L.N. 440 of 2021

IMPORT DUTIES ACT
(CAP. 337)

Enforcement Measures to Recoup Established Duties and Taxes Regulations, 2021

IN EXERCISE of the powers conferred by article 35 of the Import Duties Act, the Minister for Finance and Employment has made the following regulations:-

1. The title of these regulations is the Enforcement Measures to Recoup Established Duties and Taxes Regulations, 2021. Citation.

2. In these regulations, unless the context otherwise requires:

"Act" means the Import Duties Act; Cap. 337.

"Commissioner" means the Commissioner for Revenue as provided for in the Commissioner for Revenue Act; Cap. 517.

"duty" means any duty charged by the Commissioner for Revenue on imported goods and includes import duty, export duty, agricultural duty, anti-dumping duty, countervailing duty but does not include excise duty;

"taxes" include value added tax.

3. When an amount of duty, taxes or interest remains unpaid after ten (10) days from the notification to the debtor of the amount due, the Commissioner may immediately take the administrative and procedural measures necessary so that payment is effected, including not giving any Customs service to the debtor until payment is effected.

4. (1) When an amount of duty, taxes or interest remains unpaid after ten (10) days from the notification to the debtor of the amount due, the Commissioner may immediately proceed sequentially from paragraph (a) to paragraph (c), until the first moment when the full amount of duty, taxes and interest is paid:

(a) appropriate any security or deposit made by the debtor for the payment of duty, taxes and interest, and

(b) seize and take possession of goods belonging to the debtor which are under Customs supervision or in temporary storage, and

(c) seize and take possession of goods belonging to the debtor which have been released in free circulation, which are found in any warehouse or premises used by, or in the possession of the debtor or any other person in his stead.

(2) The goods mentioned in paragraphs (b) and (c) of sub-regulation (1) shall in virtue of this regulation constitute a security for such duty, taxes and interest, and the Commissioner may sell such goods by means of a public call for tenders after giving the debtor a notice of sale not less than eight (8) days before the sale. This notice shall be given to the debtor, and if the debtor cannot be found, the notice shall be published in the Gazette:

Provided that the goods may, in the discretion of the Commissioner, be destroyed after the eight day notice is given.

(3) The cost and expenses of the seizure and sale, and the duty, taxes and interest recoverable under such sale, shall be a first charge on the proceeds thereof. Such proceeds shall be applied in or towards the payment of such costs and expenses and in or towards the payment of the duty, taxes and interest and the surplus, if any, shall be given to the debtor.

5. (1) Where any duty, taxes or interest that is to be collected by virtue of the Act is to be paid for by any legal person, as defined in article 4(e) of the Interpretation Act, any secretary, director or other officer of the legal person is to be held jointly and severally liable with the same legal person for the duty, taxes or interest due, in accordance with the provisions of this regulation:

Cap. 249.

Provided that for the purpose of this regulation, any secretary, director or officer shall refer only to those persons who fulfil an official function listed in the constitutive document of that legal person:

Provided further that when such official function is fulfilled by a legal person, the natural persons that fulfil an official function in that legal person as referred to in this regulation, shall be jointly and severally liable with that legal person administering the legal person which owes any duty, taxes or interest by virtue of the Act, and in the same way, other natural or legal persons that fulfill an official function in legal persons in various layers and which administer each other, shall also be jointly and severally liable with the legal person that owes duty, taxes or interest in so far as they administer it through each other:

Provided further that when any of the aforementioned natural persons is deceased, his heirs shall be jointly and severally

liable for any duty, taxes or interest due, even if these heirs have inherited the deceased with the benefit of inventory.

(2) Any secretary, director or other officer shall not be held jointly and severally liable with the legal person if he proves that he acted in good faith and that there was no prospect that the legal person liable to pay duty, taxes or interest would not be able to meet its duty, taxes or interest obligations.

(3) Any secretary, director or other officer who is held jointly and severally liable by virtue of sub-regulation (1) may request the competent court, by means of an application filed within two (2) months from notification of a judicial letter served on him demanding payment, to declare that he is not to be held jointly and severally liable with the legal person, for the reasons provided in sub-regulation (2):

Provided that the judicial letter shall on pain of nullity state that if an application opposing the claim is not instituted within two (2) months from notification of the judicial letter, the secretary, director or other officer shall be held jointly and severally liable with the legal person:

(4) (a) It shall not be a defence for any secretary, director or other officer to state he did not know that legal proceedings were instituted against the legal person that might reduce the amount of assets of that legal person;

(b) It shall not be a defence for any secretary, director or other officer to state that it was impossible for him to know the exact amount of duty, taxes and interest due by the legal person administered by him.

6. (1) Any amount of duty, taxes or interest which constitutes an executive title in favour of the Commissioner may be collected by the Commissioner according to law, including the right of the Commissioner to register a note of privilege in the public registry or in the land registry, as the case may be, for the amount of duty, taxes or interest which constitutes an executive title, and that note of privilege may be registered by any lawyer or notary.

(2) The provisions of Title XXIII Part II Book Second of the Civil Code which regulate privileges shall apply *mutatis mutandis* for sub-regulation (1). Cap. 16.

7. (1) Any person who feels aggrieved by any action of the Commissioner made by virtue of these regulations, except any action by virtue of regulation 5, shall have the right to oppose such action by filing an application before the Administrative Review Tribunal within twenty (20) days from the notification by the Commissioner regarding

that action.

(2) An application made by virtue of sub-regulation (1) shall be served on the Commissioner within two (2) days of filing, and the cause shall be appointed for hearing with urgency.

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