

## Client Alert

16 July 2019

## Revamp of the Malaysian Customs Act 1967 Affecting Businesses

### Background

Following the recent entry into force of the Customs (Amendment) Act 2018 and the Customs (Amendment) (No. 2) Act 2018 (see link to our previous client alert [here](#)), the new Malaysian government has introduced another round of amendments to the Customs Act 1967 ("**Customs Act**") via the Customs (Amendment) Act 2019 ("**Amendment Act**").

The Amendment Act was passed by the Lower House of Parliament on 8 April 2019 and the Upper House on 7 May 2019, and gazetted as an Act of Parliament on 9 July 2019. The date of coming into force of the Amendment Act is expected to be announced by way of gazette.

The Amendment Act spans across 132 pages of amendments and, to date, it represents the most significant round of changes to the Customs Act introduced under the new Malaysian government.

In summary, the Amendment Act outlines approximately 96 amendments to existing provisions within the Customs Act and seeks to introduce approximately 61 new provisions.

### 16 Key Amendments to the Customs Act

We have summarised below the key amendments introduced under the Amendment Act:

#### **1. Timeline to Demand for Back Duties**

The timeline within which the Royal Malaysian Customs Department ("**Customs**") may demand for payment of duties underpaid will be extended from 3 years to 6 years. Accordingly, the scope of customs audits is expected to be extended beyond the standard 3-year audit period.

The extended 6-year timeline does not apply to instances of *fraud* or *default*. At this juncture, there is no further clarification as to the scope of the term "*default*" which potentially encompasses a broad spectrum of situations where Customs may lift the 6-year prescribed limitation period<sup>1</sup>. We expect that the amendments will bring about uncertainties in respect of the applicability of the limitation period which may ultimately be determined through court interpretation.

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<sup>1</sup> For example, would a procedural breach of the terms and conditions of the licensed manufacturing warehouse (LMW) licence amount to a "*default*" which would allow Customs to lift the 6-year limitation period?

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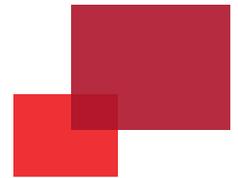
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## **2. Changes to the Compounding of Offences Provision**

The Amendment Act provides for the issuance of regulations relating to the compounding of offences, which would set out the offences which can be compounded, the criteria for compounding and methods and procedures for compounding such offences. Such compound is to be offered in writing and shall be for an amount not exceeding 50% of the maximum fine for that offence. While the compounding regulations are yet to be published at this juncture, we note that this amendment may bring about significant changes to Customs' practice in respect of compounding of offences.

## **3. Issuance of Public Rulings**

The Director General of Customs ("**DG**") is now empowered to issue *public rulings* on the application of any provision of the Customs Act. This may result in more transparency in the operations of Customs, as well as enhanced clarity on Customs' interpretation of the Customs Act and consequently more certainty to businesses.

## **4. New Categories of Offences**

In line with the spirit of the amendments to strengthen enforcement and to increase penalty for non-compliance with the Customs Act, various new categories of offences have been introduced. This include, among others, offences relating to the destruction or manipulation of data stored in computers, unlawful claims for drawback, unlawful claims for refunds, incorrect declaration of origin, etc.

## **5. Enhanced Powers of Enforcement**

Subject to the authorization of the public prosecutor, Customs officers are granted new powers to *intercept* communications that may contain information relevant for the purposes of investigating any offences under the Act. Such forms of communication that may be intercepted by Customs include, postal articles transmitted by post, messages transmitted by any telecommunication and conversations by any telecommunication.

## **6. Rules of Origin**

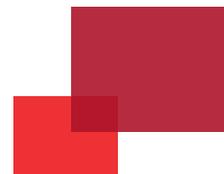
The Amendment Act introduces an entirely new chapter on *origin of goods* as well as *preferential and non-preferential tariff treatment*<sup>2</sup>. This new chapter regulates various aspects relating to the origin of goods including, among others, the appointment of issuing authorities, application for certificate of origin, registration for producing a declaration of origin, responsibility of the importer, producer and exporter, eligibility criteria to claim preferential tariff and verification of origin-related documents and information. The Amendment Act also extends the scope of matters which a customs ruling can be sought to include matters relating to the *origin of goods*.

