

[LEGAL NOTICE NO. 50]

CUSTOMS ACT 1986

Customs (Infringement Notices) Regulations 2018

IN exercise of the powers conferred on me by section 143F of the Customs Act 1986, I hereby make these Regulations—

PART 1—PRELIMINARY

Short title and commencement

1.—(1) These Regulations may be cited as the Customs (Infringement Notices) Regulations 2018.

(2) These Regulations come into force on 1 August 2018.

Interpretation

2. In these Regulations, unless the context otherwise requires—

“Act” means the Customs Act 1986;

“court” means a court of competent jurisdiction;

“Customs Infringement Notice” means the notice prescribed in Schedule 1 to the revoked Regulations;

“fixed penalty” means a penalty prescribed in column 4 of Schedule 1;

“fixed penalty offence” means an offence prescribed in columns 1 and 2 of Schedule 1;

“Infringement Notice” means the notice issued under regulation 5;

“late payment fee” means 50% of the fixed penalty a person is liable to pay;

“revoked Regulations” means the Customs (Infringement) Regulations 2016;
and

“Service” means the Fiji Revenue and Customs Service.

Objectives

3. The objectives of these Regulations are to—

(a) ensure compliance with the Act; and

(b) address breaches of the Act.

Application

4. These Regulations apply throughout Fiji irrespective of a person’s nationality, citizenship or place of registration or incorporation.

PART 2—PROCEEDINGS FOR INFRINGEMENT NOTICES

Issuance of Infringement Notice

5.—(1) A proper officer may issue an Infringement Notice to a person alleged to have committed a fixed penalty offence by serving the Infringement Notice—

- (a) personally upon the person;
- (b) through registered mail sent to the person's postal address last recorded by the Service;
- (c) at the registered office of the person;
- (d) upon a person who resides at the person's physical address last recorded by the Service, provided that the first mentioned person is of or over the age of 18 years; or
- (e) through any electronic means as approved by the Service, including by electronic mail to a valid electronic mailing address submitted by the person to the Service and verified by the Service.

(2) In these Regulations, service of the Infringement Notice is deemed to have been effected if the Infringement Notice is—

- (a) in the form prescribed in Schedule 2; and
- (b) served in accordance with this regulation.

(3) The Service may notify a person to whom an Infringement Notice is issued of the person's alleged commission of a fixed penalty offence and such notification may be made by—

- (a) Short Message Service (SMS) messaging to a registered mobile phone contact; or
- (b) electronic mail to a valid electronic mailing address,

submitted by the person to the Service and verified by the Service.

Fixed penalty

6. A person to whom an Infringement Notice is issued is liable to a fixed penalty and must, within 30 days from the date the Infringement Notice is issued, undertake one of the following actions—

- (a) pay the fixed penalty in a single payment or by instalments; or
- (b) elect to dispute the Infringement Notice in a court.

Failure to pay fixed penalty

7.—(1) If a person to whom an Infringement Notice is issued does not undertake any of the actions in regulation 6 within the prescribed period, the person is liable to pay the late payment fee in addition to the fixed penalty and where the person is—

- (a) an individual, the individual shall be issued a departure prohibition order preventing the individual from leaving Fiji; or

- (b) a company, all the directors of the company in Fiji shall be issued a departure prohibition order preventing the directors from leaving Fiji,

unless the person undertakes one of the following actions—

- (i) pays the fixed penalty and late payment fee in a single payment or by instalments; or
- (ii) elects to dispute the Infringement Notice in court.

(2) If a person to whom an Infringement Notice is issued pays the fixed penalty and late payment fee, if applicable, and also elects to dispute the Infringement Notice in a court, the person must notify the Service, on or before the payment of the fixed penalty and late payment fee, if applicable, of the person's intention to dispute the Infringement Notice.

(3) If a person to whom an Infringement Notice is issued pays the fixed penalty and late payment fee, if applicable, and also elects to dispute the Infringement Notice and the court subsequently makes a final determination in the person's favour, including the determination of any appeal in any appellate court, the Service must refund the fixed penalty and late payment fee, if applicable, to that person.

(4) If a person to whom an Infringement Notice is issued does not undertake any of the actions in regulation 6 within the prescribed period, the Service must notify the Director of Immigration immediately after the expiration of the prescribed period.

(5) Upon receipt of the notification from the Service under subregulation (4), the Director of Immigration must issue to—

- (a) where the person is an individual, the individual; or
- (b) where the person is a company, all the directors of the company in Fiji,

a departure prohibition order stating—

- (i) the reasons for the issue of the departure prohibition order;
- (ii) the fixed penalty and late payment fee that the person is required to pay; and
- (iii) that the departure prohibition order may be revoked if the person undertakes any of the actions listed in subregulation (1)(i) and (ii).

