

A BILL

i n t i t u l e d

An Act to amend the Free Zones Act 1990.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Free Zones (Amendment) Act 2019.

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

Amendment of section 2

2. The Free Zones Act 1990 [*Act 438*], which is referred to as the “principal Act” in this Act, is amended in section 2—

(a) in subsection (1)—

(i) in the definition of “commercial activity”, by substituting for the words “, relabelling and transit” the words “and relabelling”;

- (ii) by inserting after the definition of “operation” the following definitions:

‘ “owner” in relation to goods, includes any person being or holding himself out to be the owner, importer, exporter, consignee, agent or person in possession of, or beneficially interested in, or having any control of, or power of disposition over, the goods;

“Pangkor” shall have the same meaning assigned to it under section 163Q of the Customs Act 1967;’; and

- (iii) in the definition of “principal customs area”, by substituting for the words “and Tioman” the words “, Tioman and Pangkor”; and

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

“(2A) For the purpose of the definition of “owner”, “exporter” and “importer” shall have the same meaning assigned respectively to them under section 2 of the Customs Act 1967.”.

Amendment of section 7

3. Section 7 of the principal Act is amended—

- (a) by renumbering the existing section 7 as subsection (1); and

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

“(2) Custom duty, if any, on any goods deemed to be exported from or imported into Malaysia shall be payable.”.

New sections 8A and 8B

4. The principal Act is amended by inserting after section 8 the following sections:

“Declaration to give full and true account

8A. Any person who makes any declaration under this Act or any regulations made thereunder for the purpose of obtaining approval from the proper officer of customs or proper officer of the Authority shall give a full and true account relating to—

- (a) the number and description of the packages;
- (b) the description of the goods;
- (c) the weight, measure or quantity of the goods;
- (d) the value of all of the goods; and
- (e) the country of origin of the goods.

Goods unaccounted for

8B. (1) Where in any shop or warehouse, or other building, place or premises in a free zone the quantity of any goods which ought to be kept there, is found by a proper officer of customs to be short and the deficiency is not accounted for to the satisfaction of such officer, the owner of such goods or the operator of such shop or warehouse, or other building, place or premises shall, until the contrary is proved, be deemed to have illegally removed such goods from the free zone into the principal customs area, and shall, until the contrary is proved, be deemed to have knowledge of the removal.

(2) Where the goods deemed illegally removed from the free zone into the principal customs area under subsection (1) are subject to taxes, duties or payment under any written law, the owner of such goods or the operator of such shop or warehouse, or other building, place or premises shall be liable to pay to the proper officer of customs such taxes,

duties or payment on demand being made within six years from the date on which such taxes, duties or payment was payable or the deficient taxes, duties or payment was paid unless the owner of such goods or the operator of such shop or warehouse, or other building, place or premises can show to the satisfaction of the Director General that such deficiency has been caused by unavoidable leakage, breakage or other accident.

(3) Nothing in subsection (2) prevents the Director General from making a demand at any time after six years whenever any payment of taxes, duties or payment is not paid or short paid due to any form of fraud or default committed by or on behalf of any person.

(4) For the purposes of this section, “operator” means any person who has been given the approval under the regulations made under this Act to carry out any activity in a free zone.”.

Substitution of section 9

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

“Penalty

9. (1) Any person who contravenes section 5, 6A or 8 shall be guilty of an offence and shall, on conviction, be liable—

(a) for the first offence, to a fine of not less than ten times the value of the goods or fifty thousand ringgit, whichever is the greater amount, and of not more than twenty times the value of the goods or five hundred thousand ringgit, whichever is the greater amount, or to imprisonment for a term not exceeding five years or to both; and

(b) for a second offence or any subsequent offence, to a fine of not less than twenty times the value of the goods or one hundred thousand ringgit, whichever is the greater amount, and of not more than forty

times the value of the goods or one million ringgit, whichever is the greater amount, or to imprisonment for a term not exceeding seven years or to both.

(2) If the value of the goods under subsection (1) cannot be ascertained, the penalty may amount to a fine of not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.”.

New section 10A

6. The principal Act is amended by inserting after section 10 the following section:

“Record of activity

10A. (1) Every person carrying out any activity in a free zone who has possession of documents and records pertaining to the activity of importation, exportation or manufacturing of goods, shall preserve for a period of seven years all documents and records relating to such activity.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.”.

Amendment of section 14

7. Section 14 of the principal Act is amended by deleting the word “industrial” wherever appearing.

Amendment of section 15

8. Section 15 of the principal Act is amended—

(a) in the shoulder note, by deleting the word “**industrial**”;
and

(b) in subsection (1), by deleting the word “industrial”.

Amendment of section 17

9. Section 17 of the principal Act is amended—

(a) in subsection (2)—

(i) by substituting for the words “if so directed by the Minister shall present to him” the words “shall furnish to the Minister”; and

(ii) by substituting for the word “prescribe” the word “direct”; and

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

“(3) The reports and information referred to in subsection (2) shall be in such form as the Minister may specify.”.

