

CAYMAN ISLANDS



CUSTOMS AND BORDER CONTROL (AMENDMENT) BILL, 2019

Supplement No. 1 published with Legislation Gazette No. 39 dated 17th October, 2019.

A BILL FOR A LAW TO AMEND THE CUSTOMS AND BORDER CONTROL LAW, 2018; TO AMEND CERTAIN DEFINITIONS IN THE CUSTOMS AND BORDER CONTROL LAW, 2018; TO PROVIDE FOR THE IMPOSITION AND REGULATION OF ADMINISTRATIVE PENALTIES; AND FOR INCIDENTAL AND CONNECTED PURPOSES

PUBLISHING DETAILS



Memorandum of OBJECTS AND REASONS

This Bill seeks to amend the Customs and Border Control Law, 2018 (the “principal Law”), to, among other things, amend certain definitions and provide for the imposition and regulation of administrative penalties.

Clause 1 provides the short title of the legislation and contains the commencement provision.

Clause 2 amends the definition of “bearer negotiable instrument” in section 2 of the principal Law to include bearer bonds and postal orders.

Clause 3 amends section 12 of the principal Law to provide that regulations made under that section may prescribe that the contravention of those regulations constitutes an offence for which the person is liable on summary conviction, to a fine of ten thousand dollars or to imprisonment for a term of one year, or to both, and on conviction on indictment, to a fine of fifteen thousand dollars or to imprisonment for three years, or to both. The regulations may also prescribe that a person may be liable to an administrative penalty, of a fine not exceeding ten thousand dollars and that the goods in respect of which the offence was committed may be liable to forfeiture.

Clause 4 inserts proposed new sections 71A, 71B, 71C and 71D in the principal Law. The proposed section 71A provides for the Director’s discretion to impose instead, an administrative penalty, notwithstanding that certain penalties are expressed to be mandatory under the principal Law. The proposed section 71B provides for the service of the ticket where the Director imposes an administrative penalty and further provides that the payment of the administrative penalty stated in the ticket within twenty-eight days of being served constitutes a discharge from liability for conviction for the offence. The proposed section 71C provides for the procedure to be followed in the event that a person chooses not to pay the ticket or where the person does not agree to the ticket. The proposed section 71D provides that Cabinet may, by Order, amend Schedules 1 and 2.

Clause 5 amends section 79 of the principal Law to provide that the Director may enforce payment of administrative penalties through the appropriate process or by a court ordering such payment.

Clause 6 amends section 80 of the principal Law to provide that the Director shall keep and maintain a register of administrative penalties imposed under the principal Law.

Clause 7 amends section 133 of the principal Law to provide that regulations made under that section may prescribe that the contravention of those regulations constitutes an offence for which the person is liable on summary conviction, to a fine of ten thousand dollars or to imprisonment for a term of one year, or to both, and on conviction on indictment, to a fine of fifteen thousand dollars or to imprisonment for three years, or to both. The regulations may also prescribe that a person may be liable to an administrative



penalty, of a fine not exceeding ten thousand dollars and that the goods in respect of which the offence was committed may be liable to forfeiture.

Clause 8 inserts proposed new Schedules 1 and 2 in the principal Law. The proposed Schedule 1 provides for the administrative offences, the provision of the principal Law or regulations which sets out the offence and the administrative penalty for the administrative offence. The proposed Schedule 2 sets out the form of the ticket which is served on the person who is alleged to have committed an administrative offence.



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CAYMAN ISLANDS**CUSTOMS AND BORDER CONTROL
(AMENDMENT) BILL, 2019**

A BILL FOR A LAW TO AMEND THE CUSTOMS AND BORDER CONTROL LAW, 2018; TO AMEND CERTAIN DEFINITIONS IN THE CUSTOMS AND BORDER CONTROL LAW, 2018; TO PROVIDE FOR THE IMPOSITION AND REGULATION OF ADMINISTRATIVE PENALTIES; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

Short title and commencement

1. (1) This Law may be cited as the Customs and Border Control (Amendment) Law, 2019.
- (2) This Law shall come into force on such date as may be appointed by Order made by the Cabinet and different dates may be appointed for different provisions of this Law and in relation to different matters.

Amendment of section 2 of the Customs and Border Control Law, 2018 - interpretation

2. The *Customs and Border Control Law, 2018*, in this Law referred to as the “principal Law” is amended in section 2 in the definition of “bearer negotiable instrument” by inserting after paragraph (a) the following paragraphs —
“(aa) bearer bonds;



(ab) postal orders;”.

