

(2) The Master in charge of the craft must ensure that:

(a) upon arrival at the declared port or airport, or customs controlled area within that port or airport; and

(b) until an inward report under section 31 has been made,

a person must not leave or board the craft unless authorised to do so by a customs officer.

(3) Subsection (2) does not apply to:

(a) the port pilot; or

(b) the medical officer for the port or airport; or

(c) any other person authorised by the Director.

(4) The Master of any craft who fails to comply with subsection (1), commits an offence and is liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding VT5,000,000, or both.

(5) A crew member or a passenger on any craft who acts in contravention of subsection (2), commits an offence and is liable on conviction to a fine not exceeding VT5,000,000.

### **31 Craft arriving at place other than declared port or airport**

(1) Section 30 does not apply to a craft that is required or compelled to berth, land, anchor, or otherwise arrive at a place other than at a port or airport declared in accordance with subsection 30(1) if the arrival:

(a) is required by any statutory or other requirement relating to navigation; or

(b) is compelled by accident, stress of weather, or other necessity; or

(c) is authorised by the Director.

(2) If a craft is required or compelled to berth, land or anchor at a place other than at a port or airport under subsection (1), the Master of the craft;

(a) must immediately report to a customs officer or an authorised person; and

(b) must not permit any goods carried in the craft to be unloaded from it or any of the crew or passengers to depart from its vicinity without the consent of a customs officer or authorised person; and

(c) must not allow any crew member or passenger or any other person to depart from or board the craft unless authorised to do so by a customs officer or authorised person; or

(d) must comply with any directions of a customs officer in respect of any goods, crew or passengers carried in the craft.

(3) An international passenger or crew must not, without the consent of a customs officer,:

(a) unload goods from the craft; or

(b) depart from the vicinity of the craft.

(4) A person referred to in subsection (3) must comply with any direction given by a customs officer.

(5) The Master of any craft who fails to comply with, or acts in contravention of, subsection (2), commits an offence and is liable on conviction to a fine not exceeding VT5,000,000.

(6) An international passenger or crew who acts in contravention of subsection (3) or (4), commits an offence and is liable on conviction to a fine not exceeding VT5,000,000.

### **32 Inward report**

(1) Unless otherwise approved by the Director, this section applies to a craft that arrives in Vanuatu from outside of Vanuatu, or that is carrying persons or goods subject to Customs control.

(2) On the arrival at a port or airport, the master or the owner of the craft must:

(a) deliver to Customs, the certificate of clearance granted to the master at the last port or airport of departure; and

(b) deliver to Customs within 12 hours of the crafts arrival, an inward report containing particulars verified by a declaration as approved and accompanied by such supporting documents as approved by the Director;

and

(c) comply with any Customs direction concerning:

(i) the movement of the craft within the declared port or airport;  
and

(ii) the unloading of goods or the disembarkation of crew or passengers from the craft.

(3) The Master or the owner of a craft who:

(a) fails to comply with paragraph (2)(a); or

(b) fails to lodge an inward report required under paragraph (2)(b)

(c) fails to obey a Customs direction given under paragraph (2)(c),

commits an offence and is liable on conviction to a fine not exceeding VT5,000,000.

### **33 Offences in relation to inward report**

If:

(a) an inward report delivered pursuant to section 32 is incorrect, misleading or defective in any material particular; or

(b) a document delivered in support of the report is not genuine or is incorrect or misleading,

the Master of the craft and the owner of the craft both are guilty of an offence punishable, on conviction to imprisonment of not exceeding 2 years or a fine not exceeding VT3,000,000 or both.

### **34 Person to report to customs officer**

(1) Unless otherwise required by this Act, a person must on arrival, report to a customs officer or an authorised person.

(2) A person who reports to a customs officer or an authorised person in accordance with subsection (1), is to remain at the place where he or she is directed by the officer for the purposes of enabling any customs officer to exercise any power under this Act.

### **35 Disembarkation**

(1) A person who is on board a craft that has arrived in Vanuatu must comply with any Customs direction concerning disembarkation.

(2) A person who has disembarked from a craft to which this section applies must, unless otherwise directed by Customs:



- (a) proceed to a customs controlled area; and
- (b) remain there for the purposes of enabling a customs officer to exercise, in relation to that person, any power under this Act.

### **36 Baggage to be presented**

(1) A person who disembarks from a craft that has arrived in Vanuatu must:

- (a) make his or her accompanying baggage available for examination by a customs officer; and
- (b) comply with any Customs direction relating to the movement of the baggage within the Customs port, airport, or customs controlled area or from any craft to a customs controlled area.

(2) A person who is moving or handling the baggage subject to Customs control must comply with any Customs direction relating to the movement of the baggage.

### **37 Persons departing from Vanuatu**

Unless otherwise authorised by Customs, a person must not depart from Vanuatu unless he or she departs from an appointed port or airport.

### **38 Embarkation**

A person preparing to board a departing craft must comply with any Customs direction given to that person concerning embarkation.

### **39 Outgoing baggage to be presented**

A person who arrives at a port or airport or a customs controlled area for embarkation on to a craft that is scheduled to depart from Vanuatu must:

- (a) make his or her accompanying baggage available for examination by a customs officer; and
- (b) comply with any Customs direction relating to the movement of the baggage within the Customs port, airport or customs controlled area or from a customs controlled area to any craft.

### **40 Obligations of persons arriving in or departing from Vanuatu**

A person who fails to comply with any requirement imposed on that person by or under sections 35 to 39, commits an offence punishable on conviction to a fine not exceeding VT1,000,000.

### **41 Use of electronic devices prohibited in certain places**

(1) This section applies to any customs controlled area that is used by persons arriving in or departing from Vanuatu.

(2) A customs officer may erect a sign in any place or area prohibiting the use of any electronic device identified on the sign.

(3) A customs officer may order a person using an electronic equipment in an area prohibited under subsection (2), to refrain from using the electronic device identified on the sign.

(4) A person must comply with a requirement by a customs officer under subsection (3).

(5) In this section:

**electronic device** includes a device, other than a device that is used to assist a disabled person that is capable of any or all of the following actions:

- (a) transmitting sound; or
- (b) computing information; or
- (c) functioning as a telephone; or
- (d) communicating in any other way using any technology (including telecommunication, radio communication and broadcasting technology).

(6) A person who fails to comply with any requirement imposed on him or her by subsection (3), commits an offence punishable, on conviction to a fine not exceeding VT1,000,000.

#### **42 Departure of craft and Clearance of craft**

(1) Unless approved by the Director, a master in charge of a departing craft must not cause the craft to depart from Vanuatu unless the master has received a certificate of clearance.

(2) The master in charge of a craft that has arrived in Vanuatu must not cause that craft to depart from the place in Vanuatu that it first arrived at, or from any subsequent place of call within Vanuatu, without the permission of Customs and subject to the production to Customs of any documents that the Director may require and to any conditions imposed by the Director.

#### **43 Certificate of clearance**

Before any certificate of clearance is granted to the master of any departing craft the master must:

- (a) deliver to Customs an outward report, verified by declaration as approved and accompanied by such supporting documents as the Director may require; and
- (b) answer any questions asked by a customs officer relating to the craft and its passengers, crew, cargo, stores or its intended voyage; and
- (c) produce any other document required by a customs officer relating to

the craft and its passengers, crew, cargo, stores or its intended voyage; and

(d) comply with all requirements in this Act or any other Act concerning the craft and its passengers, crew, cargo, stores, and its intended voyage; and

(e) pay or produce evidence of payment of all duties, taxes or other dues and fees that are payable in respect of the craft.

#### **44 Offences in relation to outward report**

If:

(a) an outward report delivered pursuant to paragraph 43(a) is incorrect, misleading or defective in any material particular; or

(b) any document delivered in support of the report is not genuine or is incorrect or misleading,

the master and the owner of the craft each commits an offence punishable, on conviction to imprisonment of not exceeding 2 years or a fine not exceeding VT3,000,000, or both.

#### **45 Boarding of outward craft**

The master of a departing craft, whether or not the immediate destination of the craft is a point outside Vanuatu, must on the request of a customs officer, facilitate that officer's boarding of the craft.

#### **46 Production of certificate of clearance on request**

The master of a craft who has been granted a certificate of clearance must on the request of a customs officer, produce the certificate of clearance for examination by the officer and answer any question that the customs officer may ask concerning the craft and its passengers, crew, cargo, stores and its intended voyage.

#### **47 Departure to be from declared port or airport only**

(1) Unless approved by the Director, a master of a craft:

(a) must not cause that craft to depart from a place inside Vanuatu that is not a declared port or airport; or

(b) having obtained a certificate of clearance from a declared port or airport in Vanuatu to depart for any point outside Vanuatu, cause that craft:

(i) to depart immediately within 24 hours from that port or airport ;  
and

(ii) to go to any other place in Vanuatu.

(2) Subsection (1) does not apply to a craft that is compelled by accident, stress of

weather, or other necessity to return to a place in Vanuatu, and in such case the provisions of section 28 are to apply, subject to such modification as may be necessary.

#### **48 Offences in relation to departure of craft**

(1) A person who:

- (a) being the Master of any craft, contravenes section 37; or
- (b) being the Master of any craft:
  - (i) fails to comply with paragraph 43(a); or
  - (ii) refuses to answer any question put to that person by a customs officer under paragraph 43(b) or knowingly gives a false answer to the question; or
- (c) being a Master or a member of the crew, of any craft fails to comply with section 45; or
- (d) being a Master any craft, fails to comply with a demand made by a customs officer under section 46 or refuses to answer any question put to that person under that section or knowingly gives a false answer to the question; or
- (e) being a Master of any craft, acts in contravention of section 47,

commits an offence.

(2) A person who commits an offence under paragraph (1)(a), (c) or (e) is liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding VT3,000,000, or both.

(3) A person who commits an offence against paragraphs (1)(b) or (d), is liable on conviction to a fine not exceeding VT2,000,000.

#### **49 Unloading goods**

(1) A person must not unload goods under Customs control from a craft, unless:

- (a) advice of arrival under section 27 has been received; or
- (b) he or she has been granted permission to do so; or
- (c) they have been authorised subject to conditions determined by the Director; or
- (d) the goods in the craft, are threatened by collision, fire, the stress of weather or similar circumstances; or
- (e) any other circumstances as approved by the Director.

(2) A person who contravenes subsection (1) commits an offence punishable, on conviction to a fine not exceeding VT10,000,000.

### **50 Interference with cargo**

(1) If at any time after any craft carrying goods from a point outside Vanuatu arrives in Vanuatu, and before a report is made according to section 32:

- (a) any cargo is interfered with; or
- (b) any alteration is made in the storage of goods carried, so as to facilitate the unloading of any of the goods before the report has been made; or
- (c) any of the goods are starved, removed, destroyed, or thrown overboard;  
or
- (d) any package is opened,

the person so acting and the person in charge of the craft each commits an offence.

(2) Subsection (1) does not apply if the act:

- (a) was authorised by the Director or a customs officer; or
- (b) was required by any statutory or other requirement relating to navigation; or
- (c) was compelled by accident, stress of weather, or other necessity.

(3) A person who commits an offence against this section is liable on conviction to a fine not exceeding VT5,000,000.

## **PART 5 ENTRY AND ACCOUNTING FOR GOODS**

### **51 Entry of imported goods**

(1) The owner of imported goods or goods that are to be imported must complete the prescribed Customs declaration form at the first port or airport of unloading within 3 days of the arrival of the craft on which the goods are transported.

(2) A person entering goods under this section must:

- (a) respond to any questions asked by a customs officer with respect to the goods; and
- (b) present the goods upon request by a customs officer;
- (c) remove any covering from the goods, unload any conveyance or open any part of it, or open and unpack any package that the officer wishes to examine.

(3) If a default is made in the entry of goods under this section, duty becomes due and payable on the goods and the goods may be sold or disposed of by the Director.

### **52 Imported goods to be dealt with according to entry**

Any goods for which an entry has been made and passed is to be dealt with in accordance with the provisions of this Act that deal with entry of goods.

### **53 Cancellation and amendments of entries**

(1) The Director may cancel or amend an entry for the purpose of:

- (a) preventing duplication of entries; or
- (b) correcting any entry or any part of an entry already accrued or incurred in respect of that entry by the person making it.

(2) A cancellation or amendment of an entry by the Director under subsection (1) does not affect any penalty, liability for seizure, or criminal liability already accrued or incurred in respect of that entry by the person making it.

(3) Subject to the provisions of this Act, the Director may, on cancelling or amending an entry, refund duty to the person who made the entry.

### **54 Other matters relating to entries**

(1) A declaration, invoice, certificate, written statement or other document required or authorised under this Act to be made or produced by a person making an entry, forms part of that entry.

(2) An amendment of an entry is deemed to form part of that entry, but does not relieve a person from liability to a penalty or to seizure of goods or criminal liability incurred in respect of the entry before its amendment.

### **55 Offences in relation to entries**

(1) A person who:

- (a) fails to make an entry required under this Act; or
- (b) makes an entry required under this Act that is incorrect or defective in a material particular,

commits an offence punishable on conviction to a fine not exceeding VT100,000.

(2) A person who makes an entry that the person knows is incorrect or defective in a material particular commits an offence punishable, on conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding VT1,000,000, or both.

### **56 Samples or illustrations**

(1) For purposes of analysing, classifying or maintaining records, a customs officer may require an importer to provide a sample, illustration, drawing, document or plan relating to the goods imported.

(2) An importer must comply with a request made under subsection (1), and must submit a sample, illustration, drawing, document or plan, free of charge.

### **57 Transportation of imported goods**

(1) Subject to the Director's permission, any goods under Customs control must not be placed in a craft, vehicle for transportation within Vanuatu unless an entry has been made or permission has been granted under paragraph 58(1)(c).

(2) A person who contravenes subsection (1), commits an offence punishable on conviction to a fine not exceeding VT10,000,000.

### **58 Removal of goods from customs controlled area**

(1) Goods that are under Customs control must not be delivered or removed from a customs controlled area, unless:

(a) the Act provides for such delivery or removal; or

(b) a customs officer grants permission, after entry has been made and passed; or

(c) on the permission of the Director subject to conditions as determined by the Director; or

(d) by the performance of the customs officer's duty under this Act.