Amendment of section 18

10. Section 18 of the principal Act is amended—

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

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

“(2) When any information or document given or produced under subsection (1) is proved to be untrue or incorrect in whole or in part it shall be no defence to allege that the information or document or any part of the information or document was furnished inadvertently or without criminal or fraudulent intent, or was misinterpreted or not fully interpreted by an interpreter provided by the person who has given such information or produced such document.”.

Amendment of section 19

11. Section 19 of the principal Act is amended by substituting for the words “not exceeding five thousand ringgit” the words “not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both”.

New section 20A

12. The principal Act is amended by inserting after section 20 the following section:

“Access to shop or warehouse, or other building, place or premises

20A. (1) Any senior officer of customs shall for the purposes of this Act at all times have full and free access to any shop or warehouse, or other building, place or premises in the free zone where any person carries on his activity.

(2) Where any senior officer of customs enters upon any shop or warehouse, or other building, place or premises in accordance with this section, he may—

- (a) require any person to produce any goods, document or thing which relates to the person’s activity and any documents and records which are required to be kept under section 10A;
- (b) examine any goods, document or thing;
- (c) seize and detain any goods, document or thing if in his opinion it may afford evidence of the commission of any offence under this Act or any regulations made thereunder;
- (d) require any person to answer any question relating to any goods, document or thing;
- (e) require any container, envelope or other receptacle in the shop or warehouse, or other building, place or premises to be opened;

- (f) at the risk and expense of the person carrying out activity in the shop or warehouse, or other building, place or premises, open and examine any package, or any goods or material in the shop or warehouse, or other building, place or premises; or
- (g) take samples of any goods or material and make copies or extracts of any document, if he deems it necessary.

(3) Where any senior officer of customs is unable to obtain full and free access to the shop or warehouse, or other building, place or premises under subsection (1) or to any container, envelope or other receptacle contained therein, he may, at any time, enter the shop or warehouse, or other building, place or premises and open the container, envelope or other receptacle and by force, if necessary.

(4) Any person who refuses to permit any senior officer of customs to enter upon any shop or warehouse, or other building, place or premises in accordance with this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.”.

Amendment of section 21

13. Section 21 of the principal Act is amended by substituting for the words “shop, warehouse or other building or place”, “shop, warehouse, building or place” and “place” wherever appearing the words “shop or warehouse, or other building, place or premises”.

Amendment of section 22

14. Section 22 of the principal Act is amended by substituting for the words “shop, warehouse or other building or place” wherever appearing the words “shop or warehouse, or other building, place or premises”.

Amendment of section 23A

15. Subsections 23A(1) and (2) of the principal Act are amended by inserting after the words “his powers under sections” the word “20A,”.

Substitution of section 33

16. The principal Act is amended by substituting for section 33 the following section:

“Compounding of offences

33. (1) Any senior officer of customs may, with the written consent of the Public Prosecutor, compound any offence committed by any person under this Act and prescribed by the Minister to be a compoundable offence by making a written offer to the person suspected of committing the offence to compound the offence on payment to the Director General of an amount of money not exceeding fifty per centum of the amount of the maximum fine for that offence within the time specified in the offer.

(2) An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted, and if the amount specified in the offer is not paid within the time specified in the offer or within any extended period as the Director General may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(3) Where an offence has been compounded under subsection (1), no prosecution shall after that be instituted in respect of the offence against the person to whom the offer to compound was made.

(4) Upon payment of such compound under subsection (1), any property seized shall be released and no further proceedings shall be taken against such property except that if the property seized consists of goods the import of which into Malaysia is absolutely or conditionally prohibited under any written law and no import licence has been issued, such goods

or the amount secured under paragraph 27(1)(a) or (b) or the amount realized by sale under paragraph 27(1)(c), as the case may be, shall be forfeited.

(5) All sums of money received by the Director General under this section shall be paid into and form part of the Federal Consolidated Fund.”.

New section 41A

17. The principal Act is amended by inserting after section 41 the following section:

“Recovery of duty or tax as a civil debt

41A. (1) Without prejudice to any other remedy, any tax, duty or payment payable under this Act may be recovered as a civil debt due to the Government of Malaysia, or where the customs duty is a duty of a category assigned to the State by Article 112C of the Federal Constitution, to the Government of the State.

(2) In any proceedings to recover any other remedy, any tax, duty or payment under subsection (1), the production of a certificate signed by the Director General—

(a) stating that any other remedy, any tax, duty or payment shown in the certificate as payable, in any assessment or notice made under this Act from a person named in the certificate; and

(b) giving the address of the person and purporting to be a copy of or an extract from any notice of assessment,

shall be conclusive evidence of any other remedy, any tax, duty or payment as payable in any assessment or notice and shall be sufficient authority for the court to give judgement for that amount.”.

Saving provisions

18. (1) The amendment to sections 14 and 15 of the principal Act in sections 7 and 8 of this Act shall not affect—

- (a) any erection of building or other structures in a free commercial zone before the date of coming into operation of this Act which on the coming into operation of this Act is still under construction;
- (b) any person who has taken, held or enjoyed movable and immovable property of every description in a free commercial zone before the date of coming into operation of this Act; and
- (c) any person who has been residing within a free commercial zone before the date of coming into operation of this Act.

