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CHAPTER 257

CUSTOMS

Act 15 of 1999
Act 15 of 2003

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CUSTOMS

An Act to provide for the management, regulation and control of customs.

PART 1 – PRELIMINARY PROVISIONS

1. Interpretation

In this Act, unless the contrary intention appears:

“agent”, in relation to the master, commander or owner of a ship or an aircraft, includes a person who notifies the Director in writing that he or she is entitled to act as that person’s agent for the purposes of this Act;

“aircraft” includes balloons, gliders, airships and other flying machines and any other means of aerial locomotion;

“airport” means any airport appointed under section 10;

“bonded warehouse” means a place approved under section 41 to be used for warehousing goods;

“cargo” includes all goods imported or exported in any aircraft or ship other than the goods that are required as stores for consumption or use by or for that aircraft or ship, its crew or passengers, and also includes the personal accompanied baggage of the passengers;

“commander”, in relation to an aircraft, includes any person having or taking the charge or command of the aircraft;

“court” means a court of competent jurisdiction;

“crew” includes any person (except the master or commander) employed or engaged in any capacity on board any ship or aircraft;

“Customs” means the Department of Customs;

“Customs controlled area” means any area, place or building approved under section 11;

“Customs computer system” means any computerised system established under section 80;

“customs laws” includes this Act and any other Act or subordinate legislation relating to customs;

“Customs officer” means a Customs officer referred to in section 5;

“days” does not include Saturday, Sunday or public holidays;

“declaration” includes a declaration in electronic form, whether or not signed or initialled or authenticated;

“Director” means the Director of Customs referred to in section 3;

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

“duty” means any duty leviable under any customs laws, and includes any special duty or surcharge;

“export” means to take, or cause to be taken, out of Vanuatu;

“exporter” means any person who exports goods from Vanuatu and includes the owner of the goods and any person acting on his or her behalf;

“goods” includes:

(a) ships and aircraft ; and

(b) all kinds of movable personal property;

“identifier” means the unique identifier allocated by the Director under section 91 to a registered user of the Customs computer system;

“import” means to bring, or cause to be brought, into Vanuatu;

“importer” means any person who imports goods into Vanuatu and includes the owner of the goods or his or her agent, or any other person having a beneficial interest in any goods between the time of the importation of the goods and the release of those goods from Customs control;

“master”, in relation to a ship, means the person in charge or in command of the ship, but does not include a person appointed to bring ships into or out of a port;

“Minister” means the Minister responsible for Customs;

“name” includes the registration mark or number of a ship or aircraft;

“officer” includes any person authorised by the Director to carry out or assist to carry out the provisions of this Act or any other Act relating to customs;

“owner”, in relation to a ship or an aircraft, includes the master or commander or other responsible officer of that ship or aircraft and any person acting as an agent for the owner;

“passenger” means a person carried on any ship or aircraft entering or departing from Vanuatu, whether or not paying a fee for the carriage, other than the master of the ship or the commander of the aircraft and members of the crew;

“port” means any port appointed under section 10;

“prescribed” means prescribed by regulations made under this Act;

“prohibited goods” means goods that are prohibited from being exported or imported by or under this Act or any other Act;

“records” means all papers, books, registers, computer or electronic files, tapes, discs, films, videos, sound tracks or any other devices in which information is recorded or stored;

“registered user” in relation to the Customs computer system means a person registered as a user under this Act;

“restricted goods” means goods the importation or exportation of which is restricted by or under this Act or any other Act;

“search of a person” includes a search of all clothing worn by a person and, if required, the removal of all the clothing and the viewing of a person unclothed, but does not include a search involving an internal examination of his or her body;

“ship” includes a ship, hovercraft, vessel or boat of any kind whatsoever, whether propelled by engine or otherwise or towed;

“stores”, in relation to a ship or an aircraft, includes any goods carried on or taken on board the ship or aircraft that are for use on board the ship or aircraft by its crew or passengers;

“tax” means any tax imposed under any Act or law;

“tranship” means to transfer, either directly or indirectly, any goods from a ship or aircraft arriving in Vanuatu from outside Vanuatu to a ship or aircraft departing from Vanuatu;

“transit shed” means a building approved under section 11 for the deposit of goods subject to Customs control;

“uncustomed goods” includes goods on which a declaration has not been made, dutiable goods on which the full duty has not been paid, and any goods, whether dutiable or not,

which are imported or exported or in any way dealt with contrary to the provisions of customs laws;

“value”, in respect of any penalty under this Act and based upon the value of goods, means the duty paid value of such goods at the time and place of the commission of the offence by which the penalty is incurred.

PART 2 – ADMINISTRATION

2. Customs Department

- (1) The Department of the Government known as the Customs Department that is in existence on the commencement of this Act continues in existence on and after that commencement.
- (2) The Department is responsible for administering this Act.

3. Director of Customs

- (1) Subject to subsection (2), the Public Service Commission is to appoint the Director of Customs in accordance with the Public Service Act [Cap. 246].
- (2) The person holding the office of the Director of Customs on the commencement of this Act continues as the Director, on and after that commencement, on the same terms and conditions of service.
- (3) The Director is responsible for the administration and efficient working of Customs.
- (4) The Minister may give general or special directions to the Director in relation to the administration of this Act that are not inconsistent with the provisions of the customs laws.

4. Director's powers

Without limiting section 3(3), the Director may, in writing, approve any matter relating to the administration of this Act including:

- (a) the approval of Customs controlled areas;
- (b) the form and manner of reports to be lodged by ships or aircraft;
- (c) the form and manner of Customs declarations and the supporting documents required, and the time of lodgement of the declarations;
- (d) the place and time of Customs examinations;
- (e) claims for duty refunds due to damage or short shipment or other causes;
- (f) requests for the opening or repacking of goods under Customs control;
- (g) the form and manner of release of goods from Customs control;
- (h) requests for transshipments or inter port removals;
- (i) any other matter relating to the administration of Customs requiring the approval or permission of the Director under this Act.

5. Customs officers and others

- (1) The Public Service Commission is to appoint persons to be Customs officers in accordance with the Public Service Act [Cap. 246].
- (2) A Customs officer must act under the direction of the Director.
- (3) If a person holds a position as a Customs officer on the commencement of this Act, the person is to continue as a Customs Officer, on and after that commencement, on the same terms and conditions of service.

- (4) Any other person who holds a position in the Customs Department on the commencement of this Act is to continue in that position, on and after that commencement, on the same terms and conditions of service.

6. Delegation by Director

- (1) The Director may, in writing, delegate to a Customs officer or any other officer any of his or her powers or functions under the Act, other than this 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) A delegation does not prevent the Director from exercising the power or function that he or she has delegated.

7. Assistance by the police

- (1) A Customs officer may request a police officer to assist him or her in the performance of a function or the exercise of a power.
- (2) A police officer must, if requested by a Customs officer, assist the Customs officer.

8. Establish identity

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

- (a) an identity card issued by Customs; or
- (b) another document establishing his or her identity as a Customs officer.

9. Working days and hours

- (1) The regulations may prescribe the days and hours of working of 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 has the permission of 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 Customs 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

10. Appointment of ports and airports

- (1) The Minister may, by order in writing, for the purposes of customs laws:
- (a) appoint ports and specify the limits of those ports; or
- (b) appoint airports and specify the limits of those airports.
- (2) An appointment is subject to such terms and conditions as are specified in the order.
- (3) The ports known as :
- (a) the port of Port Vila, on the island of Efate; and
- (b) the port of Luganville on the island of Espiritu Santo.

are taken to have been appointed as ports under subsection (1).

- (4) The airports known as:
- (a) Bauerfield Port Vila International airport on the island of Efate; and
 - (b) Pekoia airport, on the island of Santo; and
 - (c) Whitegrass airport, on the island of Tanna;
- are taken to have been appointed as airports under subsection (1).

11. Approval of Customs controlled areas

- (1) For the purpose of the customs laws, the Director may, by notice in writing, approve a place or area within the limits of a port or airport to be used as:
- (a) a place for loading and unloading goods for export or import;
 - (b) a transit shed;
 - (c) a place for the landing and embarkation of passengers of ships and aircraft, and other persons;
 - (d) a place for the storing, examination or clearance of goods, including baggage;
 - (e) an entrance to, or exit from, a port or airport.
- (2) For the purposes of the customs laws, the Director may, by notice in writing, approve a place or area outside the limits of a port or airport to be used as a place or building of the kind referred to in subsection (1).
- (3) An approval under subsection (1) or (2) is subject to such conditions as are specified in the approval.
- (4) If a place or area is on the commencement of this Act used as a place or building of the kind referred to in subsection (1), the place or area is to continue, on and after that commencement, to be used accordingly on the same conditions (if any) as if it had been approved for such use under that subsection.