(6) If a departure prohibition order is issued to a person under this regulation, the person to whom the departure prohibition order is issued may pay in full the fixed penalty and late payment fee that the person is liable to, to the Service or, if the person intends to leave Fiji, to the Department of Immigration at an international airport in Fiji.

(7) Pursuant to subregulation (6), if a person pays in full the fixed penalty and late payment fee that the person is liable to, the departure prohibition order is deemed to have been revoked and the person must not be prevented from leaving Fiji on the basis of the departure prohibition order issued under this regulation.

Failure to take action within 3 months

8. If a person to whom an Infringement Notice is issued does not undertake any of the actions provided in regulation 7(1)(i) and (ii) within 3 months from the date the Infringement

Notice is issued, the Infringement Notice takes effect as a conviction and the Service may seek the maximum penalty for the prescribed offence from a court.

Evidence of matters in certificate

9. A certificate signed by a proper officer stating that the fixed penalty was or was not paid must, unless the contrary is proved, be conclusive evidence of the matters stated in the certificate.

PART 3—MISCELLANEOUS

Revocation

10. The Customs (Infringement) Regulations 2016 is revoked.

Transition

11. The provisions of the revoked Regulations continue to apply to any Customs Infringement Notice issued by the Service prior to the commencement of these Regulations until such time that—

- (a) the fixed penalty specified in the Customs Infringement Notice is paid to the Service; or
- (b) the trader specified in the Customs Infringement Notice is required to appear before the Magistrates Court to answer to the charge specified in the Customs Infringement Notice.

Made this 31st day of July 2018.

A. SAYED-KHAIYUM
Attorney-General and Minister for Economy

SCHEDULE 1
(Regulation 2)

CUSTOMS ACT 1986

Section	Fixed Penalty Offence	Maximum Penalty Fine Imprisonment	Fixed Penalty						
			Infringement Notice Penalty Individuals				Infringement Notice Penalty Body Corporate		
			1 st Offender	2 nd Offender	3 rd Offender	4 th or more	1 st Offender	2 nd Offender	3 rd or more
11A(5)	Failure to comply with section 11A for advanced notification of arrival of aircraft or ship	\$25,000 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$15,000	\$25,000
13	Failure to comply with section 13 in refusing or not facilitating the boarding or disembarkation of or neglecting to receive any officer at any place in Fiji on board such aircraft or ship etc	\$25,000 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$15,000	\$25,000
14(4)	Failure to comply with procedures under section 14 on arrival	\$25,000 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$15,000	\$25,000
16(2)	Failure to comply with restriction on boarding before proper officer	\$25,000 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$15,000	\$25,000
17(2)	Provisions as to persons disembarking from or going on board an aircraft, ship etc	\$25,000 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$15,000	\$25,000
27(2)	Failure to comply with section 27 in relation to unentered goods	\$25,000 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$15,000	\$25,000
31(3)	Failure to uphold an undertaking	\$25,000 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$15,000	\$25,000
37(3)	Failure to comply with the criteria for a bonded warehouse under section 37	\$25,000 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$15,000	\$25,000

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38	Failure to comply with section 38(5) or (6) for bonded warehouses	\$25,000 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$15,000	\$25,000
40(3)	Failure to comply with directions given by the Comptroller	\$25,000 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$15,000	\$25,000
47(5)	Failure to comply with section 47 on entry of warehoused goods etc	\$25,000 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$15,000	\$25,000
55	General offences relating to bonded warehouses	\$25,000 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$15,000	\$25,000
63G	Failure to comply with conditions imposed under section 63F(1)	\$25,000 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$15,000	\$25,000
65(2)	Failure to comply with requirements under section 65 for loading etc	A fine of 3 times the value of the export declared on the export entry declaration or a fine not more than \$50,000, whichever is greater 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$15,000	\$25,000
66H(1)	Penalty when goods under secure exports scheme are found contrary to declaration	A fine of 3 times the value of the export declared on the export entry declaration or a fine not more than \$50,000, whichever is greater 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$15,000	\$25,000

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71	Giving incorrect material particulars	\$25,000 plus 10% of the export value 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$15,000	\$25,000
72(5)	Failure of aircraft or ship to depart from Fiji within specified time	\$25,000 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$15,000	\$25,000
74(2)	Failure to comply with section 74 on discharge of goods for export	A fine of 3 times the value of the export declared on the export entry declaration or a fine not more than \$50,000, whichever is greater 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$15,000	\$25,000
95D(1)	Failure to comply with garnishee order	\$25,000 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$15,000	\$25,000
100(1)	Failure to comply with section 100 on drawbacks	\$25,000 or 3 times the amount of the drawbacks claimed whichever is greater 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$10,000	\$25,000
100(2)	Wilfully claiming more drawback on any goods than is legally due etc	\$25,000 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$10,000	\$25,000
102(3)	Failure to comply with section 102 on power of Comptroller with regard to invoices	\$25,000 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$15,000	\$25,000

