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Government Notice

OFFICE OF THE PRIME MINISTER

No. 303

2016

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 17 of 2016: Customs & Excise Amendment Act, 2016.

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EXPLANATORY NOTE:

_____	Words underlined with a solid line indicate insertions in existing provisions.
[]	Words in bold type in square brackets indicate omissions from existing provisions.

ACT

To amend the Customs and Excise Act, 1998, so as to insert new definitions; to provide for the streamlining of customs controls and customs procedure for the better facilitation of trade and for risk management; to further address ethics and integrity requisites; to strengthen the provisions relating to the exchange of and access to information and confidentiality; to further provide for the territorial application of the Act; to provide for the automation and the use of information technology in electronic commerce; to accommodate the One Stop Border post concept by providing for places of entry or exit in terms of international agreements with SADC member states and adjoining countries; to provide for co-operation between government offices, ministries and agencies to facilitate the functioning of the national single window concept; to change the time frame for the report of arrival and lodging of declarations to the customs and excise office; to permit or require the declaration of goods imported overland to be lodged electronically and prior to importation; to simplify provisions requiring an importer or exporter to produce documents and pay duties; to provide for the registration of legal persons as authorised economic operators; to provide for the imposition of an environmental levy in respect of certain goods manufactured and imported into Namibia; to require that electronic documents and records be maintained; and to provide for incidental matters.

(Signed by the President on 12 December 2016)

BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

Amendment of section 1 of Act No. 20 of 1998

1. Section 1 of the Customs and Excise Act, 1998 (in this Act referred to as the “principal Act”) is amended:

- (a) by the insertion after the definition of “agricultural distiller” of the following definitions:

“ “audit-based control” means measures by which the customs and excise office satisfies itself as to the accuracy and authenticity of declarations through the examination of the relevant books, records, business systems and commercial information held by persons concerned;

“authorised economic operator” means a legal person registered as an authorised economic operator in terms of section 18B;”;

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- (b) by the insertion after the definition of “bill of entry” of the following definition:

“ “cargo declaration” in relation to a ship or an aircraft, means information -

- (a) submitted prior to or on arrival or departure of a ship or an aircraft which is used for commercial purposes; and
- (b) which provides the particulars required by the customs and excise office relating to the cargo brought into or removed from the customs territory;”;

- (c) by the insertion after the definition of “crew” of the following definition:

“ “customs control” means measures applied by the customs and excise office to ensure compliance with customs legislation;”;

- (d) by the insertion after the definition of “customs duty” of the following definitions:

“ “customs territory” means the territory of Namibia, including its territorial waters and its airspace;

“declarant” means a person referred to in section 41(1)(a);”;

- (e) by the insertion after the definition of “drawback procedure” of the following definition:

“ “electronic communication” means a communication by means of data which is generated, displayed, sent, received or stored by electronic or similar means;”;

- (f) by the insertion after the definition of “entry for home consumption” of the following definition:

“ “environmental levy” means a duty levied in terms of section 58A on goods manufactured in or imported into Namibia;”;

- (g) by the insertion after the definition of “goods” of the following definition:

“ “goods declaration” means a statement -

- (a) in terms of which goods are disclosed and which is lodged by a declarant; and
- (b) which indicates the customs procedure to be applied to the goods and furnishes the particulars which the Customs may require;”;

- (h) by the insertion after the definition of “Permanent Secretary” of the following definition:

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““person” means natural persons or legal persons;”;

- (i) by the insertion after the definition of “regulation” of the following definitions:

““risk analysis” means the systematic use of available information to determine how often risks may occur and the magnitude of their likely consequences;

““risk criteria” means specific indicators which, when taken together, serve as a practical tool to select and target movements for the potential for non-compliance with customs legislation;” and

- (j) by the insertion after the definition of “surcharge goods” of the following definitions:

““the Customs” means -

- (a) the Commissioner; or
- (b) an officer acting under powers or functions delegated or assigned to the officer in terms of this Act;

“the customs and excise office” means the Office of the Commissioner of Customs and Excise established under section 2(1);

“the Trade” means any category of traders, importers, exporters, manufacturers or producers of goods;

“third party” means any person who deals directly with the customs and excise office, for and on behalf of another person, in respect of the import, export, movement or storage of goods;”.