12. Restriction on entry, etc. to Customs controlled areas

- (1) A person must not:
- (a) enter a Customs controlled area if he or she is forbidden to enter the area by a Customs officer; or
 - (b) remain in a Customs controlled area when he or she is requested to leave the area by a Customs officer.
- (2) A Customs officer may detain for search or examination:
- (a) a person or vehicle entering or leaving a Customs controlled area; or
 - (b) all goods brought into or out of a Customs controlled area.
- (3) A person who contravenes subsection (1) is guilty of an offence punishable on conviction by a fine of not more than VT 500,000 or imprisonment for not more than 6 months, or both.

PART 4 – ARRIVAL AND REPORT OF SHIPS AND AIRCRAFT

13. Procedure on arrival

- (1) Subject to section 14, the master of a ship or commander of an aircraft entering Vanuatu from any place outside Vanuatu:

- (a) must not cause or permit the ship or aircraft to call at any place in Vanuatu other than a port or airport; and
 - (b) must, on arriving at a port or airport, bring the ship or aircraft to the proper place of mooring or unloading without touching any other place as quickly as the conditions of the port or airport allow.
- (2) Subject to section 14, the master of a ship or commander of an aircraft must cause the ship or aircraft to depart Vanuatu from a port or airport if the ship or aircraft is departing for any place outside Vanuatu.
- (3) Subsections (1) and (2) do not apply to a ship or aircraft that is compelled by accident, bad weather or any other unavoidable cause to call at a place other than a port or airport.
- (4) Nothing in subsection (1) or (2) prohibits the landing or unloading of passengers, crew or goods from a ship or aircraft for reasons of health, safety or the preservation of life or property.
- (5) A person who contravenes subsection (1) or (2) is guilty of an offence punishable on conviction by a fine of not more than VT 1,000,000 or imprisonment for not more than one year, or both.

14. Director may permit a ship or aircraft to enter or depart

- (1) The Director may, by notice in writing to the master of a ship or commander of an aircraft, permit the ship or aircraft to call at or depart from any place other than a port or airport, subject to such conditions as are specified in the notice.
- (2) The Director must not give permission unless he or she is satisfied that special circumstances exist and the master of the ship or commander of the aircraft must comply with any conditions specified in the notice.
- (3) The conditions may include provision of or payment by the master of the ship or commander of the aircraft for travel, accommodation or other expenses of Customs officers that may arise from the giving of the permission.

15. Boarding of ships and aircraft

- (1) The master of a ship arriving in the territorial waters of Vanuatu must:
- (a) bring the ship to for boarding when signalled or instructed to do so by a vessel in the service of Customs or a vessel in the service of the Government flying the proper flag; and
 - (b) facilitate the boarding and disembarkation of Customs officers.
- (2) The master of a ship or a commander of an aircraft arriving at a port or airport in Vanuatu from any place outside Vanuatu must:
- (a) bring his or her ship or aircraft to the place designated for boarding; and
 - (b) facilitate the boarding and disembarkation of Customs officers.
- (3) A person who contravenes subsection (1) or (2) is guilty of an offence punishable on conviction by a fine of not more than VT 1,000,000 or imprisonment for not more than one year, or both.

16. Restriction on boarding before a customs officer

- (1) A person must not board a ship or aircraft before a Customs officer unless he or she is:
- (a) a port pilot; or
 - (b) the medical officer for the port or airport; or

- (c) a person authorised for quarantine purposes; or
 - (d) a person authorised for immigration purposes; or
 - (e) any other person authorised by the Director.
- (2) A person who is on board a ship or aircraft (including the master or commander and crew) must not disembark the ship or aircraft unless:
- (a) he or she has the prior authority of the Director; or
 - (b) it is an emergency affecting the safety of the ship or aircraft or persons on board.
- (3) A person who contravenes subsection (1) or (2) is guilty of an offence punishable on conviction by a fine of not more than VT 2,000,000 or imprisonment for not more than 2 years, or both.

17. Restriction for an aircraft to enter Vanuatu

- (1) The commander of an aircraft must not cause or permit the aircraft to enter Vanuatu from any place outside Vanuatu unless the commander or his or her agent has obtained authority under this section.
- (2) The commander of an aircraft must make a request for authority:
- (a) to the body in Vanuatu responsible for civil aviation in the form and manner specified by that body; and
 - (b) at least 3 days before the estimated time of departure of the aircraft from the last place outside Vanuatu before entering Vanuatu airspace.
- (3) A person who contravenes subsection (1) is guilty of an offence punishable on conviction by a fine of not more than VT 2,000,000 or imprisonment for not more than 2 years, or both.

18. Reporting of ships and aircraft

- (1) The master of a ship or the commander of an aircraft, or his or her agent, must give a report to the Director within 24 hours after arrival of the ship or aircraft in Vanuatu from a place outside of Vanuatu.
- (2) The report must:
- (a) be in the prescribed form; and
 - (b) be made in the prescribed manner; and
 - (c) set out details of the ship's or aircraft's cargo and stores, and of any packages for which there is no bill of lading.
- (3) The following documents must be attached to the report:
- (a) a cargo manifest signed by the master or the commander detailing the following:
 - (i) the cargo being carried by type and number of packages;
 - (ii) the marks and numbers of the packages;
 - (iii) the description of the goods;
 - (iv) the consignee and the consignor;
 - (v) the place of loading;
 - (b) a list of all cargo to remain on board whether in transit to another country or for delivery to another place in Vanuatu;

- (c) a translation of the manifest if requested by Customs;
 - (d) a list of the ship's or aircraft's stores;
 - (e) a list of prohibited goods or restricted goods which are to remain on board;
 - (f) a declaration listing the dutiable goods of the crew;
 - (g) a passenger list;
 - (h) a written clearance from the last port of call outside of Vanuatu;
 - (i) any other documents that Customs may require.
- (4) A master or commander must not allow cargo to be unloaded from his or her ship or aircraft until the report and other documents have been given to Customs.
- (5) A person who:
- (a) fails to make a report in accordance with subsections (2) and (3); or
 - (b) makes a report containing false or misleading information; or
 - (c) allows the discharge of cargo to take place prior to the lodgement of a report and other documents required;
- is guilty of an offence punishable on conviction by a fine of not more than VT 2,000,000 or imprisonment for not more than 2 years, or both.

19. Search of ships and aircraft

- (1) The master of a ship or commander of an aircraft must in relation to a search of the ship or aircraft by Customs:
- (a) provide such assistance to Customs as is requested; and
 - (b) make available any keys to any locked areas that are required to be opened by Customs.
- (2) A master or a commander who refuses:
- (a) to provide the assistance; or
 - (b) to make available any keys to locked areas;
- is guilty of an offence punishable on conviction by a fine of not more than VT 500,000 or imprisonment for not more than 6 months, or both.

20. Departure of ship and aircraft

- (1) The master of a ship or commander of an aircraft must not allow the ship or aircraft to depart from any port, airport or other place in Vanuatu for a place outside Vanuatu without receiving a certificate of clearance in the prescribed form from the Director.
- (2) The master of a ship or commander of an aircraft, or his or her agent must before a certificate of clearance is given:
- (a) pay or produce evidence of payment of all duties, taxes or other dues and fees that are payable in respect of the ship or aircraft; and
 - (b) declare to Customs in a form and in a manner approved by the Director the following:
 - (i) any cargo loaded for export from Vanuatu;
 - (ii) any ships' stores and aircraft's stores whether taken on in Vanuatu or left on board on arrival;
 - (iii) any crew and passengers who are to depart from Vanuatu on board the ship or aircraft;

- (iv) details of the voyage to be undertaken;
 - (v) such other information required by Customs.
- (3) A master of a ship or a commander of an aircraft who contravenes subsection (1) is guilty of an offence punishable on conviction by a fine of not more than VT 1,000,000 or imprisonment for not more than one year, or both.