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103(4)	Failure to comply with section 103 by the master of a ship or an aircraft	<p>(a) For the master of a light aircraft or ship of less than 250 tonnes, a fine of not more than \$40,000</p> <p>10 years</p> <p>(b) For the master of an aircraft other than a light craft or ship of more than 250 tonnes, a fine of not more than \$200,000</p> <p>10 years</p>	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$15,000	\$25,000
104(4)	Failure to comply with section 104(4) on powers to board ship etc and search	\$25,000 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$15,000	\$25,000
104(5)	Failure to comply with section 104(5) by the master of a ship or aircraft	\$25,000 or 3 times the value of any goods found to be missing, whichever is greater 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$15,000	\$25,000
113(1)	Penalty for interfering with Customs ships etc	\$25,000 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$15,000	\$25,000

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116(3)	Failure to comply with section 116 on power to require declaration	\$25,000 or 3 treble the value of the thing not declared or of the baggage or thing not produced, whichever is greater 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$15,000	\$25,000
122(2)	Failure to comply with section 122 on powers to prevent flight of aircraft	\$25,000 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$15,000	\$25,000
124	Offences in relation to violence etc	\$25,000 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$15,000	\$25,000
134(1)	Various penalties associated with owners of aircraft and ships	\$25,000 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$15,000	\$25,000
136	Removal or destruction of dutiable goods	\$25,000 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$15,000	\$25,000

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137	<p>(a) Providing documents that are incorrect for Custom purposes.</p> <p>(b) Making false entries</p> <p>(c) Making false declarations</p> <p>(d) Misleading an Officer</p> <p>(e) Not providing correct name or address</p> <p>(f) Selling of goods on board an aircraft or any place under Customs Control without authorisation.</p> <p>(g) Delivering, removal or withdrawal of goods under customs control without prior examination.</p> <p>(h) Unlawful conveyance or possession of smuggled goods</p> <p>(i) Refuses or fails to stop any means of conveyance when called to do so.</p>	\$25,000 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$15,000	\$25,000

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137E	Failure to reflect duty decrease in price of goods	\$100,000 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$15,000	\$25,000
137F	Failure to reflect duty protection in price of goods	\$100,000 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$15,000	\$25,000
143	General penalties	\$25,000 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$15,000	\$25,000
149(4)	Failure to comply with section 149(2)	\$25,000 10 years	\$1,000	\$5,000	\$10,000	\$25,000	\$10,000	\$15,000	\$25,000

SCHEDULE 2
(Regulation 5(2)(a))



FIJI REVENUE AND CUSTOMS SERVICE

INFRINGEMENT NOTICE

Infringement Notice Number:

1. Details of Offender
Name:
Address:
TIN:
2. Details of Offence
Statement of Offence:
Particulars of Offence:
Contrary to:

This offence carries a maximum penalty of [\\$]. If you do not wish to contest this Infringement Notice, you are required to pay the fixed penalty of [\\$] to the Fiji Revenue and Customs Service.

The payment of the fixed penalty is due within 30 days from the date of issue of this Infringement Notice and is payable at any Fiji Revenue and Customs Service office. If you pay the fixed penalty, all liability in respect of the offence will be discharged and no further action will be taken against you with respect to this particular offence.

If you wish to contest this Infringement Notice, you may elect to dispute this Infringement Notice in court within 30 days from the date of issue of this Infringement Notice.

If you fail to pay the fixed penalty or dispute this Infringement Notice in court within 30 days from the date of issue of this Infringement Notice, you will be—

- (i) liable to a late payment fee equivalent to 50% of the fixed penalty, in addition to the fixed penalty; and
- (ii) issued a departure prohibition order preventing you from leaving Fiji.

You may pay your fixed penalty and late payment fee in a single payment or in instalments.

The departure prohibition order will continue until you pay your fixed penalty and late payment fee in full or elect to dispute this Infringement Notice in court.

If you do not pay your fixed penalty and late payment fee in full or elect to dispute this Infringement Notice in court within 3 months from the date this Infringement Notice is issued to you, this Infringement Notice will take effect as a conviction from the court and the Fiji Revenue and Customs Service may seek the maximum penalty from the court.

3. Details of Proper Officer

Name:	Date: [day/month/year]
Signature:	

4. Affidavit of Service

I, [name of Proper officer whose signature appears in section 3], make oath and say that, on the [specify day] day of [specify month], 20 [specify year] at [specify address] I did serve upon the offender specified therein.

[signature of Proper officer]

Sworn by the above named Proper officer this [specify day] day of [specify month] 20 [specify year].

Before:

[name and signature of Commissioner for Oaths/Justice of the Peace]

Commissioner for Oaths/Justice of the Peace