Amendment of section 2 of Act No. 20 of 1998

2. Section 2 of the principal Act is amended:

- (a) by the insertion after subsection (3) of the following subsection:

“(3A) Any power conferred on or a duty assigned to the Commissioner under this Act shall be exercised or performed by the Commissioner subject to the direction and supervision of the Minister.”;

- (b) by the deletion of subsection (4); and

- (c) by the addition after subsection (4) of the following subsections:

“(5) The Commissioner may, if the needs of commerce or other circumstances justify it, take such measures as he or she considers necessary to streamline the customs controls and customs procedures, but such measures may not jeopardize revenue interest, national security or international security.

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(6) The Commissioner shall institute and maintain formal consultative relationships with the Trade in order to increase co-operation and to facilitate participation in establishing the most effective methods of working which are commensurate with national laws and international laws which apply to Namibia and international agreements which are binding on Namibia.

(7) The Commissioner may conclude memoranda of understanding with the Trade to enhance customs controls and customs procedures.”.

Amendment of section 4 of Act No. 20 of 1998

3. Section 4 of the principal Act is amended:

(a) by the insertion before subsection (1) of the following subsection:

“(1A) The Commissioner, an officer or a staff member of the customs and excise office shall comply with the Public Service Act, 1995 (Act No. 13 of 1995) and other applicable legislation on governance, ethics and integrity, including the Namibian Customs and Excise Code of Ethics.”;

(b) by the substitution for subsection (1) of the following subsection:

“(1) **[No officer]** The Commissioner, an officer or a staff member of the customs and excise office shall not have [a] any direct financial [interested] interest in the manufacture, [or] sale [of], [or the] trade in, transport, handling or storage of imported [or] exported or excisable goods or fuel levy goods [,] or in the import or export of such [excisable or fuel levy] goods.”;

(c) by the deletion of subsections (2), (3), (4), (5), (6), (7) and (8); and

(d) by the addition after subsection (18) of the following subsections:

“(19) In so far as this section authorizes the interference with a person’s right to privacy and the privacy of that person’s home as guaranteed by Article 13 of the Constitution, this section is enacted on the authority of Sub-Article (2) of that Article.

(20) An officer may enter a place referred to in this section and conduct a search in terms of this section only if it is done in accordance with Chapter 2 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) and -

(a) as if the officer is a police official; and

(b) if any book, document or object is concerned with the commission of an offence.”.

Insertion of section 4A in Act No. 20 of 1998

4. The following section is inserted after section 4 of the principal Act:

“Exchange of information and confidentiality

4A. (1) The Commissioner, an officer or a staff member of the customs and excise office or any person seconded to or contracted by the customs and excise office to work otherwise than as a staff member and a person who was formerly an officer, staff member or a person seconded to or a person contracted by the customs and excise office, shall not disclose, exchange or allow access to any information relating to any person, concern or business acquired in the exercise of his or her powers or the performance of his or her duties in terms of this Act, unless required to do so -

- (a) by a provisions of this Act;
- (b) as a witness in a court of law or tribunal;
- (c) in connection with legal proceedings;
- (d) by a government office, ministry or agency of Namibia in terms of a law; or
- (e) by the written consent of the person that will be affected by the disclosure.

(2) Notwithstanding subsection (1), the Commissioner may authorize the disclosure or exchange of information relating to any person, concern or business which relates to the application of customs procedures, pursuant to a memorandum of understanding with a government office, ministry or agency of Namibia, for the purposes of facilitating trade and improving national security.

(3) A person, including a third party, to whom or with whom information is disclosed or exchanged under this section, shall use the information only for the purpose for which it was disclosed or exchanged.

(4) Notwithstanding subsection (1), the Commissioner may in accordance with an international agreement, in respect of customs co-operation and which is binding on Namibia, disclose or exchange or authorize an officer or a staff member of the customs and excise office or any person seconded to or contracted by the customs and excise office, to disclose or exchange any information relating to any person, concern or business acquired by the officer, staff member or person in the exercise of his or her powers or the performance of his or her duties in terms of this Act.