PART 5 – CONTROL OF SHIP AND AIRCRAFT STORES

21. Sealing of stores

- (1) A Customs officer may, on boarding a ship or aircraft, place under seal any goods on board the ship or aircraft if the goods are:
 - (a) unconsumed stores of the ship or aircraft; or
 - (b) unconsumed dutiable goods that are the personal property of or in the possession of the master, commander or any member of the crew or of a passenger in transit for any other place outside Vanuatu; or
 - (c) prohibited goods or restricted goods for which permission has been given to remain on board; or
 - (d) any other goods required to be placed under seal by this Act or any other law.
- (2) A person who breaks or interferes with a seal while the ship or aircraft remains in a port or at an airport without the Director's consent is guilty of an offence punishable on conviction by a fine of not more than VT 500,000 or imprisonment for not more than 6 months, or both.
- (3) If, when required by a Customs officer:
 - (a) the master of a ship or commander of an aircraft fails to make full disclosure of any unconsumed stores of the ship or aircraft; or
 - (b) the master, commander, any member of the crew or a passenger in transit for any other place outside Vanuatu knowingly or negligently fails to disclose any unconsumed dutiable goods, the property of or in the possession of that person,the master, commander, member of the crew, or passenger is guilty of an offence punishable on conviction by a fine of not more than VT 500,000 or imprisonment for not more than 6 months, or both.
- (4) The goods in respect of which an offence against subsection (2) or (3) is committed may be seized by Customs and on seizure are forfeited to the Government.

22. Use of aircraft's stores and ships' stores

- (1) Ships' stores and aircraft's stores whether shipped in a place outside Vanuatu or within Vanuatu:
 - (a) must not be unshipped or unloaded without the consent of the Director; and
 - (b) must only be used before departure of the ship or aircraft from its last port or airport of departure in Vanuatu for the use of the passengers or crew, or for the service, of the ship or aircraft unless the Director otherwise allows.
- (2) Ships' stores and aircraft's stores which are unshipped or unloaded with the consent of the Director must be:
 - (a) declared to Customs; or
 - (b) warehoused for future use as ships' stores and aircraft's stores; or

(c) transhipped to another ship or aircraft.

- (3) A person who contravenes subsection (1) or (2) is guilty of an offence punishable on conviction by a fine of not more than VT 500,000 or imprisonment for not more than 6 months, or both.
- (4) Goods involved in the offence may be seized by Customs and on seizure are forfeited to the Government.

23. Shipment stores

- (1) The master of a ship or commander of an aircraft departing Vanuatu may make an application in the prescribed form to the Director for approval to take ship's stores or aircraft's stores on board the ship or aircraft.
- (2) The Director may grant the approval to the applicant having regard to the voyage or flight to be undertaken by the ship or aircraft and to the number of passengers and crew to be carried.
- (3) An approval may be granted subject to the conditions that in the opinion of the Director are necessary to protect the revenue of Customs and to ensure compliance with the customs laws. For example, if the Director is of the opinion that the amount of goods applied for is in excess of the requirement of the voyage or flight, the Director may restrict the amount of stores to an amount that he or she considers fair and reasonable in the circumstances.
- (4) Ship's stores or aircraft's stores taken on board a ship or aircraft otherwise than in accordance with an approval are taken to be prohibited goods, and may be seized by Customs and on seizure are forfeited to the Government.
- (5) Goods required as stores for the master, commander, crew or passengers of a ship or aircraft departing Vanuatu and taken from any bonded warehouse must be allowed to be exported free of duty.
- (6) If, in relation to any goods, a person to whom an approval has been granted fails to comply with any condition of the approval, the person is guilty of an offence punishable on conviction, by a fine of not more than VT 500, 000 or imprisonment for not more than 6 months, or both.

24. Stores under seal

All stores taken on board a ship or aircraft free of duty may be placed under seal by a Customs officer and, if this is done, must remain under seal until the ship or aircraft has departed from Vanuatu on a voyage or flight to a place outside Vanuatu.

PART 6 – CONTROL OF CREW AND PASSENGERS

25. Crew declaration for goods remaining on board

- (1) The master, commander and each member of the crew of a ship or aircraft must declare all personal dutiable articles that he or she wishes to retain and use on board the ship or aircraft while in Vanuatu.
- (2) The declaration must be:
- (a) in the form and made in a manner approved by the Director; and
 - (b) made prior to the boarding of the ship or aircraft by Customs in Vanuatu.
- (3) The declaration must include the following details:
- (a) the name of the person making the declaration and his or her title or status on board the ship or aircraft;

- (b) goods that:
 - (i) are new or dutiable personal property; or
 - (ii) are required to be declared and which are to remain in use on board the ship or aircraft while in Vanuatu;
- (c) dutiable goods, including the following:
 - (i) tobacco;
 - (ii) cigarettes;
 - (iii) wines;
 - (iv) spirits;that are for the personal consumption of the person making the declaration, on board the ship or aircraft, while in Vanuatu.
- (4) The declaration must:
 - (a) be signed by the person making the declaration; and
 - (b) be given by the master of the ship or commander of the aircraft or by his or her agent to a Customs officer on the officer boarding the ship or aircraft.
- (5) If a Customs officer considers that the quantity declared is in excess of that which is reasonable for the personal use or consumption of an individual for the duration of the stay in Vanuatu, the officer may instruct the master of the ship or the commander of the aircraft to place the excess goods in the bonded store on board or otherwise secure them under seal.
- (6) Any person making a declaration must:
 - (a) keep the declared goods on board the ship or aircraft at all times; and
 - (b) produce the goods at any time to a Customs office if requested to do so, except for consumable goods for which the balance of the goods that remains should be produced.
- (7) Any person who:
 - (a) fails to declare dutiable goods kept in use or for consumption on board; or
 - (b) fails to produce the declared goods when requested to do so; or
 - (c) lands, or attempts to land, the goods in Vanuatu;is guilty of an offence punishable on conviction by a fine equivalent to 3 times the value of the goods involved in the offence or imprisonment for not more than 6 months, or both.
- (8) Goods involved in the offence may be seized by Customs and on seizure are forfeited to the Government.

26. Declaration by persons arriving in or departing from Vanuatu

- (1) A person arriving in Vanuatu or departing from Vanuatu must make a declaration to Customs if required or requested to do so in accordance with the provisions of this Act or any other law.
- (2) The declaration must be made:
 - (a) verbally in response to a question by a Customs officer; or
 - (b) in writing, if required, in a form and in a manner provided by the Director; or

- (c) by selection, that is, by the person making the declaration, of the appropriate specified, coloured or marked channel, pathway or area at a port or airport that has been notified by Customs as being for that purpose; or
 - (d) in any other manner that the Director may approve.
- (3) The following goods or items must be declared to Customs whether or not a declaration is required or requested:
- (a) goods of a commercial nature or imported for business purposes, whether for resale or not;
 - (b) dutiable goods imported in excess of any allowance specified by or under any customs laws;
 - (c) prohibited goods and restricted goods;
 - (d) goods carried for, or on behalf of, persons other than the declarant;
 - (e) goods to be exported that are liable to duty or tax at export.
- (4) Any person arriving in Vanuatu or departing from Vanuatu who:
- (a) fails to make a declaration when required or requested to do so; or
 - (b) fails to declare any goods which must be declared; or
 - (c) makes a false or misleading declaration in relation to any goods carried;
- is guilty of an offence punishable on conviction by a fine of 3 times the value of the goods or imprisonment for not more than 6 months, or both.
- (5) Goods involved in the offence may be seized by Customs and on seizure are forfeited to the Government.

27. Stop and search of persons and baggage

(1) If a person:

- (a) is arriving in or departing from Vanuatu; and
- (b) is in a Customs controlled area;

a Customs officer may request the person to stop, ask the person questions and search any baggage the person is carrying.

(2) The person must:

- (a) stop as requested; and
- (b) either:
 - (i) produce the keys he or she holds to unlock baggage to be searched; or
 - (ii) if he or she does not hold keys – open the baggage using the means the Customs officer may direct as necessary; and
- (c) open the baggage and unpack the contents to the extent requested by the Customs officer; and
- (d) repack baggage, only when he or she is given permission to do so.

(3) A Customs officer may search a person arriving in Vanuatu or departing from Vanuatu if the Customs officer has reasonable grounds to suspect:

- (a) there may be undeclared goods concealed on the person; or
- (b) there may be documentary, or other, evidence of an offence against this Act or any other law.