(2) The Director may, by written notice:

(a) amend any conditions set out under paragraph (1)(c); or

(b) revoke those conditions set out under paragraph (1)(c) and impose new conditions; or

(c) revoke the permit completely.

(3) Despite paragraph (1)(b), while goods remain under Customs control, the Director may revoke any notice of delivery given in respect of those goods.

(4) A person who contravenes subsection (1), commits an offence punishable on conviction to a fine not exceeding VT10,000,000.

### **59 Temporary removal of goods from customs controlled area**

(1) The Director may permit goods to be temporarily removed from a customs controlled area without payment of duty.

(2) Goods that are temporarily removed remain under the Customs control.

(3) A person who takes goods out of a customs controlled area or does any act in relation to goods taken out of a customs controlled area that constitutes a contravention of the permission granted by the Director under subsection (1) commits an offence punishable, on conviction to a fine not exceeding VT10,000,000.

### **60 Interference with goods**

A person who, except with the permission of a customs officer:

- (a) alters the condition of goods subject to the control of Customs; or
- (b) interferes with, including by way of addition to or taken away from such goods; or
- (c) unpacks or repacks such goods; or
- (d) removes goods from any place in which a customs officer has directed that the goods are to be stored,

commits an offence punishable on conviction to a fine not exceeding VT8,000,000.

### **61 Entry of goods for export**

(1) The owner of exported goods or goods that are yet to be exported must complete a Customs entry form at least 3 hours prior to the departure of the craft from the loading port or airport.

(2) A person who makes an entry under subsection (1) must:

- (a) answer any question asked by a customs officer relating to any matters arising under this Act; and
- (b) on the request of a customs officer, present the goods to the officer, remove any covering from the goods, unload any conveyance or open any part of it, or open and unpack any package that the officer intends to examine.

(3) Unless the Director determines, no right to drawback exists in goods placed on a craft before entry has been made and passed.

(4) Subject to the Director's permission, goods must not be loaded for export until an entry is made in the approved form and manner.

### **62 Goods for export to be dealt with according to entry**

(1) The owner of any goods that are entered for export must export the goods to a point outside Vanuatu in accordance with the provisions of this Act.

(2) If the goods that are entered for export are not exported according to the entry requirements, the owner must immediately notify the Director of the failure to export and the reasons for the failure.



(3) After the Director is notified under subsection (2), he or she may proceed to:

- (a) cancel or amend the entry; and
- (b) allow the goods to be released from Customs control.

(4) Despite subsection(1) and subject to the Customs licence conditions, an export entry may be made to goods that are removed from that area for sales made for delivery to persons on their arrival in Vanuatu from a point outside Vanuatu.

### **63 Goods for export not to be landed within Vanuatu**

Subject to the Director's permission, goods that are loaded for export must not be landed in any points in Vanuatu.

### **64 Offences in relation to exportation of goods**

(1) A person who:

- (a) acts in contravention of subsection 61(1) or (4); or
- (b) fails to comply with a request made under paragraph 61(2)(b); or
- (c) fails or is knowingly concerned in any failure, to comply with section 62 ; or
- (d) acts in contravention of section 63; or
- (e) is knowingly concerned in a contravention of subsection 92(3) (which relates to drawback on certain goods),

commits an offence.

(2) A person who commits an offence against paragraph (1)(a), (b) or (c) or (d) is liable on conviction to a fine not exceeding VT2,000,000.

(3) A person who commits an offence against paragraph (1)(e) is liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding VT2,000,000, or both.

## **PART 6 PROHIBITED IMPORTS AND PROHIBITED EXPORTS**

### **65 Prohibited imports**

(1) It is unlawful to import into Vanuatu:

- (a) any of the goods specified in the Customs (Prohibited Imports) Regulations; or
- (b) any goods which are:
  - (i) counterfeit trademark goods; or

- (ii) pirate copyright goods; or
- (iii) goods infringing intellectual property rights; or
- (iv) protection defeating devices.

(2) A prohibition imposed under this section:

- (a) may be general; or
- (b) may be limited to the importation of goods from a specified place or by or from a specified person or class of persons; or
- (c) maybe absolute or restricted.

(3) A restriction may allow the importation of goods:

- (a) under the authority of a licence or a permit, to be granted by the Director or by any other person named in the Customs (Prohibited Imports) Regulations, and subject to such conditions as may be imposed by the Director or other person granting the licence, or permit; or
- (b) on or subject to any other conditions prescribed by any other Act.

(4) To avoid doubt, duty applies to any prohibited goods permitted to be imported due to the issue of an authority licence consent or condition.

## **66 Prohibited exports**

(1) It is unlawful to export from Vanuatu any of the goods set out in the Customs (Prohibited Exports) Regulations.

(2) A prohibition imposed under this section:

- (a) may be general; or
- (b) may be limited to the export of goods to a specified place or by or to a specified person or class of persons; or
- (c) may be absolute or restricted.

(3) A restriction may allow the exportation of goods:

- (a) under the authority of a licence, or permit, to be granted by the Director or by any other person named in the Customs (Prohibited Exports) Regulations, or subject to such conditions, as may be imposed by the Director or other person granting the licence, or permit; or
- (b) on or subject to any other prescribed conditions.

### **67 Production of licence or permit for goods**

(1) Subject to the provisions of this Act or Regulations or any other Act, the importation or exportation of goods is prohibited unless made under the authority of a licence or a permit issued by the relevant authority.

(2) Director may refuse to pass an entry for those goods, or for goods of that class or kind until the Director is satisfied that a relevant licence or permit has been issued by the relevant authority.

### **68 Offences in relation to importation or exportation of prohibited goods**

(1) A person who:

(a) imports or unloads or lands in Vanuatu goods, the importation of which is prohibited under section 65; or

(b) exports, or transports with intent to export, goods from Vanuatu that is prohibited to be exported from Vanuatu by regulation made under section 66; or

(c) aids or abets the importation, exportation, transportation, shipment, unloading, or landing of goods to which paragraph (a) or (b) applies; or

(d) without lawful justification or excuse, removes from a customs controlled area imported goods that are prohibited to be imported into Vanuatu under section 65; or

(e) aids, abets or conspires, to remove prohibited goods from a customs controlled area; or

(f) commits a breach of, or fails to comply with, a term or condition of or subject to which a licence, permit, or consent has been granted, under a regulation made under subsection 65(3) or subsection 66(3); or

(g) aids or abets in a breach or failure to comply to which paragraph (f) applies,

commits an offence.

(2) A person who commits an offence against paragraph (1)(a), (b), (d) or (f) is liable on conviction to a fine not exceeding VT10,000,000.

(3) A person who commits an offence against any of paragraphs (1)(c), (e) or (g) is liable on conviction to imprisonment for a term not exceeding 10 years or to a fine not exceeding VT10,000,000 or both.

### **69 Possession, purchases and disposals of prohibited imports**

A person who knowingly, purchases, sells or exchanges, or has in his or her possession, any prohibited imports, commits an offence punishable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding VT 10,000,000.

## **PART 7 DUTIES**

### **70 Importer to specify Customs value on entry**

A person who makes an entry of goods imported or to be imported must, on making the entry, specify the Customs value of the goods, determined in accordance with Schedule 2 of the Import Duties (Consolidation) Act [CAP 91].

### **71 Amendment of valuation assessment**

(1) If the Director is satisfied that a determination made under subsection (1) is:

- (a) inconsistent with Schedule 2 of the Import Duties (Consolidation) Act [CAP 91]; or
- (b) incorrect,

the Director may amend that assessment, and that amended assessment is the correct Customs value of the goods.

(2) A written notice must be given to the importer of an amended assessment made pursuant to paragraph (1)(b).

(3) Subsection (1) applies whether or not the goods have been released from the control of the Customs or whether or not duty has been paid.

### **72 Currency and exchange rate**

(1) The Customs value is determined or declared in the currency of Vanuatu.

(2) The rate of exchange is to be determined by the Reserve Bank of Vanuatu if the conversion of the currency is necessary for the determination of Customs value.

(3) The conversion rate to be used is to have effect at the time of lodgement of the Customs entry.

## **PART 8 ASSESSMENT AND RECOVERY OF DUTY**

### **73 Duty is a debt due to the State**

(1) The duty on all goods constitutes, immediately on importation of the goods, a debt due to the State.

(2) The duty is owed by the importer of the goods, and if there is more than one importer, then duty is jointly and severally due by all of them.

(3) Subject to this Act, the debt becomes due and payable when:

- (a) the goods have been entered and an assessment notice issued; or
- (b) the goods have been entered for removal from a manufacturing area: or

(c) the goods have been wrongly landed or otherwise wrongfully dealt with without having been entered: or

(d) an offence has been committed against this Act in respect of the goods.

(4) A duty payable on importation becomes a debt due to the State.

(5) If an entry has not been made and duty is not paid within 21 days from the time of importation the goods may be seized as forfeited to the State.

(6) If an entry has been made in accordance with subsection 45(1) but duty is not paid within 21 days from the issue of the assessment notice for that entry, the goods may be seized as forfeited to the State.

(7) If an importer is in debt to Customs in respect to any duty, tax or penalty levied under Part 10, Customs may detain any goods imported by the importer that are held or stored in a customs controlled area until the debt is paid.

(8) Customs has a lien on goods described in subsection (7).

(9) A duty, tax, or penalty that is payable is a debt due to the State by the importer and is recoverable in a Court in Vanuatu.

(10) The right to recover duty as a debt due to the state is not affected by the fact that:

(a) the goods have ceased to be subject to the control of Customs; or

(b) a bond or other security has been given for payment of duty; or

(c) no proper assessment of duty has been made under this Act or that a deficient assessment of duty has been made;

(11) The Director may, subject to such terms and conditions he or she may impose, approve any person or class of person, as persons who may defer the payment of duty due under this section, and, for that purpose may:

(a) determine a duty accounting period; or

(b) suspend or withdraw that approval; or

(c) vary any term or condition under which the approval has been given; or

(d) vary the duty accounting period.

(12) If the Director makes any decision under subsection (11), the person or class of person affected are to be advised by a notice in writing.

(13) All goods included in the inwards report of any craft are presumed to be imported unless the contrary is proved.

#### **74 Additional duty imposed**

(1) If the payment of any duty has been deferred and remains unpaid after 5 days of the due date for payment, there will be imposed an additional duty of:

- (a) 10% of the amount of duty unpaid by the due date; and
- (b) 5 % of the amount of duty, including additional duty, unpaid at the end of the period of one month after the due date; and
- (c) 5% of the amount of duty, including additional duty, unpaid at the end of each succeeding period of one month.

(2) A person who fails to pay duty or additional duty under subsection (1) on the due date may:

- (a) be suspended from a deferred duty payment scheme by the Director; or
- (b) have proceedings instituted against that person for recovery of debt; or
- (c) have the goods and the proceeds of the sale of the goods be forfeited to the State.

#### **75 Assessment of duty**

(1) An entry for goods made under this Act is deemed to be an assessment by the importer or licensee, as the case may be, as to the duty payable in respect of those goods.

(2) If the Director has reasonable cause to suspect that duty is payable on goods by a person who has not made an entry in respect of the goods, the Director may assess the duty in accordance with Part 7.

#### **76 Amendment of assessment**

(1) The Director may amend an assessment of duty to ensure the correctness of the assessment even if the goods to which the duty relates are no longer subject to Customs control or that the duty originally assessed has been paid.

(2) If the amendment has the effect of imposing a fresh liability or altering an existing liability, the Director is to notify the person liable for the duty.

#### **77 Due date for payment of assessment**

(1) The due date for the payment of duty assessed under subsection 75(1) or reassessed under section 79(2) or demanded under subsection 84(4) or subsection 85(2), is the date that is 10 days after the date on which notice of the amended assessment or demand is issued by the Director.

(2) If all or part of any duty remains unpaid by the due date, the amount outstanding is deemed to have been increased by an amount calculated in accordance with section 74.

### **78 Obligation to pay duty not suspended by appeal**

(1) Subject to subsection (3), the obligation to pay and the right to receive and recover duty under this Act is not to be suspended by any appeal or legal proceedings.

(2) Subject to subsection (3), if the appellant is successful in the appeal or the proceedings, the amount (if any) of the duty or any security received by the Director in excess of the amount that, in accordance with the decision on the appeal or the proceedings, was properly payable is to be immediately refunded to the appellant by the Director or as the case may be, the appellant is to be released from the conditions of the security imposed under section 140.

(3) An obligation on the Director under subsection (2) is to be suspended pending written law against the decision requiring the duty to be refunded.

### **79 Limitation of time for amendment of assessments**

(1) If an assessment of duty is made under this Act, the Director is not entitled to alter that assessment so as to increase the amount of the assessment after the expiration of 5 years from the date on which the original assessment was made.

(2) Despite subsection (1), in any case where, in the opinion of the Director, the entry or any declaration made in relation to the goods was fraudulent or wilfully misleading, the Director may amend the assessment at any time so as to increase the amount of the assessment.

### **80 Keeping of business records**

(1) A licensee, owner, importer or exporter or his or her respective agent, must keep or cause to be kept in Vanuatu business records, for a period not exceeding 5 years.

(2) A licensee, importer or exporter or his or her respective agent, must when required by a customs officer:

(a) make the records available to the Customs; and

(b) provide copies of the records when required; and

(c) answer any questions relevant to matters arising under this Act asked by any officer in respect of them.

(3) If, for the purposes of complying with subsection (2), information is recorded or stored by means of an electronic or other device, the licensee, importer, exporter, or agent must, at the request of a customs officer, operate the device, or cause it to be operated, to make the information available to the customs officer.

### **81 Giving Customs access to business records**

(1) This section applies to a person only if the person:

(a) is a person to whom subsection 80 (1) applies or a person otherwise involved in the carriage, handling, or transportation of goods that are being

imported to, or exported from, Vanuatu; and

(b) has been required by the Director by notice to comply with this section on and after a date specified in the notice.

(2) On and after the date specified in the notice a person to whom this section applies must provide any document prepared in the ordinary course of business for the purposes of a commercial transaction regarding the purchase and carriage of goods whether in hard copy or electronic format.

(3) A person to whom this section applies must provide to a customs officer that access in the approved form and manner and must ensure that customs officer have that access at all reasonable times.

(4) The Director may, by notice in writing, exempt a person to whom this section applies from complying with some or all of the person's obligations under this section in all or any specified circumstances.