(5) Disclosure or exchange of confidential information to the customs administrations and other competent authorities of countries or territories outside the customs territory of Namibia shall be permitted only in accordance with an international agreement which is binding on Namibia.

(6) The disclosure or exchange of information under subsection (5), shall take place in full compliance with the data protection legislation in force in Namibia and if there is assurance that the customs administration of the receiving country will protect the information in at least an equivalent way.

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(7) Information to be disclosed or exchanged under subsections (1)(d), (2) and (4) may be disclosed or exchanged by means of electronic communication in the form determined by the Commissioner.

(8) Subsection (1), shall not be construed as preventing the Commissioner from using, any information acquired by him or her in the exercise of his or her powers or the performance of his or her duties under this Act or under any other law administered by the Commissioner, for purposes of exercising his or her powers or performing of his or her duties under this Act or any other customs legislation administered by him or her.

(9) The Commissioner may, notwithstanding subsection (1), from time to time by notice in the *Gazette* publish the name of any person in respect of whom a penalty of N\$10 000 or more has been imposed in respect of any offence contemplated in sections 90, 93, or 94, or has in respect of any offence under this Act been imposed under section 101.

(10) A notice published under subsection (9) shall specify:

- (a) the name and address of the person;
- (b) such particulars relating to the offence as the Commissioner may determine; and
- (c) the penalty imposed in respect of the offence, contemplated in that subsection.”.

Substitution of section 5 of Act No. 20 of 1998

5. The following section is substituted for section 5 of the principal Act:

Territorial [A] application of Act

5. (1) For the purposes of this Act and notwithstanding anything to the contrary in any other law contained -

- (a) the continental shelf referred to in section 6 of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act No. 3 of 1990), shall be deemed to be a part of Namibia;
- (b) any installation or device of any kind whatsoever, including any floating or submersible drilling or production platform, constructed or operating upon, beneath or above the continental shelf referred to in paragraph (a) for the purpose of exploring the continental shelf or of exploiting its natural resources, shall be deemed to be constructed or operating in Namibia; **[or]**
- (c) any goods mined or produced in the operation of an installation or device contemplated in paragraph (b) and conveyed therefrom to the shore, whether by pipeline or otherwise, and any person or other goods conveyed

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by any means to and from such installation or device, shall be deemed to be so conveyed in Namibia[.] ; and

- (d) certain provisions of this Act may be applied outside the customs territory in accordance with this Act, a specific legislation or international agreements which are binding on Namibia.

(2) Without prejudice to international law which applies to Namibia and international agreements which are binding on Namibia, this Act shall apply uniformly throughout the customs territory.”.

Insertion of sections 5A, 5B and 5C in Act No. 20 of 1998

6. The following sections are inserted after section 5 of the principal Act:

“Use of information technology and electronic commerce

5A. (1) For the purpose of facilitating customs controls and customs procedures, the customs and excise office shall use information technology, electronic commerce and other technologies to enhance customs procedures and customs controls.

Electronic communication for the purposes of customs procedures and customs controls

5B. (1) If any information, declaration, report, application, document or communication is required to be submitted to the customs and excise office in terms of this Act, such information, declaration, report, application, document or communication may be submitted to the customs and excise office by means of an electronic communication, in the form prescribed by the Permanent Secretary.

(2) If in terms of this Act, a person is required to sign any information, declaration, report, application, document or communication and that information, declaration, report, application, document or communication is submitted by means of an electronic communication, it must -

- (a) be electronically signed in the manner prescribed by the Permanent Secretary, or
- (b) be printed and signed manually,

and be delivered to the customs and excise office.

(3) If in terms of this Act, a person is required to make any payment, electronically or to submit to the customs and excise office any information, declaration, report, application, document or communication in a specific electronic form, the -

- (a) Commissioner may condone any inability by that person to make payment electronically or to submit the information, declaration, report, application, document or communication in a specific electronic form; and

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(b) customs and excise office may accept the payment in cash or in another form determined by the Commissioner or the information, declaration, report, application, document or communication in paper form within such period and at such place as the Commissioner may determine.

