

# Excise Act 1956

## [Chapter 105]

INDEPENDENT STATE OF PAPUA NEW GUINEA.

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## **PART I. – PRELIMINARY.**

### **1. INTERPRETATION.**

In this Act, unless the contrary intention appears–

**“by authority”** means by the authority of an officer performing duty in the matter in relation to which the expression is used;

**“Collector”** means a Collector within the meaning of the [Customs Act 1951](#);

**“Commissioner of Customs”** means the Commissioner of Customs appointed under Section 3(2) of the [Customs Act 1951](#);

**“Commissioner General”** means the Commissioner General of Internal Revenue appointed under Section 6 of the [Income Tax Act 1959](#);

***“the Customs”*** means the Division of Customs of the Internal Revenue Commission;

***“dealer”*** means a dealer in excisable material;

***“excisable goods”*** means goods in respect of which excise duty is payable;

***“excisable material”*** means material declared under Section 3 to be excisable material for the purposes of this Act;

***“factory”*** means the premises on which a manufacturer manufactures excisable goods, and all adjoining premises used in connection with those premises or the business of the manufacturer;

***“licence”*** means a licence under Section 19;

***“licensed”*** means licensed under this Act;

***“licensed factory”*** means a factory in which a licensed manufacturer is licensed to manufacture excisable goods;

***“manufacture”***, in relation to excisable goods, includes all processes in the manufacture of the goods;

***“National Economic and Fiscal Commission”*** means the National Economic and Fiscal Commission established by Section 117 of the Organic Law on Provincial Governments and Local-level Governments;

***“officer”*** includes all persons employed in the service of the Customs and all other officers of Customs;

***“permission”*** means the written permission of the Commissioner General;

***“producer”*** means a person who produces excisable material;

***“registered”*** means registered under this Act;

***“this Act”*** includes–

(a) any other Act relating to excise; and

(b) any regulations made under this Act or any such Act.

## **2. APPLICATION.**

This Act shall, except to the extent of any inconsistency, be incorporated and read as one with all other Acts relating to excise, other than (except to the extent indicated in them) the Excise (Beer) Act 1952 and the Distillation Act 1955.

### **3. DECLARATION OF EXCISABLE MATERIAL.**

The Head of State, acting on advice, may, by notice in the National Gazette, declare any goods used in the manufacture of excisable goods to be excisable material for the purposes of this Act.

### **4. TIME FOR COMPLIANCE WITH PROVISIONS RELATING TO REGISTRATION AND LICENCES.**

- (1) When any duty of excise is imposed by or under any law in relation to the manufacture of any goods that were previously free of such duties, a period of two months shall be allowed from the commencement of the provision imposing the duty for compliance with the provisions of this Act relating to registration and licences.
- (2) During the period referred to in Subsection (1)–
  - (a) an unlicensed person who manufactures goods to which that subsection relates shall comply with this Act as if he were licensed; and
  - (b) the premises on which he manufactures the goods shall be deemed to be a licensed factory.

## **PART II – ADMINISTRATION.**

### **5. GENERAL POWERS OF COMMISSIONER GENERAL.**

The Commissioner General has the general administration of this Act and any other Act relating to excise.

### **6. DELEGATION BY COMMISSIONER GENERAL AND COLLECTORS.**

- (1) The Commissioner General may, by written instrument, delegate to the Commissioner of Customs or to an Assistant Commissioner or to Assistant Commissioners all or any of his functions and powers under this Act or any other Act that is an Act relating to excise (except this power of delegation).
- (2) A Collector may, with the written approval of the Commissioner General, delegate to any person all or any of his functions and powers under any Act relating to excise (except this power of delegation).

## **PART III – EXCISE SECURITIES.**

### **7. REQUIREMENT OF SECURITY.**

(1) The Customs may–

- (a) require and take security for compliance with all Acts relating to excise and generally for the protection of the public revenue; and
- (b) pending the giving of the required security in relation to any goods subject to the control of the Customs, refuse to deliver the goods or to pass any entry relating to the goods.

(2) When security is required for any particular purpose, it may, by authority of the Commissioner General, be accepted to cover all transactions for such time and for such amount as the Commissioner General approves.

### **8. SECURITIES.**

(1) Where a security is required by or under this Act, it may, in the discretion of a Collector, be given–

- (a) by bond; or
- (b) by guarantee; or
- (c) by cash deposit,

or partly by one such method and partly by another.

(2) The prescribed form of excise security is sufficient for all the purposes of a bond or guarantee under any Act relating to excise, and, without sealing, binds its subscribers–

- (a) as if sealed; and
- (b) unless otherwise provided in it–jointly and severally for the full amount.

(3) If at any time the Commissioner General is not satisfied with the sufficiency of any security, he may require fresh security to be given, and fresh security shall be given accordingly.

(4) An excise security may be cancelled by the Commissioner General after the expiration of the period of 12 months from–

- (a) the date of the security; or
- (b) the time specified for the performance of the conditions of the security.

## **9. EFFECT OF SECURITIES.**

Where an excise security is put in suit by the Commissioner General, the production of the security entitles the Commissioner General, without further proof, to judgement for their stated liability, against the persons appearing to have executed it, unless they prove—

- (a) compliance with the conditions of the security; or
- (b) that the security was not executed by them; or
- (c) release; or
- (d) satisfaction.

## **PART IV – PRODUCERS AND DEALERS.**

### **10. [REPEALED.]**

### **11. UNAUTHORIZED PRODUCTION OR DEALING.**

- (1) A person other than a registered producer who produces excisable material is guilty of an offence.
- (2) Subject to Subsection (3), a person other than a registered dealer who deals in excisable material is guilty of an offence.
- (3) Subsection (2) does not apply in relation to a registered producer who deals only in excisable material of his own production.
- (4) A registered producer who produces excisable material, or a registered dealer who carries on business as a dealer, otherwise than at the premises in respect of which he is registered is guilty of an offence.
- (5) A registered producer or registered dealer who, without permission, keeps or stores excisable material at any place other than the premises in respect of which he is registered is guilty of an offence.

Penalty: Subject to Division IX. 3, a fine of not less than K1,500.00 and not exceeding K5,000.00.

### **12. REGISTRATION OF PRODUCERS.**

- (1) An application for registration as a producer shall be made to the Commissioner General in the prescribed form, and may relate to any one or more separate and distinct premises.

(2) The Commissioner General shall—

- (a) register in a book to be kept for the purpose—
  - (i) the name of the producer; and
  - (ii) the place or places where he produces excisable material; and
- (b) give to the producer a certificate of registration in the prescribed form.

### **13. REGISTRATION OF DEALERS.**

(1) An application for registration as a dealer shall be made to the Commissioner General in the prescribed form, and may relate to any one or more separate and distinct premises.

(2) The Commissioner General shall—

- (a) register in a book to be kept for the purpose—
  - (i) the name of the dealer; and
  - (ii) his place or places of business; and
- (b) give to the dealer a certificate of registration in the prescribed form.

### **14. REGISTRATION FEES.**

No fee is payable for the registration of producers or dealers.