Amendment of section 12 - prohibited and restricted goods

3. The principal Law is amended in section 12 by inserting after subsection (5) the following subsections —

- “(6) Regulations made under this section may prescribe that the contravention of the regulations constitutes an offence for which the person is liable —
- (a) on —
 - (i) summary conviction, to a fine of ten thousand dollars or to imprisonment for a term of one year, or to both; and
 - (ii) conviction on indictment, to a fine of fifteen thousand dollars or to imprisonment for three years, or to both; or
 - (b) to an administrative penalty, of a fine not exceeding ten thousand dollars.
- (7) Regulations made under this section may also prescribe that the contravention of the regulations constitutes an offence and the goods, in respect of which the offence was committed, are liable to forfeiture.
- (8) Notwithstanding subsection 6(b), where a person makes a false declaration or false disclosure under the regulations made under this section, the person is liable to an administrative penalty up to the value of the difference between the amount declared and the total amount being carried.”.

Insertion of sections 71A, 71B, 71C, 71D - administrative penalties; service and payment of ticket, etc.

4. The principal Law is amended by inserting after section 71 the following sections —

“Administrative penalties

- 71A.**(1) Notwithstanding that certain penalties are by this Law expressed to be mandatory, the Director may, in the Director’s discretion, impose instead an administrative penalty set out in Schedule 1.
- (2) Where the Director imposes an administrative penalty set out in Schedule 1, the Director shall serve the person with a ticket in the form set out in Schedule 2.
- (3) Where a person is served with a ticket under subsection (2), the payment of the administrative penalty stated in the ticket up to twenty-eight days after being served discharges the person from



liability upon conviction for the offence set out in the ticket and payment of any mandatory or other penalties, but does not affect any liability to forfeiture under this Law.

- (4) Payment of an administrative penalty under this section shall be made to the Customs and Border Control Service, and all administrative penalties shall, unless otherwise expressly stated, form part of the general revenue of the Islands.
- (5) In any proceedings, a certificate that payment of the administrative penalty was or was not made to the Customs and Border Control Service by the date specified in the certificate shall, where the certificate is signed by the Director, be sufficient evidence of the facts stated unless the contrary is proved.

Service and payment of ticket

- 71B.** (1) Service of a ticket on the person whom an officer has reason to believe committed an offence is effected where the officer —
- (a) delivers a copy of the ticket to the person;
 - (b) leaves a copy of the ticket at the last known place of business or abode of the person; or
 - (c) sends a copy of the ticket by registered mail to the last known place of business or abode of the person.
- (2) An officer who serves a ticket shall complete and sign a certificate of service stating that the ticket was, on the date set out in the certificate, served on the person whom the officer had reason to believe committed the offence and the certificate shall be evidence that, on the date set out in the certificate, a ticket was served on the person whom the officer had reason to believe committed the offence.
- (3) Upon being served a ticket, a person may —
- (a) pay the total amount set out in the ticket in accordance with subsection (4);
 - (b) enter a “not guilty” plea in accordance with section 71C(1); or
 - (c) attend the summary court on the date set out in the ticket and enter a plea.
- (4) The payment of the total administrative penalty set out in the ticket within twenty-eight days of being served constitutes a discharge from liability for conviction for the offence.

Trial after not paying ticket or not agreeing to ticket

- 71C.** (1) A person who is served with a ticket and who wishes to enter a “not guilty” plea may request a trial by signing the request for trial in the ticket and delivering the ticket to the Clerk of the Court within twenty-eight days of being served with the ticket and the Clerk of the Court shall enter the plea of “not guilty”.
- (2) As soon as practicable after a person requests a trial under subsection (1), the Clerk of the Court shall notify the Customs and Border Control Service of the request, request the duplicate ticket, fix the time and place of the trial and notify the defendant and the prosecution of the time and place of the trial.
- (3) A person who has been served with a ticket and has not paid the total amount set out in the ticket in accordance with section 71B(4), nor entered a “not guilty” plea in accordance with subsection (1), shall attend at the court on the date specified in the ticket, which shall be no earlier than thirty-eight days after the date that the ticket was served on the person and the notice of the court date in the ticket shall be notice to the defendant and the prosecution of the same.
- (4) The Customs and Border Control Service shall, within forty-eight hours of the expiration of the twenty-eight day period after a ticket is served, file with the Clerk of the Court every ticket that remains unpaid after twenty-eight days of having been served.
- (5) A ticket filed with the Clerk of the Court is evidence of the facts alleged in the ticket without proof of the signature of the person appearing to have completed the ticket or the person on whom the ticket was served.
- (6) Except as otherwise provided, a notice or document required or authorized to be given or delivered under this section may be given or delivered personally by registered mail or by other prescribed means.
- (7) Evidence that a notice or document required or authorized to be given or delivered to a person under this section was sent by registered mail or any other prescribed means to the person at the last known place of abode or business address appearing on a ticket, certificate of service or other document in the court file, is sufficient evidence that the notice or document was given or delivered to the person unless the contrary is proved.
- (8) A person who is convicted of an administrative offence in a trial requested under subsection (1) or in a trial as a result of a failure to pay the total amount set out in the ticket in accordance with section