(4) Irrespective of whether an application for a license, permit or approval is, in terms of this Act, submitted manually or electronically, the Commissioner, on approval of an application, may issue the license, permit or approval electronically.

(5) If any person is liable for any payment in terms of this Act, the Commissioner may accept or receive such payment electronically in the form determined by the Commissioner.

Admissibility of electronic communications as evidence

5C. (1) In any legal proceedings arising from the application of this Act or a customs legislation administered by the Commissioner, the rules of evidence may not be applied so as to deny the admissibility of an electronic communication, in evidence -

(a) on the mere grounds that it is constituted by electronic communication; or

(b) if it is the best evidence that the person adducing it could reasonably be expected to obtain, on the grounds that it is not in its original form.

(2) Information in the form of an electronic communication must be given due evidential weight.

(3) In assessing the evidential weight of electronic communication, regard must be had to -

(a) the reliability of the manner in which the electronic communication was generated, stored or communicated;

(b) the reliability of the manner in which the integrity of the electronic communication was maintained;

(c) the manner in which its originator was identified; and

(d) any other relevant factor.

(4) An electronic communication made by a person in the ordinary course of business, or a copy or printout of or an extract from such electronic communication certified to be correct by an individual in the service of such person, is on its mere production in any civil, criminal, administrative or disciplinary proceedings under any law, the rules of a self-regulatory organisation or any other law or the common law, admissible in evidence against any person and rebuttable proof of the facts contained in such record, copy, printout or extract.

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7. The following sections are inserted after section 6 of the principal Act:

“Places of entry or exit in terms of international agreements with Southern African Customs Union member states or adjoining countries

6A. (1) The President may enter into an agreement with the government of a Southern African Customs Union member state or other country adjoining Namibia, to provide for -

- (a) joint, one-stop or side by side places of entry or exit for Namibia and that state or country;
- (b) a place of entry or exit for Namibia alone at a location in that state or country; or
- (c) a place of entry or exit for that state or country alone at a location in Namibia.

(2) The Permanent Secretary, in accordance with an agreement contemplated in subsection (1) and subject to the approval of the Minister, may -

- (a) designate a joint, one-stop or side-by-side place or a place in the state or country contemplated in subsection (1), as a place of entry or exit for Namibia;
- (b) determine -
 - (i) the purposes for which the place, contemplated in paragraph (a), may be used as a place of entry or exit for Namibia; and
 - (ii) the days and hours of operation during which the place may be used for the purposes contemplated in subparagraph (i); and
- (c) prescribe procedures and conditions to be complied with and the information to be exchanged for the implementation of an agreement contemplated in subsection (1).

(3) The Permanent Secretary, in accordance with an agreement contemplated in subsection (1) and subject to the approval of the Minister, may designate a joint, one-stop or side-by-side place or a place in Namibia, as a place of entry or exit for a state or country contemplated in subsection (1) -

- (a) by allowing the place to be used by the state or country as a place of entry or exit in accordance with the legislation of that state or country -

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- (i) through which vehicles may pass from or to that state or country;
 - (ii) through which goods may pass from or to that state or country;
 - (iii) where goods may be declared and processed for that state or country's custom purposes;
 - (iv) through which persons may pass from or to that state or country; and
- (b) by allowing customs officials of that state or country, at the place -
- (i) to carry out customs procedures and customs controls in respect of goods and persons in accordance with the legislation of that state or country; and
 - (ii) to apply and enforce the legislation of that state or country.

(4) If the place of entry or exit for Namibia is at a location in the state or country contemplated in subsection (1), that state or country must have provisions similar to the provisions in Namibia's customs controls and customs procedure to allow the customs and excise office to operate in that state or country.

Cooperation between government offices, ministries and agencies

6B. (1) If, in respect of the same goods, controls other than customs controls are, in terms of a law, to be performed by a government office, ministry or agency of Namibia, the customs and excise office shall, in close co-operation with such an office, ministry or agency, endeavor to have those controls performed at the same time and place as customs controls, with the customs and excise office having the coordinating role in achieving this.