(2) On the date of coming into operation of this Act—

- (a) such building or other structures mentioned in paragraph (1)(a) may be continued and completed as if section 14 of the principal Act had not been amended by this Act;
- (b) such person mentioned in paragraph (1)(b) may continue to take, hold or enjoy such movable and immovable property, as if section 14 of the principal Act had not been amended by this Act, subject to such conditions as imposed by the Authority; and
- (c) such person mentioned in paragraph (1)(c) may continue to reside within such free commercial zone, as if section 15 of the principal Act had not been amended by this Act, subject to such conditions as imposed by the Authority.

(3) Any compounding of offences under the existing section 33 of the principal Act which is pending before the date of coming into operation of this Act shall, after the date of coming into operation of this Act, be continued and concluded as if the principal Act had not been amended by this Act.

EXPLANATORY STATEMENT

This Bill seeks to amend the Free Zones Act 1990 (“Act 438”).

2. *Clause 1* contains the short title of the proposed Act and the power of the Minister to appoint the date of coming into operation of the proposed Act.

3. *Clause 2* seeks to amend section 2 of Act 438 to amend certain existing definitions and introduce the definition of “owner” and “Pangkor”.

4. *Clause 3* seeks to amend section 7 of Act 438 to provide that any custom duty, if any, arising from the goods taken out from any part of the principal customs area into a free zone that is deemed to be exported from Malaysia and goods brought out from the free zone into the principal customs area that is deemed to be imported into Malaysia, shall be payable.

5. *Clause 4* seeks to introduce new sections 8A and 8B into Act 438.

The new section 8A seeks to impose a responsibility on any person making any declaration under Act 438 to give a full and true account of the goods relating to the declaration and their country of origin.

The new section 8B seeks to impose responsibility on the owner of the goods or operator of a shop or warehouse, other building, place or premises in a free zone to account for all goods kept at the shop or warehouse, other building, place or premises. If the goods are found to be short in quantity, the owner of the goods or operator of the shop or warehouse, other building, place or premises is deemed to have illegally removed the goods from the free zone into the principal customs area and the goods are deemed to be uncustomed goods and are to be subjected duty.

6. *Clause 5* seeks to amend section 9 of Act 438 to provide for a more deterrent penalty to prevent the misuse and manipulation of the facilities and customs procedures in the free zone.

7. *Clause 6* seeks to introduce a new section 10A into Act 438 which seeks to require every person to preserve for a period of seven years all documents and records that relate to the activity of importation, exportation or manufacturing of goods in the free zone.

8. *Clause 7* seeks to amend section 14 of Act 438 to extend to the Authority power to approve erection of building and other structures within both the free industrial zone and free commercial zone.

9. *Clause 8* seeks to amend section 15 of Act 438 to extend to the Authority power to prohibit any person from entry into or to reside within both the free commercial zone and free industrial zone.

10. *Clause 9* seeks to amend subsection 17(2) of Act 438 to make it mandatory for the Authority to present the annual report on the free zone to the Minister and the Minister may specify the form of the reports and information required.

11. *Clause 10* seeks to amend section 18 of Act 438 to provide that any allegation that any information or any part of any information was furnished inadvertently or without criminal or fraudulent intent, or was misinterpreted or not fully interpreted by an interpreter provided by the person required to give such information and produce such documentation, shall not be a defence.

12. *Clause 11* seeks to amend section 19 of Act 438 on general penalty to introduce the penalty of imprisonment and to increase the amount of fine.

13. *Clause 12* seeks to introduce a new section 20A into Act 438 to allow a senior officer of customs access to any shop or warehouse, or other building, place or premises in the free zone in carrying out any investigation and if necessary, to use force.

14. *Clauses 13 and 14* seek to amend sections 21 and 22 of Act 438 to include other places or premises for the purpose of a search with or without warrant.

15. *Clause 15* seeks to amend section 23A of Act 438 to provide that any officer of customs exercising his powers under sections 20A, 21, 22 and 23 shall be given access to any recorded information or computerized data.

16. *Clause 16* seeks to substitute section 33 of Act 438 to regularise the provision on compounding of offences.

17. *Clause 17* seeks to introduce a new section 41A into Act 438 to provide for the recovery of any unpaid tax, duty money or payment as a civil debt. The new section 41A also provides that if the customs duty is a duty assigned to the State under Article 112C of the Federal Constitution, it shall be paid to the State Government. The new section 41A is consistent with section 22B of the Customs Act 1967 [Act 235].

18. *Clause 18* seeks to provide saving provisions for a person who before the coming into operation of the amendments to sections 14 and 15 of Act 438 is already a resident within a free commercial zone, to be allowed to continue to take, hold or enjoy any movable or immovable property and saving provisions relating to any building which on the coming into operation of the proposed Act is still under construction. *Subclause 18(3)* seeks to save any pending compounding of offences before the date of coming into operation of the proposed Act.

FINANCIAL IMPLICATIONS

This Bill will not involve the Government in any extra financial expenditure.

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