- (4) A search of a person must be conducted by a Customs officer of the same sex and must take place:
 - (a) in a place set aside for that purpose; or
 - (b) in any other private place.
- (5) A search of a person involving an internal examination of the person's body must not be conducted except:
 - (a) with the consent of the person; and
 - (b) by a qualified medical practitioner.
- (6) A search of a person under the age of 15 years must not take place except in the presence of:
 - (a) a parent; or
 - (b) a guardian; or
 - (c) a person having care of the person while in Vanuatu.
- (7) A person under the age of 15 must not be subject to a search involving an internal examination of his or her body.
- (8) Customs is not liable for any costs incurred by a person:
 - (a) in the production or search of baggage, except for exceptional damage or destruction beyond that which is reasonable in a search; or
 - (b) arising from any delay caused by the search of baggage or of the person.
- (9) Any person arriving in Vanuatu or departing from Vanuatu who:
 - (a) refuses to stop when requested to do so by a Customs officer; or
 - (b) refuses to cooperate with a Customs officer; or
 - (c) in any way obstructs or interferes with a search of baggage or a person by a Customs officer;

is guilty of an offence punishable on conviction by a fine of not more than VT 500,000 or imprisonment for not more than 6 months, or both.
- (10) A Customs officer may use such reasonable force as is necessary for the purposes of this section.

PART 7 – IMPORTS UNDER CUSTOMS' CONTROL

28. Imports under Customs' control

- (1) This section applies to goods imported into Vanuatu whether by sea, air, as mail or by any other means, including goods remaining on board a ship or aircraft in transit through Vanuatu or for transshipment.
- (2) The goods are to be considered under the control of Customs:
 - (a) if the goods are to be landed in Vanuatu, except goods for transshipment – from the time of first entering Vanuatu until the goods are released by Customs from their control and delivered from a Customs controlled area; or
 - (b) if the goods are remaining on board a ship or aircraft in transit through Vanuatu – from the time of first entering Vanuatu until the ship or aircraft leaves Vanuatu; or

- (c) if the goods are for transshipment – from the time of first entering Vanuatu until when the goods are exported from Vanuatu.

29. Prohibitions and restrictions

- (1) Subject to the approval of the Council of Ministers, the Minister may, by order in writing, prohibit or restrict the importation into Vanuatu of any goods.
- (2) A person must not:
 - (a) import, or attempt to import, any goods the importation of which into Vanuatu is prohibited under this Act or any other Act; or
 - (b) import, or attempt to import, any goods in contravention of any restriction that is in force under this Act or any other Act.
- (3) A person who contravenes subsection (2) is guilty of an offence punishable on conviction by a fine of not more than VT 500,000 or imprisonment for not more than 6 months, or both.
- (4) Goods involved in an offence under subsection (3) may be seized by Customs and on seizure are forfeited to the Government.
- (5) Any goods on board a ship or aircraft subject to restrictions and declared to Customs may be:
 - (a) left on board the ship or aircraft for the period of its stay in Vanuatu; or
 - (b) surrendered to Customs or police for safekeeping and subsequent re-export from Vanuatu.

30. Landing of imports

- (1) Goods imported into Vanuatu must be landed:
 - (a) at a place approved for the purpose under this Act; or
 - (b) at any other place approved by the Director subject to the conditions specified in the approval.
- (2) Goods imported into Vanuatu must be landed only on the days and at the times as may be approved by Customs.
- (3) Any person who lands goods in contravention of subsection (1) or (2) is guilty of an offence punishable on conviction by a fine of not more than VT 500,000 or imprisonment for not more than 6 months, or both.

31. Declaration of imports

- (1) Goods imported into Vanuatu must be declared to Customs. The declaration must:
 - (a) be made by the importer of the goods or the importer's agent; and
 - (b) be lodged at any Customs office approved by the Director for the purpose.
- (2) The declaration must be in a form and made in a manner approved by the Director, and a copy of the declaration must be made available to Customs, on demand, within a reasonable period of time specified by the Director.
- (3) The declaration must include the following:
 - (a) the name and address of the importer;
 - (b) the name of the overseas supplier;
 - (c) the country of origin of the goods;
 - (d) the quantity of goods in the units of quantity Customs may specify;

- (e) a description of the goods, including the classification of the goods according to the Vanuatu Tariff or other coding system as may be used for the purposes of customs laws;
 - (f) the value of the goods for the purposes of customs laws;
 - (g) the duty or tax payable (if any);
 - (h) a certificate by the person making the declaration that the information supplied is true and correct;
 - (i) such other information as may be required by Customs.
- (4) The Director may require other documents relating to the import of the goods to be presented with the declaration.
- (5) Customs may reject the declaration if it does not contain all the required information, including any other documents required under subsection (4).
- (6) If the declaration is rejected, the goods are considered as undeclared until a new declaration is lodged and accepted by Customs.
- (7) The Director must, upon acceptance of a declaration, register the declaration.
- (8) Upon registration under subsection (7), the Director must give the registration number to the person who makes the declaration.
- (9) The Director:
- (a) may allow the lodgment of declarations at any time before the arrival of the goods concerned; and
 - (b) may reject a declaration that is lodged prior to the arrival of the goods for reason of a change in exchange rate, duty rate or any other change affecting the correctness of the declaration.
- (10) A person who makes a declaration that is false or misleading is guilty of an offence punishable on conviction by a fine of 3 times the value of the goods concerned or imprisonment for not more than 6 months, or both. Goods involved in the offence may be seized by Customs and on seizure are forfeited to the Government.

32. Provisional declarations

- (1) If an importer has insufficient information to make a declaration, the Director may allow a provisional declaration to be made and the goods to be examined, so that the necessary information for a declaration under section 31 ("a full declaration") may be obtained.
- (2) The provisional declaration must be in a form and made in a manner approved by the Director.
- (3) A full declaration must be made in respect of all goods for which a provisional declaration has been made within:
- (a) 21 days after the provisional declaration is lodged with Customs; or
 - (b) such other period of time that the Director may approve.
- (4) If an importer fails to make a full declaration within the required time, Customs may detain any goods consigned to the importer in a Customs controlled area until the full declaration is lodged.
- (5) Any person who, having made a provisional declaration, fails to make a full declaration for the goods involved within the required time, is guilty of an offence punishable on conviction by a fine of 3 times the value of the goods involved or imprisonment for not more than 6 months, or both.

33. Examination of imports

- (1) Customs may examine goods imported into Vanuatu.
- (2) The examination may involve:
 - (a) the opening of packages; and
 - (b) the weighing and measuring of goods; and
 - (c) the taking of samples as necessary to confirm the details of a declaration.
- (3) The importer must meet all costs involved in any examination by Customs and must supply the labour or equipment required to enable the examination to be carried out.
- (6) Customs does not incur any liability for any damage incurred in any examination.
- (5) Customs must not be charged for samples taken in any examination if the samples are necessary for the examination.
- (6) The importer must present the goods for examination at a place approved for the purpose by the Director and during the Custom's normal days and hours of operations.
- (7) If an importer requests examination to take place at any other place or on any other day or time, the Director may examine the goods subject to payment of the prescribed charges by the importer.

34. Damaged and short shipped goods

- (1) If goods have been damaged or short shipped, the Director may authorise a refund of duty paid if the damage or short shipment was notified to Customs prior to the release of the goods out of Customs control and the delivery of the goods from a Customs controlled area.
- (2) If a claim is made for damage or short shipment discovered after the delivery of the goods from a Customs controlled area, the Director must not allow the claim, unless after consideration of all the circumstances the Director is satisfied that any damage or short shipment occurred prior to the delivery of the goods from the Customs controlled area.

35. Disputes and other claims for duty refunds

- (1) If an importer disputes the amount of duty payable on any goods or the liability of goods to duty, other than by reason of damage or short shipment, the Director must in the first instance make a decision on the matter.
- (2) If after a decision by the Director the matter is still in dispute, the importer must pay the duty as may be required by Customs but may bring an action in court for the recovery of the whole or part of the sum paid.
- (3) The Director must not consider a claim for refunds of duty and notification of disputes relating to duty paid unless the claim or notification is lodged within one year after the date of payment of the duty.
- (4) An importer who makes a claim for refund of duty must pay the prescribed fee.
- (5) The Director must not consider a claim for refund unless the prescribed fee is paid.

36. Interference with imports

- (1) A person must not, unless with the permission of the Director, open, move or otherwise interfere with goods imported and under Customs control.
- (2) An importer who wishes to open, repack, sample or in other way interfere with imports under Customs control must make a request to the Director.
- (3) The Director may allow the request subject to conditions he or she thinks necessary.

- (4) A person who opens, moves or in any way interferes with goods imported and under Customs control, without the permission of the Director, is guilty of an offence punishable on conviction by a fine of not more than VT 500,000 or to imprisonment for not more than 6 months, or both.