### **15. CESSATION OF PRODUCTION OR DEALING.**

(1) When—

- (a) a registered producer ceases to produce excisable material; or
- (b) a registered dealer ceases to deal in excisable material,

he must immediately give written notice to the Commissioner General that he has ceased to do so.

Penalty: Subject to Division IX. 3, a fine of not less than K3,000.00 and not exceeding K10,000.00.

(2) On receipt of a notice under Subsection (1), and on being satisfied that the person giving the notice has no excisable material in his possession, the Commissioner General shall cancel his registration as a producer or dealer, as the case may be.

### **16. ACCOUNTS AND RETURNS.**

A registered producer or registered dealer, or a person who has been a registered producer or a registered dealer, must keep the prescribed accounts and make the prescribed returns with respect to excisable material—

- (a) produced; or
- (b) dealt in; or
- (c) produced and dealt in,

by him.

Penalty: Subject to Division IX. 3, a fine not exceeding K200.00.

## **PART V – MANUFACTURE OF EXCISABLE GOODS.**

### *Division 1.*

#### **Licensing of Manufacturers.**

#### **17. UNLICENSED MANUFACTURE.**

- (1) A person other than a licensed manufacturer who manufactures any excisable goods is guilty of an offence.
- (2) A person who manufactures excisable goods otherwise than in accordance with this Act is guilty of an offence.

Penalty: Subject to Division IX. 3, a fine of not less than K5,000.00 and not exceeding K20,000.00.

#### **18. APPLICATIONS FOR LICENCES.**

- (1) An application for a licence–
  - (a) shall be made to the Commissioner General; and
  - (b) shall be in the prescribed form; and
  - (c) shall be accompanied by the prescribed particulars.
- (2) An applicant for a licence–
  - (a) shall pay to the Commissioner General the prescribed annual licence fee; and
  - (b) shall give to the Commissioner General an excise security in accordance with the prescribed scale, for compliance with this Act; and
  - (c) shall give to the Commissioner General the prescribed drawings and particulars.

## **19. GRANT OF LICENCES.**

- (1) Licences to manufacture may be granted by the Commissioner General who may license manufacture—
  - (a) without limitation; or
  - (b) subject to any specified limitation.
- (2) If the Commissioner General is satisfied with the security given under Section 18(2)(b), he may grant to an applicant a licence in the prescribed form.
- (3) If an application for a licence is refused, the licence fee shall be refunded to the applicant.

## **20. PERIOD OF LICENCE.**

Unless previously cancelled, a licence remains in force until 31 December after the grant of the licence or any renewal of the licence.

## **21. RENEWAL OF LICENCES.**

- (1) Subject to Subsection (2), a licence may be renewed by the Commissioner General—
  - (a) on application made before the expiry of the licence; and
  - (b) on payment of the prescribed licence fee.
- (2) In exceptional circumstances, the Commissioner General may extend for a period not exceeding seven days the time within which an application for the renewal of a licence and the payment of the licence fee may be made.
- (3) When a licence is renewed, the liability of the subscribers to the security given in respect of the original licence remains in force for the period of the renewal, unless notice of termination on the part of the subscribers is given.

## **22. TRANSFER OF LICENCES.**

A licence may be transferred with the written consent of the Commissioner General and on security being given by the transferee.

## **23. FRESH SECURITIES.**

The Commissioner General may at any time require a licensed manufacturer to give fresh security, and if fresh security is not given accordingly the licence may be cancelled under Section 26.

## **24. SURRENDER OF LICENCE FOR LARGER LICENCE.**

- (1) A licence may be surrendered for a larger licence.
- (2) Where a licence is surrendered under Subsection (1), the licensee shall receive credit against the licence fee for the larger licence for a proportionate part of the fee paid for the lesser licence.

## **25. GENERAL DUTIES OF LICENSED MANUFACTURERS.**

- (1) A licensed manufacturer who—
  - (a) manufactures any excisable goods at a place other than his licensed factory; or
  - (b) manufactures in his factory a greater quantity of excisable goods than that allowed by his licence; or
  - (c) except with the written permission of the Commissioner General, sells by retail excisable goods—
    - (i) in his factory; or
    - (ii) at a place within 50m from his factory,

is guilty of an offence.

Penalty: Subject to Division IX. 3, a fine of not less than K1,500.00 and not exceeding K5,000.00.

- (2) A licensed manufacturer is responsible for—
  - (a) the safe custody of all excisable material and excisable goods in his factory; and
  - (b) the observance of this Act within his factory.

## **26. CANCELLATION OF LICENCES.**

A licence may be cancelled by the Commissioner General by notice in the National Gazette—

- (a) if the licensee is convicted of an offence against this Act; or
- (b) if any fresh security required under Section 23 is not given.

## **27. REDUCED DUTY ON GOODS FOR MANUFACTURE.**

Excisable goods and goods liable to duties of Customs that are for use in the manufacture of excisable goods may, in prescribed cases and subject to the prescribed conditions, be delivered free of duty or subject to such lower duty as is prescribed.

*Division 2.*

**Excise Supervision, etc.**

**28. SUPERVISION BY OFFICERS.**

(1) For the protection of the public revenue, the manufacture of excisable goods is subject to the right of supervision by officers.

(2) A licensed manufacturer who fails—

- (a) to provide all reasonable facilities for enabling officers to exercise their powers under this Act; or
- (b) to provide in connection with his factory, if required by the Commissioner General—
  - (i) reasonable office accommodation; and
  - (ii) reasonable board and lodging, for the supervising officer,

is guilty of an offence.

Penalty: Subject to Division IX. 3, a fine of not less than K3,000.00 and not exceeding K10,000.00.

(3) A licensed manufacturer who, as required by the Commissioner General, provides board and lodging for an officer is entitled to fair remuneration for it at such rates as are agreed on or as are prescribed.

**29. MANUFACTURERS' BOOKS.**

A licensed manufacturer who fails—

- (a) to keep the prescribed books and render the prescribed accounts for the information of officers; or
- (b) to verify, as prescribed, those books and accounts,

is guilty of an offence.

Penalty: Subject to Division IX. 3, a fine not exceeding K500.00.

**30. DIRECTIONS AS TO MANUFACTURING PROCESS.**

(1) The Commissioner General may give written directions to a licensed manufacturer directing—

- (a) in what parts of the factory any process in the manufacture is to be carried on; and

- (b) in what parts of the factory—  
    (i) excisable materials and other things used in the manufacture; and  
    (ii) excisable goods manufactured,

are respectively to be kept.

(2) A manufacturer who fails to comply with a direction under Subsection (1) is guilty of an offence.

Penalty: Subject to Division IX. 3, a fine not exceeding K500.00.

### **31. PROVISION OF WEIGHTS AND SCALES, ETC.**

A manufacturer who fails to provide, at his own expense—

- (a) sufficient lights; and  
(b) correct weights and scales; and  
(c) all labour,

necessary for—

- (d) weighing excisable material received into, and excisable goods manufactured in, his factory; and  
(e) taking stock of all excisable material and excisable goods in his factory,

is guilty of an offence.

Penalty: Subject to Division IX. 3, a fine not exceeding K500.00.