- (2) The Commissioner may, for the purposes of -
- (a) customs controls and in order to facilitate the processing of goods moved between Namibia and other territories;
 - (b) minimizing risk and combating of fraud; and
 - (c) effective administration of the place contemplated in subsection (1),

enter into a memorandum of understanding with a government office, ministry or agency of Namibia, relating to the exchange of information received in the context of the movement or storage of goods and as a result of any control.”.

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Amendment of section 7 of the Act No. 20 of 1998

8. Section 7 of the principal Act is amended -

(a) by the substitution for subsection (1) of the following subsection:

“(1) **[Unless the Controller concerned in writing extends any period of time specified in this subsection, the]** The master of any ship arriving at any place of entry designated under section 6, whether laden or in ballast, [shall within 24 hours after the ship’s arrival] or the pilot of any aircraft arriving in Namibia at any place designated in terms of section 6 as a customs and excise airport, whether with or without goods or passengers, shall [- within three hours after landing at any place designated as a customs and excise airport under that section] -

(a) **[in the form prescribed by rule, make a report to the Controller]** lodge and sign a cargo declaration with the Customs relating to such arrival [, with as many duplicates of such report or such extracts as the Controller may require];

(b) **[make and sign to a declaration before the Controller as to the truth of the report contemplated in paragraph (a), and]** answer all such questions concerning the ship or aircraft, the cargo and stores, and the crew, passengers and voyage or flight as may be put to him or her by the Customs; **[and]**

(c) produce, if so required, the official log books relating to the voyage or flight, the stowage plans and any other information or documents in his or her possession relating to the cargo, stores, crew, passengers and voyage or flight [.] ; and

(d) include with the cargo declaration the information, as prescribed by regulations, relating to -

(i) the cargo declaration;

(ii) the lists of stores, crew, and passengers on board the ship or flight; and

(iii) the place in Namibia where the goods and passengers are scheduled to be discharged.”;
and

(b) by the insertion after subsection (3) of the following subsections:

“(1A) The cargo declaration and the information contemplated in subsection (1), shall be lodged at the customs and excise office of entry prior to the arrival of the ship or aircraft, as prescribed by regulation.

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(1B) The cargo declaration and the information contemplated in subsection (1), may be lodged with the Customs by means of an electronic communication, in the form prescribed by regulation.”.

Amendment of section 11 of Act No. 20 of 1998

9. Section 11 of the principal Act is amended -
- (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(1) (a) Where any goods are imported by train, the railway authority concerned shall **[furnish the Controller with the documents relating to such goods as may be prescribed by rule.]** -

- (i) lodge and sign a declaration, with the Customs, relating to the arrival of such goods;
- (ii) include with the declaration, the information as may be determined by the Customs, relating to -
- (aa) the lists of stores, crew, and passengers on board the train; and
- (bb) the place in Namibia where the goods or passengers are scheduled to be discharged.”;

- (b) by the substitution for subsection (3) of the following subsection:

“(3) (a) The person in charge of any **[vehicle (other than an aircraft or a railway train), whether or not conveying any goods, and which vehicle]** means of transport that arrives by land at any place in Namibia, whether or not conveying any goods, shall report to the **[office of the Controller]** customs and excise office nearest to the point at which he or she crossed the border, or to the [office of the Controller] customs and excise office which is most conveniently [situated in relation] located to [such] the crossing point [, before unloading any goods, or in any manner disposing of such vehicle or goods, and make a full written report to such Controller concerning the vehicle or goods, the journey and the destination of the goods, and shall, in the form determined by the Controller, make and sign a declaration as to the truth of such report].

- (b) **[A]** The person referred to in paragraph (a) shall fully and truthfully answer all questions put to him or her [and produce any way-bills or other documents demanded of him or her,] by the [Controller] Customs.
- (c) The person referred to in paragraph (a), shall not unload any goods or remove the means of transport before he or she lodges a declaration with the Customs concerning the means of transport or goods, the journey and the destination of the goods.

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(d) The person in charge of any means of transport transporting goods or passengers for hire shall -

(i) lodge and sign a declaration relating to such arrival with the Customs;

(ii) include with the declaration the information as may be required by the Customs, including -

(aa) the list of passengers that on board of the means of transport; and

(bb) the place in Namibia where the goods or passengers are scheduled to be discharged.