37. Payment of duty

- (1) If duty or tax is payable on any goods included in a declaration made under section 31, payment must be made in Vatu, and by any means or method that may be approved by the Director.
- (2) Any duty or tax that is payable is a debt due to the Government by the importer and is recoverable in a court in Vanuatu in the name of the Republic of Vanuatu.
- (3) If an importer is in debt to Customs in respect of any duty or tax, Customs may detain any goods imported by the importer that are held or stored in a Customs controlled area until the debt is paid. Customs has a lien over any such goods.

38. Exemption from duty

- (1) If goods are exempted, whether wholly or in part, from payment of duty or tax under any Act, Customs must release the goods, subject to payment of the duty or tax (if any) that is payable and the conditions or restrictions that may be in force in relation to the exemption.
- (2) A person who contravenes any of the conditions or restrictions relating to the release of imported goods exempted from duty and tax is guilty of an offence punishable on conviction by a fine of 3 times the value of the goods or imprisonment for not more than 6 months, or both.
- (3) If a person refuses or neglects to:
- (a) pay the duty or tax; or
 - (b) comply with a condition or restriction;
- in respect of goods under subsection (1), Customs may detain the goods.
- (4) Goods involved in the offence may be seized by Customs and on seizure are forfeited to the Government.

39. Release of goods

- (1) Imported goods which have been declared to Customs and on which any duty or tax due has been paid may be released by Customs from their control.
- (2) Notification of release may be made by :
- (a) the issue of a release note; or
 - (b) a stamped copy of the relevant declaration; or
 - (c) by any other means, including electronic means, that the Director may approve.
- (3) Goods released from Customs control must be removed from a transit shed or Customs controlled area at the earliest opportunity.
- (4) A person must not remove, or attempt to remove, any goods from Customs control unless the person produces a properly authorised release note or other document approved for the purpose by the Director.
- (5) A person who removes, or attempts to remove, imported goods from Customs control without production of an authorised release note, or such other document approved for the purpose by the Director, is guilty of an offence punishable on conviction by a

fine of not more than VT 500,000 or imprisonment for not more than six months, or both.

- (6) Goods involved in the offence may be seized by Customs and on seizure are forfeited to the Vanuatu Government.

40. Undeclared and abandoned goods

- (1) Imported goods:

- (a) not declared to Customs; or
(b) released by Customs but not delivered from a Customs controlled area within 2 months after their date of arrival in Vanuatu;

may be seized by Customs and on seizure are forfeited to the Government.

- (2) If the importer of imported goods is unknown, the goods may be detained by Customs for enquiries to establish the identity of the importer.
(3) If a person does not claim imported goods within 2 months after the arrival of the goods in Vanuatu, the goods may be seized by Customs and on seizure are forfeited to the Government.
(4) If any goods are to be seized under subsection (3), Customs must give written notice of the seizure to the importer.

PART 8 – BONDED WAREHOUSES AND AIRPORT DUTY FREE SHOPS

41. Bonded warehouses

- (1) The Director may, on application in writing by a person, approve:

- (a) premises; or
(b) a building; or
(c) an enclosure; or
(d) a storage tank;

as a private or public bonded warehouse for the deposit and storage of imported goods without payment of duty and tax, subject to the conditions specified in the approval.

- (2) If the Director approves a bonded warehouse as a private bonded warehouse, only goods imported by the applicant or the warehouse keeper may be deposited or stored without payment of duty or tax.
(3) A warehouse keeper of a private bonded warehouse must not:
(a) advertise or hold out the bonded warehouse as a public bonded warehouse; or
(b) levy charges for goods deposited or stored in the bonded warehouse.
(4) If the Director appoints a bonded warehouse as a public bonded warehouse, the warehouse keeper may:
(a) advertise the warehouse as a public bonded warehouse; and
(b) accept for deposit and storage imported goods from an importer; and
(c) impose charges for deposit and storage.
(5) A private or public bonded warehouse within the meaning of the Customs Act [Cap. 3] that is in existence when this Act commences, continues as a private or public

bonded warehouse, as the case requires, on and after that commencement as if it had been approved under this section.

42. Airport duty free shops

- (1) The Director may, on application in writing by a person, approve any premises at an airport as an airport duty free shop subject to the conditions specified in the approval.
- (2) All airport duty free shops within the meaning of the Customs Act [Cap. 3] that are in existence when this Act commences, continue on and after that commencement as if they had been approved under subsection (1).

43. Duties of warehouse keepers

- (1) If the Director approves an application for a bonded warehouse or airport duty free shop, the Director must appoint the applicant or the applicant's nominated representative to be the warehouse keeper for the purposes of this Act.
- (2) The warehouse keeper of a bonded warehouse or airport duty free shop must:
 - (a) maintain the records of goods received, stored and delivered, as required by Customs, and produce the records on demand to Customs; and
 - (b) keep goods safe and secure and stack and arrange goods so as to enable access to, and examination of, goods at all times; and
 - (c) provide the facilities, including office accommodation, as the Director may require for the purposes of examinations and inspections by Customs; and
 - (d) allow access to the warehouse and examination of goods by Customs on demand; and
 - (e) comply with the conditions relating to the warehouse or airport duty free shop specified in the approval under section 41 or 42, whichever applies.
- (3) The Director may revoke an approval of any bonded warehouse or airport duty free shop if the warehouse keeper fails to comply with:
 - (a) any of the duties set out in this section; or
 - (b) any of the conditions relating to the approval of the premises.

44. Control of duty free goods

- (1) Goods deposited and stored in any bonded warehouse are considered under Customs control from the time of their deposit until Customs authorise the release of the goods.
- (2) Goods deposited and stored in an airport duty free shop are considered under Customs control from the time of their deposit until the point of sale to a passenger arriving in, or departing from, Vanuatu or their release is otherwise authorised by Customs.
- (3) Imported goods may be declared at the time of import for deposit in a bonded warehouse or airport duty free shop.
- (4) Customs may permit goods referred to in subsection (3) to be deposited without payment of duty and tax if:
 - (a) the bonded warehouse or airport duty free shop where the goods are to be deposited or stored has been appointed by the Director to receive goods of the type declared, and the warehouse keeper has the facilities for deposit and storage of the goods; and
 - (b) if the goods are for deposit or to be stored in a private warehouse or airport duty free shop – the goods are imported by the warehouse keeper.

- (5) The delivery of goods declared for warehousing is subject to such reasonable conditions the Director may require.
- (6) Goods must not remain in a bonded warehouse or airport duty free shop for more than one year from the date of deposit, without the written permission of the Director.
- (7) Customs may seize and forfeit to the Government any goods remaining in a bonded warehouse or airport duty free shop for more than the one year without the written permission of the Director.

45. Offences in relation to duty free goods

- (1) A person must not open, remove or interfere in any way with the goods stored in a bonded warehouse or airport duty free shop unless the person has Custom's permission to do so.
- (2) Customs may examine at anytime the goods deposited and stored in a bonded warehouse or airport duty free shop.
- (3) Goods must be released from a bonded warehouse or airport duty free shop:
 - (a) on presentation to Customs of a declaration and payment of any duty or tax that may be due; or
 - (b) on transfer to another bonded warehouse or airport duty free shop; or
 - (c) in the case of an airport duty free shop – on sale to a passenger arriving in or departing from Vanuatu; or
 - (d) if otherwise authorised by Customs.
- (4) A person who:
 - (a) without the permission of Customs, opens or interferes in any way with any goods stored duty free in a bonded warehouse or airport duty free shop; or
 - (b) refuses access to, or obstructs, any customs officer in the course of:
 - (i) an inspection of a bonded warehouse or airport duty free shop; or
 - (ii) an examination of goods stored duty free in those premises; or
 - (c) removes any duty free goods from a bonded warehouse other than:
 - (i) on presentation of a declaration to Customs and payment of any duty due; or
 - (ii) on transfer to another bonded warehouse or airport duty free shop; or
 - (iii) by permission of the Director; or
 - (d) removes any duty free goods from an airport duty free shop other than:
 - (i) by a sale to a passenger arriving in, or departing from, Vanuatu; or
 - (ii) on presentation of a declaration to Customs and payment of any duty due; or
 - (iii) on transfer to another bonded warehouse or airport duty free shop; or
 - (iv) by permission of the Director;

is guilty of an offence punishable on conviction by a fine of not more than VT 500,000 or imprisonment for not more than 6 months, or both.
- (5) Goods involved in the offence may be seized by Customs and on seizure are forfeited to the Government.