## ***Division 3.***

### **Special Provisions Relating to Tobacco.**

### **32. INTERPRETATION OF DIVISION 3.**

A person shall not be deemed, for the purposes of this Division, to manufacture tobacco merely because he cures tobacco leaf as stripped from the plant so as to convert it into leaf tobacco.

### **33. FACTORY NUMBERS.**

The Commissioner General shall allot to each licensed manufacturer of tobacco a factory number for his factory.

### **34. PACKAGING.**

(1) Tobacco and snuff manufactured in a licensed factory shall be put up in packages of the prescribed weights and sizes.

Penalty: Subject to Division IX. 3, a fine not exceeding K100.00.

(2) Before any package containing manufactured tobacco, snuff, cigars or cigarettes is removed from a licensed factory, the manufacturer must mark the package, and any packages contained in it, in the prescribed manner—

(a) in distinct characters; and

(b) by a method approved by the Commissioner General.

Penalty: Subject to Division IX. 3, a fine not exceeding K500.00.

### **35. RECEIPT OF MANUFACTURED TOBACCO INTO FACTORY.**

(1) A person who receives manufactured tobacco into a licensed factory otherwise than—

(a) for renovation; or

(b) for cutting; or

(c) for any other prescribed purpose,

and by authority, is guilty of an offence.

(2) Manufactured tobacco received into a licensed factory must—

(a) be dealt with in the prescribed manner; and

(b) be treated separately, and be kept separate, from tobacco manufactured in the factory.

Penalty: Subject to Division IX. 3, a fine not exceeding K200.00.

### **36. DISPOSAL OF WASTE TOBACCO.**

Notwithstanding Section 40(1), stalks, refuse, clipping or waste arising from the manufacture of tobacco in a licensed factory may be removed, as prescribed, from the factory for destruction in the prescribed manner.

### **37. MOISTURE CONTENT OF TOBACCO.**

(1) A licensed manufacturer who has in his factory any manufactured tobacco containing more than 30% by weight of moisture is guilty of an offence.

Penalty: Subject to Division IX. 3, a fine not exceeding K500.00.

(2) For the purposes of Subsection (1), manufactured tobacco that on being dried at a temperature of 100°C is decreased in weight by more than 30% shall be deemed to have contained more than 30% by weight of moisture.

## **PART VA – IMPORTATION OF GOODS TO WHICH THIS PART APPLIES.**

### *Division 1*

#### **Importation of Goods to which this Part Applies.**

##### **37A. INTERPRETATION.**

In this Part, “goods to which this Part applies” means goods which, had they been manufactured in Papua New Guinea, would be excisable goods.

##### **37B. APPLICATION OF CUSTOMS ACT SUBJECT TO SUITABLE MODIFICATIONS.**

The provisions of the [Customs Act 1951](#) shall be applicable, subject to suitable modification and insofar as they are consistent with this Division, to any goods imported which are goods to which this Part applies.

##### **37C. METHOD OF IMPORTING GOODS TO WHICH THIS PART APPLIES.**

No person shall import goods to which this Part applies other than—

- (a) by sea, at a port declared as such under Section 7 of the [Customs Act 1951](#); or
- (b) by air, at an aerodrome declared as such under Section 7 of the [Customs Act 1951](#); or
- (c) by land, at such authorized entry points as are declared as such by notice in the National Gazette by the Commissioner General.

##### **37D. GOODS TO WHICH THIS PART APPLIES WHEN IMPORTED SUBJECT TO CONTROL OF CUSTOMS.**

Goods to which this Part applies which have been imported shall, for the purposes of this Division, be subject to the control of customs as provided by Parts IV and V of the [Customs Act 1951](#) until such time as all excise duties due have been paid.

##### **37E. IMPORTER TO MAKE DECLARATION OF GOODS IMPORTED.**

Every importer of goods to which this Part applies shall, before removing any such goods or any part thereof from customs control, make personally or by his agent to an officer of

customs a declaration in accordance with the prescribed form of the particulars of the goods imported and pay any excise duty assessed.

### **37F. DUTIES OF EXCISE IN ADDITION TO IMPORT DUTIES.**

The duties of excise payable by importers of goods to which this Part applies are in addition to any import duties payable by virtue of the provisions of the [Customs Act 1951](#) and the [Customs Tariff Act 1990](#) and shall be paid together with any such import duties.

### **37G. FORFEITURE TO STATE OF GOODS NOT ACCOUNTED FOR TO CUSTOMS.**

- (1) Subject to Subsection (2), where any goods to which this Part applies imported into the country are not accounted for to the satisfaction of a proper officer of customs they shall be forfeited to the State and in addition the importer of the goods shall be liable to pay on demand twice the amount of duty payable thereon or an amount of K2,000.00, whichever is the greater.
- (2) The Commissioner General may, in any case, for reasons that he thinks sufficient, remit any of the penalties, including forfeiture of the goods, set out in Subsection (1).

### **37H. PROVISIONS OF THIS PART NOT TO APPLY TO CERTAIN GOODS.**

The provisions of this Division shall not apply to goods which are in the possession of or in the baggage of any passenger who is aged 18 years or over, arriving in the country and which are of an amount not exceeding—

- (a) in the case of liquor, one litre per person; and
- (b) in the case of tobacco products, 250 grams per person (for the purposes of this concession 200 cigarettes or 50 cigars shall be deemed to equal 200 grams weight); and
- (c) in the case of any other dutiable goods, being non-commercial goods, goods of a value not exceeding K250.00 per passenger.

### **37I. EXEMPTIONS.**

- (1) The Minister may, by notice in the National Gazette, exempt—

- (a) a person; or
- (b) a class of persons,

from all or any of the provisions of this Division.

- (2) An exemption under Subsection (1) shall be subject to such conditions as are specified in the notice.

## **PART VI – PAYMENT OF DUTY, REMOVAL OF EXCISABLE GOODS FROM FACTORIES AND EXCISE CONTROL.**

### **38. CUSTOMS CONTROL.**

- (1) Until delivery for home consumption or exportation, whichever first happens, all excisable goods manufactured are subject to the control of the Customs.
- (2) A person who moves, alters or interferes with goods to which Subsection (1) applies, except by authority and in accordance with this Act, is guilty of an offence.

Penalty: Subject to Division IX. 3, a fine not exceeding K1,000.00.

### **39. PAYMENT OF DUTY.**

- (1) The manufacturer or importer of any excisable goods, or where the owner of any excisable goods enters them for home consumption, the owner of the goods must pay to the Commissioner General, in accordance with this Act, the excise duty on the goods.

Penalty: <sup>191</sup>Subject to Division IX. 3, a fine not exceeding K100.00.

