

## Client Alert

11 January 2019

## Amendments to the Customs Act: Increased Penalties and More Robust Review Process

### Background

Under the administration of the new Malaysian government, the following rounds of legislative amendments have been effected to the Malaysian Customs Act 1967 ("**the Act**"):

- the Customs (Amendment) Act 2018 which was gazetted on 28 August 2018 and entered into force on 1 September 2018;
- the Customs (Amendment) (No. 2) Act 2018 which was gazetted on 28 December 2018 and recently entered into force on 2 January 2019.

### ("Amending Acts")

### Key Changes

The Amending Acts brought about changes to various aspects of the Act, including, among others, penalties for offences under the Act, review and appeal process, enforcement powers of customs officers and regulation of customs agents. Key changes under the Act are summarised as follows:

#### (a) *enhanced powers of enforcement*

In addition to existing powers provided under the Act, senior customs officers are further accorded powers of a police officer as provided under the Criminal Procedure Code in relation to enforcement, investigation and inspection.

#### (b) *increased penalties for offences under the Act*

A summary of key increments in penalties are set out in the table below:

Maximum penalty under old provisions	Maximum penalty under amended provisions
<b>Section 133 - Penalty on making incorrect declarations and on falsifying documents</b>	
RM 500,000 fine and / or imprisonment up to <u>5 years</u>	RM 500,000 fine and / or imprisonment up to <u>7 years</u>

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Maximum penalty under old provisions	Maximum penalty under amended provisions
<b>Section 135</b> - Penalty relating to smuggling offences, evasion of duty, fraud, etc.	
<i>Cases involving dutiable goods other than cigarettes containing tobacco and intoxicating liquor</i>	
<p style="text-align: center;"><b>First offence</b></p> <p style="text-align: center;">Fine not more than 20 times the customs duty or <u>RM 100,000</u> (whichever greater) and / or imprisonment up to <u>3 years</u></p> <p style="text-align: center;"><b>Subsequent offence(s)</b></p> <p style="text-align: center;">Fine not more than 40 times the customs duty or <u>RM 500,000</u> (whichever greater) and / or imprisonment up to <u>5 years</u></p>	<p style="text-align: center;"><b>First offence</b></p> <p style="text-align: center;">Fine not more than 20 times the customs duty or <u>RM 500,000</u> (whichever greater) and / or imprisonment up to <u>5 years</u></p> <p style="text-align: center;"><b>Subsequent offence(s)</b></p> <p style="text-align: center;">Fine not more than 40 times the customs duty or <u>RM 1,000,000</u> (whichever greater) and / or imprisonment up to <u>7 years</u></p>
<i>Cases involving prohibited goods other than cigarettes containing tobacco and intoxicating liquor</i>	
<p style="text-align: center;"><b>First offence</b></p> <p style="text-align: center;">Fine not more than 20 times the value of goods or <u>RM 100,000</u> (whichever greater) and / or imprisonment up to <u>3 years</u></p> <p style="text-align: center;"><b>Subsequent offence(s)</b></p> <p style="text-align: center;">Fine not more than 40 times the value of goods or <u>RM 500,000</u> (whichever greater) and / or imprisonment up to <u>5 years</u></p>	<p style="text-align: center;"><b>First offence</b></p> <p style="text-align: center;">Fine not more than 20 times the value of goods or <u>RM 500,000</u> (whichever greater) and / or imprisonment up to <u>5 years</u></p> <p style="text-align: center;"><b>Subsequent offence(s)</b></p> <p style="text-align: center;">Fine not more than 40 times the value of goods or <u>RM 1,000,000</u> (whichever greater) and / or imprisonment up to <u>7 years</u></p>
<b>Section 137</b> - Penalty for offering or receiving bribes	
<u>RM 10,000</u> fine and / or imprisonment up to 5 years	<u>RM 500,000</u> <sup>1</sup> fine and / or imprisonment up to 5 years
<b>Section 138</b> - Penalty for offences not otherwise provided for	
<u>RM 20,000</u> fine and / or imprisonment up to 5 years	<u>RM 50,000</u> fine and / or imprisonment up to 5 years

<sup>1</sup> This increase in penalties for bribery-related offences is in line with the newly elected government's ongoing efforts to clamp down on corruption nationwide.



**(c) *heftier penalties for smuggling offences relating to cigarettes containing tobacco and intoxicating liquor***

The Amending Acts have also introduced heftier penalties for smuggling offences in relation to cigarettes containing tobacco and intoxicating liquor<sup>2</sup> as follows:

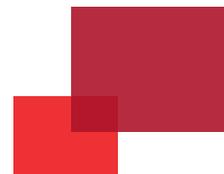
<b>Maximum penalty for first offence</b>	<b>Maximum penalty for subsequent offence(s)</b>
<i>Cases involving dutiable cigarettes containing tobacco and intoxicating liquor</i>	
Fine not more than 20 times the customs duty or RM 500,000 (whichever greater) and / or imprisonment up to 5 years	Fine not more than 40 times the customs duty or RM 1,000,000 (whichever greater) and / or imprisonment up to 5 years
<i>Cases of cigarettes containing tobacco or intoxicating liquor which are prohibited goods</i>	
Fine not more than 20 times the value of goods or RM 500,000 (whichever greater) and / or imprisonment up to 5 years	Fine not more than 40 times the value of goods or RM 1,000,000 (whichever greater) and / or imprisonment up to 5 years

**(d) *revamp to the review and appeal process***

Key changes to the review and appeal process under the Act are summarised as follows:

- review of decision of the Director General of Customs ("DG") - under the old Act, any person aggrieved by the decision of the DG may appeal to the Customs Appeal Tribunal ("CAT") within 30 days from the date of notification of decision in writing. The Amending Acts introduce an additional layer of recourse by allowing an aggrieved person to apply to the DG to review any of his decision within the similar 30 days timeline;
- representation at appeal hearing - under the old Act, advocates and solicitors are not allowed to represent an appellant at the hearing of an appeal before the CAT. Following the entry into force of the Amending Acts, the above restriction against legal representation has been removed and appellants can now appoint legal counsel to represent them before the CAT.

<sup>2</sup> Please note the first draft of the Customs (Amendment) (No. 2) Bill 2018 initially proposed the inclusion of punishment in the form of whipping in addition to the penalties outlined above. However, this was removed subsequently.



## Conclusion

The amendments to the Act result in an overall more stringent customs regime as can be gleaned from the significant increase in quantum of penalties for customs non-compliances as well as the enhanced enforcement powers accorded to customs officers. Whilst this is the case, the amendments also appear to provide a more robust appeal process to deal with any grievances that may arise in relation to the Act, striking a fair balance between deterrence and ensuring an overall business friendly outlook.

At this juncture, Malaysia still does not have a voluntary disclosure regime, which would help genuine businesses better comply and regularise their operations vis-a-vis the Act. However, this may potentially change if and when Malaysia decides to ratify the Comprehensive and Progressive Trans-Pacific Partnership Agreement, which has already entered into force on 30 December 2018 for Mexico, Japan, Singapore, New Zealand, Canada and Australia.

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