

INTERIM GOVERNMENT OF THE REPUBLIC OF FIJI

CUSTOMS ACT (BUDGET AMENDMENT) PROMULGATION
(PROMULGATION NO. 14 OF 2007)

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INTERIM GOVERNMENT OF THE REPUBLIC OF THE FIJI ISLANDS

CUSTOMS ACT (BUDGET AMENDMENT) PROMULGATION 2007
(PROMULGATION NO. 14 2007)

IN exercise of the powers conferred upon the Interim Government, and upon the exercise of my own deliberate judgment as President of the Republic of Fiji Islands as to what is best and good for the people of the Republic of the Fiji Islands, and by the exercise of the executive authority of the State in accordance with section 85 of the Constitution and such other powers as may appertain, and with the approval of Cabinet, I, Josefa Iloilovatu Uluivuda, make this Promulgation—

TO AMEND THE CUSTOMS ACT

Short title, etc

1. — (1) This Promulgation may be cited as the Customs Act (Amendment) Promulgation 2007 and comes into force on 1 July 2007.

(2) In this Promulgation, the Customs Act 1986 is referred to as the “Act”.

Interpretation

2. Section 2 of the Act is amended—

(a) in the definition of “agent” by repealing the proviso and substituting the following proviso—

“PROVIDED THAT—

(a) such person is licensed under section 148; or

(b) the owner of an aircraft or ship—

(i) if resident or represented in Fiji but no other agent is appointed, is deemed to be the licensed agent of the master of the aircraft or ship, for all purposes of the customs laws;

(ii) if not resident or represented in Fiji, the master of the aircraft or ship is deemed to be the licensed agent of the aircraft or ship;”;

(b) by repealing the definition of “customs agent” and substituting the following definition—

“customs agent” means a customs agent licensed under section 144(1), but does not include an agent licensed under section 148;

(c) in the definition of “customs area” by inserting “, and includes a bonded consol freight station, a bonded export freight station or any bonded customs area” after “customs control”;

(d) by adding the following definitions in their proper alphabetical positions—

““ bonded” means subject to customs control under customs laws;

“bonded area” means an area subject to customs control under customs laws;

“bonded consol freight station” means a place licensed under customs laws in which shipping containers of goods imported or exported may be stored, unpacked, packed or sorted, pending payment of duty, exportation or re-exportation;

“bonded customs area” means an area that is subject to customs control under customs laws regarding movement of persons, goods or activity where goods may be lodged, stored or secured;

“customs approved secure package” means any package whether or not stored in a customs area and whether or not for import, export or transshipment, that has been identified by the customs with appropriate markings for export or transshipment but has not yet been exported or transhipped;

- “customs enclosed area” means an area appointed by the Comptroller and marked with demarcation boundaries and notices for the purposes of customs laws under section 4(2);
- “declarant reference number” means a declaration number allocated to any entry at the time of registration when electronically lodged by the agent or the owner;
- “enclosure” means a piece of land or a building, surrounded by fences over secured metal mesh grill framework, and may include a secured roof, to the satisfaction of the Comptroller;
- “entry” means a prescribed form of declaration (with or without additional documents as required under this Act) and with the automatically generated unique registration number on such form and registered by means of an electronic message transmitted to the customs computer system but the duty has not yet been paid and receipted;
- “export freight station” means bonded premises approved and licensed by the Comptroller under section 4(5) for export freight handling;
- “lodgement number” means any number allocated in sequential order either manually or by means of a numbering device by the proper officer under section 4 to any customs document;
- “storage place” includes a customs area for the storage of goods before being finally released from customs control;
- “transit” in respect of an aircraft or ship, means the interim passage in Fiji of such aircraft or ship arriving from a place outside Fiji and proceeding thereafter to another place outside Fiji and where the duration of time in Fiji does not exceed 4 consecutive days;
- “transit” in respect of goods, means all manifested goods on board an aircraft or ship (other than the aircraft’s or ship’s stores and manifested cargo for landing in Fiji) arriving at any airport or seaport in Fiji from outside Fiji but without finally landing in Fiji; and finally being exported from Fiji on the same aircraft or ship;
- “transit” in respect of persons refers to all manifested persons on board an aircraft or ship (other than the aircraft’s or ship’s crew and manifested disembarking passengers) arriving at an airport or seaport in Fiji from outside Fiji but without finally disembarking in Fiji; and finally departing from Fiji on the same aircraft or ship;
- “warrant” for the purposes of customs laws shall be the paid entry declaration unique number automatically generated by the system on the forms prescribed and registered by means of an electronic message transmitted to the Customs computer system after payment;
- “secure exports scheme” means a customs approved secure exports partnership scheme between the exporter and the Customs under section 66B, where cargo may be accumulated for onward carriage, handling, transportation or exportation to places beyond Fiji;
- “wharf” includes a quay, pier, jetty, landing place or similar place at or from which passengers or goods may be taken on board or landed from a vessel;”.