- (2) The excise duty on any excisable goods shall be paid–
  - (a) at the rate in force when the goods are entered for home consumption; and
  - (b) before the entry for home consumption is passed.
- (3) The manufacturer or importer of any excisable goods may apply to the Commissioner of Customs, in writing, for permission to deliver those goods into home consumption, in any period from Monday to Saturday, without duty being paid prior to their delivery into home consumption.
- (4) An officer of Customs may, on receipt of an application under Subsection (3), by notice in writing –
  - (a) grant permission for the particular goods, to which the application relates to be delivered into home consumption within the period without duty being paid; or
  - (b) refuse to grant such a permission and set out in the notice the reasons for so refusing,

and where –

- (c) permission has been granted in respect of the particular goods; and
- (d) those goods are delivered into home consumption in any period from Monday to Saturday, without duty being paid;

the manufacturer or importer to whom the permission is granted must –

- (e) lodge with Customs an Entry for Home Consumption detailing all deliveries during that period and paying any duty owing at the rate applicable when the entry was lodged; and
- (f) lodge for Entry for Home Consumption with Customs for payment of duty as prescribed; and
- (g) comply with any conditions to which the permission is subject.

Penalty: Subject to Division IX.3, a fine not exceeding K25,000.00.

- (5) Where an officer of Customs is satisfied that a manufacturer or importer of excisable goods to which a permission has been granted under Subsection (4), has failed to comply with any condition to which the permission is subject, the officer may, by notice in writing, revoke the permission and set out in the notice the reasons for that revocation.

### **39A. STATUTORY GARNISHEE.**

- (1) In this section–

**“duty”** means excise duties and includes a judgement debt and costs in respect of any such duty;

**“taxpayer”** means any person against whom the Commissioner of Customs is entitled to recover any duty or penalty that is due and payable under this Act.

- (2) The Commissioner of Customs may at any time, or from time to time, by notice in writing (a copy of which shall be forwarded to the taxpayer at his last place of address known to the Commissioner of Customs), require–

- (a) any person by whom any money is due or accruing or may become due to the taxpayer; or
- (b) any person who holds or may subsequently hold money for or an account of the taxpayer; or
- (c) any person who holds or may subsequently hold money on account of some other person for payment to the taxpayer; or
- (d) any person having authority from some other person to pay money to the taxpayer,

to pay to the Commissioner of Customs, either forthwith upon the money becoming due or being held or at or within a time specified in the notice (not being a time before the money becomes due or is held)–

- (e) so much of the money as is sufficient to pay the amount due by the taxpayer in respect of any duty and of any fines, penalties and costs imposed upon him under this Act, or the whole of the money when it is equal to or less than the amount; or

(f) such amount as is specified in the notice out of any payments that the person so notified becomes liable from time to time to make to the taxpayer, until the amount due by the taxpayer in respect of any duty, penalties, fines and costs imposed upon him under this Act is satisfied and the Commissioner of Customs may at any time, or from time to time, amend or revoke any such notice, or extend the time for making any payment in pursuance of the notice.

(3) A person who fails to comply with a notice under this Section is liable to pay—

- (a) the amount specified in the notice; or
- (b) the amount due or held on behalf of the taxpayer,

whichever is the lesser amount, and any amount collected under this subsection shall be applied against the debt of the taxpayer.

(4) In addition to any amount that he is liable to pay under Subsection (2), a person, who fails to comply with a notice under this section, is guilty of an offence.

Penalty: A fine of not less than K500.00 and not exceeding K5,000.00.

(5) A person making a payment in pursuance of this Section shall be deemed to have been acting under the authority of the taxpayer and all other persons concerned and is, by force of this subsection, indemnified in respect of that payment.

(6) Where the Commissioner of Customs receives a payment in respect of the amount due by the taxpayer before payment is made by the person so notified he shall forthwith give notice of receipt of the payment to that person.

#### **40. REMOVAL OF EXCISABLE GOODS.**

(1) Except as provided in Section 36, a person who removes or causes or permits to be removed, excisable goods from a licensed factory without an entry made and passed authorizing their removal is guilty of an offence.

Penalty: Subject to Division IX. 3, a fine not exceeding K1,000.00.

(2) Excisable goods must be removed from a licensed factory only in packages of such sizes and marked in such manner as is prescribed.

Penalty: Subject to Division IX. 3, a fine not exceeding K100.00.

(3) Entries—

- (a) may be made by the manufacturer and passed by an officer; and
- (b) may authorize the removal of excisable goods for—

- (i) home consumption; or
- (ii) removal to an approved place; or
- (iii) exportation.

#### **41. TRANSFER OF PARTLY-MANUFACTURED GOODS FROM FACTORY TO FACTORY.**

Partly-manufactured excisable goods may, by authority and subject to the prescribed conditions, be transferred from one licensed factory to another for the purpose of completing the manufacture.

#### **42. SAFE CUSTODY OF EXCISABLE GOODS.**

- (1) Where a person who has, or has been entrusted with, the possession, custody or control of any excisable goods that are subject to the control of the Customs—
- (a) fails to keep them safely; or
  - (b) when so requested by a Collector—does not account for them to the satisfaction of the Collector,

he shall, on written demand by the Commissioner General, pay to the State an amount equal to the amount of the excise duty that, in the opinion of the Commissioner General would have been payable on the goods if they had been entered for home consumption on the day on which the Commissioner General made the demand.

- (2) An amount payable under Subsection (1) is a debt due to the State, and may be recovered in a court of competent jurisdiction by proceedings in the name of the Commissioner General.
- (3) In proceedings under Subsection (2), a statement or averment in the claim or declaration of the Commissioner General is evidence of the matter or matters so stated or averred.
- (4) This section does not affect the liability of a person arising under or by virtue of—
- (a) any other provision of this Act; or
  - (b) a security given under this Act.

### **PART VII – REMISSIONS, REFUNDS AND DRAWBACKS.**

#### *Division 1.*

#### **Remissions and Refunds.**

### **43. REMISSIONS AND REFUNDS.**

Remissions and refunds of excise duty may be allowed—

- (a) in respect of excisable goods generally or in respect of the goods included in a class of excisable goods; and
- (b) in such circumstances, and subject to such conditions and restrictions (if any), as are prescribed, being circumstances, conditions and restrictions that relate to excisable good generally or to goods included in a class of excisable goods.

### **43A. REFUND SET-OFF.**

Where the Commissioner of Customs is required or authorized under Section 43 and any other section of this Act to make a refund of any excise duty or drawback of excise duty the Commissioner of Customs may, on the written application by or on behalf of the person to whom the refund is due (“the taxpayer”) apply or credit the amount of the refund to any income tax or withholding tax or salary or wages tax or stamp duty or customs duty or any other tax or duty charged, levied or imposed under any revenue legislation administered by the Commissioner General payable by the taxpayer.

### *Division 2.*

### **Drawbacks.**

### **44. ALLOWANCE OF DRAWBACKS.**

Drawbacks of excise duty may be allowed on exportation in respect of such excisable goods, in such cases, to such amount and in such manner as is prescribed.

### **45. MINIMUM VALUE OF GOODS FOR DRAWBACK.**

Drawback shall not be allowed on any goods of a less value for home consumption than the amount of the drawback, or on which the excise duty paid did not amount to K2.00.

### **46. EXAMINATION OF GOODS UNDER DRAWBACK.**

All goods in respect of which a claim for drawback is made shall, before exportation, be produced for examination by the Customs.