PART 9 – CONTROL OF EXPORTS

46. Exports under Customs' control

Goods to be exported from Vanuatu are under the control of Customs from the point of receipt into a Customs controlled area until lodgment of a declaration to Customs.

47. Prohibitions and restrictions

- (1) Subject to the approval of the Council of Ministers, the Minister may, by order in writing, prohibit or restrict the exportation from Vanuatu of any goods.
- (2) A person must not :
 - (a) export, or attempt to export, any goods the exportation of which from Vanuatu is prohibited under this or any other Act; or
 - (b) export or attempt to export any goods in contravention of any restriction that may be in force at the time under this or any other Act.
- (3) A person who contravenes subsection (2) is guilty of an offence punishable on conviction by a fine of not more than VT 1,000,000 or imprisonment for not more than one year, or both.
- (4) Goods involved in the offence may be seized by Customs and on seizure are forfeited to the Government.

48. Declaration to Customs

- (1) The exporter or his or her agent must declare goods for export to Customs at a place approved for the purpose by the Director before the goods are loaded for export.
- (2) The declaration must be made in accordance with the relevant Act relating to export duties.

49. Loading of exports

- (1) Goods for export must be loaded for export only during the normal days and hours of Customs at a place appointed for the purpose under this Act by the Director.
- (2) If an exporter requests permission to load goods for export at a place other than an appointed place or outside of the normal days and hours of Customs, the Director may grant the request subject to payment of the prescribed charges.
- (3) A person who loads, or causes to be loaded, any goods for export at any place not appointed, or on any day or at a time not approved, under this Act is guilty of an offence punishable on conviction by a fine of not more than VT 1,000,000 or imprisonment for not more than 2 years, or both.

50. Interference with exports

A person who opens or interferes in any way with goods declared for export and under Customs control without the permission of Customs is guilty of an offence punishable on conviction by a fine of not more than VT 500,000 or imprisonment for not more than 6 months, or both.

51. Non-shipment of exports

- (1) A person must not remove from Customs control goods that have been declared for export unless:
 - (a) the goods are being loaded for export; or
 - (b) Customs has authorised the removal.
- (2) Goods that are not accepted for shipment must remain under Customs control until Customs authorises the release of the goods.

- (3) A person must not reload goods loaded for export unless Customs has authorised the reloading.
- (4) A person who contravenes subsection (1) or (3) is guilty of an offence punishable on conviction by a fine of not more than VT 500,000 or imprisonment for not more than 6 months, or both.
- (5) Goods involved in the offence may be seized by Customs and on seizure are forfeited to the Vanuatu Government.

PART 10 – CUSTOMS FRAUDS AND OTHER OFFENCES

52. Fraudulent evasion of duties

- (1) A person who knowingly and with intent to defraud the Government of any duty or tax payable :
 - (a) imports or attempts to import goods liable to duty or tax without declaring the goods to Customs; or
 - (b) exports or attempts to export goods liable to duty or tax without declaring the goods to Customs; or
 - (c) removes goods from a bonded warehouse without:
 - (i) the permission of Customs; or
 - (ii) a declaration to Customs; and
 - (iii) the payment of the duty or tax due; or
 - (d) removes goods from an airport duty free shop other than:
 - (i) on sale to a passenger arriving in or departing from Vanuatu; or
 - (ii) by permission of Customs; or
 - (e) makes a declaration to Customs which is false or misleading; or
 - (f) receives, acquires possession of or deals in goods on which the duty or tax due has been fraudulently evaded;

is guilty of an offence punishable on conviction by a fine of not more than VT 5,000,000 or imprisonment for not more than 10 years, or both.
- (2) Goods involved in the offence may be seized by Customs and on seizure are forfeited to the Government.

53. Evasion of prohibitions and restrictions

- (1) A person who knowingly and with intent to evade any prohibition or restriction in force at the time under any Act or other law:
 - (a) imports or attempts to import any goods into Vanuatu:
 - (i) the importation of which is prohibited; or
 - (ii) in contravention of any restriction on the importation of the goods; or
 - (b) exports or attempts to export any goods from Vanuatu:
 - (i) the exportation of which is prohibited; or
 - (ii) in contravention of any restriction on the export of the goods; or
 - (c) makes a declaration to Customs which is false or incorrect; or

(d) receives, acquires possession of or deals in goods imported in contravention of any prohibition or restriction;

is guilty of an offence and is punishable on conviction by a fine of not more than VT 5,000,000 or imprisonment for not more than 10 years, or both.

(2) Goods involved in the offence may be seized by Customs and on seizure are forfeited to the Government.

54. Counterfeiting of seals and documents

A person who:

(a) counterfeits or falsifies any document which:

(i) is required to be presented to Customs; or

(ii) is used in any transaction for the purposes of customs laws; or

(b) knowingly accepts, receives or uses any document that has been counterfeited or falsified which is required to be presented to Customs or is used in any transaction for the purposes of customs laws; or

(c) alters any document that has been issued by Customs without permission of Customs; or

(d) counterfeits, copies or forges any seal, stamp, signature, or other mark used by Customs;

is guilty of an offence punishable on conviction by a fine of not more than VT 5,000,000 or imprisonment for not more than 10 years, or both.

55. Failure to produce records

A person who fails to produce on demand by Customs under this Act records that are held by the person or under the person's control is guilty of an offence punishable on conviction by a fine of not more than VT 1,000,000 or imprisonment for not more than 2 years, or both.

56. Obstruction of officers

A person who obstructs, hinders or impedes any Customs officer in the performance of his or her duties or a person assisting the officer is guilty of an offence punishable on conviction by a fine of not more than VT 500,000 or imprisonment for not more than 6 months, or both.

57. Intimidation of officers

A person who:

(a) threatens; or

(b) intimidates or attempts to intimidate;

a Customs officer in the performance of his or her duties or a person assisting the officer is guilty of an offence punishable on conviction by a fine of not more than VT 500,000 or imprisonment for not more than 6 months, or both.

58. Assault on officers

A person who assaults a Customs officer in the performance of his or her duties or a person assisting the officer is guilty of an offence punishable on conviction by a fine of not more than VT 1,000,000 or imprisonment for not more than 2 years, or both.

59. Bribery and collusion

(1) A person who:

- (a) offers or gives, whether directly or indirectly, to the Director or a Customs officer or person appointed by the Director to assist Customs any payment or reward, whether in money or otherwise; or
 - (b) proposes or enters into any agreement with the Director, officer or person so appointed by the Director,
in order to induce him or her to do, or abstain from doing, permit or conceal any act intended to defraud the Government, or is otherwise unlawful under this Act or any other law, is guilty of an offence punishable on conviction by a fine of not more than VT 5,000,000 or imprisonment for not more than 10 years, or both.
- (2) If the Director or a Customs officer or a person appointed by the Director to assist Customs:
- (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 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 Government, or which is otherwise unlawful under this Act or any other law,
he or she is guilty of an offence punishable on conviction by a fine of not more than VT 5,000,000 or imprisonment for not more than 10 years, or both.

60. Aiding and abetting

A person who aids, abets, counsels or procures or is in any way concerned in the commission of any offence under this Act is taken to have committed the offence and is punishable on conviction to the penalty for that offence.

61. Burden of proof in certain proceedings

In a proceeding for an offence against this Part, if a question arises whether a person acted knowingly and with intention to defraud, the burden lies on that person to disprove that he or she acted knowingly and with intention to defraud.

PART 11 – DETENTION AND SEIZURE OF GOODS

62. Detention of goods

- (1) A Customs officer may detain goods and remove them to a Customs office, lock up, police station or any other place for safekeeping if the goods are imported goods under Customs control and:
- (a) the goods are liable to duty and the importer has requested permission to re-export the goods; or
 - (b) the goods are subject to restriction and the importer is unable, at the time of detention, to comply with the conditions of the restriction; or
 - (c) the goods are subject to:
 - (i) enquiries by Customs in relation to value or liability; or
 - (ii) an examination by Customs requiring their removal to a place having the required facilities for the examination; or
 - (d) the importer is not known.
- (2) A Customs officer may detain goods and remove them to a Customs office, lock up, police station or any other place for safekeeping if:

- (a) the goods are unclaimed baggage or cargo landed but not manifested or otherwise accounted for; or
- (b) the goods have been declared for export and are under Customs control and subject to:
 - (i) enquires by Customs in relation to value or liability; or
 - (ii) an examination by Customs requiring their removal to a place having the required facilities for the examination; or
- (c) the officer has reasonable grounds to believe that the goods have been imported or removed from a bonded warehouse or airport duty free shop without permission or declaration to Customs and that duty due on the goods has not been paid; or
- (d) the officer has reasonable grounds to believe that the goods have been imported in contravention of any prohibition or restriction provided for by any Act or law; or
- (e) the goods are liable to seizure under this Act.