Section 4 amended

3. Section 4 of the Act is amended—

(a) by adding after subsection (1) the following subsection—

“(1A) Where—

- (a) a written law provides for the power to declare ports or airports; and
- (b) such declaration will affect the functions, powers and duties under customs laws or the operations of the Customs,

the Minister responsible for customs laws shall be consulted before such declaration is made.”;

- (b) in subsection (1), by deleting “ports, airports, and the limits of ports and airports” and substituting “ports, airports, seaports and the limits of ports, airports and seaports”;
- (c) in subsection (2), by repealing subparagraph (f) the following subparagraphs—
 “(f) peripheral boundaries and surveyor’s coordinate bearings of the area; comprising the airport or seaport;
 (g) entrances and exits whether general or specific, to and from an airport or seaport.”;
- (d) in subsection (3), by inserting “on application and” after “The Comptroller may”;
- (e) by inserting after subsection (4) the following subsections—

“(5) The Comptroller may, on application, and subject to such conditions as he may deem necessary, licence—

- (c) any international airport;
 (d) seaport;
 (e) sufferance airport;
 (f) wharf; or
 (g) other any other area,

for temporary storage of goods.

(6) For the purposes of subsection (5), the Comptroller may further permit any place in an area of a seaport or airport to be used for temporary storage of goods, and may approve or licence such place as a bonded consol freight station, a bonded export freight station or a bonded customs area.”.

Section 4A inserted

4. The Act is amended by inserting after section 4, the following section—

“Revocation of ports, etc

4A.—(1) If the Minister intends to revoke or not to renew the licence of an airport or seaport, the Minister shall—

- (a) obtain the concurrence of the Comptroller;
 (b) consult the relevant Minister responsible for Transport, Civil Aviation or Seaport;
 (c) notify the operator of the airport or seaport;
 (d) notify such intention by notice in the *Gazette*, not being less than 3 months from the intended date in which the revocation or non renewal is to take effect.

(2) If notice is given under subsection (1)(c), no goods shall be deposited in such airport or seaport after its publication in the *Gazette*.

(3) For the purpose of subsection (1), the publication of the notice in the *Gazette* is deemed to be notice duly sent to and served on all persons interested in any goods then entered for or deposited in such airport or seaport and within the limits of that airport or seaport, and persons associated with movement of persons at that airport or seaport.

(4) A proper officer may cause the goods to be taken to a customs warehouse, if—

- (a) after the date specified in the notice referred to in subsection (1), or such later date as the Comptroller may in any case allow, any goods upon which duty has not been paid remain in the airport or seaport and within the limits of the airport or seaport; or
 (b) after such notice has been served, any goods are deposited in the airport or seaport and within the limits of airport or seaport.

(5) For the purpose of subsection (3), the Comptroller may, permit such goods to be transferred to another airport or seaport.

(6) For the purpose of this section, any opening, unpacking, weighing, measuring, repacking, bulking, sorting, lotting, marking, numbering, loading, unloading, carrying or landing of goods or their packages for the purposes of, or incidental to, any facilities or assistance is to be performed or provided by the master or owner of the aircraft or ship at his expense.”.

Section 5 amended

5. Section 5 of the Act is amended in subsection (3) by deleting “\$1,000” and substituting “\$10,000”.

Section 6 amended

6. Section 6 of the Act is amended—

- (a) by replacing the existing section title with the following title “Accommodation on wharves, airports, bonded consol freight stations, bonded export freight stations and bonded customs areas”;
- (b) in subsection (1)—
 - (i) by deleting “wharf and airport” and substituting with “wharf, sufferance wharf, airport, sufferance airport, bonded consol freight station, bonded export freight station and other bonded customs areas”;
 - (ii) in paragraph (a), by deleting “at his airport” and substituting “or sufferance airport, bonded consol freight station, bonded export freight station and bonded customs areas”;
 - (iii) in paragraph (a), by deleting “the wharf and airport” in the second line and substituting “these locations” before the semi-colon;
 - (iv) in paragraph (b), by deleting “of goods” and substituting “and examination and delivery of goods and baggage”;
- (c) in subsection (2)—
 - (i) in line 1, by deleting “Where a wharf or airport owner” and substituting “If the owner of a wharf, airport, sufferance wharf, sufferance airport, bonded consol freight station, bonded export freight station or bonded Customs areas”; and
 - (ii) in paragraph (a), by deleting “wharf” and substituting “wharf, airport, sufferance wharf, sufferance airport, bonded consol freight station, bonded export freight station or bonded customs areas”.

Section 8 amended

7. Section 8 of the Act is amended—

- (a) in subsection (2)—
 - (i) in paragraph (a), by deleting “imported goods,” and substituting “imported goods, whether imported by sea, air, stored in a bonded consol freight station or a bonded Customs area,”;
 - (ii) in paragraph (c), by deleting “port” and substituting “airport, seaport”;
 - (iii) in paragraph (d), by deleting the word “port” after “airport” and before “or” and substituting with “seaport”;
 - (iv) by adding the following paragraphs—
 - “(i) all goods from any bonded warehouse or excise warehouse from the time of their being dispatched from such bonded warehouse or excise warehouse until exportation or until release from customs control;
 - (j) all goods verified by Customs within a secure exports scheme until exportation or until release from customs control;
 - (k) all goods that have been secured in a customs-approved secure package under the secure exports scheme but not yet exported;
 - (l) all goods intended for transshipment;
 - (m) all restricted or prohibited goods;
 - (n) all goods being transferred between two customs areas.”.