### **47. DRAWBACK DEBENTURES.**

- (1) For the purpose of claiming drawback, a drawback debenture shall be presented to the Commissioner General who shall, as soon as the goods have been exported, cause the debenture to be passed for payment.
- (2) The person claiming drawback on any goods shall make a declaration on the debenture that—
  - (a) the goods—
    - (i) have been exported; and
    - (ii) have not been re-landed; and
    - (iii) are not intended to be re-landed; and
  - (b) he was, at the time of shipping, entitled to the drawback.
- (3) The name of the person claiming the drawback shall be stated in the debenture, and his receipt on the debenture (countersigned by the holder of the debenture if it has been transferred) is a sufficient discharge for the drawback.
- (4) A drawback debenture shall not be paid, except with the consent of the Commissioner General, unless it is presented for payment within one year from the date of the shipment of the goods for export.
- (5) The Commissioner General may prohibit the payment in whole or in part of a drawback debenture, but such a prohibition does not deprive the person entitled to the drawback of any remedy he may have for it.

## **PART VIII – OFFICERS OF EXCISE.**

### *Division 1.*

#### **Powers of Officers.**

#### **48. ACCESS TO FACTORY AND MANUFACTURER’S BOOKS.**

An officer—

- (a) shall be allowed complete access at all times to every part of a licensed factory; and
- (b) may examine, take account of and note all vessels, utensils, excisable goods and excisable materials in the factory; and
- (c) may examine and take copies of, or extracts from all books and accounts required to be kept by the manufacturer under Section 29 in relation to—
  - (i) the factory; or
  - (ii) the making or sale of excisable goods.

#### **49. ENTRY AND SEARCH OF PREMISES.**

- (1) An officer may, at any time between sunrise and sunset, enter and search—
- (a) the premises of any producer, or dealer, or any person who sells excisable goods; or
  - (b) any land on which excisable material is produced; or
  - (c) any premises on or in which he has reasonable cause to suspect that—
    - (i) excisable goods are made; or
    - (ii) excisable goods on which excise duty has not been paid are kept or stored.
- (2) An officer who has with him a writ of assistance or a Customs warrant under the [Customs Act 1951](#) may—
- (a) at any time during the day or night, enter into and search any house, premises or place; and
  - (b) break open the house, premises or place and search any depository, chest, trunk or package in which any excisable goods may be or are supposed to be; and
  - (c) take with him and have the assistance of—
    - (i) any other officer; or
    - (ii) any member of the Police Force; or
    - (iii) such other assistants as he thinks necessary.

#### **50. STOPPING AND SEARCH OF VEHICLES AND BOATS.**

- (1) An officer may, on reasonable suspicion, stop and search any vehicle or boat for the purpose of ascertaining whether any excisable goods on which excise duty has not been paid are in or on it.
- (2) When required under Subsection (1) by an officer to do so, the driver of a vehicle or the person in charge of a boat must stop the vehicle or boat and permit an officer to search it.

Penalty: Subject to Division IX. 3, a fine not exceeding K500.00.

#### **51. EXAMINATION OF GOODS AND SEALING OF GOODS AND PLANT.**

- (1) An officer may—
- (a) open packages and examine, weigh, mark and seal any excisable goods subject to the control of the Customs; and
  - (b) lock up, seal, mark or fasten any plant in a licensed factory.

- (2) The expense of the examination of any goods under Subsection (1)(a)(including the cost of their removal to the place of examination) shall be borne by the owner.
- (3) A person who, except by authority, opens, alters, breaks or erases a fastening, lock, mark or seal placed by an officer on any goods or any plant in a factory is guilty of an offence.

Penalty: Subject to Division IX. 3, a fine not exceeding K500.00.

## **52. SEIZURE OF GOODS.**

- (1) An officer may seize any forfeited goods or any goods that he has reasonable cause to believe are forfeited.
- (2) An officer making a seizure under any Act relating to excise may call on any person present to assist him.
- (3) A person who fails to give assistance when called on under Subsection (2) to do so is guilty of an offence.

Penalty: Subject to Division IX. 3, a fine not exceeding K200.00.

- (4) All seized goods shall be taken to the nearest Government warehouse or to such other place of security as the Commissioner General directs.

## **53. NOTICE OF SEIZURE.**

- (1) When any goods have been seized as forfeited, the seizing officer shall give written notice of the seizure and the cause of it to the owner of the goods (unless the owner is present at the seizure, in which case no notice is necessary) by delivering the notice to him—
  - (a) personally; or
  - (b) by letter addressed to him and transmitted by post to or delivered at his last-known place of abode or business.
- (2) All goods seized—
  - (a) shall be deemed to be condemned; and
  - (b) may be sold by the Commissioner General, unless the person from whom the goods were seized or the owner gives, within one month of the date of seizure, written notice to the Commissioner General that he claims them.
- (3) If any of the goods seized are of a perishable nature or are live animals they may be immediately sold by the Commissioner General.

#### **54. RETURN OF SEIZED GOODS ON SECURITY.**

The Commissioner General may authorize any goods seized to be delivered to the claimant on his giving security to pay their value in case of their condemnation.

#### **55. REQUIREMENT BY COMMISSIONER GENERAL OF LEGAL PROCEEDINGS FOR RETURN.**

- (1) Where any goods have been seized by an officer and a claim to the goods has been served on the Commissioner General by the owner of the goods, the Commissioner General may—
  - (a) retain possession of the goods without taking any proceedings for their condemnation; and
  - (b) by notice under his hand, require the claimant to take proceedings against him for the recovery of the goods.
- (2) If the claimant does not, within four months after the date of the notice, commence legal proceedings for the return of the goods, the goods shall be deemed to be condemned without any further proceedings.

#### **56. DISPOSAL OF FORFEITED GOODS.**

All forfeited goods shall be disposed of or destroyed in such manner as is prescribed or as the Commissioner General directs.

#### **57. ARREST BY OFFICERS.**

- (1) An officer, or a member of the Police Force, may arrest without warrant any person whom he has reasonable cause to believe to be guilty of—
  - (a) unlawfully manufacturing any excisable goods; or
  - (b) unlawfully receiving, carrying, conveying or having on his premises, in his custody or under his control any excisable goods; or
  - (c) being found without lawful excuse on any premises where excisable goods are being illegally manufactured.
- (2) An officer arresting a person shall, as soon as practicable after the arrest, give him a written statement of the reason for his arrest.
- (3) Every person arrested may be detained until such time as he can, without undue delay, be taken before a magistrate.
- (4) A magistrate before whom a person is brought under Subsection (3) may—
  - (a) commit him to gaol until he can be brought before a court to be dealt with according to law; or

- (b) admit him to bail on his giving sufficient security for his appearance before a court at the time and place appointed for the hearing of the charge.

#### **58. DETENTION AND SEARCH OF PERSONS.**

- (1) If an officer, or a member of the Police Force, has reasonable cause to suspect that any person is unlawfully carrying any goods subject to the control of the Customs, or has any such goods secreted about him, he may detain and, subject to Subsections (2) and (3), search the suspected person.
- (2) Before the suspected person is searched, he may demand to be taken before a magistrate or the Commissioner General, who may—
- (a) order the suspected person to be searched; or
  - (b) discharge him without search.
- (3) Females shall be searched only by a female searcher appointed by the magistrate or Commissioner General.