63. Care of detained goods

- (1) Customs must issue an official receipt for any goods detained and the receipt must be signed and dated by the Customs officer detaining the goods.
- (2) Customs:
 - (a) must not charge for the storage or care of any detained goods; and
 - (b) are not liable to any costs incurred by reason of the detention of the goods.
- (3) If storage or other charges relating to detained goods are incurred, the importer, exporter or owner of the goods, as the case requires, is responsible for the charges.
- (4) Subject to subsection (5), goods detained by Customs must:
 - (a) be returned to the importer, exporter or rightful owner; and
 - (b) not be disposed of by Customs without the permission of the importer, exporter or owner; and
 - (c) be released from Customs control when the reason for detention no longer applies.
- (5) Subsection (4) does not apply to goods that have been seized by Customs and forfeited to the Government in accordance with a provision of this Act.

64. Seizure of goods

- (1) Goods may be seized by Customs if the seizure is authorised under this Act and on seizure the goods are forfeited to the Government.
- (2) Customs may seize:
 - (a) a ship, aircraft, vehicle or container (including any item of passenger's baggage) which has been used or adapted to carry or conceal any goods liable to seizure; and
 - (b) goods mixed, packed or found with any goods liable to seizure;and upon seizure the goods are forfeited to the Government.

65. Notice of seizure

- (1) If any goods have been seized, the Director must give written notice of the seizure setting out the reasons for the seizure to the following:

- (a) the importer;
 - (b) the exporter;
 - (c) the agent of the importer or exporter;
 - (d) the owner of the goods;
 - (e) the master of the ship or commander of the aircraft, as the case may require.
- (2) If a person disagrees with the Customs decision to seize the goods, the person may within 30 days after the date of the notice bring an action in court for the release of the goods.

66. Disposal of seized goods

- (1) Customs may dispose of seized goods by way of sale or otherwise as directed by the Director. The proceeds of any sale must be paid to the Government subject to the deduction of any expenses incurred in the sale.
- (2) Customs must not dispose of seized goods if a person to whom a notice of seizure has been given under section 65, or any other person having a claim to the goods:
- (a) gives the Director notice in writing within one month after the date of the notice of seizure that he or she contests the seizure or the disposal; and
 - (b) commences proceedings in a court contesting the seizure or the disposal within 3 months after the date of the notice of the seizure.
- (3) Goods of a perishable nature including live animals that are seized may be disposed of by Customs at any time after seizure.
- (4) Customs must not pay the proceeds to the Government of any sale of perishable goods if a person to whom a notice of seizure has been given under section 65, or any other person having a claim to the goods:
- (a) gives the Director notice in writing within one month after the date of the notice of seizure that he or she contests the seizure or distribution of proceeds; and
 - (b) commences proceedings in a court contesting the seizure or distribution of proceeds within 3 months after the date of the notice of the seizure.
- (5) Customs must not allow a claim for part or all of the proceeds of sale of any goods by the owner or any other person, unless notice of contest against seizure is made within one month after the issue of the notice of seizure.

PART 12 – POWERS OF OFFICERS

67. Boarding and search powers

- (1) A Customs officer may board a ship or aircraft at any place and at any time while the vessel or aircraft is in Vanuatu if the officer has reason to believe the vessel or aircraft has recently arrived in Vanuatu from a place outside of Vanuatu.
- (2) On boarding of a ship or aircraft, a Customs officer may search any part of the ship or aircraft and open, or have opened, any cupboard, locker, room or other place on board the ship or aircraft.
- (3) A Customs officer boarding a ship or aircraft may remain on the ship or aircraft for such time as he or she thinks necessary.
- (4) The master of the ship or commander of the aircraft must provide the Customs officer who remains on board the ship or aircraft with proper and sufficient food and suitable accommodation.

- (5) A master or commander who contravenes subsection (4) is guilty of an offence punishable on conviction by a fine of not more than VT 500,000 or imprisonment for not more than 6 months or both.

68. Power to seal and secure

A Customs officer may place under seal or otherwise secure any goods on board any ship or aircraft.

69. Power to exclude persons

A Customs officer may exclude any person from:

- (a) a ship or aircraft recently arrived in or about to depart from Vanuatu; or
- (b) a Customs controlled area including any place approved for the examination of passengers or cargo.

70. Power to stop and question

A Customs officer may stop and question any person who:

- (a) has arrived in, or is intending to depart from, Vanuatu as a passenger or crew member; or
- (b) is the master of a ship or the commander of an aircraft that has recently arrived in, or is about to depart from, Vanuatu; or
- (c) is arriving in, departing from or within any Customs controlled area; or
- (d) is arriving in, departing from or within a bonded warehouse or airport duty free shop.

71. Power to search and examine baggage

A Customs officer may search and examine baggage, packages or other items carried by a person or belonging to the person if he or she:

- (a) has arrived in, or is intending to depart from, Vanuatu as a passenger or crew member of a ship or aircraft; or
- (b) is the master of a vessel or the commander of an aircraft that has recently arrived in, or is about to depart from, Vanuatu; or
- (c) is arriving in, departing from or within a Customs controlled area; or
- (d) is arriving in, departing from or within a bonded warehouse or airport duty free shop.

72. Power to search persons

(1) A Customs officer may stop, and search any person if the person:

- (a) has arrived in, or is intending to depart from, Vanuatu as a passenger or crew member of a ship or aircraft; or
- (b) is the master of a ship or the commander of an aircraft that has recently arrived in, or is about to depart from, Vanuatu; or
- (c) the person is arriving in, departing from or within a Customs controlled area; or
- (d) the person is arriving in, departing from or within a bonded warehouse or airport duty free shop;

and the officer has reasonable grounds to suspect that there may be:

- (e) undeclared goods concealed on the person; or
- (f) documentary evidence of an offence concealed on the person.

- (2) Subsections (4) to (8) and (10) of section 27 apply to the search of a person.

73. Power to arrest persons

Any Customs officer who has reasonable grounds to believe that a person has committed an offence under this Act may arrest the person and must deliver the person into the custody of the Police as soon as possible.

74. Power to examine goods

A Customs officer may examine goods if:

- (a) the goods have been declared to Customs; or
- (b) the goods are in a Customs controlled area; or
- (c) the goods are in a bonded warehouse or airport duty free shop; or
- (d) the officer has reasonable grounds to believe the goods are uncustomed goods; or
- (e) examination of the goods is authorised under this Act or any other customs laws.

75. Power to obtain sample of goods

A Customs officer may obtain a sample of any goods selected for examination and a person must not charge Customs for a sample taken in the course of any Customs examination.

76. Power to detain goods

- (1) A Customs officer may detain any goods if the detention of the goods is authorised under this Act.
- (2) Customs is not liable for any loss arising out of the detention of any goods under this Act.

77. Power to inspect records

A Customs officer may inspect the records, or require a person to produce for inspection the records, relating to:

- (a) a ship or aircraft recently arrived in Vanuatu, or about to depart Vanuatu, from or to any place outside of Vanuatu; or
- (b) the crew or passengers on the ship or aircraft; or
- (c) goods carried or loaded on the ship or aircraft; or
- (d) goods declared to Customs; or
- (e) goods stored in a bonded warehouse or airport duty free shop; or
- (f) goods which have been detained by Customs.

78. Power to enter and search without warrant

A Customs officer may, at any time and without a search warrant, enter and search the following premises:

- (a) a transit shed, store or other building within a Customs controlled area; or
- (b) a bonded warehouse or airport duty free shop.

79. Power to enter and search with warrant

(1) If a Customs officer has reasonable grounds to believe that there are in any premises:

- (a) any uncustomed goods; or
- (b) any books or documents relating to any uncustomed goods;

the officer may make a declaration on oath to the effect, before a magistrate.

- (2) Upon the declaration made under subsection (1), the magistrate may issue a warrant authorizing the officer:
 - (a) to enter upon; and
 - (b) search the premises, with such force as may be reasonably necessary, by day or night; and
 - (c) seize, and remove any uncustomed goods and books or documents relating to the goods found in the premises.
- (3) An officer in possession of a warrant under subsection (2) may require a police officer to assist him or her in the execution of the warrant.