(5) To avoid doubt, this section does not affect any obligation under section 80 to keep or cause to be kept, make available, provide copies of, or answer questions in respect of records.

## **82 Offences in relation to records**

(1) A person who fails to keep records that are required to be kept under section 80, commits an offence punishable on conviction to a fine not exceeding VT1,000,000.

(2) A person who:

(a) fails without reasonable excuse to provide to the Customs, on the request of that officer, the records that are required to be kept under section 81 ; or

(b) fails, when requested by a customs officer, to operate any mechanical, or electronic device on which any records or information is, stored for the purposes of enabling the customs officer to obtain those records or that information,

commits an offence punishable, on conviction to a fine not exceeding VT1,000,000.

(3) A person who:

(a) destroys, alters, or conceals any book, document, or record required to be kept under this Act; or

(b) sends or attempts to send out of Vanuatu any such book, document, or record,

commits an offence punishable on conviction to imprisonment for a term not



exceeding 2 years or to a fine not exceeding VT5,000,000, or both.

### **83 Release of goods subject to duty**

(1) A person is not entitled to obtain release of goods from the control of the Customs until the sum payable by way of duty on the goods is paid in full.

(2) An action or other proceeding is not to be instituted against the State or the Director or any customs officer in respect of the detention of any such goods during any period before the payment of the full sum.

### **84 Liability for duty on goods wrongfully removed or missing**

(1) If the Director is satisfied that certain goods stored in a customs controlled area have been wrongfully removed from or are missing from that customs controlled area or cannot be accounted for, the licensee of that customs controlled area is to be liable for duty payable on those goods.

(2) The licensee is not to be released from liability under this section by virtue of any other provision of this Act or any other Act.

(3) If:

(a) dutiable goods are removed from a customs controlled area without the authority of the Customs; or

(b) dutiable goods are not produced by the licensee to the Customs and are not accounted for as having been lawfully delivered from the customs controlled area,

duty becomes due and payable as if the goods were removed for home consumption, or entry has been made and passed for home consumption.

(4) The Director may, by notice, demand from the owner or importer of the goods or the licensee of the customs controlled area, payment of any sum that the Director has reasonable cause to suspect is owed.

(5) Duty payable under this section constitutes a debt due to the State by the licensee and the importer of the goods and the owner of the goods whose liability is joint and several.

### **85 Liability of owners of craft for duty on goods unlawfully landed**

(1) If cargo or stores or other goods are unlawfully landed in Vanuatu in or from a craft that is in Vanuatu, the owner or the Master of the craft are to be jointly and severally liable for the payment of the duty on the cargo stores or other goods.

(2) The Director may by notice, demand from the owner or the Master in charge of any craft payment of any sum that the Director has reasonable cause to suspect is owed under this section.

(3) In any proceedings for the recovery of duty under this section, or for a refund of duty paid under this section, the sum so demanded by the Director is presumed

to be due and payable unless the contrary is proved.

### **86 Effect of payment of duty by a person on liability of other persons**

The liability of a person under this Act for the payment of duty on goods is extinguished by the payment of that duty by any other person liable for the payment of it under this Act, unless that duty is subsequently refunded or remitted.

### **87 Incidence of altered duties**

(1) In the case of an alteration in the law relating to the liability of goods to duty, or the rate of duty to which goods are liable, the liability or rate is, except where otherwise expressly provided, to be determined:

(a) in the case of goods held in a warehouse, or excisable goods - by the law in force at the time the goods are removed from the warehouse or manufacturing area;

(b) in the case of other goods - by the law in force at the time an entry is lodged for the goods.

(2) In this section, the term **alteration in the law** includes variation that takes place at any time or periodically in the liability of goods to duty or in the rate of duty to which they are liable.

### **88 Refund of duty paid in error**

(1) If the Director is satisfied that duty has been paid in error either of law or of fact, the Director is to refund the duty:

(a) at any time within 5 years after it has been paid; ;or

(b) at any time on an application made within 5 years after it has been paid.

(2) This section extends and applies to duties paid in error before the commencement of this Act.

### **89 Other refunds and remissions of duty**

The Director may refund or remit any duty if the Director is satisfied that imported goods, or excisable goods:

(a) have been damaged, destroyed, pillaged, or lost, or have diminished in value or deteriorated in condition, prior to their release from Customs control; or

(b) are of faulty manufacture; or

(c) have been abandoned to the State for destruction or other form of disposal prior to their release from Customs control.

### **90 Recovery of duty refunded in error**

Money refunded by Customs in error of fact or law is recoverable by action at the suit of the Director on behalf of the State:

(a) if the refund has not been obtained by fraud - at any time within 5 years after the date of its payment; or

(b) if the refund has been obtained by fraud - at any time.

### **91 Goods temporarily imported**

(1) Subject to this section, if the Director is satisfied that goods have been temporarily imported, a sum equal to the amount of the duty payable on the goods is to be secured, in such cases as may be approved by the Director.

(2) On receipt of security required under subsection (1), the Director may release the goods from the control of Customs without payment of duty.

(3) Subject to prescribed conditions, the person providing the security must be released from the conditions of the security, and a deposit of money made must be returned to that person if, within 12 months from the date of their importation, the Director is satisfied that the goods have been exported.

(4) If the goods have not been exported within the 12 months period prescribed in subsection (3):

(a) any sum secured by way of deposit of money, is to be retained by the State; or

(b) any sum otherwise so secured is to be paid to the State by the importer within 10 days after the expiry of that period, and upon such payment the security is to be released.

### **92 Drawbacks of duty on certain goods**

(1) Drawbacks of duty may be allowed at such amounts and subject to such conditions as may be prescribed, on:

(a) goods imported into Vanuatu that are later exported from Vanuatu; or

(b) imported parts, and materials used in, worked into, or attached to, goods manufactured or produced in Vanuatu and exported from Vanuatu; or

(c) imported materials, except fuel or plant equipment, consumed in the manufacture or production of goods produced in Vanuatu and exported from Vanuatu.

(2) If the Director is satisfied that goods have been entered and shipped for export, the Director may pay drawback of duty.

(3) If a drawback has been allowed on any goods consumed in the manufacture of those goods, the drawback is not to be paid until the exportation of the goods is

verified.

**93 Regulations may prescribe minimum duty collectable or refundable and minimum drawback allowable**

The Minister may by regulation prescribe any or all of the following:

- (a) an amount of duty below that duty which Customs does not need to collect and the circumstances in which that duty does not need to be collected;
- (b) the minimum amount of duty refundable on goods, and the circumstances in which duty below the prescribed amount is not to be refunded;
- (c) the minimum amount of drawback of duty allowable on goods, and the circumstances in which drawback below the prescribed amount will not be allowed.

**PART 9 CUSTOMS RULINGS**

**94 Application for customs ruling**

(1) A person may apply to the Director in respect of particular goods specified in the application, for a customs ruling regarding either any or more of the following matters:

- (a) the Tariff Classification of those goods under Schedule 1 of the Import Duties (Consolidation) Act [CAP 91];
- (b) the excise classification of those goods under Schedule 1 the Excise Act [CAP 290];
- (c) whether or not those goods are for the purpose of the Tariff, the produce or manufacture of a particular country or group of countries;
- (d) whether or not those goods are subject to a specified duty concession under Schedule 3 of the Import Duties (Consolidation) Act [CAP 91];
- (e) The valuation rule under Schedule 2 of the Import Duties (Consolidation) Act [CAP 91].

(2) An application made under subsection (1) may be made for the following goods:

- (a) imported goods:
  - (i) at any time before the date of importation into Vanuatu of the goods that are subject of the application; or
  - (ii) at any later time, if the Director permits; or

(b) excisable goods:

(i) at any time before the date of manufacture of the goods; or

(ii) at any later time, if the Director permits.

(3) A person may apply to the Director in relation to a particular matter specified in the application, for a Customs ruling as to the correct application of any provision contained in Schedule 4 of the Import Duties (Consolidation) Act [CAP 91].

(4) An application made under subsection (1) or (3) must be in the approved form accompanied by the prescribed fee.

### **95 Making of customs ruling**

(1) Subject to subsection (4), the Director must:

(a) in the case of an application made under section 94 make a customs ruling in respect of any particular goods specified in the application and in respect of the matter or matters on which the ruling is sought; or

(b) in the case of an application made under section 94 (3) - make a customs ruling in respect of the particular matter specified in the application.

(2) The Director must make a customs ruling under subsection (1) within such time or times as prescribed after receiving:

(a) in the case of an application under subsection (1):

(i) a properly completed application in respect of particular goods; and

(ii) the goods or a sample of the goods unless the Director has agreed not to require receipt of the goods; and

(b) all information that the Director considers relevant to a proper consideration of the application; and

(c) payment of the approved fee.

(3) A customs ruling may be made subject to such conditions as the Director thinks fit.

(4) The Director may decline to make a customs ruling if he or she has insufficient information to do so.

### **96 Notice of customs ruling**

Upon making a decision on an application under this Part, the Director must immediately notify the applicant in writing:

(a) that a customs ruling has been made on his or her application, and state the reasons for the ruling, and the conditions of the ruling; or

(b) that his or her application for a customs ruling has been declined, together with the reasons for that decision.

### **97 Effect of customs ruling**

(1) A customs ruling in respect of particular goods is conclusive evidence that the goods:

(a) have a particular tariff classification under Schedule 1 of the Import Duties (Consolidation) Act [CAP 91]; or

(b) has a particular excise classification under Schedule 2 of the Excise Act [CAP 290]; or

(c) is or is not the produce or manufacture of a particular country or a group of countries, for the purposes of Schedule 4 of the Import Duties (Consolidation) Act [CAP 91]; or

(d) is or is not subject to a specified duty concession under Schedule 3 of the Import Duties (Consolidation) Act [CAP 91].

(2) A customs ruling that has been made under section 95 is conclusive evidence for the purposes of this Act and the Import Duties (Consolidation) Act [CAP 91] on which the ruling was made in relation to that matter.

### **98 Confirmation of basis of customs ruling**

(1) At any time after a customs ruling is made, the Director may by written notice, request the applicant to provide information that will convince the Director that:

(a) the facts or information on which the customs ruling was made remain correct; and

(b) any conditions on which the customs ruling was made have been complied with.

(2) A notice made under subsection (1) must be complied with within 20 days or such period that the Director considers necessary.

### **99 Amendment of customs ruling**

(1) The Director may amend a customs ruling to correct any error contained in the ruling.

(2) The Director must immediately after making the amendment, notify the applicant of the amended customs ruling.

(3) An amended ruling is to be applied to the applicant as from the date on which notice of the amendment was given.

(4) Subsection (3), does not apply if the amendment to the ruling has the effect of increasing any duty liability in respect of any goods:

(a) if the goods are imported within 3 months of the date of the notice of the amendment is given, pursuant to a binding contract entered into before that date; or

(b) if the goods have left the place of manufacture or warehouse in the country from which they are being exported for direct shipment to Vanuatu at the date notice of the amendment of the ruling is given; or

(c) if the goods are imported on or before the date notice of the amendment is given, but have not been entered for home consumption, then the ruling given prior to the amended ruling is to be applied to those goods.

(5) Despite subsection (3), if the amendment to the ruling has the effect of decreasing any duty liability of any goods, then the provisions of section 88 apply as if the higher duty had been paid in error, not be allowed.

#### **100 Cessation of customs ruling**

(1) A customs ruling ceases to have effect on any of the following dates, depending on whichever date occurs first:

(a) the date on which any information on which the customs ruling was made ceases to be correct in all material respects; or

(b) the date of a material change in any of the information or facts on which the customs ruling was made; or

(c) the date of a material change in the Import Duties (Consolidation) Act [CAP 91]; or

(d) the date on which any of the conditions to which the customs ruling was made cease to be met or complied with; or

(e) the date of a failure to convince the Director under section 98; or

(f) the date of expiry of 12 months from the date that notice of the customs ruling under section 96, is made.

(2) A customs ruling is not effective if:

(a) information on which it was made is not correct in all material respects; or

(b) a material change has occurred in any information or facts which it was made.

### **101 No liability where customs ruling relied on**

If an applicant has relied on a customs ruling under this Part, he or she will not be liable for any penalty or seizure under this Act unless the ruling has expired or has been amended.

## **PART 10 ADMINISTRATIVE PENALTIES**

### **102 Interpretation**

For the purposes of this Part,

**entry**, in relation to any goods or class of goods that are deemed to have been entered under subsection 51(1), include a document that the Director requires to be lodged with the Customs before the goods or class of goods will be deemed to be entered;

**materially incorrect** means that an entry contains an error or an omission in relation to any of the following matters:

- (a) the identity of the overseas supplier;
- (b) the identity of the importer;
- (c) the identity of the person making the entry;
- (d) the identification of the importing craft or its voyage number;
- (e) the bill of lading, air waybill or container identification details;
- (f) the supplier's invoice number and date, and the invoice amount;
- (g) any permit number or code;
- (h) the tariff item in which the goods are classified under the Schedule I of the Import Duties Act;
- (i) the statistical quantity of the goods;
- (j) the country of currency in which the goods are traded;
- (k) the rate of exchange used to convert the currency to Vatu;
- (l) the value for duty expressed in the currency in which the goods are traded;
- (m) the value for duty expressed in Vanuatu currency;
- (n) the country of origin of the goods;
- (o) the country from which the goods have been exported;



(p) the amount paid or payable to transport the goods to Vanuatu from the country of exportation, including any amount paid or payable for internal transportation of the goods in that country;

(q) the insurance costs associated with transporting the goods to Vanuatu, inclusive of any insurance costs in the country of exportation;

(r) the particulars of shipping containers, packages or break bulk including marks and numbers;

(s) The number of any exemption claimed under schedule 3 of the Import Duties (Consolidation) Act [CAP 91];

**technical offence** means a breach of the Act or Regulations in respect to:

(a) communicating information to Customs; or

(b) dealing with goods under this Act; or

(c) dealing with a craft under this Act; or

(d) the keeping, retaining or producing documents or records; or

(e) failing to comply with any term or condition of a licence or permission issued under the Act; or

(f) allowing or permitting unauthorised entry to a customs controlled area; or

(g) failing to answer questions or making a statement which is false or misleading to a customs officer or authorised person; or

(h) lodging documents required under the Act for the correct dealing with goods; or

(i) using the Customs computerised entry processing system unique user identifier only as authorised.