#### **59. DEFICIENCY IN STOCK OR DUTY PAID.**

- (1) An officer may at any time check the stock of material of any producer or dealer, and if any deficiency is found that cannot be accounted for to the satisfaction of the Commissioner General, the producer or dealer must pay duty on the amount of material found to be deficient as if it has been manufactured into excisable goods.
- (2) If, when an officer takes stock, in relation to a licensed factory, of excisable goods manufactured and excisable material, it appears to the officer that excise duty has not been paid on the full quantity of excisable goods on which it should have been paid, the manufacturer must immediately pay to the Commissioner General the amount of deficiency, unless the deficiency is accounted for to his satisfaction.
- (3) For the purpose of calculating the quantity of excisable goods that have been produced in a licensed factory, scales may be prescribed showing—
- (a) the quantity of excisable goods that shall be deemed to have been produced from a given quantity of material; and
  - (b) the quantity of fully-manufactured excisable goods that shall be deemed to have been produced from a given quantity of partly-manufactured excisable goods.

Penalty: Subject to Division IX. 3, a fine not exceeding K100.00.

## **60. SUPPLY OF SAMPLES.**

(1) Samples–

- (a) of material; and
- (b) of partly manufactured excisable goods; and
- (c) of excisable goods subject to the control of the Customs,

may, for any purpose thought necessary by the Commissioner General, be taken, utilized and disposed of by an officer in the prescribed manner.

- (2) An officer may purchase samples of excisable goods from any person who is the owner of, or is in possession of, excisable goods.
- (3) A person who is the owner of, or is in possession of, any excisable goods and refuses to deliver to an officer samples of the excisable goods on tender of a reasonable price for them is guilty of an offence.

Penalty: Subject to Division IX. 3, a fine not exceeding K200.00.

### *Division 2.*

#### **Protection to Officers.**

## **61. REASONABLE CAUSE FOR SEIZURE AS BAR TO ACTION.**

- (1) A person is not liable for a seizure under this Act for which there was reasonable cause.
- (2) If a person recovers any goods seized under this Act, or any proceeds of any such goods, and at the same time reasonable cause for the seizure is found, the finding bars proceedings against any person concerned in the seizure.

## **62. NOTICE OF PROCEEDINGS AGAINST OFFICERS.**

- (1) Subject to Subsection (4), proceedings shall not be commenced against an officer for any thing done in execution of his office, or by reason of his office, until one month after written notice is delivered to him, or left at his usual place of abode, by the plaintiff or his attorney or agent.
- (2) A notice under Subsection (1) shall state clearly–
- (a) the cause and nature of the proceedings; and
  - (b) the court in which it is intended to take the proceedings; and
  - (c) the name and place of abode of the plaintiff; and

- (d) if the notice is delivered by the attorney or agent of the plaintiff—the name and place of business of the attorney or agent.
- (3) A notice under Subsection (1) is not invalid by reason of any defect or inaccuracy in it unless the court is of the opinion that the defect or inaccuracy would prejudice the defendant in his defence, and the court may give leave to amend the notice as it thinks just.
- (4) This section does not apply where a Judge gives leave to the plaintiff to proceed without notice.
- (5) Leave under Subsection (4) may be given on such terms as the Judge thinks just.

### **63. EVIDENCE IN PROCEEDINGS ON NOTICE.**

In any proceedings taken on notice under Section 62(1), the plaintiff—

- (a) shall not advance evidence of any cause of action that was not distinctly stated in the notice; and
- (b) is not entitled to a verdict unless he proves on the trial that the notice was duly served.

### **64. TENDER OF AMENDS.**

- (1) An officer to whom notice has been given under Section 62(1) may, within one month after the notice is given, offer amends to the plaintiff, or to his attorney or agent.
- (2) If an offer of amends is not accepted, the defendant may plead the offer in defence, either alone or with other defences.
- (3) If amends offered in accordance with Subsection (1) are found to be sufficient—
- (a) costs shall not be recovered against the defendant; and
- (b) if the defendant brought the amount of the amends into court when entering his defence he is entitled to costs.

### **65. PROCEEDINGS GENERALLY.**

Subject to Section 66, proceedings of a kind referred to in Section 62(1) against an officer shall be commenced within six months after the cause of the proceedings arose, and the defendant is entitled to plead the general issue and give any special matter in evidence.

## **66. PROCEEDINGS IN CASE OF PROPOSED TARIFF.**

- (1) In this section, “tariff” includes an excise duty.
- (2) Subject to Subsection (3), proceedings, whether against an officer or otherwise, for anything done for the protection of the public revenue in relation to any tariff or tariff alteration proposed in the Parliament shall not be commenced before the end of the meeting of the Parliament in which the tariff or tariff alteration is proposed.
- (3) On the application of a person who wishes to commence any proceedings referred to in Subsection (2) against an officer, the National Court—
  - (a) may require the officer to give security to the satisfaction of the Court to abide the result of the proceedings; and
  - (b) may, in default of the giving of such security, permit the immediate commencement of the proceedings.

## **PART IX. – PENAL PROVISIONS.**

### ***Division 1.***

#### **Forfeitures.**

## **67. FORFEITED GOODS.**

The following things are forfeit to the State:—

- (a) all excisable goods manufactured, or partly manufactured, by a person who is not a licensed manufacturer;
- (b) all excisable material found on any premises where the manufacture of excisable goods is unlawfully carried on;
- (c) all goods that—
  - (i) are used, or capable of being used, in or in connection with the manufacture of excisable goods; and
  - (ii) are found on any premises where the manufacture of excisable goods is unlawfully carried on;
- (d) all excisable goods subject to the control of the Customs that are moved, altered or interfered with otherwise than by the authority of, and in accordance with, this Act;
- (e) all ships, boats, vehicles and animals conveying, or having packed in or on them, any forfeited goods;
- (f) all animals and harness used in drawing any vehicle to which Paragraph (e) relates;
- (g) all packages in which forfeited goods are contained.

## **68. CONDEMNATION ON CERTAIN CONVICTIONS.**

Where the commission of an offence causes the forfeiture of goods, the conviction of any person for the offence has effect as a condemnation of the goods in respect of which the offence is committed.

### *Division 2.*

#### **General Offences.**

## **69. PREVENTION OF SEIZURES.**

If two or more persons are assembled for the purpose of preventing the seizure of, or rescuing after seizure, any forfeited goods, each of them is guilty of an offence.

Penalty: Subject to Division IX. 3, imprisonment for a term not exceeding five years.

## **70. UNLAWFUL POSSESSION OF EXCISABLE GOODS OR MATERIAL.**

- (1) A person other than a licensed manufacturer who, otherwise than by authority, has in his possession, custody or control, any manufactured or partly-manufactured excisable goods on which excise duty has not been paid is guilty of an offence.
- (2) A person other than a registered producer, registered dealer or licensed manufacturer who keeps or stores any excisable material, otherwise than by authority, is guilty of an offence.

Penalty: Subject to Division IX. 3, a fine not exceeding K500.00.

## **71. UNLAWFUL CONVEYANCE OF EXCISABLE GOODS.**

- (1) A person who unlawfully conveys any excisable goods on which excise duty has not been paid is guilty of an offence.
- (2) A person in charge of a ship, boat or aircraft who—
  - (a) uses it; or
  - (b) knowingly permits it to be used,

in the unlawful carriage of any excisable goods on which excise duty has not been paid, is guilty of an offence.