PART 13 – USERS OF CUSTOMS COMPUTER SYSTEM

Division 1 – Registration procedures and offences

80. Customs' computer system

Customs may establish and maintain a computerised system for and in relation to the administration and enforcement of customs laws, including for entry processing duty payment and cargo reporting.

81. User must be registered

A person must not transmit information to or receive information from a Customs computer system unless the person is registered under this Act.

82. Transmitting or receiving information without being registered an offence

A person other than a registered user who:

- (a) transmits to or attempts to transmit information; or
- (b) receives or attempts to receive information;

from a Customs computer system is guilty of an offence punishable on conviction by a fine of not more than VT 5,000,000 or imprisonment for not more than 6 years or both.

83. Disclosure of information for unauthorised purposes

(1) A person must not:

- (a) use or disclose information received from a Customs computer system for a purpose that is not authorised under this Act or for the purposes of any other customs law; or
- (b) use or disclose, publish or otherwise disseminate that information.

(2) A person who contravenes subsection (1) is guilty of an offence punishable on conviction by a fine of not more than VT 5,000,000 or imprisonment for not more than 6 years or both.

84. Use and disclose information for unauthorised purpose an offence

A person who knowingly uses or discloses information received from a Customs computer system for a purpose that is not authorised under this Act or for the purposes of any other customs law is guilty of an offence punishable on conviction by a fine of not more than VT 3,000,000.

85. Falsifying, damaging etc. of record, information or system etc. on offence

A person who knowingly:

- (a) falsifies any record or information stored in a Customs computer system; or
- (b) damages or impairs any Customs computer system; or
- (c) damages or impairs any duplicate tape or disc or other medium on which any information obtained from a Customs computer system is held or stored, without the permission of the Director,

is guilty of an offence punishable on conviction by a fine of not more than VT 3,000,000 or imprisonment for not more than 2 years, or both.

86. Director to determine the requirements to become a registered user

- (1) The Director must determine the requirements for an applicant to become a registered user of the Customs computer system.
- (2) The Director must give notice of this requirement by public notice or by any other manner the Director thinks appropriate.

87. Application for registration

- (1) A person who wishes to be registered as a user of a Customs computer system must apply to the Director.
- (2) An application for registration must:
 - (a) be in the form specified by the Director; and
 - (b) be accompanied by the:
 - (i) prescribed fee; and
 - (ii) the information, documents and other material that may be prescribed.

88. Registration of user

- (1) Subject to this section, on receiving an application made under section 87, the Director may register the applicant.
- (2) The Director may register the applicant subject to any conditions the Director thinks fit to impose.
- (3) The Director may require an applicant to provide any additional information, document or material the Director considers necessary.
- (4) The Director may refuse to register the applicant if the Director is satisfied that:
 - (a) the requirements under subsection (3) have not been complied with by the applicant; or
 - (b) the applicant is not capable of complying with the conditions of registration.

89. Notice of refusal

If the Director refuses to register an applicant under section 88(4), the Director must give notice in writing to the applicant of the Director's decision setting out the reasons for the refusal.

90. Appeal

- (1) A person whose registration is refused under section 88(4) may appeal to the Minister against the refusal.
- (2) An appeal must be made in writing within 7 days after the person receives the notice of refusal under section 89.
- (3) The Minister on receiving an appeal may confirm, vary or revoke the refusal.

- (4) The Minister must give the person written notice of his or her decision within 7 days after making it.

Division 2 – Unique user identifier

91. Allocation of unique user identifier

- (1) The Director must, within 7 days after a person has been registered as a user under section 88, allocate to the person a unique user identifier.
- (2) The unique user identifier is to be in the form and manner determined by the Director.

92. Identifier to be used for transmitting and receiving information

A registered user who has been allocated a unique user identifier must use the identifier for the purpose of transmitting information to, and receiving information from, the Customs computer system.

93. Unauthorised use of identifier

A person (other than a person to whom a unique user identifier has been allocated) who uses an identifier for the purpose of transmitting information to, or receiving information from, a Customs computer system is guilty of an offence punishable on conviction by a fine of not more than VT 1,000,000, or imprisonment for not more than one year, or both.

94. The Director may impose conditions

- (1) The Director may, by notice in writing, impose conditions relating to the use and security of an identifier.
- (2) The conditions may be imposed:
- (a) on a particular registered user; or
 - (b) on registered users generally.

95. Evidence of the proof of transmission

If information has been transmitted to a Customs computer system by a registered user by using his or her unique user identifier, the proof of transmission is sufficient evidence that the registered user has transmitted that information to the Director in the absence of proof to contrary.

96. Cancellation of registration of registered user

The Director may cancel the registration of a registered user if the Director is satisfied that the registered user has:

- (a) failed to comply with or acted in contravention of:
- (i) a condition of registration imposed by the Director under section 88; or
 - (ii) a condition imposed by the Director under section 94; or
- (b) been convicted of an offence under this Act relating to improper access to or interference with a Customs computer system.

97. Notice of cancellation

If the Director decides to cancel the registration of the registered user under section 96, the Director must give notice in writing of the cancellation to the registered user setting out the reasons for the cancellation.

98. Appeal

- (1) A person whose registration is cancelled under section 96 may appeal to the Minister against the cancellation.

- (2) An appeal must be made in writing within 7 days after the person receives the notice of cancellation under section 97.
- (3) The Minister on receiving an appeal may confirm, vary or revoke the cancellation.
- (4) The Minister must give the person written notice of his or her decision within 7 days after making it.

Division 3 – Records of transmission

99. Record of transmission to be kept by Director

- (1) The Director must maintain a record of every transmission sent to or received from a registered user using a Customs computer system.
- (2) The record must be kept for 5 years from the date of sending or receiving of the transmission.

100. Business records to be kept by persons dealing with Customs

- (1) A person who deals with Customs must keep records of each transaction.
- (2) The records must be kept for 5 years from the date of the transaction.

PART 14 – MISCELLANEOUS

101. Regulations

- (1) The Minister may make regulations:
 - (a) generally for the purpose of carrying out the provisions of this Act; or
 - (b) prescribing all matters required or permitted by this Act to be prescribed.
- (2) Without limiting subsection (1), regulations may be made for and in relation to the following:
 - (a) the appointment of ports and airports;
 - (b) the prohibition or restriction of the importation or exportation of goods;
 - (c) the days and hours of normal working of Customs;
 - (d) fees and charges for services of Customs officers;
 - (e) payment of surcharges in respect of unpaid amounts;
 - (f) refunds of amounts paid under this Act.
- (3) Regulations may be made prescribing penalties not exceeding VT 200,000 or a term of imprisonment of not more than 1 month, or both for offences against or a contravention of any of the regulations

102. On the spot fines

- (1) A Customs officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence under:
 - (a) section 18(5); or
 - (b) section 21(3); or
 - (c) section 25(7); or
 - (d) section 26(4); or
 - (e) section 29(3); or
 - (ea) section 31(10); or

- (eb) section 32(5); or
 - (ec) section 36(4); or
 - (ed) section 38(2); or
 - (f) section 45(4); or
 - (g) section 47(3); or
 - (h) section 51(4).
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the amount specified in the notice, being the amount prescribed by the regulations which must not exceed the maximum penalty specified by this Act for the offence.

103. Appeal to the Supreme Court

(1) If the Director:

- (a) refuses to grant permission under section 14; or
- (b) imposes conditions on any permission granted under section 14; or
- (c) refuses to grant a certificate of clearance under section 20; or
- (d) makes a decision prescribed by the regulations as a decision in respect of which an appeal can be made;

the person in respect of whom the decision was made may appeal to the Supreme Court against that decision.

- (2) An appeal must be brought, by originating application, not more than 28 days after the date on which the appellant is notified of the decision appealed against, or within such further period as the Supreme Court may allow.
- (3) The Supreme Court may:
- (a) confirm, reverse or modify the decision appealed against, and make such orders and give such directions to the Director as may be necessary to give effect to the Court's decision; or
 - (b) refer the matter back to the Director with directions to reconsider the whole or any specified part of the matter.

104. Savings

If a subordinate legislative instrument made under the Customs Act [Cap. 3] was in force immediately before the commencement of this Act, the instrument continues in force, on or after that commencement, as if it had been made under this Act so far as it is not inconsistent with the provisions of this Act.

105. Repeals

The following Acts are repealed:

- (a) the Customs Act [Cap. 3];
- (b) the Customs Agents Act [Cap. 41].

Table of Amendments

102(1)(ea) – 102(1)(ed)

Inserted by Act 15 of 2003

102(2) Amended by Act 15 of 2003