

ASYCUDA

CUSTOMS ACT

Division 2A.-Offences related to the Computer Service

159A. Evading Duty by Unauthorised Modification of Computer Program or Data

- (1) Any person who, without the authority of the Commissioner-General:
- (a) destroys, alters, erases, renders meaningless, useless or ineffective or otherwise manipulates data stored in, or used in connection with, a computer;
 - (b) introduces into, or records or stores in, a computer by any means data for the purpose of —
 - (i) destroying, altering, erasing or rendering meaningless, useless or ineffective or otherwise manipulating other data stored in that computer; or
 - (ii) interfering with, interrupting or obstructing the lawful use of, that computer or the data stored in that computer; or
 - (c) otherwise uses a computer;

the purpose or effect of which is to reduce, avoid or evade any liability to customs duty, excise duty or tax imposed or which would otherwise have been imposed by any customs related law, or to defeat any provision of any customs related law, is guilty of an offence

Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K5, 000.00 and not exceeding K50, 000.00 or imprisonment for a period not exceeding 10 years, or both.

(2) In this section “data” includes any computer program or part of a computer program being a program, whether or not approved by the Commissioner-General, for use in relation to the computer service established under section 195.

159B. Unauthorised Disclosure Of Access Code

(1) Any person who without authority discloses directly or indirectly any password, access code or any other means of gaining access to any program or data held in any computer to any person other than a person to whom he is duly authorised to disclose such information, is guilty of an offence.

Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K500.00 and not exceeding K25, 000.00 or imprisonment for a period not exceeding 5 years, or both.

(2) This section applies to any computer program or part of a computer program being a program, whether or not approved by the Commissioner-General, for use in relation to the computer service established under section 195.

159C. Unauthorised Access To Computer Material.

(1) Any person who:

- (a) causes a computer to perform any function so as to secure access to any program or data held in any computer; and
- (b) such access is unauthorised; and
- (c) the person knows at the time when he causes the computer to perform the function that such access is unauthorised.

is guilty of an offence.

Penalty: Subject to Sections 163, 164 and 165, a fine of not less than K500.00 and not exceeding K25, 000.00 or imprisonment for a period not exceeding 3 years, or both.

(2) The intent a person has to have to commit an offence under this section need not be directed at:

- (a) any particular program or data; or
- (b) a program or data of any particular kind; or
- (c) a program or data held in any particular computer.

(3) This section applies to any computer program or part of a computer program being a program, whether or not approved by the Commissioner-General, for use in relation to the computer service established under section 195.

159D. Enhanced Punishment For Offences Against Sections 159B and 159C

(1) Any person who commits an offence referred to in section 159B or Section 159C so as-

- (a) to commit an offence against section 196 ; or
- (b) to facilitate the commission of such an offence whether by himself or by any other person;

shall, in lieu of the punishment prescribed in those sections, be liable on conviction and subject to Sections 163, 164 and 165, to a fine of not less than K5,000.00 and not exceeding K50,000.00 or imprisonment for a period not exceeding 10 years, or both.

(2) For the purposes of subsection (1), it is immaterial whether the offences to which this subsection applies are to be committed at the same time when the unauthorised access is secured or on any future occasion.

159E. Presumption

For the purposes of this Division, any person who has in his custody or control any program, data or other information which is held in any computer or retrieved from any computer that he is not authorised to have in his custody or control shall be deemed to have obtained unauthorised access to such program, data or information unless the contrary is proved.

195. Computer Service.

(1) The Commissioner General may establish and operate a computer service and make provision for any manifest, return, list, statement, declaration, direction, notice, permit, receipt or other document required or authorised by this Act to be

made, served or submitted by electronic transmission (referred to in this Act as an electronic notice).

(2) A registered user may, in accordance with the conditions set by the Commissioner under subsection (12), make and serve an electronic notice to the computer account of the Commissioner General.

(3) The Commissioner or any person authorised by him may, in accordance with the conditions set under subsection (12), make and serve an electronic notice to the computer account of a registered user.

(4) Where an electronic notice is transmitted to the computer account of the Commissioner General using the authentication code assigned to a registered user —

(a) with or without the authority of the registered user; and

(b) before the notification to the Commissioner General by the registered user in the required manner, of cancellation of the authentication code, that notice shall, for the purposes of this Act, be presumed to be made by the registered user unless he provides evidence to the contrary.

(5) Where the registered user alleges that he has transmitted no such electronic notice referred to in subsection (4), the burden of proof to provide evidence of that fact is on the user.

(6) For the purposes of this Act, an electronic notice or a copy thereof shall not be inadmissible in evidence merely on the basis that it was transmitted without the making or delivery of any equivalent document or counterpart in paper form.

(7) Notwithstanding any other written law, in any proceedings under this Act, an electronic notice or a copy thereof (including a print-out of that notice or copy) or any database report (including a print-out of that report) relating to that notice —

(a) certified by the Commissioner General to contain all or any information transmitted in accordance with this section; and

(b) duly authenticated in the manner specified in subsection (8) or is otherwise duly authenticated by showing that there is copy thereof certified by the Commissioner shall be admissible as evidence of the facts stated or contained therein.

(8) For the purposes of this section, a certificate —

(a) giving the authentication code and other particulars of any user and device (if known) involved in the production and transmission of, and identifying the nature of, the electronic notice or copy thereof; and

(b) purporting to be signed by the Commissioner or by a person occupying a responsible position in relation to the operation of the computer service at the relevant time, shall be sufficient evidence that the electronic notice or copy thereof has been duly authenticated, unless the court, in its discretion, calls for further evidence on this issue.

(9) Where an electronic notice or a copy thereof is admissible under subsection (7), it shall be presumed, until the contrary is proved, that the contents of the electronic notice or copy thereof have been accurately transmitted.

(10) The Commissioner may, for the purpose of facilitating any electronic transmission under this section, approve the use in any such electronic transmission of symbols, codes, abbreviations or other notations to represent any particulars or information required under this Act.

(11) Any person transmitting an electronic notice on behalf of another person shall not divulge or disclose the contents of any electronic notice or a copy thereof without the prior written consent of the Commissioner General.

(12) The Commissioner may provide written conditions for —

- (a) subscription to the computer service, including the manner in which the authentication codes are to be assigned; and
- (b) the manifests, returns, lists, statements, declarations, directions, notices, permits, receipts or any other document which may be transmitted through the computer service including the form and manner in which they are to be transmitted; and
- (c) the correction of errors in or amendments to electronic notices; and
- (d) the procedure for use of the computer service including the procedure in circumstances where there is a breakdown or interruption in the service; and
- (e) generally for the better provision of the computer service.