(b) by inserting after subsection (2) the following new subsections—

- “(3) The Comptroller may, subject to such conditions as in any particular case he may deem necessary, extend the descriptions of customs control goods in subsection (2), temporarily meeting exigencies of any place (other than within the limits of seaports or airports) to be used temporarily as a place for loading or unloading and examination of goods, a boarding station, a sufferance airport or sufferance wharf, a road or route over which goods under customs control may be conveyed, or entrance or exit.
- (4) The Comptroller may, temporarily appoint and specify areas or places outside the limits of airports and sea ports to be used temporarily for the purpose of storing, examination and clearance of goods, including baggage, subject to such conditions as may be notified when such areas or places are appointed and to the payment of such prescribed sum.
- (5) The Comptroller may, upon written application, and subject to such conditions as he may deem necessary, permit any place in an area outside of airport or seaport peripheral boundaries, to be used for the purposes of subsections (3) and (4).
- (6) An appointment under subsection (4)—
- (a) shall not be made until the operator that applies has furnished a memorandum of understanding with the Customs regarding the security arrangement for import, export and transshipment of goods; and
- (b) shall be subject to full compliance with paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m) and (n) of subsection (2).
- (7) The Comptroller may appoint and specify areas within the limits of airports and seaports as customs enclosed areas to be expressly demarcated for the parking and berthing of aircraft and vessels arriving from and departing to places outside Fiji, and the operators of such airports or seaports shall have such boundaries to such places expressly marked to be easily visible to the pilot or master of aircraft and vessels.
- (8) Notwithstanding any existing airport or seaport appointed under the customs laws, all such airports or seaports shall conform to all requirements under this Act for the purposes of licensing by the Comptroller.”

Section 10 amended

8. Section 10 of the Act is amended—

(a) by inserting after subsection (2) the following subsection—

- “(3) If goods are detained or seized under this Act, the bringing of such goods from the place of examination to a Customs warehouse or such other place as may be directed by the proper officer, shall be provided by and at the expense and risk of the owner, importer, exporter or agent of the goods as the case may be.”.

Section 11A inserted

9. The Act is amended by inserting after Section 21, the following—

“PART VA — ADVANCED NOTIFICATION OF ARRIVAL OF AIRCRAFT OR SHIP

Advanced notification of arrival of aircraft or ship

11A.—(1) Subject to customs laws, the pilot, commanding officer or agent of an aircraft, whether laden or in ballast, shall, not less than 9 hours or less than the actual flight time from the airport of departure outside Fiji to any airport in Fiji, but before arrival at a Fiji airport, or at any other place especially allowed

by the proper officer, notify the proper officer (in the prescribed form or by means of an electronic message and in the prescribed manner)—

- (a) of the aircraft;
- (b) of its passengers and crew;
- (c) of its cargo and stores; and
- (d) of any package for which there is no airway bill.

(2) Subject to the customs laws, the master or agent of a ship, whether laden or in ballast shall, not less than 2 days before arrival from outside Fiji to any port in Fiji, or at any other place especially allowed by the proper officer, notify the proper officer (in the prescribed form or by means of an electronic message and in the prescribed manner)—

- (a) of such ship;
- (b) of its passengers and crew;
- (c) of its cargo and stores; and
- (d) of any package for which there is no bill of lading.

(3) The proper officer may permit the master or agent of an aircraft or ship to amend any obvious error in the notification, or to supply any omission, which in the opinion of the proper officer results from accident or inadvertence, by providing an amended or supplementary notification in the prescribed manner.

(4) A master, pilot, commanding officer or agent of an aircraft or ship who—

- (a) fails to make a notification under subsection (1) or (2); or
- (b) makes a notification in which any of the material particulars contained are false; or
- (c) fails to comply with any direction given by the Comptroller for the purpose of this Part;

commits an offence, and is liable to a fine not exceeding \$10,000.”

Section 19 amended

10. Section 19 of the Act is amended—

- (a) in subsection (1)(c) by deleting “port” and substituting “seaport”; and
- (b) by repealing subsection (2) and adding the following subsections —

“(2) The operator of an international passenger air service shall provide access to passenger information, if requested by the Comptroller to allow authorised officers ongoing access to the operator’s passenger information in a particular manner and form.

(3) Subsection (2) is not contravened if—

- (a) the operator, at a particular time, cannot access its passenger information; or
- (b) the operator had a reasonable excuse for failing to provide the facilities and assistance in accordance with that subsection.

(4) An authorised officer must only access an operator’s passenger information for the purposes of performing his or her functions in accordance with the Act.