Penalty: Subject to Division IX. 3, a fine not exceeding K1,000.00.

## **72. MISCELLANEOUS OFFENCES.**

A person who—

- (a) sells, otherwise than by authority, any excisable goods that have been unlawfully removed from a licensed factory; or
- (b) buys any excisable material from a person who is not a registered producer, registered dealer or licensed manufacturer; or
- (c) sells any excisable material to a person who is not a registered dealer or a licensed manufacturer; or
- (d) evades any excise duty that is payable; or
- (e) obtains any drawback that is not payable; or
- (f) obtains a refund of excise duty that is not payable; or
- (g) makes an entry that is false in any particular; or
- (h) makes in a declaration or document produced to an officer a statement that is untrue in any particular; or
- (i) produces or delivers to an officer a declaration or document containing a statement that is untrue in any particular; or
- (j) sells or offers for sale any goods on the pretence that the goods are excisable goods on which excise duty has not been paid,

is guilty of an offence.

Penalty: Subject to Division IX. 3, a fine not exceeding K1,000.00.

## **73. BRIBERY OF OFFICERS, UNDUE INFLUENCE, ETC.**

A person who—

- (a) gives or procures to be given, or offers or promises to give or to procure to be given, a bribe, recompense or reward to an officer to induce him to neglect his duty; or
- (b) makes a collusive agreement with an officer to induce him to neglect his duty; or
- (c) attempts by threats, demands or promises to influence an officer in the discharge of his duty,

is guilty of an offence.

Penalty: Subject to Division IX. 3, imprisonment for a term not exceeding five years.

## **74. ASSAULTING, RESISTING, OBSTRUCTING ETC., OFFICERS.**

A person who—

- (a) assaults; or
- (b) by force resists, molests or obstructs; or

(c) endeavours to intimidate,

an officer in the execution of his duty, or a person acting in aid or assistance of an officer in the execution of his duty, is guilty of an offence.

Penalty: Subject to Division IX. 3, imprisonment for a term not exceeding five years.

## **75. RESCUING SEIZED GOODS, ETC.**

A person who—

- (a) rescues any goods that have been seized; or
- (b) destroys any goods, or any documents relating to any goods, to prevent—
  - (i) the seizure or the securing of the goods; or
  - (ii) the proof of an offence,

is guilty of an offence.

Penalty: Subject to Division IX. 3, imprisonment for a term not exceeding five years.

## **76. COLLUSION AND SIMILAR OFFENCES BY OFFICERS.**

An officer who—

- (a) makes a collusive seizure; or
- (b) delivers up, or makes an agreement to deliver up or not to seize, any goods liable to forfeiture; or
- (c) conspires or connives with any person—
  - (i) to neglect his duty; or
  - (ii) to do any act by which any Act relating to excise may be evaded,

is guilty of an offence.

Penalty: Subject to Division IX. 3, imprisonment for a term not exceeding five years.

### ***Division 3.***

#### **Penalties.**

## **77. PENALTIES IN ADDITION TO FORFEITURES.**

All penalties under this Act are in addition to any forfeitures.

## **78. MINIMUM FINES.**

The minimum penalty for an offence against this Act that is punishable by a fine is 5% of the maximum fine that may be imposed under this Act for the offence.

## **79. MAXIMUM PENALTIES IN CERTAIN CASES.**

(1) Notwithstanding anything in this Act, if a fine only is provided by this Act for an offence and the maximum fine is less than three times the value of any goods in respect of which the offence is committed, the maximum penalty for the offence is three times that value.

(2) A person may be charged at the same time with—

- (a) an offence against this Act; and
- (b) an intent to defraud the public revenue,

and if he is convicted of both the offence and of that intent the maximum penalty is twice that which is otherwise provided for the offence.

## **80. PENALTY ON SECOND CONVICTION.**

Where—

- (a) a person is convicted of an offence against this Act for which a fine only is provided; and
- (b) he had previously been convicted of a similar offence against this Act,

the court may, instead of or in addition to imposing a fine, impose a penalty of imprisonment for a term of not less than six months and not exceeding two years, with or without the right of release on payment of a penalty.

## **PART X. – EXCISE PROSECUTIONS.**

### **81. INTERPRETATION OF PART X.**

In this Part, “*excise prosecution*” means any proceedings by the Customs for—

- (a) the recovery of a penalty under any Act relating to excise; or
- (b) the condemnation of any goods seized as forfeit.

### **82. INSTITUTION OF PROSECUTIONS.**

(1) An excise prosecution may be instituted—

- (a) in the National Court, by appropriate proceedings in the name of the Commissioner General; or
  - (b) if the penalty does not exceed K1,000.00 or the excess is abandoned—in the name of a Collector.
- (2) Where an excise prosecution has been instituted by an officer in the name of the Commissioner General, the prosecution shall, in the absence of evidence to the contrary, be deemed to have been instituted by the authority of the Commissioner General.
- (3) Production of a telegram or radiogram purporting—
  - (a) to be sent by the Commissioner General; and
  - (b) to authorize an officer to institute any excise prosecution or proceedings,is admissible in evidence in the prosecution or proceedings, and shall be accepted as evidence of the authority of the officer to institute the prosecution or proceedings in the name of the Commissioner General.

### **83. COMMENCEMENT OF PROSECUTIONS.**

An excise prosecution may be brought within five years after the cause of the prosecution.

### **84. PROTECTION TO WITNESSES.**

- (1) A witness on behalf of the Commissioner General or an officer in an excise prosecution shall not be compelled to disclose—
  - (a) the fact that he received or gave any information; or
  - (b) the nature of the information; or
  - (c) the name of the person who gave the information.
- (2) In an excise prosecution an officer appearing as a witness shall not be compelled to produce any reports—
  - (a) made or received by him confidentially in his official capacity; or
  - (b) containing confidential information.

### **85. AVERMENTS.**

- (1) In an excise prosecution, the averment of the prosecutor or plaintiff contained in the information, complaint, declaration or claim is prima facie evidence of the matter or matters averred.
- (2) This section applies to any matter averred even if—

- (a) evidence in support or rebuttal of the matter averred or of any other matter is given by witnesses; or
- (b) the matter averred is a mixed question of law and fact,

but in a case to which Paragraph (b) applies the averment is prima facie evidence of the fact only.

- (3) Any evidence given by witnesses in support or rebuttal of a matter averred shall be considered on its merits, and the credibility and probative value of the evidence is not increased or diminished by reason of this section.
- (4) This section does not lessen or affect any onus of proof otherwise falling on the defendant.

#### **86. LEVY OF PENALTY ON GOODS.**

Where a pecuniary penalty adjudged against a person is unpaid, the Commissioner General may levy the penalty by the sale of any goods belonging to the person that are from time to time subject to the control of the Customs.

#### **87. EFFECT OF IMPRISONMENT.**

A person shall not be twice imprisoned on the same conviction, but the suffering of imprisonment for non-payment of a penalty does not release the penalty or affect the right of the Customs to collect the amount in any manner provided by this Act otherwise than by imprisonment of the person convicted.