(e) The declaration and the information relating to any goods or passengers on board may be lodged at the customs and excise office of entry prior to the arrival, as prescribed by regulation.

(f) The -

(a) declaration and the information relating to the goods or passengers may be lodged with the Customs by means of an electronic communication, in the form prescribed by regulation; and

(b) the Customs may require that the declaration and information be lodged by means of an electronic communication, in the form prescribed by regulation.”; and

(c) by the insertion after subsection (3) of the following subsection:

“(3A) (a) The declaration and the information relating to the goods, stores, crew, passengers and rail journey shall be lodged with the customs and excise office of entry prior to the arrival of the train, as prescribed by regulation.

(b) The declaration and the information relating to the goods, stores, crew, passengers and rail journey may be lodged with the customs and excise office by means of electronic communication, in the form prescribed by regulation.”.

Insertion of sections 18A and 18B in Act No. 20 of 1998

10. The following sections are inserted after section 18 of the principal Act:

“Customs and Excise controls

18A. (1) The Customs may carry out all the customs controls it considers necessary on goods, transport and persons that

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enter or leave the customs territory, regardless of whether or not the goods or means of transport are liable to duties and taxes in terms of this Act.

(2) Customs controls may in particular consist of conducting audit-based controls, examining goods, verifying declaration data, inspecting transport, inspecting baggage and other goods carried by or on persons, taking samples and carrying out official enquiries and other similar acts.

(3) Customs controls, other than random checks, shall be based on risk management techniques, which include risk analysis and risk criteria, and the -

- (a) risk analysis shall identify and evaluate the risks and develop the necessary actions to address the risk; and
- (b) risk criteria shall be developed by the customs and excise office or the office may use risk criteria developed at an international level.

(4) (a) The Customs may, after releasing the goods and in order to ascertain the accuracy of the particulars contained in the declaration, inspect any documents and information relating to the operations in respect of the goods in question or to prior or subsequent commercial operations involving those goods.

- (b) The Customs may also examine goods contemplated in paragraph (a) and take samples where it is still possible for them to do so.
- (c) Inspections in terms of this section may be carried out at the premises of the holder of the goods, his or her agent, or any other person directly or indirectly involved in those operations in a business capacity or of any other person in possession of those documents and information for business purposes.

(5) In carrying out customs controls, the Customs shall limit its interventions to the minimum necessary to ensure the application of the customs legislation.

Authorized economic operator

18B. (1) The Commissioner may register a legal person who complies with this section as an authorised economic operator for the purpose of benefiting from trade facilitations determined by the Commissioner and reduced levels of customs controls.

(2) (a) A legal person who is registered in the customs territory and who meets the criteria set out in this section may apply to Commissioner to be registered as an authorised economic operator.

- (b) The Minister may prescribe the fee payable for an application under paragraph (a).

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(3) The procedures for the granting, suspension and revocation of the economic operator status, as well as the facilities accorded, shall be determined by the Commissioner.

(4) The criteria for the granting of the status of an authorised economic operator shall be the following -

- (a) a good record of compliance with customs and tax requirements;
- (b) a satisfactory system of managing commercial and transport records, which allows appropriate customs controls;
- (c) financial solvency;
- (d) an effective automated systems capable of complying with authorised economic operator requirements;
- (e) skilled employees capable of complying with the authorised economic operator requirements; and
- (f) any other criteria which the Commissioner may consider necessary.

(5) If the Commissioner decides to grant an application in terms of this section, the Commissioner shall register the person concerned as an authorised economic operator and issue to that person an authorised economic operator certificate.

(6) The Commissioner may decide not to approve an application in terms of this section, if the person concerned does not comply with the criteria for registration as an authorised economic operator status set out subsection (4).