(5) In this section—

“Fiji international flight” means a flight—

- (a) from a place within Fiji to a place outside Fiji; or
- (b) from a place outside Fiji to a place within Fiji;

“international passenger air service” means a service of providing air transportation of persons—

- (a) by means of Fiji (international flights, domestic flights or other international flights);
- (b) for a fee payable by persons using the flight service;
- (c) in accordance with fixed schedules to or from fixed terminals over specific routes; and
- (d) that is available to the general public on a regular basis;

“operator”, in relation to an international passenger air service, means a person, who conducts, or offers to conduct, the service;

“passenger information”, in relation to an operator of an international passenger air service, means any information the operator of the service keeps electronically relating to —

- (a) flights scheduled by the operator (including information about schedules, departure and arrival terminals, and routes);
- (b) payments by persons of fees relating to flights scheduled by the operator;
- (c) persons taking, or proposing to take, flights scheduled by the operator;
- (d) passenger check-in, and seating, relating to flights scheduled by the operator;
- (e) numbers of passengers taking, or proposing to take, flights scheduled by the operator;
- (f) baggage, cargo or anything else carried, or proposed to be carried, on flights scheduled by the operator and the tracking and handling of those things;
- (g) itineraries (including any information about things other than flights scheduled by the operator) for people taking, or proposing to take, flights scheduled by the operator; and
- (h) any other information required by the Comptroller.

(6) In this section, the flights referred to are any flight scheduled by the operator (not just Fiji international flights).

(7) A master, agent or operator that contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 12 years.”.

Section 27 amended

11. Section 27 of the Act is amended—

(a) in subsection (1) by—

- (i) deleting “10 days” and substituting “4 days”;
- (ii) inserting “and including the operator of any area approved and licensed by the Comptroller under section 4, and including a bonded consol freight station or a bonded customs area,” after “his agent,”

(b) in subsection (2) by—

- (i) deleting “9 days” and substituting “3 days”;
- (ii) inserting “and including the operator of any area approved and licensed by the Comptroller under section 4, and including a bonded consol freight station or a bonded customs area,” after “his agent,”;
- (iii) deleting “\$500” and substituting “\$5,000”;

(c) in subsection (4) by deleting “9 days” and substituting “3 days”.

Section 47 amended

12. Section 47 of the Act is amended by adding the following subsections—

- “(1A) An entry under subsection (1) shall clearly record the exact date and time of removal of such goods.
- (1B) The Comptroller shall also at all times maintain a proper record of the removal of all goods from a warehouse.
- (1C) The Comptroller—
 - (a) may, as and when it is necessary to do so for the purposes of carrying into effect the provisions of this Act, seal up any warehouse for the duration of time necessary for giving effect to such purposes; and
 - (b) shall keep and maintain proper record of all seals placed upon the entrance to and exit from any bonded warehouse, including the records of all seals used and the date of use of same.”.

Section 52 amended

13. Section 52 of the Act is amended—

- (a) by deleting “three years” and substituting “one year”; and
- (b) by deleting “two years” and substituting “one year” in the proviso.

Section 63 amended

14. Section 63 of the Act is amended in subsection (1), by deleting “ 21 days” and substituting “7 days”.

Section 65 amended

15. Section 65 of the Act is amended—

- (a) in subsection (1), by repealing paragraph (a) and its subparagraphs and substituting the following paragraphs;
 - “(a) no goods shall be taken on board an aircraft or ship for export unless the master or master’s agent—
 - (i) has delivered a manifest to the Comptroller by means of an electronic message 2 days ahead of the proposed time of departure for a ship and 9 hours ahead of the proposed date of departure for an aircraft on the customs system and the system has allocated a registration number in respect of that message; or
 - (ii) has possession of an export entry declaration in respect of that shipment;
 - (aa) no goods shall be approved to be put on board an aircraft or ship for export unless the exporter or the exporter’s agent—
 - (i) has previously delivered to an officer an entry declaration outwards 2 days ahead of the proposed time of departure of a ship and 9 hours ahead of the proposed date of departure for an aircraft in the prescribed form; or
 - (ii) in the case of an entry declaration made by means of an electronic message, has transmitted the appropriate message to a system and the system has allocated a registration number in respect of that message; and
 - (iii) has paid all duties and charges payable upon the goods;”;
- (b) in subsection (1)(b), by inserting after the word “loading” the words “a sufferance airport,” before the words “a sufferance wharf;”;
- (c) by inserting the following after paragraph (b), the following subparagraph—
 - “(c) no goods destined for export shall be received at any premises for storage or stowage unless the premises has been duly licensed by the Comptroller as a bonded Customs area.”;

- (d) in subsection (2), by inserting “and is liable to a fine of three times the value of the export declared on the export entry declaration or a fine not exceeding \$50,000, whichever is the greater, or to imprisonment for term not exceeding 6 years, or to both such fine and imprisonment;” after “offence”
- (e) by inserting after subsection (2) the following subsection—

“(3) Notwithstanding the penalty in subsection (2), the Comptroller shall prevent all further exports for that exporter until the penalty has been settled or served in full.”.

Sections 65A inserted

16. The Act is amended by adding after section 65, the following section—

“Storage and stowage of goods destined for export

65A.—(1) The Comptroller may, on application, license any area to be a bonded export freight station whether inside or outside the limits of an airport of entry or a seaport of entry.

(2) A licence issued under this section shall—

- (a) be in the prescribed form;
- (b) be subject to the payment of prescribed fees; and
- (c) be subject to any prescribed security arrangement.

(3) No licence shall be issued under subsection (1) unless the applicant has furnished a memorandum of understanding to the Customs regarding the security arrangement for export and transshipment of goods, dealing in under bond goods, as articulated in section 67 and subject to full compliance with section 67(2).