### **103 Notice of Penalty**

The Director may, within 5 years after a declaration is made, by written notice, require the owner or agent of the goods to pay a penalty within 10 days of the notice being issued, if the Director satisfied that the goods declaration:

(a) contains an error or omission and that as a result the amount of duty payable has not been paid or declared for payment or would not have been paid or declared for payment; or

(b) is otherwise materially incorrect.

#### **104 Imposition of penalty**

(1) If a particular of an entry lodged with the Customs is found to be materially incorrect, the Director may:

(a) impose a penalty:

(i) if the duty is not declared or the duty on the goods is attempted to be avoided, a penalty of 3 times the unpaid duty; or

(ii) if the goods are exempt, free or zero rated from duty, a penalty of 5 percent of the value of the goods; or

(iii) if the entry is otherwise materially incorrect, a penalty of 5 percent of the value of the goods; and

(b) withhold the delivery of the goods until the penalty, including any additional duty is paid.

(2) If a person is found to have made entries where a particular contained in that entry is materially incorrect on more than 3 consecutive occasions, the Director may refuse to accept any further entries made by that person.

(3) The Director will not impose a penalty on a person, if the person has voluntarily disclosed to Customs at any time prior to the issue of a notice under section 103, that a particular contained in any entry is materially incorrect.

(4) If a penalty imposed under this section is not paid by the due date, the Director is to impose the following penalties:

(a) an additional penalty of 10 percent of the amount of the penalty, unpaid by the due date;

(b) an additional penalty of 5 percent of the amount of the penalty, including any additional penalty unpaid at the end of a the period of 10 days after the due date;

(c) an additional penalty of 5 percent of the amount of the penalty, including additional penalty, unpaid at the end of each succeeding period of 10 days.

(5) The amount of the penalty is a debt owed to the State and is recoverable by action in a Court of law.

(6) The Director will not impose a penalty on a person if the person has voluntarily disclosed to Customs that a particular in an entry is materially incorrect.

#### **105 Penalty for technical offences**

(1) If a person has committed a technical offence against this Act, the Director may, by notice in writing require the person to pay within 10 days after service of

the notice, the prescribed penalty.

(2) A person who, having been served a notice under subsection (1), fails to pay the penalty after a period of 10 days, is to pay, in addition to the initial penalty a further VT1000 for each day in default.

### **106 Dishonoured cheques**

(1) A person who presents a cheque to a customs officer in payment of Customs duty, taxes or penalty that is not honoured by the bank is to be liable to an administrative penalty of VT10000.

(2) A person is not liable to pay the administrative penalty under subsection (1) if the cheque is not honoured by mistake of the bank.

## **PART 11 CUSTOMS COMPUTERISED ENTRY PROCESSING SYSTEMS**

### **107 Access to Customs computerised entry processing systems**

A person must not transmit to, or receive information from a Customs computerised entry processing system unless that person is registered by the Director as a user of that Customs computerised entry processing system.

### **108 Registered users**

(1) A person who wishes to be registered as a user of a Customs computerised entry processing system, is to apply in writing to the Director in the approved form and such information in relation to the application as is approved.

(2) The Director may, on receipt of an application in the approved format, subject to any conditions he or she deems fit to impose, and upon payment of the approved fee, register the person as a user of a Customs computerised processing system.

(3) The Director may refuse to register the applicant if the Director is satisfied that the applicant is not capable of complying with the conditions of registration.

(4) The Director must give notice in writing to the applicant of the Director's decision and if the application is refused, the reasons for refusal.

### **109 Registered users to be allocated unique user identifier**

(1) A person who is registered as a user of a Customs computerised entry processing system is to be allocated a unique user identifier for use in relation to that Customs computerised entry processing system.

(2) The unique user identifier allocated under subsection (1) is to be used only for purposes of transmitting information to or receiving information from that Customs computerised entry processing system.

(3) The Director may, by written notice, impose conditions, on a particular registered user, or on registered users generally, regarding the use and security of unique user identifiers.

### **110 Use of unique user identifier**

(1) If information is transmitted to a Customs computerised entry processing system using a unique user identifier issued to a registered user, the transmission of that information is, in the absence of proof to the contrary, sufficient evidence that the registered user to whom the unique user identifier has been issued, has transmitted that information.

(2) Subsection (1) is not to apply if the registered user has notified Customs that the unique user identifier is no longer secure, prior to the unauthorised use of the registered users' unique user identifier by the unauthorised user.

### **111 Cancellation of registered user**

(1) The Director may at any time by written notice, cancel the registration of a registered user if the Director is satisfied that a registered user has:

- (a) failed to comply with a condition of registration imposed by the Director under subsection 108(2); or
- (b) failed to comply with or acted in contravention of any conditions imposed by the Director under subsection 109(3); or
- (c) been convicted of an offence under this Act relating to improper access to or interference with a Customs computerised entry processing system; or
- (d) been convicted of any other offence under this Act; or
- (e) made entries materially incorrect vide subsection 104(2); or
- (f) is considered by the Director not to be a proper person to hold a registration.

(2) The Director is to provide the reasons for cancelling the registration.

### **112 Customs to keep records of transmission**

Customs is to keep a record of every transmission sent to or received from a registered user using a Customs computerised entry processing system for 5 years.

### **113 Unauthorised access to or improper use of Customs computerised entry processing system**

A person who:

- (a) knowingly and without lawful authority by any means gains access to or attempts to gain access to any Customs computerised entry processing system; or
- (b) having lawful access to any Customs computerised entry processing system, knowingly uses or discloses information obtained from such a computer system for a purpose that is not authorised; or

(c) knowing that he or she is not authorised to do so, receive information obtained from any Customs computerised entry processing system and, uses discloses, publishes or otherwise disseminates such information.

commits an offence punishable on conviction by imprisonment for a term not exceeding 2 years, or a fine not exceeding VT3,000,000, or both.

#### **114 Interference with Customs computerised entry processing system**

A person who:

(a) by any means knowingly falsifies any record or information stored in any Customs computerised entry processing system; or

(b) knowingly damages or impairs any Customs computerised entry processing system; or

(c) knowingly damages or impairs any duplicate tape or disc or other medium on which any information obtained from a Customs computerised entry processing system is held or stored otherwise than with the permission of the Director,

commits an offence punishable on conviction by imprisonment for a term not exceeding 2 years, or a fine not exceeding VT3,000,000, or both.

#### **115 Offences in relation to security of, or unauthorised use of, unique user identifiers**

(1) A registered user of a Customs computerised entry processing system who fails to comply with or acts in contravention of any condition imposed by the Director relating to the security of that registered user's user identifier, commits an offence.

(2) A person who:

(a) not being a registered user, uses a unique user identifier; or

(b) being a registered user, uses the unique user identifier of any other registered user,

to authenticate a transmission of information to the Customs computerised entry processing system, commits an offence.

(3) A person who commits an offence under this section commits an offence punishable on conviction by imprisonment for a term not exceeding 1 year, or a fine not exceeding VT1,000,000, or both.

### **PART 12 POWERS OF CUSTOMS OFFICERS**

#### **116 Patrols and surveillance**

A customs officer or an authorised person may, at any time and in such manner as the officer considers appropriate:

- (a) patrol on or over any part of the foreshore or the shore of any lake or lagoon or the banks of any river and any structure extending from it, or any part of the adjacent land;
- (b) patrol any port or airport, or customs controlled area;
- (c) enter and inspect any aircraft landing strip and any building in these areas and may remain in any such area for the purposes of carrying out investigations or surveillance.

### **117 Landing or mooring of Customs craft**

A customs officer or a person in charge of any craft employed in the service of the Customs may:

- (a) anchor, moor, berth, or land the craft; or
- (b) haul the craft ashore,

at any place within Vanuatu and, in such case, no charge is to be levied against the Customs.

### **118 Boarding craft**

(1) A customs officer or any authorised person may at any time board a craft that is within Vanuatu if:

- (a) the craft has arrived in Vanuatu from a point outside Vanuatu; or
- (b) the craft is departing from Vanuatu to a point outside Vanuatu, including while the craft is travelling within Vanuatu en route to a point outside Vanuatu;
- (c) the craft is carrying international cargo while it remains within Vanuatu.
- (d) a customs officer has reasonable cause to suspect that the craft;
  - (i) is carrying any dutiable, uncustomed, prohibited or forfeited goods; or
  - (ii) has been, is being or is about to be involved in the commission of an offence under this Act.

(2) The Director may station customs officers onboard any craft that has arrived in Vanuatu from a point outside Vanuatu for the purposes of performing any functions or exercising any power that the officers may be required, authorised or empowered to perform under this Act.

(3) If a customs officer is stationed on board a craft, the Master or the operator of that craft must ensure that the officer is provided with:

- (a) suitable accommodation; and
- (b) safe access to any part of the craft: and
- (c) safe means of disembarking the craft,

at no cost.

### **119 Searching of craft**

(1) A customs officer or any authorised person may search:

- (a) A craft that has arrived in Vanuatu from a point outside of Vanuatu; or
- (b) a craft that is departing from Vanuatu to a point outside of Vanuatu and at all times while the craft is travelling within Vanuatu en route to a point outside Vanuatu; or
- (c) a craft that is carrying any international cargo while the craft remains within Vanuatu; or
- (d) a craft that a customs officer has reasonable cause to suspect:
  - (i) is carrying any dutiable, uncustomed, prohibited or forfeited goods; or
  - (ii) has been, is being, or is about to be involved in the commission of an offence under this Act for the purpose of performing any function or exercising any power that the officer may be required, authorised or empowered to perform under this Act.

(2) A customs officer may use such force as may be reasonably necessary in order to enter a part of the craft, open any package, locker or any place, and to examine any other goods found on the craft.

### **120 Securing goods on craft**

For the purpose exercising any power that Customs is required, authorised or empowered to perform or exercise under this Act, a customs officer or an authorised person may at any time while boarding or searching any craft under section 118 or section 119:

- (a) secure by appropriate means, goods on board that craft; or
- (b) remove goods on board that craft to a secure place.

### **121 Firing on ship**

The person commanding or in charge of any craft in the service of the Republic of Vanuatu having hoisted and carrying or displaying the proper ensign or the Customs flag must, at the request of the Director, pursue any ship if:

(a) the ship does not immediately respond when signalled or required to do so; or

(b) the master refuses to permit the ship to be boarded and may, as a last resort after having fired a warning, fire at or into the ship to compel it to bring-to.

### **122 Detention of craft**

(1) A customs officer who has reasonable cause to believe that an offence under this Act:

(a) has been committed; or

(b) is being committed; or

(c) is about to be committed,

on or in a craft while that craft was or is within Vanuatu may direct the craft to proceed to the nearest Customs port or airport or such other place as the officer considers appropriate and detain the craft for such time and for such purposes as necessary to carry out an investigation into the commission of the offence.

(2) If a person in charge of a craft attempts or threatens to cause the craft to depart from a place to which the craft has been directed under subsection (1) without a certificate of clearance, a customs officer may detain the craft until a certificate of clearance is obtained.

### **123 Searching vehicles**

(1) A customs officer may search and detain a vehicle for such period as may be reasonably necessary if the officer has reasonable cause to suspect that:

(a) there is in or on any vehicle that is within a Customs port, airport or customs controlled area, any dutiable, uncustomed, prohibited, or forfeited goods; or

(b) there is evidence relating to any dutiable, uncustomed, prohibited, or forfeited goods; or

(c) there is evidence relating to any offence under this Act.

(2) A customs officer or any authorised person who has reasonable cause to believe that:

(a) there is in, or on, any vehicle, (not being a vehicle to which subsection (1) applies) any goods that have been unlawfully exported; or

(b) there is evidence relating to the unlawful importation of any goods or an attempt to unlawfully export any goods; or

(c) there is evidence relating to any offence under this Act;



may search it and may detain the vehicle for such period as may be reasonably necessary.

#### **124 Questioning persons about goods**

(1) This section applies to:

- (a) a person who is within a customs controlled area; or
- (b) a person who is on board or is in the process of boarding a craft that is scheduled to depart from Vanuatu; or
- (c) a person who is disembarking from a craft that has arrived in Vanuatu.

(2) A customs officer or an authorised person may question a person on any or all of the following matters:

- (a) whether or not that person has or has had in their possession any dutiable, prohibited, uncustomed, or forfeited goods;
- (b) the nature, origin, value or intended destination of any goods described in paragraph (2)(a).

#### **125 Questioning persons about identity, address, travel movement and entitlement and other matters**

(1) This section and sections 129 and 130 apply to the following persons:

- (a) a person who:
  - (i) has, or is suspected of having, disembarked from a craft that has arrived in Vanuatu; and
  - (ii) has not, or is suspected of not reporting to a customs officer on his or her arrival, contrary to section 34;
- (b) a person who is, or is suspected of attempting to depart from Vanuatu from a place other than an appointed port or airport.

(2) A customs officer may question a person on the following matters:

- (a) the person's identity;
- (b) the person's residential address;
- (c) the person's travel movements;
- (d) the craft:
  - (i) from which the person disembarked or is suspected of disembarking from; or

(ii) on which the person is attempting to depart on, or is suspected of attempting to depart on; or

(iii) its voyage and any person or goods carried on it.

(3) A customs officer may question any other person who is, or was, involved in the persons arrival, suspected arrival, departure, attempted departure or suspected departure, whether or not the other person was on the craft;

(a) from which the person disembarked or is suspected of disembarking; or

(b) on which the person attempted to depart or is suspected of attempting to depart from Vanuatu.

### **126 Questioning employees of airlines, shipping companies**

A customs officer may question the following persons about any international cargo:

(a) a person who, as an employee of an airline or shipping company, manages or carries out the receipt, handling, custody or dispatch of international cargo by that airline or shipping company; or

(b) a person employed by a license holder of a customs controlled area; or

(c) a person who is in a customs controlled area.

### **127 Detention of persons about goods**

(1) A customs officer or an authorised person may detain a person if the officer:

(a) is not satisfied that the answer to question put to the person under section 124 is correct; or

(b) has not been given an answer to a question put to the person under section 124; or

(c) has reasonable cause to suspect that an offence has been, is being, or is about to be, committed against this Act by that person or any other person associated with that person.

(2) The purpose of a detention under subsection (1) is to enable the officer to make inquiries to establish whether the answer to the question or the reason or explanation is correct.