#### **88. COSTS.**

In an excise prosecution—

- (a) the court may award costs against any party or claimant; and
- (b) all provisions relating to recovery of penalties (except commitment to gaol) extend to the recovery of any costs adjudged to be paid.

### **PART XI. – DISPUTES AS TO DUTY.**

#### **89. DEPOSIT OF DUTY.**

- (1) Subject to Subsection (4), if a dispute arises as to—
  - (a) the amount or rate of duty on any goods; or
  - (b) the liability of any goods to duty,

the owner of the goods may deposit with the Commissioner General the amount of duty demanded.

- (2) When a deposit is made in accordance with Subsection (1)–
  - (a) on making a proper entry the owner of the goods is entitled to delivery of the goods; and
  - (b) the amount of the deposit shall be deemed to be the amount of the proper duty unless the contrary is determined in proceedings brought under Subsection (3).
- (3) Within six months after making the deposit, the owner of the goods may bring proceedings against the Commissioner General in any court of competent jurisdiction for the recovery of the whole or part of the amount of the deposit, in which case any excess of the deposit over the proper duty as determined in the proceedings shall be refunded by the Commissioner General to the owner, plus interest at the rate of 5% per annum.
- (4) This section does not apply in a case where the Commissioner General is of opinion that an evasion of this Act has been committed or attempted.

## **PART XII. – SETTLEMENT OF DISPUTES BY THE COMMISSIONER GENERAL.**

### **90. DISPUTES AS TO CONTRAVENTIONS OF ACT.**

- (1) If a dispute arises between an officer and a person concerning a contravention of this Act, the Commissioner General may, with the consent of that person, inquire into and determine the dispute in the prescribed manner.
- (2) An inquiry under this section shall be held in public, and the Commissioner General may–
  - (a) summon the parties and any witnesses to appear before him; and
  - (b) take evidence on oath or affirmation; and
  - (c) require the production of documents; and
  - (d) allow reasonable expenses to witnesses and costs to the successful party.
- (3) A person who is summoned as a witness in an inquiry under this section and who–
  - (a) disobeys the summons; or
  - (b) refuses to be sworn or affirmed as a witness; or
  - (c) refuses or fails to produce a document that he is required to produce; or
  - (d) being sworn or affirmed as a witness, refuses or fails to answer a question that is lawfully put to him,

is guilty of an offence.

Penalty: [\[175\]](#) A fine not exceeding K200.00.

- (4) In an inquiry under this section, the Commissioner General may, by order, impose, enforce, mitigate or remit any penalty or forfeiture that he finds to have been incurred.
- (5) An order under Subsection (4) shall be immediately published in the National Gazette, and a copy of the order shall be delivered to the person concerned.
- (6) An order under Subsection (4) is final, and may be enforced in the same way as an order of a court of summary jurisdiction.

## **91. SETTLEMENT OF OTHER DISPUTES.**

- (1) If a dispute as to a matter not involving a contravention of this Act arises under this Act or in relation to the Customs, the Commissioner General may, at the request of the parties, determine the matter.
- (2) In a case to which Subsection (1) applies, the Commissioner General may inform his mind on the matter in such manner as he thinks proper, and his decision is final.

## **PART XIII. – MISCELLANEOUS.**

### **92. ALTERATION OF CERTAIN AGREEMENTS IN CASES OF ALTERATION OF DUTY.**

- (1) If after an agreement is made for the sale or delivery, duty-paid, of any excisable goods, an alteration takes place in the duty collected that affects the goods before they are entered for home consumption, in the absence of any express written provision to the contrary, this section applies and the agreement shall be deemed to have been altered accordingly.
- (2) If the alteration to the duty is a new duty or an increase in duty, the seller may, after payment of the new or increased duty, add the difference to the agreed price.
- (3) If the alteration to the duty is the abolition or reduction of duty, the purchaser may deduct the difference from the agreed price.
- (4) Any refund or payment of additional duty resulting from the alteration to the duty not being finally adopted shall be allowed between the parties in such manner as the case requires.

### **93. RECOVERY OF EXCISE DUTY.**

Excise duty is a debt to the State—

- (a) charged on the goods in respect of which it is payable; and
- (b) payable by the owner of the goods,

and may be recovered in any court of competent jurisdiction by proceedings in the name of the Commissioner General.

### **93A. ISSUE OF CLEARANCE CERTIFICATE.**

(1) Upon application by or on behalf of a person about to leave Papua New Guinea, the Commissioner General may, where he is satisfied—

- (a) that duty is not payable by that person; or
- (b) that arrangements have been made to the satisfaction of the Commissioner General for the payment of any duty that is or may become payable by that person,

issue a certificate that there is no objection to the departure of that person from Papua New Guinea.

(2) A certificate issued under Subsection (1) remains in force until—

- (a) the expiration of a period of one month from the date of issue of the certificate or such other period, if any, as is specified in the certificate; or
- (b) the certificate is revoked,

whichever first occurs.

### **93B. CLEARANCE CERTIFICATE TO BE PRODUCED TO SHIPOWNER ETC.**

(1) When so required by the Commissioner General, the owner or charterer, or an agent or other representative of the owner or charterer, of a ship or aircraft shall not issue or permit the issue of an authority for a person to travel from Papua New Guinea on the ship or aircraft unless there has been presented to the owner, charterer, agent or other representative, as the case may be, a certificate issued in respect of that person under Section 93A, being a certificate that is in force on the date on which it is presented.

(2) A person who, in contravention of Subsection (1), issues, or permits the issue of, an authority for a person to travel on a ship or aircraft is personally liable to pay the amount of duty, if any, that is or may become payable by that last mentioned person and, in addition, is guilty of an offence.

Penalty: A fine not less than K400.00 and not exceeding K1,000.00.

(3) Where a ship or aircraft departs from a place at which the ship or aircraft has taken on board a passenger in respect of whom a certificate issued under the Section 93A has been presented for the purpose of obtaining authority for that person to travel from Papua New Guinea in that ship or aircraft, the owner or charterer of the ship or aircraft, or, where the owner or charterer does not have a place of business at that place, the principal agent of the owner or charterer at that place, shall, not later than the first working day after the departure of the ship or aircraft from that place, or as soon thereafter as is practicable, lodge, or cause to be lodged, at the office of the Commissioner General—

(a) the certificate; and

(b) a list showing the name, last known address in Papua New Guinea and place of destination of every person (other than members of the crew or staff of the ship or aircraft) taken on board the ship or aircraft at that first-mentioned place.

(4) A person who fails to comply with the last preceding subsection is guilty of an offence.

Penalty: A fine of not less than K400.00 and not exceeding K1,000.00.

#### **94. REBATES OF EXCISE DUTY.**

If any rebate is allowed in respect of excise duty, the allowance shall be made and duty shall be paid in the prescribed manner.

**94A.** [*REPEALED.*]

#### **95. DECLARATIONS.**

A declaration for the purposes of this Act may be made before a justice, a Commissioner of Declarations or an officer.

#### **96. REGULATIONS.**

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, or for the conduct of any business relating to excise.