(4) The Comptroller may, subject to such conditions as he may think fit, by notice in the *Gazette*, appoint the following places as the Comptroller considers necessary for the purposes of the customs laws in relation to areas whether inside or outside the limits of airports and seaports licensed under this section—

- (a) places for loading and unloading of export goods;
- (b) places for examination of export goods;
- (c) places for detention and storage of detained export goods;
- (d) satisfactory office accommodation and furnishing; and
- (e) satisfactory sanitation facilities.”.

Section 66 amended

17. Section 66 of the Act is amended—

- (a) in subsection (1)(c), by deleting “entry provided” and substituting “an entry being immediately provided, unless”;
- (b) in subparagraph (ii) of subsection (1)(c)—
 - (i) by inserting “or his duly authorised agent” after “owner of the goods”;
 - (ii) by deleting “6 days” and substituting “5 consecutive days;” and
- (c) in subparagraph (iii) of subsection (1)(c) by inserting “or his duly authorised agent” after “owner”;
- (d) in subsection (2)—
 - (i) by deleting “6 days” and substituting “5 consecutive days”;
 - (ii) by deleting “\$100” and substituting “\$1,000.”.

Sections 66A to 66H inserted

18. The Act is amended by adding after Section 66, the following sections—

Purpose of secure exports scheme

66A. The purpose of a secure exports scheme is to ensure that the goods to be exported under the scheme are—

- (a) packed securely with no other goods; and
- (b) conveyed securely and without interference to the place of shipment and shipped.

Security for export freight stations

66B. Sections 35 and 36 apply to security arrangements for any bonded export freight station.

Customs approved secure exports schemes

66C.—(1) The Comptroller may, upon written application by a person involved in the carriage, handling, transportation, or exportation of goods for export, approve a secure exports scheme, as a customs approved secure export scheme, subject to any conditions the Comptroller may impose.

(2) The Comptroller must ensure that the exporter concerned is notified promptly and in writing of any decision to give or to decline an approval under this section.

(3) An approval under this section must be in writing and takes effect either on the day after the date on which it is given or on any later date specified in the approval.

(4) Any approval under this section may be revoked by the Comptroller by notice in writing given to the exporter concerned and specifying both any conditions to which the revocation is subject and the date on or after which the revocation takes effect.

(5) Subsections (1) to (4) apply, with all necessary modifications, to any amendment to a secure exports scheme.

(6) Upon an application for the purpose by the exporter concerned, the Comptroller must revoke an approval under this section of all of a secure exports scheme.

(7) The revocation of an approval must be subject to the condition that goods remain subject to the scheme until exported, if, at the time the revocation takes effect, the goods have been secured in a customs approved secure package under the scheme but not yet exported.

Matters to be specified in secure exports scheme

66D.—(1) A secure exports scheme must specify how the goods to be exported under the scheme are to be packed, including—

- (a) the secure package to be used;
- (b) the seal or markings to be applied to the package, as soon as it is secured—
 - (i) to show that, when it was secured, the package contained only the goods, and was secured in an approved way; and
 - (ii) to help to identify tempering or interference with the package after it was secured.

(2) A secure exports scheme must also specify any conditions required by the Comptroller as to—

- (a) the persons who are to pack the goods, and the security checks to be applied to those persons;
- (b) the conditions in which packing is to occur (such as, the area or areas in which packing is to occur, and the controls on the entry and exit of persons and goods to that area or those areas);
- (c) any other requirements relating to how the goods are to be packed.

(3) A secure exports scheme must also specify how, on the completion of the packing of the goods, the goods are to be conveyed to the place of shipment and shipped, including any conditions required by the Comptroller as to—

- (a) the persons who are to convey the goods, and the security checks to be applied to those persons;
- (b) the manner in which those goods are to be conveyed;
- (c) any place or places of security en route to the place of shipment in which the goods are to be stored in the course of being conveyed to the place of shipment and shipped.

Matters to be acknowledged in secure exports scheme

66E. A secure exports scheme must include express acknowledgements by the exporter concerned—

- (a) that the goods to be exported under the scheme are subject to the control of Customs from the time such goods are first secured in a customs approved secure package until their exportation;
- (b) that the powers of detention and search under this Act are available in respect of a vehicle in Fiji if there are suspected to be in or on the vehicle goods that are, or are suspected to be,—
 - (i) subject to the control of the Customs; and
 - (ii) in a customs approved secure package.
- (c) that a customs officer may, under this Act, question any or all of the following persons about any cargoes destined to be exported—
 - (i) a person who is the owner or operator of a vehicle that a customs officer has reasonable cause to suspect has in or on it, or has within the previous 72 hours had in or on it, goods subject to the control of the Customs and in a customs approved secure package;
 - (ii) a person who is the owner or occupier of premises that a customs officer has reasonable cause to suspect have in or on them, goods subject to the control of the Customs and in a customs approved secure package;
 - (iii) a person employed by a person described in subparagraph (i) or (ii);
- (d) that the powers in section 114 (which includes powers of examination) are available in respect of goods that are, or are suspected to be—
 - (i) subject to the control of the Customs; and
 - (ii) in a customs approved secure package.