(7) The Commissioner may suspend or revoke the registration status of an authorised economic operator -

- (a) if the holder of the status -
 - (i) no longer meets the authorised economic operator criteria referred to in subsection (4); or
 - (ii) has failed to comply with any authorised economic operator requirements; or
- (b) if the holder of the status or a director or an employee of the holder -
 - (i) has contravened or failed to comply with a provision of this Act or any other legislation in which dishonesty is an element; and

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- (ii) has been convicted of an offence under this Act or an offence in terms of any other legislation in which dishonesty is an element; or
- (c) at the request of the holder of the registration status.
- (8) A person granted the status of an authorised economic operator status is not absolved from complying with this Act.”.

Amendment of section 41 of Act 20 of 1998

11. Section 41 of the principal Act is amended:

- (a) by the substitution for paragraph (a) of subsection (1) of the following subsection.

“Importer and exporter to [produce] lodge documents and pay duties

(1) (a) A person entering any imported goods in terms of this Act for any purpose shall **[, during the hours of any day prescribed by rule,] be a declarant and shall [deliver to the Controller a bill of entry, duly completed to the satisfaction of the Controller, and shall in addition thereto, in the form prescribed by rule, make and sign a declaration as to the correctness of the particulars and the purpose or purposes for which such goods are being entered as specified on such bill of entry.] lodge with the Customs a duly completed goods declaration.**

- (b) by the insertion after paragraph (a) of subsection (1) of the following paragraph:

“(aA) The goods declaration shall be lodged during the business hours of the customs and excise office.”;

- (c) by the substitution for paragraph (b) of the following paragraph:

“(b) A [person referred to in paragraph (a)] declarant shall, together with the [bill of entry referred to in that paragraph,] goods declaration, subject to subsection (2), pay all duties due on the goods concerned and deliver such number of duplicates of the [bill of entry] goods declaration as may be prescribed by [rule, or as may be required by the Controller and shall, subject to subsection (2), pay all duties due on the goods concerned] regulation.

- (d) by the substitution for paragraph (c) of the following paragraph:

“(c) [A person referred to in paragraph (a)] The declarant shall [, in addition, to the documents required by paragraphs (a) and (b) to be delivered to the Controller in terms of that paragraph and of paragraph (b) the transport document or such other document in lieu thereof as may be approved by the Commissioner, the invoices prescribed by rule, the shipper’s statement of expenses incurred by him or her, a copy of the confirmation of sale or other contract

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of purchase and sale, the importer's written clearing instructions, unless exempted by rule, and such other documents relating to such goods as the Controller may require in each case, and answer all such questions relating to such goods as may be put to him or her by the Controller, and furnish to the Commissioner in such form and in accordance with the procedures the Commissioner may determine, such information regarding the tariff classification of such goods as the Commissioner may require.] deliver to the Customs:

- (i) the transport documents or such other document in the place of transport documents as may be approved by the Commissioner;
- (ii) the invoices prescribed by regulation;
- (iii) the shipper's statement of expenses incurred by the shipper;
- (iv) a copy of the confirmation of sale or other contract of purchase and sale;
- (v) the importer's written clearing instructions, unless exempted by regulation; and
- (vi) other documents relating to the goods as the Customs may require in each case.”;

(e) by the insertion after paragraph (c) of the following paragraph:

“(cA) The declarant must answer all questions relating to the goods as may be put to him or her by the Customs and must provide such additional information regarding the tariff classification, customs value and country of origin of the goods as may be required.”;

(f) by the substitution for paragraph (d) of the following paragraph:

“(d) The Commissioner may, subject to the conditions as he or she may determine, allow the **[person referred to in paragraph (a)] declarant** to **[, in lieu of any document required to be produced in terms of paragraph (c), to produce a document purporting to be a copy of any such document and obtained by means of microfilming or any other process, and which copy of the document shall, subject to compliance with the conditions determined by the Commissioner, for all purposes be as valid as and have all the effects of the original document concerned.] lodge the goods declaration and supporting documents prior to the arrival of the goods in the customs territory.”;**

and

(g) by the addition after paragraph (e) of the following paragraph:

“(f) The -

- (a) goods declaration and the supporting documents contemplated in this section may be lodged by means of an electronic communication, in the form prescribed by regulation; and

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(b) Commissioner may require that the goods declaration and the supporting documents contemplated in this section be lodged by means of an electronic communication, in the form prescribed by regulation.”.