## **7. Record Keeping Requirements**

The record keeping requirements under the Customs Act will be extended from 6 years to 7 years. The Amendment Act also sets out a clear list of records that will

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<sup>2</sup> This has traditionally been administered by way of guidelines published by the Malaysian Ministry of International Trade and Industry.



be subject to the extended 7 years record keeping requirements, including any accounting, management and financial records as well as business records such as sales, distribution and royalty agreements which may affect a person's obligations under the Customs Act.

#### **8. Free Zones**

It should be noted that pursuant to the Amendment Act, "free zones" will be deemed to be a place 'outside a principal customs area' for the purposes of Customs Act, as opposed to 'outside Malaysia'. It remains to be seen whether there will be changes in customs procedures relating to the movement of goods into and out of a free zone arising from the amendments.

#### **9. Transit and Transshipment**

The Amendment Act makes significant overhaul to the legislative provisions regulating transit and transshipment activities. Briefly, transit is the movement of goods between two or more customs offices in Malaysia or from a customs office in any country to a customs office in Malaysia for the sole purpose of being carried out to another country. Meanwhile, transshipment refers to the transfer of goods from one vessel or aircraft to another or the unloading of goods from a vessel or aircraft and depositing such goods in a customs or licensed warehouse, for shipment out of Malaysia.

Detailed procedures for transit and transshipment are spelled out in the Amendment Act. Amongst others, the Amendment Act introduces provisions to safeguard goods moved under transit and transshipment, requirements for the owner of goods in transit or transshipment or his agent to be immediately liable to pay duties leviable when transit / transshipment procedures are interrupted as well as heavy penalties for breach of the transit and transshipment procedures.

#### **10. Licensed Warehouses**

The Amendment Act provides that in cases of deficiencies in quantities of dutiable goods at a licensed manufacturing warehouse, a licensee is, in the absence of proof to the contrary, presumed to have illegally removed the goods and is liable to pay Customs duty on the deficient goods. A licensed warehouse licensee will also be mandatorily required to provide appropriate Customs office and facilities at the licensed warehouse at the licensee's own expense.

#### **11. Timeline to Claim Duty Refund**

The Amendment Act amends Section 16 of the Customs Act to impose a one year timeline to submit a refund claim for duties paid pending origin verification, appeal to Director General or appeal to the Customs Appeal Tribunal (in addition to payment made under protest), from the date that the decision on verification of origin, review and appeal is made known to the claimant.

#### **12. Directors' Liability**

Currently, the joint and several liability of directors is only limited to customs duties payable. The Amendment Act now extends the joint and several liability to cover surcharges, penalties, fees or other money payable to Customs.

#### **13. New Powers to Offset**

The Amendment Act seeks to introduce a new power granted to Customs to offset any drawback or refund due to a person against any customs duty, excise



duty, sales tax, service tax, GST and other amounts owing by such person. The offset amount shall be treated as payment or part payment received from such person of the amount owing.

#### **14. Section 93 Duty Drawback**

Section 93 provides for a drawback facility for duty paid on imported goods which are subsequently re-exported. The timeline for the goods to be re-exported for duty drawback purposes has been reduced from 12 months to 3 months from the date upon which customs duty is paid. The minimum threshold for eligibility to claim a duty drawback will also be increased from RM50 to RM200.

#### **15. Confidentiality of Information**

The confidentiality provision under the Customs Act is revamped to provide that all information, documents or declarations relating to importation, exportation, valuation, classification or origin determination of any goods are to be treated as confidential by Customs officers. Any Customs officer who improperly disclose or communicate such information may be in breach of this requirement and shall, on conviction, be liable to imprisonment for a period not exceeding 5 years and/or to a fine not exceeding RM100,000.

#### **16. Pulau Pangkor**

The Amendment Act introduces an entirely new Part XIXD to provide for the appropriate customs treatment for transportation of goods to and from Pulau Pangkor, as a new duty-free island.

### **Conclusion**

Given the extensive amendments that are introduced under the Amendment Act, a comprehensive understanding of the new customs regime is key to ensure that businesses can fully comply with the new and overhauled customs law. The changes warrant a review of existing processes and practices to ensure that businesses remain fully compliant with the requirements of the law when the changes become effective.

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