Exports under drawback from a secure exports scheme premises

66F. The Comptroller may permit a secure exports scheme operator to export its goods directly from a secure exports scheme premises provided that all conditions prescribed for export under drawback under sections 98 to 101 shall bind the operator of the secure exports scheme.

Customs seals to goods exported under secure exports scheme

66G. Nothing in this Act prevents a Customs seal from being applied on any goods or any means of conveyance and the laws governing the application of Customs seals shall prevail.

Penalty when goods under secure exports scheme are found contrary to declaration

66H.—(1) If any goods under the secure exports scheme have been found by the Customs at any stage, to be incorrect in any material particular from any declaration made to the Customs, the operator of the secure exports scheme commits an offence and is liable on conviction to—

- (a) a fine of three times the value of the export declared on the export entry declaration or a fine not exceeding \$50,000, whichever is the greater; or
- (b) imprisonment for a term not exceeding 6 years, or to both such fine and imprisonment;
- (c) in addition to such penalties, an order that any goods in respect of which such offence is committed are liable to forfeiture.

- (2) The Comptroller may revoke the approval given to that secure exports scheme operator, if the operator is convicted under subsection (1) in addition to the penalties imposed to that operator.”

Section 67 amended

19. Section 67 of the Act is amended—

- (a) in subsection (1) by deleting “or” paragraph (c); and by substituting the comma with a semicolon at the end of paragraph (d); and by adding the following paragraphs—
- “(e) goods approved under the secure exports scheme;
 - (f) goods in a Customs-approved secure package;
 - (g) goods from a Tax Free Factory;
 - (h) goods from a Tax Free Zone;
 - (i) goods from a Duty Suspension Scheme premises, or;
 - (j) goods from an excise factory;”;
- (b) in subsections (1) and (3), by deleting “owner” and substituting “exporter or his duly authorised agent” where it appears in those subsections;
- (c) in paragraphs (a) and (b) of subsection (4), by inserting “or his duly authorised agent” after “exporter”;
- (d) by inserting after subsection (3) the following subsection—
- “(3A) The master or agent of any aircraft or ship including the operator of any storage area approved and licensed by the Comptroller under this Act, and a bonded consol freight station, a bonded export freight station or any bonded Customs area, in which goods under subsection (1) were received and approved for shipment by the Customs shall be responsible to ensure the goods are actually shipped as entered for export.”;
- (e) by inserting after subsection (5) the following subsections—
- “(5A) For the purpose of subsection (4) or (5), the master, owner or agent of the aircraft or ship against which the proper officer had certified export documents for shipment shall also be required on demand, to produce a certificate from the customs authorities at the port of discharge of the due discharge thereat of the goods according to the export entry declaration.
- (5B) For the purpose of subsection (5A), the master, owner or his duly authorised agent that—
- (a) fails to produce such certificate; or
 - (b) produces a certificate that does not show that the goods have been discharged thereat according to the export entry declaration; and
 - (c) fails to account for any of the goods to the satisfaction of the proper officer, the proper officer may refuse to allow any further export by that master, owner or his duly authorised agent until the appropriate duties, fees and taxes due on those goods have been paid in full.”;
 - (f) in subsection (6) by deleting “not exceeding \$2,000,” and substituting “of three times the value of the export declared on the export entry declaration or \$100,000, whichever is the greater, or to imprisonment not exceeding 12 years;”.

Section 68 amended

20. Section 68 of the Act is amended by deleting “48 hours of the departure of the aircraft or ship” and substituting “9 hours of the departure of the aircraft or within 2 days of the departure of the ship”.

Section 69 amended

21. Section 69 of the Act is amended by inserting after subsection (2), the following subsection—

- “(3) If it is not possible to assess the exact amount of export duty to be paid, the Comptroller may accept a provisional entry or a security given under section 35.”.

Section 71 amended

22. Section 71 of the Act is amended by deleting "\$2,000" and substituting "\$20,000 plus 10% of the export value stated on the export entry declaration".

Section 72 amended

23. Section 72 of the Act is amended by repealing the subsection (4) and substituting the following subsections—

- “(4) Any aircraft or ship which has been issued with a valid certificate of customs clearance for departure beyond Fiji shall depart Fiji—
 - (a) for the aircraft, within 2 hours from the time clearance is given;
 - (b) for the ship, within 1 day from the time clearance is given.
- (5) If the aircraft or ship does not depart from Fiji within the times specified in subsection (4), the master or agent of the aircraft or ship commits an offence and is liable on conviction to a fine not exceeding \$20,000 or imprisonment for a term not exceeding 2 years or to both such fine and imprisonment.
- (6) If the master or agent is convicted under subsection (5), no customs clearance shall be issued to such aircraft or ship until the fine is paid in full.
- (7) The master or agent is not liable under subsection (5) if the master or agent shows reasonable excuse for such failure to comply with subsection (4).”.

Section 74 amended

24. Section 74 of the Act is amended by—

- (a) in subsection (1), by inserting “, or transferred to another aircraft or ship at any place in Fiji.” after “Fiji”;
- (b) in subsection (2), by inserting “and is liable to a fine of three times the total duty component of relevant goods at subsisting rates for home consumption or \$50,000 whichever is greater or to imprisonment not exceeding 3 years or to both such fine and imprisonment;” after “guilty of an offence”.