Insertion of sections 58A and 58B in Act No. 20 of 1998

12. The following sections are inserted after section 58 of the principal Act:

“Imposition of environmental levy

58A. (1) A levy to be known as the environmental levy shall be leviable on goods imported into and goods manufactured in Namibia as may be specified in any item of Part 3 of Schedule No.1.

(2) The goods on which an environment levy is imposed in terms of subsection (1), are known as environment levy goods.

Rate of environmental levy

58B. The environmental levy shall be levied at a rate as may be specified in any item of Part 3 of Schedule No. 1 and the environmental levy so specified in such item shall be payable in addition to any duty prescribed in respect of the goods concerned in any heading or subheading of Part 1 or Part 2 of Schedule No. 1.”.

Substitution of section 112 of Act No. 20 of 1998

13. The following section is substituted for section 112 of the principal Act:

“Business books, accounts, [or other] documents or other information to be available for inspection

112. (1) (a) Any person conducting any business in Namibia shall in Namibia and in the **[official]** English language keep such books, accounts, **[or]** documents or information relating to his or her business transactions as may be prescribed by regulation **[, and such books, accounts or documents shall be kept in such form and in accordance with the procedures, and shall be retained for such period, as may be so prescribed]**.

(b) Different provisions may be prescribed under paragraph (a) in respect of different classes or kinds of books, accounts **[or]** documents **[,]** or information or different classes of persons conducting business **[,]** or different **[kinds or]** classes **[of]** or kinds of businesses, as contemplated in that paragraph.

(c) Books, accounts, documents or information contemplated in paragraph (a) shall be kept in an accessible manner and in a manner acceptable to the Commissioner.

(d) Books, accounts, documents or information contemplated in paragraph (a) shall be retained for

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a period of five years from the date of importation, exportation, manufacturing or transport of any goods, but, in the case of goods stored or manufactured in a customs and excise warehouse, the period shall be extended until all the relevant goods have been duly cleared in terms of section 20(7) of the Act and have been delivered or exported.

(2) The Commissioner may, subject to such conditions as he or she may determine, allow any person **[referred to]** contemplated in subsection (1) to, retain, in lieu of any of the book, account**[or] document or information** **[required to be retained in terms of that subsection, retain]** an electronic version, a reproduction or any other form of any such book, account, **[or] document or information** **[in the form of a microfilm, or in any other form or by means of any other process],** as approved by the Commissioner**[in writing]**.

(3) **[Any]** The person referred to in subsection (1) shall, upon a **[written]** demand made by the **[the Controller or by the Commissioner, as the case may be,]** Customs produce **[to him or her]** such books, accounts, **[or] documents** **[referred to in that subsection as he or she may require,]** or information and **[such person]** shall **[render such returns or]** submit such particulars in connection with his or her transactions to the **[Commissioner as he or she may from time to time in writing request]** Customs.

(4) The Commissioner may, subject to such conditions as he or she may determine, allow **[any]** the person referred to in subsection (1) to, produce, in lieu of any book, account, **[or] document or information** required to be produced in terms of subsection (3), **[produce a copy of such book, account or document obtained by means of any manner of reproduction referred to in subsection (2),]** an electronic version, a reproduction or other form approved in terms of subsection (5), of such book, account, document or information, and **[such copy shall,]** the electronic version, reproduction or other form of the copy shall, [subject to such conditions so determined,] for the purposes of this Act, have the force and effect of the original book, account, **[or] document or information** concerned.

(5) The Permanent Secretary may prescribe -

- (a) the books, accounts, documents, transactions or operations in respect of which a chartered accountant's certificate shall be produced to the **[Controller]** Customs by the class of persons **[referred to contemplated in]** subsection (1) as he or she may so prescribe; and
- (b) the nature and form of a certificate contemplated in paragraph (a) and the intervals at which such a certificate shall be produced in terms of that paragraph.”.

Act No. 17, 2016**CUSTOMS AND EXCISE AMENDMENT ACT, 2016****Short title and commencement**

14. This Act is called the Customs and Excise Amendment Act, 2016 and comes into operation on a date determined by the Minister by notice in the *Gazette*.