(3) A person must not be detained under this section for a period exceeding 4 hours.

### **128 Detention of person questioned under section 107**

(1) Despite section 127, a customs officer may detain a person for any or all of the following purposes:

(a) to question the person under section 125;

(b) to enable the officer to make the inquiries that are necessary to establish whether an answer to a question asked under section 125 is correct;

(c) to obtain the attendance of, or make inquiries of, another customs officer or an officer entitled to exercise a power to question, detain or arrest a person under this Act.

(2) A customs officer may detain a person under subsection (1) for up to 12 hours.

(3) The questioning of a person under this section must take place as soon as practical after the person is detained.

(4) A customs officer must release a person detained immediately after the person answers the questions asked under section 125 if the officer:

(a) is satisfied that the person has correctly answered the questions; and

(b) has no reasonable cause to suspect that the person questioned under the section has committed an offence.

(5) The customs officer may continue to detain a person under subsection (1) after the person is questioned if the officer:

(a) is not satisfied that the person has correctly answered the question under section 125; or

(b) is not satisfied that the person has given an answer to question asked under section 125; or

(c) has reasonable cause to suspect that the person questioned under that section has committed an offence by not complying with sections 34 or 37.

(6) Despite subsection (2), a person may be detained for a further reasonable period if accident, stress of weather, or some other difficulty of transport or special circumstances makes it impossible for customs officer to detain and question that person within the 12 hour period.

(7) A customs officer may use such reasonable force as is necessary to detain a person for questioning.

(8) For the purpose of this section, unless the context otherwise requires:

**detain** in relation to a person, includes moving a person to a port or airport or police station where the person may be, or may continue to be questioned;

**further reasonable period** means a period no longer than is necessary in the circumstances for a customs officer to do what is specified in subsection (1).

### **129 Detention of persons committing or about to commit certain offences**

(1) A customs officer or an authorised person may detain a person who, either officer has reasonable cause to suspect is committing, or is attempting to commit, an offence under section 24(3), 25(3), 26(5), 27(4), 28(5), 28(6) and 29(3), if that person:

(a) is leaving or boarding a craft, that has arrived at a declared Customs place or a customs controlled area within that place, without the authority of a customs officer before an inward report is made as required by subsection 30(2) and section 32; or

(b) has arrived in Vanuatu and has not reported to a customs officer or an authorised person as required by subsection 34 (1); or

(c) has arrived in Vanuatu and has reported to a customs officer or an authorised person under paragraph 31(2)(a), but has failed to remain at the place where he or she has reported for a reasonable time as required in order for the officer to carry out his or her duties under section 34; or

(d) is on board a craft that has arrived in Vanuatu but has not complied with any Customs direction concerning disembarkation as required under subsection 35(1); or

(e) fails to remain in a customs controlled area for such reasonable time as is required to enable a customs officer to exercise his or her powers under subsection 35(2); or

(f) fails to comply with a direction given under paragraph 39(b).

(2) To avoid doubt, a customs officer or an authorised person may only detain a person under subsection (1) for the purpose of ensuring the person's compliance with 1 or more of the provisions referred to in subsection (1).

(3) A customs officer or an authorised person must release a person detained under subsection (1) immediately after the person has complied with the requirements under which they were detained.

(4) Reasonable force may be used, if necessary, to detain a person under subsection (1).

(5) This section does not prevent a person:

(a) to be detained or further detained under this Act or under any other Act; or

(b) to be arrested under section 158.

(6) For the purposes of this section, unless the context otherwise requires, **detention** includes the delivery of a person to a police station or the custody of a police officer.

### **130 Detention and further detention**

(1) A person who is required to comply with a direction given under paragraph 36(1)(b) but fails to comply with that direction, may be detained by a customs officer.

(2) If a customs officer has reasonable cause to suspect that a person detained under section 127, 128 or 129 is a person to whom subsection 36(2) applies, the officer may:

(a) detain the person; or

(b) if the detention under section 127, 128 or 129 has ended or is about to end, further detain the person under this section.

(3) A customs officer may detain or further detain a person under this section only for the purposes of obtaining the attendance of, or making inquiries of, another officer who is authorised, in respect of a matter specified in section 35 to do one or all of the following:

(a) question the person;

(b) ascertain or determine a matter relating to the status of the person;

(c) detain the person;

(d) arrest the person.

(4) A person must not be detained or further detained under this section for a period exceeding:

(a) 4 hours; or

(b) if the person's detention commenced under section 128 or 129, the maximum period for which the person could, at the time of his or her detention or further detention under subsection (2), have been detained under section 128 or, as the case requires, section 129.

(5) Reasonable force may be used, if necessary, to detain or further detain a person under this section.

(6) This section does not prevent a person:

(a) to be detained or further detained under this Act or under any other Act; or

(b) being arrested under section 158.

(7) For the purposes of this section, **detention** includes the delivery of a person to a police station or into the custody of a Police officer.

### **131 Evidence of answers to questions under section 125**

(1) A person to whom this section applies must, on the request of a customs officer, produce documents that:

(a) are in the person's possession or control; and

(b) relate to the matters the person has been questioned about under section 125.

(2) If a person produces a document in response to a request under subsection (1), a customs officer may carry out any of the following:

(a) inspect the document immediately and return it to the person when the officer has finished inspecting it;

(b) inspect the document and retain it for the length of the person's detention under section 128;

(c) inspect the document and retain it for as long as necessary to ascertain whether or not the Director wishes to exercise his or her power under section 148 to retain the document;

(d) inspect the document and remove it for the purpose of making a copy under section 149;

(e) inspect the document and retain it under section 150.

### **132 Searching of persons if reasonable cause to suspect hidden items**

(1) A customs officer or an authorised person may search a person if the officer has reasonable cause to suspect that the person has hidden on or about his or her person:

(a) any dutiable, uncustomed, prohibited or forfeited goods; or

(b) evidence relating to any dutiable, uncustomed, prohibited or forfeited goods; or

(c) anything that is or might be evidence of the contravention or possible contravention of this Act.

(2) Subsection (1) applies to a person who:

(a) is on board a craft that has arrived in or that is departing from Vanuatu;  
or

(b) is in the process of disembarking from or embarking onto a craft described in paragraph (a); or

(c) having entered into Vanuatu at a port or airport remains in that port or airport.

(3) Despite subsection (2), a customs officer or authorised person may detain and search a person if the officer reasonably believes that:

(a) the person has within the past 24 hours, arrived in Vanuatu at any place other than from an appointed port or airport; or

(b) the person is about to depart from Vanuatu from any place other than from an appointed port or airport and officer has reasonable cause to believe that the person has hidden on or about his or her person anything described in paragraph (1)(a), (b) or (c).

(4) Despite subsection (1) or (3), a customs officer or authorised person may detain and search a person in a customs controlled area if the officer reasonably believes that the person has hidden on or about their person, anything described in paragraph (1)(a), (b) or (c).

(5) Reasonable force may be used if it is necessary to detain and search a person under this section.

(6) A person detained pursuant to subsection (1), (3) or (4) must be informed of his or her rights, before being searched.

(7) A person detained pursuant to subsection (1), (3) or (4) must only be searched by an officer of the same gender as the person detained.

(8) An officer may request the assistance of any person to assist him or her with the search.

(9) If a person is detained under this section and there is no suitable person available at the place where the search is to take place, the person detained may be taken to another place to be searched.

(10) An officer may seize goods found when conducting the search that the officer has reasonable cause to suspect is a thing described in paragraph (1)(a), (b) or (c).

(11) An officer may use such reasonable force as is necessary to seize any goods described in paragraph (1)(a), (b) or (c).

### **133 Access of customs officers to customs controlled area**

A customs officer may, at any time of the day or night, enter any part of a customs controlled area and examine goods in that area, and may, for that purpose, enter any other area that it is necessary to pass through.

### **134 Examination of goods subject to Customs control**

- (1) A customs officer may:
- (a) examine, weigh, analyse or test; or
  - (b) cause to be examined, weighed, analysed or tested,
- goods subject to the control of Customs.
- (2) The owner of the goods is to meet all costs involved in any examination by the Customs and must supply the labour or equipment required to enable the examination to be carried out.
- (3) Customs does not incur any liability to any damages caused during examination, unless the result of an officers negligence.
- (4) The powers conferred to a customs officer under subsection (1), extend to the examination, weighting, analysing or testing of a suitcase, pallet, bulk cargo container, or other package.
- (5) An examination made under this section, may include the following:
- (a) physical or chemical testing, or may be facilitated by any means whatever, including the drilling into, or the dismantling of, the goods; and
  - (b) be facilitated by any means such as an examination by using a dog, a chemical substance, x-ray or imaging equipment or some other mechanical, electrical or electronic device.
- (6) Samples of goods subject to the control of the Customs or suspected to be subject to the control of the Customs, may be taken and used by the Customs for the purposes of this section and are to be disposed of in the prescribed manner.
- (7) A sample taken from an examination under subsection (5) must be sufficient for the purpose for which it is taken.
- (8) A customs officer is to be allowed free access to all lands, buildings, and places, and to all goods in or on any lands, buildings, or places, for the purpose of exercising powers under this section in respect of goods that are, or are suspected to be subject to the control of the Customs.
- (9) A customs officer must not enter a private dwelling except with the consent of an occupier or owner of that dwelling or pursuant to a warrant issued under this Act.

### **135 Examination of goods no longer subject to control of Customs**

- (1) If the Director has reasonable cause to suspect that an offence has been committed under this Act in respect of goods that have ceased to be subject to the control of the Customs, the Director may demand from a person who has, or whom the Director believes has, possession or control of those goods, to produce them for inspection by a customs officer.



(2) A customs officer may exercise, in respect of the goods, all the powers conferred by section 134.

(3) A customs officer may take and retain goods produced under subsection (1), for the purposes of exercising the powers conferred by subsection (2), and may retain the goods until the investigation into the alleged offence is completed.

### **136 Accounting for goods**

The Director may from time to time by notice in writing, require the licensee of a customs controlled area to:

- (a) immediately account for goods that the Director believes have been entered into that customs controlled area; and
- (b) produce any documents relating to the movement of goods into or out of or within that customs controlled area.

### **137 Production of goods**

A customs officer may require the licensee of a customs controlled area to produce to that officer, goods that are shown in any record as being within that area.

### **138 Failure to produce or account for goods**

A person who fails or refuses to produce or account for any goods when required to do so under section 135, 136 or 137, commits an offence, punishable on conviction to a fine not exceeding VT2,000,000.

### **139 Verification of entries**

(1) The Director may require from a person making entry of goods proof by declaration or the production of documents of the correctness of the entry and may refuse to deliver the goods or pass the entry before such proof is provided.

(2) This section extends and applies to entries made for goods subject to Excise tax.

(3) If the Director is not satisfied with the correctness of an entry in relation to any goods, or with any other aspect of the importation or exportation of those goods, the Director may:

- (a) detain the goods for a period that is reasonably necessary to enable the goods to be examined; and
- (b) if necessary, make an investigation, whether in Vanuatu or elsewhere, into the importation or exportation of those goods.

### **140 Securities for payment of duty**

(1) The Director may require and take securities of such kind as may be prescribed for payment of duty.

(2) The Director may refuse to pass an entry or carry out any other act in relation to any matter in respect of which the security is required if no security is given.

(3) A security may be required in relation to

- (a) a particular transaction; or
- (b) transactions generally; or
- (c) a class of transactions,

and for such period and amount and on such conditions as to penalty or otherwise, as the Director may direct.

(4) The security is to be in such form as is approved by the Director.

#### **141 New securities may be required**

(1) If the Director is not satisfied with the sufficiency of any security, he or she may require a new security in place of or in addition to the existing security.

(2) If the new security is not given, the Director may refuse to pass an entry or carry out any other act in relation to any matter in which the new security is required.

#### **142 Written authority of agents**

(1) A customs officer may require a person acting or holding themselves out as the agent of another person in any matter relating to this Act, to produce a written authority from their principal.

(2) If the agent fails to produce a written authority, the officer may refuse to recognise the agency.

#### **143 Audit or examination of records**

(1) A customs officer may at all reasonable times, enter any premises or places where records are kept pursuant to section 80 for the purposes of auditing or examining those records either in relation to specific transactions or to the adequacy and integrity of the manual or electronic system or systems by which records are created and stored.

(2) A customs officer has full and free access to all lands, buildings and places and to all books, records and documents, whether in the custody or under the control of the licensee, importer, or exporter, or any other person, for the purpose of inspecting any books, records and documents and any property, process or matter that the officer considers:

- (a) necessary or relevant for the purpose of collecting any duty under this Act; or
- (b) necessary for the purpose of carrying out any other function lawfully conferred on the officer under this Act; or

(c) likely to provide any information otherwise required for the purposes of this Act or any of those functions.

(3) A customs officer may, make extracts from or copies of any such books, records or documents, at no cost to the Customs.

(4) A customs officer must not enter any private dwelling except with the consent of the occupier or owner of that dwelling or pursuant to a warrant issued under this Act.

#### **144 Requirement to produce documents**

(1) If a customs officer has reasonable cause to suspect that:

(a) certain goods have been unlawfully imported, exported, manufactured, undervalued, entered, removed, or otherwise unlawfully dealt with by any person contrary to this Act; or

(b) a person intends to import, export, manufacture, undervalue, enter, remove or otherwise deal with the goods, contrary to this Act,

the officer may, by notice in writing, require that person or any person whom the officer suspects to be or to have been the owner, importer, exporter or manufacturer of those goods, or their respective agent, to produce and deliver to that officer, or any other specified customs officer, any or all of the following documents provided under subsection (2).

(2) A customs officer may, pursuant to subsection (1), require any books of account, invoice-books, or other books, records or documents of account, in which any entry or memorandum appears or may be required to appear in respect of the:

(a) purchase; or

(b) importation; or

(c) exportation; or

(d) manufacture; or

(e) cost; or

(f) value of; or

(g) payment for,

the goods and any other goods so imported or exported for the goods and otherwise dealt within a period of 5 years preceding the date of the notice.

(3) Subsection (2) also applies to goods that have been seized under this Act.

(4) In addition to the requirements of subsection (2), the Director may require the owner, importer, exporter or manufacturer of those goods, or their respective agent, to:

- (a) produce any of the documents referred to in subsection (2) for the inspection by the officer or any specified customs officer, and to allow the officer to make copies of or extracts of the documents; and
- (b) answer any question concerning those documents.