Title to Part XIV substituted

25. The title to Part XIV is substituted by the following title—

“PART XIV CARRIAGE OF IMPORTED UNDER BOND GOODS WITHIN FIJI”.

Section 84 amended

26. Section 84 of the Act is amended—

- (a) in subsection (2) by deleting “such goods are liable to forfeiture and the master of the aircraft or ship or the agent is guilty of an offence.” and substituting “the master of the aircraft or ship or the agent commits an offence and, is liable on conviction to a fine of three times the total duty component at subsisting rates for home consumption of those goods or \$200,000 whichever is greater or to imprisonment not exceeding 12 years or to both such fine and imprisonment.”; and
- (b) by inserting after subsection (2) the following subsections—
 - “(3) Goods which have not been released from customs control and have been carried coastwise under this section shall not be unloaded before due import entry of such goods has been made except if the goods are unloaded for deposit in a customs area.
 - (4) If any import dutiable goods for home consumption are unloaded in contravention of subsection (3) or are dealt with contrary to any condition or restriction imposed under subsection (1), the master of the aircraft or ship or the agent commits an offence and, is liable to—
 - (a) a fine of three times the total import duty component (as the case may be) at subsisting rates for home consumption on those goods or \$200,000 whichever is greater; or

- (b) imprisonment not exceeding 12 years or to both such fine and imprisonment; and
- (c) an order that such goods in respect of which the offence is committed be forfeited.

- (5) If a master or agent is convicted under subsection (2) or (4), the master or agent shall not be permitted to carry out any coastwise transactions until any fine imposed under the subsection (2) or (4) is paid in full.”.

New Part XIVA inserted

27. The Act is amended by adding after section 84 the following new Parts—

**“PART XIVA—TRANSFER OF EXCISE UNDER BOND GOODS BETWEEN
EXCISE FACTORIES, EXCISE WAREHOUSES AND PORTS WITHIN FIJI**

Transfer of Excisable Goods

84A.—(1) The Comptroller may, subject to such conditions and restrictions as he sees fit to impose, permit goods transferred from an excise factory or an excise warehouse to a port in Fiji, to be transferred before due entry of the goods has been made to another aircraft, vehicle or ship for carriage by air, land or sea to that other port, and any goods so transferred and carried shall for the purposes of this Act be deemed to be carried coastwise.

(2) Excise goods which have been carried coastwise under this section shall not be unloaded before due entry of such goods has been made except if the goods are unloaded for deposit in a customs area and duly deposited in such area.

(3) If any import dutiable goods for home consumption are unloaded in contravention of subsection (2) or are dealt with contrary to any condition or restriction imposed under subsection (1), the master of the aircraft or ship or the agent commits an offence and, is liable to—

- (a) a fine not exceeding three times the total import duty component (as the case may be) at subsisting rates for home consumption on those goods or \$200,000, whichever is the greater;
- (b) imprisonment for a term not exceeding 12 years or to both such fine and imprisonment; or
- (c) to an order that the goods in respect of which the offence is committed be forfeited.

(4) If a master or agent is convicted under subsection (3), the master or agent who is convicted under this section shall not be permitted to carry out any further coastwise transactions until any fine imposed under the subsection (3) is paid in full.”.

**PART XIVB—CARRIAGE AND ACCOUNTABILITY
OF EXPORT UNDER BOND GOODS WITHIN FIJI**

Carriage and accountability of export under bond goods within Fiji

84B—(1) The Comptroller may, subject to such conditions and restrictions as he sees fit to impose, permit goods described in section 67(1) transferred to a port in Fiji but consigned to and intended to be exported from Fiji to be transferred before due entry of the goods has been made to another aircraft, vehicle or ship for carriage by air, land or sea to that other port, and any goods so transferred and carried shall for the purposes of this Act be deemed to be carried coastwise.

(2) Transferred goods which have been carried coastwise under this section shall not be unloaded before due entry of such goods has been made except if the goods are unloaded for deposit in a customs area and duly deposited in such area.

(3) Goods which have been carried coastwise under this section shall not be unloaded before due entry of such goods has been made except if the goods are unloaded for deposit in a customs area and duly deposited in such area.

(4) A master or agent who unloads goods contrary to subsection (2) or (3) commits an offence and, is liable on conviction to—

- (a) a fine not exceeding three times the total import duty component (as the case may be) at subsisting rates for home consumption on such goods or \$200,000 whichever is greater;
- (b) imprisonment for a term not exceeding 12 years or to both such fine and imprisonment; or
- (c) an order that such goods in respect of which the offence is committed be forfeited.

(5) If a master or agent is convicted under subsection (4), the master or agent shall not be permitted to carry out any further coastwise transactions until any fine imposed under subsection (4) is paid in full.”.

Section 85 amended

28. Section 85 of the Act is amended—

- (a) in subsection (1), by—
 - (i) inserting “or excisable goods” after “imported goods”;
 - (ii) inserting “appropriately” after “duty chargeable”;
 - (iii) inserting “or excise home consumption” after “on the importation”;
- (b) in subsection (2), by inserting “or section 23(1) (including the relevant Parts of Schedules 1 and 2) of the Excise Act, as the case may be” after “subsection (1)”.