- 71B(4) is liable, in addition to any mandatory penalty and forfeiture, on summary conviction to a fine of one thousand dollars or to imprisonment for a term of six months, or to both.
- (9) The ticket, for the purposes of a trial, is deemed to be a complaint within the meaning of section 14 of the *Criminal Procedure Code (2019 Revision)*.
- (10) Notwithstanding anything in law to the contrary, where the ticket remains unpaid at the expiration of the time specified for the payment of the administrative penalty or where the person served requests a trial, the ticket shall be deemed to be a summons in accordance with section 15 of the *Criminal Procedure Code (2019 Revision)*.
- (11) Proceedings in respect of an offence deemed to be instituted by a ticket under this Law shall not be listed for hearing in court unless —
- (a) the officer delivers the duplicate of the ticket with a certificate stating that the payment of the administrative penalty has not been received within the twenty-eight day period within which it was payable; and
- (b) a period of ten days has elapsed from the last day on which the administrative penalty was payable.
- (12) Where the administrative penalty is not paid within the time specified in the ticket or the person served requests a trial, proceedings in respect of the offence specified in the ticket shall be in accordance with the procedure set out for Category C offences under the *Criminal Procedure Code (2019 Revision)*.

Amendment of Schedules

71D. Cabinet may, by Order, amend Schedules 1 and 2.”.

Amendment of section 79 - recovery of penalties

5. The principal Law is amended in section 79 by inserting after the word “fees” the words “, administrative penalties”.

Amendment of section 80 - register

6. The principal Law is amended in section 80 by inserting after the word “fees” wherever the word appears, the words “, administrative penalties”.

Amendment of section 133 - general regulations

7. The principal Law is amended in section 133 as follows —
- (a) by renumbering section 133 as section 133(1); and

- (b) by inserting after the newly renumbered section 133(1) the following subsections —
- “(2) Regulations made under this section may prescribe that the contravention of the regulations constitutes an offence for which the person is liable —
- (a) on —
- (i) summary conviction, to a fine of ten thousand dollars or to imprisonment for a term of one year, or to both; and
- (ii) conviction on indictment, to a fine of fifteen thousand dollars or to imprisonment for a term of three years, or to both; or
- (b) to an administrative penalty, of a fine not exceeding ten thousand dollars.
- (3) Regulations made under this section may also prescribe that the contravention of the regulations constitutes an offence and the goods, in respect of which the offence was committed, are liable to forfeiture.”.

Insertion of Schedules 1 and 2- administrative offences; form of ticket

8. The principal Law is amended by inserting the following Schedules —

“Schedule 1

(section 71A(1) and (2))

Administrative Offences

Description of administrative offence	Administrative Penalty
1. Making a false declaration or false disclosure in respect of money being transported into or exported out of the Islands	A fine up to the value of the difference between the amount declared and the total amount being carried



Schedule 2

(section 71A(2))

Form of Ticket

FRONT OF TICKET

Ticket Number: _____	Time: _____
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Date: _____	Name of Individual: _____
Location: _____	

List of administrative offences

No.	Description of administrative offences	Administrative penalty	Tick relevant box and state particular provision
1	Making a false declaration or false disclosure in respect of money being transported into or exported out of the Islands	A fine up to the value of the difference between the amount declared and the total amount being carried	<input type="checkbox"/>

I, the undersigned customs and border control officer, have reason to believe that _____ has committed the following
(Name of person)
 administrative offence described in the second column with the respective administrative penalty in the third column —
 the facts being that _____

(Provide a summary of the facts of the offence and the provision contravened)
 Time and place at which administrative offence committed: _____

 This administrative offence carries an administrative penalty of \$ _____



NOTICE This ticket may be used as evidence of the Customs and Border Control Service.
Submit or send payment to: The Customs and Border Control Service at Owen Roberts International Airport in the case of Grand Cayman or the Charles Kirkconnell International Airport in the case of Cayman Brac or Little Cayman
Hours of operation : 6:00 am to 10:00 pm
OR
Submit or send payment to: The Customs and Border Control Service at P.O.Box 898, 42 Owen Roberts Drive, Grand Cayman, KY1-1103 or at P.O.Box 240 District Administration Building in Cayman Brac or Little Cayman
Hours of operation : 8:30 am to 5:00 pm

Passed by the Legislative Assembly the day of , 2019.

Speaker

Clerk of the Legislative Assembly