#### **145 Further powers in relation to documents**

(1) The Director may, by notice in writing, require a person to:

- (a) produce for inspection by a specified customs officer, any documents or records that the Director considers necessary or relevant to an investigation or audit under this Act;
- (b) allow a customs officer to make copies of or extracts from any such documents or records;
- (c) appear before a customs officer and answer all questions concerning:
  - (i) any goods or any transactions relating to goods that are the subject of an investigation; or
  - (ii) the documents or records that are relevant to an investigation.

(2) For the purposes of this section, **a person** includes:

- (a) an officer employed in or in connection with any Government Department, Statutory Corporation, Statutory Entity, Constitutional Entity or local Government; or
- (b) an officer employed in or in connection with any financial institution or insurance company.

#### **146 Failure to comply with requisition**

A person who fails or refuses to comply with a requirement of the Director under section 144 or section 145, is guilty an offence punishable, on conviction, to a fine not exceeding VT5,000,000.

#### **147 Documents in foreign language**

(1) If a document presented to a customs officer is in a foreign language, the officer may require the person who presented the document to supply to the officer the English, French or Bislama text of the document prepared by a person approved by the officer.

(2) The translation of a document required under subsection (1) is to be made at the expense of the person who presented it.

### **148 Director may take possession of and retain documents and records**

(1) The Director may possess and retain any document or record presented to him or her in connection with any entry or required to be produced under this Act.

(2) If the Director takes possession of a document or record under subsection (1), he or she may, at the request of the person entitled to the document or record, provide that person with a copy of the document certified by or on behalf of the Director under the seal of the Department of Customs as a true copy.

(3) A certified copy is admissible as evidence in any Court as if it were the original.

### **149 Copying of documents obtained during search**

If a customs officer or an authorised person carries out any lawful search, inspection, audit, or examination under this Act, and has reasonable cause to believe that documents discovered during the search, inspection, audit, or examination, are evidence of the commission of an offence against this Act, the officer may remove the documents for the purpose of making copies.

### **150 Retention of documents and goods**

(1) If a customs officer or an authorised person conducts search, inspection, audit, or examination under this Act, and has reasonable cause to believe that any documents or goods coming into his or her possession during such search, inspection, audit or examination are:

(a) evidence of the commission of an offence under this Act; or

(b) intended to be used for the purpose of committing an offence under this Act,

the officer may, subject to subsection (4), take possession of and retain the documents or goods.

(2) If a customs officer or authorised person takes possession of a document under subsection (1), he or she may, at the request of the person entitled to the document, provide that person with a copy of the document certified by or on behalf of the Director under the seal of the Customs as a true copy.

(3) A certified copy is admissible as evidence in any Court as if it were the original.

(4) In any proceedings for an offence relating to the documents or goods possessed by an officer under this section, the Court may order, either at the hearing or on a subsequent application by the owner of the goods, that:

(a) the documents or goods be delivered to the person entitled to them; or

(b) the documents or goods be disposed of in such manner and under such conditions as the Court thinks fit.

### **151 Search warrants**

(1) A judicial officer may, issue a search warrant if the judicial officer is satisfied by information made on an application prepared by a customs officer under oath, that;

(a) there is reasonable grounds to suspect that there may be evidence of the commission of an offence against this Act or any regulations made under this Act; or

(b) there are circumstances that provide reasonable grounds to suspect that a premises, vehicle or craft is intended to be used for the purpose of committing an offence against this Act or any regulations made under this Act; or

(c) anything that is liable to seizure under this Act.

(2) In applying for a search warrant, a customs officer must, after making the necessary enquiries, disclose on the application details of any other applications for search warrants that the customs officer has knowledge of the:

(a) place or thing specified; and

(b) offence or offences alleged; and

(c) result of such application or applications.

(3) A search warrant must be:

(a) directed to and executed by a designated customs officer; or

(b) directed to customs officers generally and be executed by 1 or more customs officers.

(4) A warrant may be issued subject to such reasonable conditions specified in the warrant.

### **152 Entry and search under warrant**

(1) A search warrant must authorise the customs officer executing the warrant to:

(a) enter and search the place or thing on one occasion within 10 working days from the date the warrant is issued, and at any time that is reasonable in the circumstances, but subject to any conditions imposed by the issuer under subsection 151(4); and

(b) use such assistance as is reasonable in the circumstances; and

(c) use reasonable force to prevent the removal of anything from the premises and using force for making entry including:

(i) using force to break down doors;

(ii) using force to break open anything as is reasonable in the circumstances.

(2) In addition to searching and seizing anything referred to in subsection 151(1), a customs officer may also, whilst on the premises executing the warrant, seize any other thing that the officer finds and has reasonable cause to suspect may be evidence of the commission of an offence in respect of which that officer could have obtained a warrant under subsection 151(1).

(3) A search warrant may also authorise the officer executing it to:

(a) detain a person who:

(i) is at the place referred to in the warrant when the officer arrives at that place; or

(ii) arrives at that place when the officer is executing the warrant,

until the officer is satisfied that the person is not connected to with the matter referred to in the warrant; and

(b) search a person who:

(i) is at the place referred to in the warrant when the officer arrives at that place; or

(ii) arrives at that place referred to in the warrant while the officer is executing the warrant,

if the officer reasonably believes that the thing referred to in the warrant may be on the person's body.

(4) Reasonable force may be used, if necessary, when searching a person.

(5) A customs officer or authorised person may seize any item found when carrying out the search if the officer has reasonable cause to believe the item is referred to in the warrant, and reasonable force may be used to seize that item.

(6) A person who is requested to assist the officer executing the warrant has, for that purpose, the powers referred to in paragraph (1)(c) and subsection (2).

### **153 Search warrant to be produced**

(1) A customs officer executing a search warrant must, if requested to do so by the occupier or person in charge of the premises, produce for inspection upon initial entry and in response to any later request.

(2) A customs officer must provide a copy of a warrant when requested by or on behalf of the owner or occupier of the premises, no later than 5 working days after the request is made.

(3) Subject to subsection (4), if the owner or occupier of the place being searched or the owner of the thing being searched, is not present at the time of the search, the customs officer executing the warrant must leave in a prominent location at the place being searched or attached to the thing searched, a written notice stating the date and time of the execution of the warrant and the name of the officer in charge of the search.

(4) If the officer executing the warrant believes that a notice under subsection (3), would unduly prejudice subsequent investigations, that officer may refrain from leaving the notice and, in that event, must, within 5 working days apply to a the Court for confirmation of his or her decision.

(5) If the Court refuses to confirm the decision, the officer who executed the warrant must immediately notify the owner or occupier of the place searched or the owner of the thing searched, of the particulars referred to in subsection (3).

#### **154 Duty to inform owner where thing seized**

(1) Subject to sections 181 and 183, or unless a Court because of exceptional circumstances otherwise orders, the person executing the warrant must, within 5 days after the seizure inform:

- (a) the owner or occupier of the place searched; or
- (b) the owner of the thing searched,

that as a result of the executing the warrant certain documents or goods have been seized.

(2) The customs officer executing the warrant must inform the owner or occupier by:

- (a) delivering a written notice containing such information; or
- (b) leaving a notice in a prominent location at the place searched or attached to the thing searched, as the case may be; or
- (c) by sending such a notice to the owner or occupier by registered mail; or
- (d) in such other manner as judicial officer directs.

#### **155 Emergency warrants**

(1) A Court may, orally or in writing, grant an emergency search warrant if the Court is satisfied, on an application made by a customs officer, that circumstances exist that would justify granting a search warrant under section 151, but the urgency of the situation requires that the search should begin before a warrant could be obtained.

(2) An application for an emergency warrant may be made orally or in writing.



- (3) The customs officer making the application must, when making the application, make a note in writing of the particulars of the application.
- (4) If the Court grants an emergency warrant, it must immediately make a note in writing of the particulars of the application,
- (5) A note made under subsection (4) is to be filed in the Court Registry nearest to where the application is made, and for the purpose of subsection (1), is to be deemed to be an application under that section.
- (6) An executing officer must produce the note for inspection upon initial entry and in response to any subsequent request and, when requested, must provide a copy of the note to the owner or occupier no later than 5 working days after the request is made.
- (7) Sections 153 and 154 apply to emergency warrants in the same manner as they apply to search warrants.
- (8) An emergency warrant is valid 12 hours from the time when it is issued.
- (9) As soon as practicable after the expiration of an emergency warrant, the executing officer, must provide a written report, in the approved form, to the Judge or the Magistrate who granted the emergency warrant setting the manner in which the emergency warrant has been executed and the results obtained by the execution of the warrant.

#### **156 Use of aids by customs officer**

- (1) In exercising any power of boarding, entry, or search conferred by this Act, a customs officer or any police officer may have with them, and use for the purposes of searching, a dog, a chemical substance, or a mechanical, electrical or electronic device.
- (2) This section also applies to a search warrant carried out on residential premises except pursuant to a warrant issued under sections 151 and 155.

#### **157 Conditions applying to entry of buildings**

Despite anything in this Act, every provision of this Act that confers on a customs officer the power to enter any building, whether under the authority of a warrant or otherwise, is subject to the following conditions:

- (a) reasonable notice of the intention to enter must be given except where it would frustrate the entry;
- (b) entry must be made at a time that is reasonable in the particular circumstances except where it would frustrate the purpose of entry;
- (c) identification must be produced on initial entry and if requested at any subsequent time;
- (d) the authority for the entry and the purpose of the entry must be clearly

stated to the owner or occupier of the building, if they are present.

### **158 Arrest of offenders**

(1) A customs officer or police officer who has reasonable cause to suspect that a person has committed an offence under section 68, 160, 163, or 175, may at anytime within 5 days after the date on which such cause to suspect arises, arrest that person without warrant.

(2) Despite subsection (1), a customs officer may arrest without warrant any person found on a craft that the officer believes:

(a) has committed; or

(b) is committing; or

(c) is attempting to commit; or

(d) is otherwise involved in, abetted, or facilitated the commission of, an offence under this Act being an offence that is punishable by a term of imprisonment.

(3) If a customs officer arrests a person under a power conferred under this section, the officer must, unless is sooner released, immediately call a police officer to his or her aid and deliver the arrested person into the custody of that police officer.

### **159 Protection of persons acting under authority of Act**

(1) The Director, a customs officer or an authorised person, is not liable to an action or other proceeding for damages for or in respect to an act done or omitted to be done in good faith in the exercise or performance, or purported exercise or performance, of a power, function or duty conferred on him or her by this Act.

(2) A person is not exempted from liability under subsection (1) for any act or omission that constitutes bad faith or gross negligence on the part of that person.

## **PART 13 OFFENCES AND PENALTIES**

### **Division 1 Offences in relation to Customs**

#### **160 Threatening or resisting a customs officer**

A person who:

(a) threatens or assaults; or

(b) by force, resists or intentionally obstructs or intimidates,

any customs officer or authorised person when carrying out his or her duties, commits an offence punishable on conviction by imprisonment for a term not exceeding 2 years, or a fine not exceeding VT1,000,000, or both.

### **161 Obstructing customs officer or interfering with Customs property**

A person who:

- (a) otherwise than by force, intentionally obstructs any customs officer or authorised person in carrying out his or her duties; or
- (b) intentionally interferes with any equipment, vehicle, craft, dog, communications system, or other aid used or intended for use, by the Customs; or
- (c) acts with the intention of impairing the effectiveness of any equipment, vehicle, craft, dog, communications system, or other aid used, or intended for use, by the Customs,

commits an offence punishable on conviction by imprisonment for a term not exceeding 2 years, or a fine not exceeding VT1,000,000, or both.

### **162 Impersonating a customs officer**

A person who:

- (a) not being a customs officer or authorised person:
  - (i) by words, conduct or demeanour, pretends to be a customs officer or an authorised person; or
  - (ii) wears or uses the uniform, name, designation or description of a customs officer or authorised person; or
- (b) without authority represents any craft, vehicle or other conveyance as being in the service of the Customs,

commits an offence punishable on conviction by imprisonment for a term not exceeding 2 years, or a fine not exceeding VT1,000,000, or both..

### **163 Bribery and collusion**

(1) A person who:

- (a) offers or gives, whether directly or indirectly, to the Director, a customs officer or an authorised person, any payment or reward, whether in money or otherwise; or
- (b) proposes or enters into an agreement with the Director, a customs officer or an authorised person, in order to induce them to do, or abstain from doing, permit or conceal any act that is intended to defraud the State, or is otherwise unlawful under this Act,

commits an offence punishable on conviction by imprisonment for a term not exceeding 10 years, or a fine not exceeding VT10,000,000, or both.

(2) If the Director, a customs officer or an authorised person:

(a) asks for or takes, whether directly or indirectly, any payment or reward, whether in money or otherwise, that is not a payment or reward that he or she is lawfully entitled to receive; or

(b) proposes or enters into any agreement, to do, or refrain from doing, permit or conceal any act to defraud or attempt to defraud the State, or which is otherwise unlawful under this Act or any other law;

he or she commits an offence punishable on conviction by imprisonment for a term not exceeding 10 years, or a fine not exceeding VT10,000,000, or both.

#### **164 Disclosure of information**

A customs officer or authorised person who directly or indirectly discloses to any person any protected information without authority commits an offence punishable on conviction by imprisonment for a term not exceeding 5 years, or a fine not exceeding VT5,000,000, or both.

#### **165 Counterfeit seals or marks**

A person who:

(a) without lawful authority or excuse, has in his or her possession, or makes, or uses any counterfeit, seal, stamp or mark; or

(b) has in his or her possession, or makes, or uses any seal, stamp or mark closely resembling any seal, stamp or mark used by the Customs for the purposes of this Act,

commits an offence punishable on conviction to a fine not exceeding VT3,000,000.

#### **166 Failure to answer questions**

A person who, when required under this Act to answer any question:

(a) without reasonable excuse, fails or refuses to answer the question; or

(b) knowingly gives a false answer,

commits an offence punishable, on conviction to a fine not exceeding VT100,000.

### **Division 2 Other offences**

#### **167 Adapting craft for smuggling**

(1) If any craft enters into or is found within Vanuatu having:

(a) any part or place adapted for the purpose of concealing goods or persons; or

(b) any hole, pipe or device adapted for the purpose of concealing goods or persons,

the Master and the owner of the craft each commit an offence.