Section 95A inserted

29. The Act is amended by adding after section 95 the following section—

“Recovery of tax debts

95A.—(1) The Commissioner of Inland Revenue may, in writing, request to the Comptroller to detain any goods, if the owner of such goods has not paid taxes due and payable under the Income Tax Act (Cap. 201), the Value Added Tax Decree 1991, the Gambling Turnover Tax Decree 1991 and the Hotel Turnover Tax Act 2006.

(2) Section 95(2) applies, with necessary modifications, to recovery of tax under this section.”.

Section 128 amended

30. Section 128 of the Act is amended—

- (a) in subsection (2)(a), by adding “he is guilty of an offence” after “claim or receive”;
- (b) in subsection (2) by adding after paragraph (b) the following paragraph—
 - “(c) if the Comptroller or any officer takes possession of or unauthorised usage of any goods under false pretences other than for authorised bona fide usage for Customs and Excise, he is guilty of an offence.”;
- (c) in subsection (3), by inserting after paragraph (b) the following paragraph (c)—
 - “(c) colludes with the Comptroller or any officer in unauthorised usage of any goods under false pretences other than for authorised bona fide usage for customs or excise.”;
- (d) in subsection (4), by deleting “\$5,000” and substituting “\$50,000”;
- (e) by inserting “and the goods the subject matter of the offence may be ordered to be forfeited, notwithstanding that the goods may be duty paid” after “fine and imprisonment”.

Section 129 amended

31. Section 129 of the Act is amended by adding after subsection (2) the following subsections—

“(3) The officer or other person so authorised may place under seal any goods detained under this section and keep such goods on board an aircraft, ship, or vehicle under customs control or keep at any customs area, or keep at any other place authorised by the Comptroller.

(4) No seal referred to and placed under subsection (3) may be broken or interfered with while the goods remain detained except with the consent of the Comptroller.

(5) A person who breaks or interferes with a seal placed under subsection (3) commits an offence and the goods in respect of which the offence is committed are liable to forfeiture.

(6) Detained goods, which have been placed under seal on board an aircraft or ship in accordance with the provisions of this Act, shall remain under seal until the aircraft or ship has departed from Fiji on an outward voyage.”

Section 135 amended

32. Section 135 of the Act is amended by—

- (a) deleting “\$2,000” and substituting “\$200,000”; and
- (b) by deleting “2 years” and substituting “12 years”.

Section 135A inserted

33. The Act is amended by inserting after section 135 the following section—

“Colluding, conspiring or conniving with any person to commit a Customs offence

135A. Any person who—

- (a) colludes with an officer, importer, exporter, or any agent, or any person whosoever or whatsoever, corporate or unincorporated, to violate or to breach any customs law;
- (b) colludes either directly or indirectly to deliver up or not to seize any aircraft, ship or goods required by this Act to be delivered up or to be seized;
- (c) conspires or connives with any person to import or export contrary to this Act or the Excise Act; or
- (d) is in any way concerned in the importation or exportation of any goods for the purpose of preventing seizure of any aircraft or ship or goods and obtaining any reward for preventing such seizure,

commits an offence and is liable on conviction to a fine not exceeding \$200,000 or to imprisonment for 12 years or to both such fine and imprisonment and the subject matter of the offence shall be liable to forfeiture.”

Section 143C inserted

34. The Act is amended by inserting after section 143B the following section—

“Departure prohibition orders

143C—(1) Notwithstanding any other provision of this Act, if the Comptroller is satisfied that a person—

- (a) owes duty or has outstanding fines or penalties under the Customs Act 1986 or Customs Tariff Act 1986 or Excise Act 1986; and
- (b) may leave Fiji without discharging such duty, fines or penalties under the Customs Act 1986, Customs Tariff Act 1986 or Excise Act 1986 or without securing such duty, fines or penalties,

the Comptroller may issue a departure prohibition order against the person prohibiting the departure of the person from Fiji for another country.

(2) Other provisions regulating departure prohibition order under the Income Tax Act apply, with necessary modification, to this section.”

Section 148 replaced

35. The Act is amended by repealing section 148 and substituting the following section—

Licensing of airline and shipping agents

“148. —(1) The Comptroller may, on application, licence such other persons as he thinks fit as airline or shipping agents for transacting business relating to inward and outward entry and clearances of any aircraft or ship, including its goods and baggage.

(2) Sections 144(2), (3), 145, 146 and 147 apply, with necessary modifications, to this section.

Section 174 amended

36. Section 174 of the Act is amended—

- (a) by inserting “, on the recommendation of the Judicial Service Commission,” after “Minister may”;
- (b) by inserting “substantial” after “legal knowledge and”;
- (c) by inserting “for dealing with such other matters as are assigned to the said person under the provisions of this Act, the Customs Tariff Act 1986 and the Excise Act 1986” after “Schedule,”;
- (d) by inserting after “shall,” and before “for” the following – “in Customs, Tariff and Excise matters”.

Given under my hand this 18th day of April 2007.

J. I. ULUIVUDA
President of the
Republic of Fiji Islands