(2) A person who commits an offence against this section is liable on conviction to a fine not exceeding VT10,000,000.

### **168 Interference with seals and fastenings**

(1) If any fastening, lock, mark or seal that has been placed by a customs officer on any goods or on a hatchway, opening or other place or device on any craft is, removed without the authority by a person while the craft is within Vanuatu, the person so acting and the Master of the craft each commits an offence.

(2) A person who commits an offence against this section is liable on conviction to imprisonment of not exceeding 6 months or a fine not exceeding VT5,000,000 or both.

### **169 Offences in relation to documents or statements**

A person who:

- (a) makes a false declaration or written statement; or
- (b) produces or delivers to a customs officer, a false or forged document or statement; or
- (c) produces or delivers to a customs officer a document or statement that is incorrect in any material particular,

commits an offence punishable on conviction to a fine not exceeding VT100,000.

### **170 Offences in relation to declarations**

A person who:

- (a) makes a false declaration under this Act; or
- (b) knowingly produces or delivers to a customs officer a false or forged declaration; or
- (c) knowingly produces or delivers to a customs officer a declaration that is incorrect in any material particular,

commits an offence punishable, on conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding VT5,000,000, or both.

### **171 Possession of incomplete documents**

A person who, without lawful authority or excuse,

- (a) has in his or her possession; or
- (b) brings into Vanuatu,

any uncompleted document or form capable of being used for any purpose under this Act if the document is signed or certified or bears any such mark or inscription to indicate that it is correct or authentic, commits an offence punishable on conviction to a fine not exceeding VT5,000,000.

### **172 Offences in relation to use of goods**

If, goods entered for a particular purpose or under any condition imposed by the Director under this Act or the Import Duties (Consolidation) Act [CAP 91], are exempt from duty and taxes or liable to a lower rate of duty, any person who knowingly:

- (a) uses or deals with those goods for a purpose other than that for which they have been so entered; or
- (b) fails to comply with a condition imposed by the Director in respect of the goods so entered,

commits an offence punishable on conviction to a fine not exceeding an amount equal to 3 times the amount of the duty that would have been payable if the goods had been entered otherwise than under the provision under which they were entered, or a fine not exceeding VT500,000, whichever sum is the greater.

### **173 Provisions relating to offences against section 82 and sections 168 to 171**

For the purposes of this Act:

- (a) a declaration, invoice, certificate, written statement or other document required or authorised under this Act to be made or produced by a person making an entry, is deemed to form part of that entry;
- (b) an amendment of an entry is deemed to form part of that entry, but does not relieve a person from liability to a penalty or to seizure of goods or criminal liability incurred in respect of the entry before its amendment.

### **174 Defrauding the revenue of Customs**

(1) A person who does not act or omits to do any act for the purpose of:

- (a) evading or enabling any other to evade, payment of duty or full duty on goods; or
- (b) obtaining or enabling any other person to obtain, money by way of drawback or a refund of duty on goods to which that person or that other person is not entitled under this Act; or
- (c) conspiring with any other person (whether that other person is in Vanuatu or not) to defrauding in any other manner the revenue of the Customs in relation to goods,

commits an offence punishable on conviction to imprisonment for a term not exceeding 5 years or to a fine not exceeding VT10,000,000 or both.

### **175 Possession, purchases and disposals of uncustomed goods**

A person who knowingly, purchases, sells or exchanges, or has in his or her possession, any uncustomed goods, commits an offence punishable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding VT 10,000,000.

## **Division 3 Miscellaneous provisions relating to offences**

### **176 Liability of officers of corporations**

(1) For the purposes of this section, **corporation** includes a company, trust, partnership or any other enterprises including co-operatives or charitable organisations.

(2) If a corporation commits an offence against any provision of this Act, every director, manager, secretary, officer or agent of the corporation and every person purporting to act in any such capacity who participated in, directed, authorised acquiesced in, or assented to the act or omission constituting the offence also commits an offence against that provision.

(3) A person who commits an offence as provided in subsection (2) is liable on conviction to the penalty imposed by this Act for that offence.

### **177 Liability of principal and agent**

(1) A declaration made or other act made by an agent in the course of his or her agency in relation to the report, entry or clearance of any craft or goods or any other matter under this Act, is deemed also to have been made or done by the agent's principal, and the principal is liable to the penalties imposed by this Act.

(2) For the purposes of this section, the knowledge or intent of the agent is imputed to the principal in addition to the principal's own knowledge or intent.

(3) For the purposes of this section:

- (a) an employee of the agent; or
- (b) a person performing any function of or for the agent; or
- (c) a person acting under the instruction of the agent;

is deemed to be the agent of the principal.

(4) If any person acts or purports to act as the agent of any other person in relation to the report, entry, or clearance of any craft, or goods or any other matter under this Act, that person is liable to the same penalties as if he or she were the principal for whom he or she so acts or purports to act.

### **178 Attempts**

An attempt to commit an offence against this Act is punishable in the same manner and gives rise to the same cause for seizure as if the offence had been committed.

## **PART 14 FORFEITURE AND SEIZURE**

### **Division 1 General**

#### **179 Application of this Part**

This Part applies to all forfeitures that occur under this Act.

#### **180 Goods forfeited**

(1) The following goods are to be forfeited to the State:

(a) goods in respect of which an officer has reasonable cause to suspect an offence has been committed under:

(i) section 165 (which relates to counterfeit seals or marks);

(ii) section 55 (which relates to offences in relation to entries);

(iii) section 169 (which relates to offences in relation to declarations and documents);

(iv) section 68 (which relates to offences in relation to importation or exportation of prohibited goods);

(v) section 64 (which relates to offences in relation to exportation of goods);

(vi) section 174 (which relates to defrauding the revenue of Customs);

(vii) section 175 (which relates to possession or custody of uncustomed goods or prohibited imports);

(viii) section 69 possession, purchase and disposal of prohibited imports;

(b) goods dealt with in contravention of section 49, 52, or 58;

(c) dutiable or prohibited goods found in the possession of any person who, when questioned under section 126 or 128, denied or failed to disclose the possession of those goods;

(d) dutiable or prohibited goods found in the course of a search pursuant to section 123 or 132;

(e) goods in respect of which an erroneous statement, declaration, certificate or claim as to the country of which the goods are the produced or manufactured has been made or produced to any customs officer;

(f) dutiable or prohibited goods found on or in any craft, bulk cargo



container, or pallet or a similar device that is unlawfully in any place;

(g) dutiable or prohibited goods found on or in any craft, bulk cargo container, or pallet or a similar device after arrival in any port or airport, being goods that are not specified or referred to in the inward report or baggage belonging to the crew or passengers and not being accounted for to the satisfaction of a customs officer;

(h) dutiable or prohibited goods found concealed in or on any craft, vehicle, bulk cargo container, pallet or a similar device, or any other thing;

(i) goods in any package where those goods are not fully accounted for in the entry or declaration relating to that package;

(j) dutiable goods or prohibited goods found so packed as to be likely to deceive the customs officer;

(k) uncustomed goods that are found in any place;

(l) goods imported into Vanuatu that have been acquired in a country outside Vanuatu, whether by the importer or some other person, by an act which, if done in Vanuatu would have amounted to an offence under this Act or any other Act;

(m) all goods unlawfully exported or attempted to be exported;

(n) all goods that have been unlawfully imported into Vanuatu;

(2) For the purposes of paragraph (1)(m), goods that are prohibited to be exported under this Act are deemed to have been exported as soon as they are placed in or on any craft for exportation.

(3) The forfeiture of goods extends to the forfeiture of the case, covering, or other enclosure, not being a bulk cargo container, pallet or a similar device, in or on which the goods are contained at the time of seizure, importation, or exportation.

(4) Despite subsection (3), forfeiture of goods extends to the forfeiture of a bulk cargo container, pallet or a similar device where that bulk cargo container, pallet or other similar device has been adapted for the purpose of concealing goods.

(5) The craft, vehicle, or any other thing, including any machinery or equipment on or in the craft or vehicle or thing, or any animal that is being or has been used for the carriage, handling, deposit or concealment of any goods referred to in subsection (1), whether on or after the time of the alleged offence in relation to those goods, is also to be forfeited to the State.

### **181 Procedure for seizure**

(1) A customs officer or any authorised person may seize any forfeited goods or any goods that he or she has reasonable cause to suspect are forfeited.

- (2) Goods may be seized as forfeited whenever the goods are found within Vanuatu.
- (3) Forfeited goods, other than prohibited goods, may be seized at any time within 2 years after the forfeiture has arisen.
- (4) Goods that are forfeited because they are prohibited goods may be seized at any time after the forfeiture has arisen.
- (5) A customs officer or any authorised person may use such force as is necessary for seizing and securing the goods.
- (6) Except as provided in subsections (7) and (8), all goods seized must be taken to and detained in a secure location as directed by a customs officer.
- (7) If goods including any craft, vehicle or animal, have been seized under this section, a customs officer may leave those goods in the custody of either:
- (a) the person from whom the goods have been seized; or
  - (b) any other person authorised by the customs officer, who consents to have custody of the goods.
- (8) A person who has the custody of goods under subsection (7) must hold them in safekeeping, without charge to the State and in accordance with any reasonable conditions that may be imposed by the Customs, until a final decision is made as to whether or not they are to remain forfeit, and must:
- (a) make the goods available to a customs officer on request;
  - (b) not alter or dispose of, or remove the goods from Vanuatu unless he or she is authorised to do so by a customs officer; and
  - (c) return the goods on demand, to the custody of the Customs.

### **182 Notice of seizure**

(1) If goods are seized under section 181, Customs must, as soon as practicable, give notice in writing to any person known or believed to have an interest in the goods or if that person is overseas, to his or her agent in Vanuatu, of the seizure and the reasons for the seizure, in the approved form.

(2) A seizure is not invalidated or unlawful by reason of any failure to give such notice if reasonable steps were taken to give the notice.

### **183 Forfeiture to relate back**

If pursuant to section 180, goods are forfeited and subsequently seized, the forfeiture relates back to the date of the act or event from which the forfeiture arose.

### **184 Delivery of goods seized on payment of deposit**

(1) The Director may, at any time before the condemnation of goods that have been forfeited and seized, deliver the goods to the owner or the person from whom they were seized, if that person pays to the Customs, a deposit of the sum equal to the Customs value of the goods.

(2) The money paid under subsection (1) is deemed to be substituted for goods seized, and all the provisions of this Part so far as they are applicable extend and apply to the money accordingly.

### **185 Sale of certain seized goods**

(1) The Director may authorise the sale certain seized goods before its condemnation if that seized goods is:

(a) a living creature; or

(b) anything that, in the opinion of the Director , is of a perishable nature; or

(c) anything that, in the opinion of the Director , is likely to deteriorate or diminish in value by keeping; or

(d) anything that, in the opinion of the Director , it is desirable to sell has been seized as forfeited.

(2) The net proceeds of sale are deemed to be substituted for the thing sold, and all the provisions of this Part so far as they are applicable extend and apply to those proceeds accordingly.

### **186 Offences in relation to seized goods**

(1) A person who, having custody of goods pursuant to section 184, acts in breach of subsection 181(8), commits an offence punishable on conviction to a fine not exceeding VT1,000,000.

(2) A person who, without the permission of the Director:

(a) takes or carries away; or

(b) otherwise converts to their own use,

goods including any vehicle or craft, that has been seized as forfeited, commits an offence punishable on conviction to imprisonment for a term not exceeding 2 years, or to a fine of VT10,000,000 or to an amount equal to 3 times the value of the goods to which the offence relates, whichever is the lesser.

## **Division 2 Appeals against seizure**

### **187 Application for order disallowing seizure**

(1) A person claiming an interest in goods forfeited and seized under this Part may, within 20 days after the date on which a notice is given to that person under section 182, apply to the Court for an order that the seizure be disallowed and the

goods restored to the owner.

(2) If an application under subsection (1) is not made within the 20 days, the goods are to be condemned to the State.

### **188 Court may disallow or dismiss application**

(1) If an application is made under section 187, the Court may either dismiss the application or make an order that the seizure be disallowed and the goods returned.

(2) If the Court makes an order dismissing the application, that order is deemed to be an order for condemnation of the goods to the State.

(3) An order that the seizure of the goods be disallowed is not to be made if the Court is of the opinion that the goods or any of them are required to be produced in evidence in any proceedings pending under this Act.

## **Division 3 General provisions as to forfeiture**

### **189 Condemnation of seized goods on conviction**

(1) Subject to subsection (2), if this Act provides that on the commission of any offence any goods are to be forfeited, the conviction of any person for that offence has effect as a condemnation, without suit or judgment, of any goods that have been seized in accordance with this Act and:

(a) in respect of which the offence was committed; or

(b) which were forfeited under any of subsections 180(3), (4) or (5).

(2) If the Court imposes a sentence on any person on the conviction of that person for an offence to which subsection (1) applies, the Court may, if it thinks fit, order the restoration of the goods forfeited to the person from whom the goods were seized and, where such an order is made, the conviction does not have effect as a condemnation of those goods.

(3) Subsection (2) does not apply where the goods have, before the conviction, been sold, or restored to the person from whom they were seized, or otherwise disposed of by the Director under any other provision of this Act.

### **190 Property in goods**

(1) The State has the property in forfeited goods or in any deposit made under section 184 or in the proceeds of sale under section 185.

(2) The goods may be sold, used, destroyed, or otherwise disposed of after their condemnation as the Director may direct.

## **PART 15 EVIDENCE**

### **191 Burden of proof**

(1) In any proceedings under this Act instituted by or on behalf of the State (other

than a prosecution for an indictable offence), an allegation made on behalf of the State in any statement of claim, plea or information relating to:

- (a) the identify or nature of any goods; or
- (b) the value of any goods for duty; or
- (c) the country or time of exportation of any goods; or
- (d) the fact or time of the importation of any goods; or
- (e) the place of manufacture, production or origin of any goods; or
- (f) the payment of any duty on goods,

is presumed to be true unless the contrary is proved.

(2) The presumption in subsection (1) is not be excluded by the fact that evidence is produced on behalf of the State in support of any such allegation.

(3) The provisions of this section extends and applies to proceedings in which the existence of an intent to defraud the revenue of the State is in issue.

(4) Despite this section, in any proceedings for an offence against this Act where it is alleged that the defendant intended to commit the offence, the prosecution has the burden of proving that intent beyond reasonable doubt.

#### **192 Documents made overseas**

In any proceedings under this Act, the Court may admit in evidence as proof of any fact in issue, a document made in a country outside Vanuatu.

#### **193 Customs record of computer transmission admissible in evidence**

In any proceedings under this Act, a computer printout of an extract of a record kept by the Customs under section 112, certified by or on behalf of the Director under the seal of the Customs as a true copy, is admissible in all Courts as evidence of the electronic message received by or sent to the Customs set out in that printout, unless the contrary is proved.

#### **194 Presumption of authenticity of documents**

In any proceeding under this Act, any document purporting to be signed by or on behalf of the Director or to be sealed with the seal of the Customs, is presumed to have been signed or sealed with the due authority, unless the contrary is proved.

### **PART 16 CUSTOMS APPEAL TRIBUNAL**

#### **195 Appeal against the decisions of the Director**

(1) A person not satisfied with a decision of the Director relating to:

- (a) the liability of goods to duty; or

- (b) the amount or rate of Customs duty on any goods; or
- (c) the issue, suspension or revocation of any license issued under this Act;  
or
- (d) the assessment of Customs valuation; or
- (e) the deferment of any duty paid; or
- (f) the imposition of administrative penalties under this Act,

may within 30 days of receiving the decision, appeal to Customs Appeal Tribunal.

(2) To avoid doubt, subsection (1) does not apply to a decision made in relation to the forfeiture or seizure of goods.

### **196 Establishment of Customs Appeal Tribunal**

(1) The Customs Appeal Tribunal is established.

(2) The Tribunal may be given such distinctive designation as the Minister responsible for Customs determines.

(3) The Tribunal consists of 3 members appointed by the Minister.

(4) Subject to subsections (5) and (6), a person may be appointed as a member of the Tribunal only if the person has special knowledge, experience or skills relevant to the functions of the Tribunal.

(5) The following person is not eligible to be appointed as a member of the Tribunal:

- (a) a customs officer or a officer of the Department of Customs and Inland Revenue;
- (b) a licensed Customs broker;
- (c) a person convicted of a Customs or criminal offence;
- (d) an undischarged bankrupt.

(6) A member of the Tribunal is appointed for a period 2 years and is eligible for reappointment.

(7) A member of the Tribunal holds office on such terms and conditions as the Minister determines.

(8) A member may at any time be suspended or removed from the Tribunal by the Minister on any of the following grounds:

- (a) inability to perform the functions of the office;

- (b) bankruptcy;
- (c) neglect of duty;
- (d) misconduct.

(9) A member may resign by giving 21 days notice to the Minister.

### **197 Tribunal not personally liable**

A person appointed to the Tribunal is not liable to an action or other proceeding for damages for or in respect to an act done or omitted to be done in good faith in the exercise or performance, or purported exercise or performance, of a power, function or duty conferred on him or her by this Act.

### **198 Procedure**

(1) The Tribunal may make rules, not inconsistent with this Act, to regulate its proceedings.

(2) Proceedings before the Tribunal is to commence by the lodging of an application in the prescribed form, together with the prescribed fee with the Tribunal.

(3) If an applicant is successful in his or her appeal under this Part, then that applicant is entitled to the refund of his or her lodgement fee as provided for in subsection (2).

### **199 Nature of appeal**

If a person is entitled to appeal to a Tribunal within a specified time, the Tribunal may, on an application made within the specified time, extend the time within which the appeal may be brought.

### **200 Hearing**

(1) At a hearing of an appeal before the Tribunal the appellant and the Director may call evidence and must be given the opportunity to be heard either in person or by a person authorised by them.

(2) If the appellant or the Director or both fail to appear before the Tribunal at the time and place appointed, the Tribunal may proceed to determine the appeal.

(3) Despite subsections (1) and (2), the Tribunal may, if it thinks fit and if both parties consent, can sight an appeal without an aural hearing.

### **201 The Tribunal may dismiss frivolous or vexatious appeal**

The Tribunal may at any time dismiss an appeal if it is satisfied that the appeal is frivolous or vexatious.

### **202 Decision of the Tribunal**

The decision of the Tribunal is to be given to the appellant and the Director in writing along with a statement of the Tribunal's reasons for the decision.

### **203 Power to award costs**

The Tribunal may order a party to pay to the other party such costs and expenses as it considers reasonable, and may apportion any such costs between the parties or any of them in such manner as it thinks fit.

### **204 Offences in relation to Customs Appeal Tribunal**

A person who, with intent to deceive, makes a false or misleading statement or a material omission in any information given to the Customs Appeal Tribunal, commits an offence punishable on conviction to a fine not exceeding VT1,500,000.

## **PART 17 MISCELLANEOUS**

### **Division 1 Customs Brokers**

#### **205 Grant or refusal of Licence**

(1) A person who wishes to be a licensed Customs broker is to apply in writing to the Director in the prescribed form, accompanied by the prescribed fee.

(2) The Director may:

- (a) grant the license subject to any conditions the Director deems fit to impose; or
- (b) refuse to grant a licence if the Director is satisfied that the applicant is not capable of complying with the licence conditions.

(3) The Director must give notice in writing to the applicant of the Director's decision and if the application is refused, the reason for refusal.

#### **206 Revocation or suspension of licence**

If at any time the Director is satisfied that a licensed Customs broker has:

- (a) contravened a term, condition or restriction specified in the licence; or
- (b) ceased to operate as an agent on behalf of owners; or
- (c) been convicted of an offence under this Act; or
- (d) been considered by the Director not to be a fit and proper person to hold a licence; or
- (e) failed to pay the prescribed annual fee due; or
- (f) made entries materially incorrect as provided under subsection 104(2),

the Director may cancel the licence by providing a notice in writing of the decision and the reasons for cancellation of the licence.



### **207 Authorised Agents**

- (1) The owner of any goods, other than goods of a personal private nature or goods not imported for commercial purposes, is to comply with this Act by or through a lawfully authorised agent.
- (2) To avoid doubt, an authorised agent is a licensed Customs broker.
- (3) A Customs broker is to obtain from the owner of the goods, a written document authorising that broker to act on behalf of the owner in respect to those goods.
- (4) An authority granted by an owner under subsection (3), may be for a particular shipment or shipments or for a period not exceeding 5 years.

### **208 Production of Authority**

- (1) If a person:
  - (a) is authorised by the owner to act as the authorised agent under subsection 207(3); or
  - (b) represents or passes him or herself, or acts as a broker,

he or she is deemed to be the owner of the goods and personally liable for any duties or taxes chargeable or any penalties recoverable under this Act in the same manner and to the same extent as if he or she were the owner.

- (2) Subsection (1) does not relieve an owner from personal liability.

### **209 Liability of the owner for actions of a broker**

A declaration authorised by this Act that is made by a broker, is deemed to be made with the knowledge and consent of the owner, so that in a criminal proceeding in respect of a declaration made by the broker, the owner is liable as if they had made the declaration themselves.

### **210 Unlawfully acting as Customs broker**

- (1) A Customs broker or any of his or her employee or any person acting under the instructions of a Customs broker who acts as the agent of the owner of any goods without written authorisation of the owner, commits an offence.
- (2) A person not licensed as a Customs broker under this Act who assumes or uses in connection with a trade, business, calling or profession that would give reasonable cause to believe that it is operated under such a licence, commits an offence.
- (3) A person who commits an offence against subsection (1) or (2) is liable upon conviction to a fine not exceeding VT1,000,000.

## **Division 2 Securities**

### **211 Requirement of security**

(1) Customs may:

- (a) take securities for compliance with Customs laws and generally for the protection of the public revenue; and
- (b) allow a Customs security to be provided by a bond, guarantee, or cash or by a combination of these: and
- (c) impose such conditions as is deemed necessary.

(2) Goods subject to a Customs security are not to be released from Customs control until the security is provided.

### **212 Amount of security**

If the Director is not satisfied with the sufficiency of a security, he or she may at any time, require additional security to be given.

### **213 Validity of security**

(1) A Customs security is valid for a period of 1 year and may be renewed.

(2) If a security is not renewed on the date of its expiry, the Director may cancel the security.

(3) A customs security may be forfeited if any condition imposed on it is not complied with by a person.

## **Division 3 Declaration, Regulations and Rules**

### **214 Declarations under this Act**

A declaration (including a declaration that is made and transmitted electronically), that is required or authorised under this Act must be made in the approved form.

### **215 Regulations**

(1) The Minister may make regulations for the better carrying out of the provisions of this Act.

(2) Without limiting subsection (1), regulations may be made for and in relation to the following matters:

- (a) the appointment of ports and airports;
- (b) the prohibition of the importation or exportation of goods;
- (c) the normal working days and hours of Customs;
- (d) the fees and charges for the services of customs officers;
- (e) the fees and charges for licenses issued under this Act.

(3) A Regulation may prescribe penalties not exceeding VT1 million or a term of

imprisonment of not more than 1 year, or both for offences against the regulations.

#### **216 Customs prohibited imports and exports regulations**

For the purposes of paragraphs 65(1)(a) and 66(1), the Minister may only make regulations to add items to the Customs (Prohibited Imports) or the Customs (Prohibited Exports) regulations.

#### **217 Rules for specific purposes**

(1) The Director may make rules for the administration of this Act, including prescribing forms, applications, licences and the manner in which goods may be treated.

(2) A rule made under this section must be signed by the Director.

(3) The power of the Director to make rules under this section must not be delegated to any other person.

(4) A rule made by the Director is to be published in the Gazette and commences on the day on which it is published in the Gazette.

(5) The Director may amend or revoke any rules made under subsection (1).

### **Division 4 Repeal and Savings**

#### **218 Repeal**

(1) The Customs Act [CAP 257] is repealed.

(2) Any rules or regulations made under the Customs Act [CAP 257] are repealed.

#### **219 Savings**

(1) All appointments made under the Customs Act [CAP 257] on or before the commencement of this Act are taken to be appointments made under this Act.

(2) A reference in any other Act or instrument to the Customs Act [CAP 257] is taken to be a reference to this Act.

#### **220 Commencement**

This Act commences on the date on which it is published in the Gazette.

**REPUBLIC OF VANUATU  
CUSTOMS (AMENDMENT) ACT NO. 23 OF 2014**

**Arrangement of Sections**

- 1 Amendment**
- 2 Commencement**

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**REPUBLIC OF VANUATU**

**Assent: 17/06/2014  
Commencement: 17/06/2014  
CUSTOMS (AMENDMENT) ACT NO. 23 OF 2014**

An Act to amend the Customs Act No. 7 of 2013.  
Be it enacted by the President and Parliament as follows-

**1 Amendment**

The Customs Act No. 7 of 2013 is amended as set out in the Schedule.

**2 Commencement**

This Act commences on the day on which it is published in the Gazette.

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**SCHEDULE  
AMENDMENTS OF CUSTOMS ACT NO. 7 OF 2013**

**1 Section 1 – Definition of customs broker**

Repeal the definition, substitute

“**customs broker** means a person licensed under section 205 to facilitate the clearance of goods through Customs for an importer or exporter, and includes a principal broker;”

**2 Paragraph 30(2)(b)**

Delete “31”, substitute “32”

**3 After subsection 42(2)**

Insert

“(3) A person who contravenes subsection (1) or (2), commits an offence punishable on conviction to a fine not exceeding VT3,000,000, or to

imprisonment for a term of not more than 2 years, or both.”

**4 Section 128 (Heading)**

Delete “107”, substitute “125”

**5 Section 206 (Heading)**

Repeal the heading, substitute “Cancellation of license”

**6 Paragraph 206(e)**

Delete “; or”, substitute “,”

**7 Paragraph 206(f)**

Repeal the paragraph.

**8 After section 206**

Insert

**“206A Suspension of license**

If a customs broker is found to have made entries where a particular contained in that entry is materially incorrect on more than 3 consecutive occasions, as provided under subsection 104(2), the Director may suspend that broker’s license for a period of not more than 1 year.

**206B Principal broker**

(1) A licensed customs broker who wishes to be a principal broker is to apply in writing to the Director in the prescribed form accompanied with the prescribed fee.

(2) The Director may:

(a) grant the license subject to any conditions the Director deems fit to impose; or

(b) refuse to grant a licence if the Director is satisfied that the applicant is not capable of complying with the licence conditions.

(3) The Director must notify the applicant, in writing, of his or her decision and if the application is refused, the reason for the refusal.

(4) The Director may cancel a license issued under this section if:

(a) that person’s license as a customs broker has been cancelled under section 206; or

(b) the person has contravened a term, condition or restriction

specified in the license; or

(c) the prescribed fee has not been paid; or

(d) the person has failed to comply with any requirements prescribed in the Regulations.

(5) The Director may suspend a principal brokers license if, that person's license as a customs broker has been suspended under section 206A.

(6) To avoid doubt, a decision by the Director to:

(a) refuse to grant a license under subsection (3); or

(b) cancel or suspend a license under paragraph (4)(b), (c), or (d),

does not affect the validity of that person's customs brokers license issued under section 205.

(7) For the purposes of this section unless the context otherwise requires, a "**principal customs broker** means a licensed customs broker who lodges customs declarations for the importation or exportation of goods on behalf of another person;

#### **206C Corporate importer or exporter's licence**

(1) A person who intends to be a corporate importer or exporter is to apply in writing to the Director in the prescribed form accompanied with the prescribed fee.

(2) The Director may:

(a) grant the license subject to any conditions the Director deems fit to impose; or

(b) refuse to grant a licence if the Director is satisfied that the applicant is not capable of complying with the licence conditions.

(3) The Director must give notice in writing to the applicant of his or her decision and if the application is refused, the reason for refusal.

(4) The Director may cancel a license issued under this section if:

(a) the person has contravened a term, condition or restriction specified in the license; or

(b) the prescribed fee has not been paid; or

(c) the person has failed to comply with any requirements prescribed in the Regulations.

(5) For the purposes of this section, unless the context otherwise  
“**corporate importer** or **corporate exporter** means a corporate entity that lodges customs declarations for any goods that are the property of that corporate entity and employs a licensed customs broker for this purpose; ”

**9 After paragraph 215(2)(d)**

Insert

“(dA) requirements for applying for a customs brokers license or a principal brokers license; or

(dB) prescribe licensing requirements and conditions for corporate importers or exporters; or”