



**FIJI ISLANDS CUSTOMS SERVICES PUBLIC CIRCULAR
NO. 04 OF 2010**

ADMINISTRATIVE SETTLEMENT OF CUSTOMS OFFENCES

Date of effect: 26 July 2010

Key legislation: Part XX, Section 155 of the *Customs Act 1986*

PURPOSE

1. This Internal Instruction deals with the Comptroller's power to compound offences by agreement under section 155 of the *Customs Act 1986*.

INTRODUCTION

2. Part XX of the *Customs Act 1986* gives the Comptroller of Customs & Excise the power to compound an offence by agreement between the offender and the Fiji Islands Customs Service.
3. The Comptroller's ability to exercise this power depends upon the exercise of certain preconditions. These are:
 - the offender has to be charged in writing in letter format.
 - the offender who has been charged under Customs laws **admits** in writing to the Comptroller of Customs & Excise that he has committed the offence; and
 - **requests** the Comptroller of Customs & Excise to deal with his case under the provisions of section 155.
4. The Comptroller of Customs & Excise can only deal with cases, which have a pecuniary penalty prescribed and/or cases where the penalty is the forfeiture of the goods.
5. The power to compound an offence by agreement is a discretionary power available to the Comptroller of Customs & Excise. Therefore, an offender may request to have his case dealt with under section 155 by the Comptroller and it is the Comptroller's decision whether he accepts to compound the offender under section 155 or to refer the case for prosecution in a Court of competent jurisdiction.

6. The compounding of offences under section 155 of the *Customs Act* requires an easy and understandable process for the offender and the officers of the Fiji Islands Customs Service.
7. The Comptroller of Customs & Excise must be “satisfied” that a person has committed an offence against this Act. In order to be satisfied, the Comptroller must have before him a complete investigation or audit file with relevant copy of served charge containing all relevant documentation, audit report, records of interview of all relevant persons involved in the case, statements from and including the investigating officer and an advice from Legal that the investigation file is complete and ready for prosecution in a Court of competent jurisdiction. To ensure effectiveness of this process, all investigation and audit files relating to alleged offences being committed will be reviewed by Manager Investigations (Suva and Lautoka) and Team Leader Investigation (Nadi) in liaison with Manager Investigation Lautoka to ensure all elements of the offences are covered including the completeness of files.
8. It must be emphasised that the Comptroller of Customs & Excise acts in a quasi-judicial capacity once he exercises his discretion to deal with an offence under section 155.

ADMINISTRATION OF INVESTIGATION FILES

9. This section is a guideline for the referral of cases on alleged offences committed against any Customs laws. This process requires urgency and thoroughness on the part of the reporting officer up to, and including the completion of the investigations by the CIB.
10. The time-line for reporting and investigating of offences committed against the Customs laws is determinable by the classification of the offending as per the Matrix in 16 – 19 below. For common offences, the maximum time-line for completion is 3 working days; for serious offences, the maximum time-line for completion is 2- 3 weeks and for very serious offences, the maximum time-line for completion is 3 – 6 months.
11. Once an alleged offending against any Customs law is committed, it is the responsibility of the reporting officer or the respective Officer-in-Charge (OIC) to identify possible offences for the particular situation presented to him/her.
12. Once the reporting officer or the OIC has identified all possible offences for the alleged offending, the file is then referred to the respective Manager CIB. The referral file must contain a report of the list of possible offences and a summary of the reporting officer or OIC’s findings.
13. The alleged offending will then be dealt with by the Customs CIB as per normal procedure.

POLICY

14. If an offence is committed and before the Comptroller agrees to compound the offence:

- The offender will be charged with the relevant offence either on CPC¹ format with covering letter or on letter format. The letter containing the charges will also include, for the offender's information, the option for compounding by agreement as provided under section 155.
- Section 155 will be explained to the offender as such, that if he elects, he can write to the office of the Comptroller of Customs & Excise admitting the offences with which he has been charged and requesting to have his case settled under that section.
- The offender must be clarified that once agreed to compound, the settlement is final and not subject to appeal or re-charge later.
- The offender must also be informed that the compounding of the offence under section 155 is a discretionary power of the Comptroller of Customs & Excise and it is the latter's decision whether or not to refer the case for prosecution in a Court of competent jurisdiction.
- Once an offender writes to the office of the Comptroller of Customs & Excise admitting the offences with which he has been charged and requesting to have his case settled under section 155, the Comptroller of Customs & Excise will then request for the investigation file and satisfy himself that an offence has indeed been committed.
- If the Comptroller of Customs & Excise is satisfied, he will then make a decision whether or not to compound the offence under section 155.
- If he agrees to compound the offence, he will then write to the offender giving him maximum of fourteen days within which to mitigate before him either in person or in writing. The Comptroller may further extend the time for mitigation upon the request of the offender.
- The Comptroller may make a decision based on information provided by the offender at the point of request.
- Once the Comptroller of Customs & Excise has heard the offender in mitigation or has received in letter in mitigation, he may then Order such offender to pay a pecuniary penalty and/or order any goods liable to forfeiture, as a result of the offending, to be condemned to the State.
- Once the Comptroller of Customs & Excise makes an Order, he will put that decision into writing and attach a copy of the request by the offender along with his Order.

¹ CPC = Criminal Procedure Code (as required by Court).

- The Order must specify the offence with which the offender has been charged and the penalty that the Comptroller of Customs & Excise has ordered **under** section 155. It will also provide that the decision of the Comptroller is final and binds both the FICS and the offender.
- A copy of the said Order must be provided to the offender and a copy must be kept in a **master Compounding Register** at the FICS **at each port**.
- As per the necessary delegation (**L/N 111/1986**), the powers of the Comptroller of Customs & Excise may be delegated to officers of prescribed rank.

15. If an offence is committed and Comptroller exercises his discretion not to compound:

- Repeat 9 (i) – (iv) above.
- The Comptroller of Customs & Excise will then write to the offender informing him that he has decided not to accept the offender's request to compound and that his case will be referred for prosecution in a Court of competent jurisdiction.
- That the investigation file before him will be sent to Legal thereafter with the Comptroller's endorsement for prosecution.
- **In the event, that the offender had admitted committing the offence and the compounding process was entered into with the offender signing the compounding form, but the offender decided not to pay the penalty imposed, the file together with the Comptroller's endorsement must immediately be sent to the Legal Services.**

OFFENCES & COMPOUNDING

If the Comptroller of Customs & Excise allows an offence to be compounded, he will include such factors below when working out a penalty amount:

- i) the prescribed maximum offence;
- ii) the nature and gravity of the particular offence;
- iii) the offender's degree of guilt and responsibility;
- iv) the impact of the offence on FIRCA's objective and the injury, loss or damage resulting from the offence;
- v) whether the offender pleaded guilty to the offence, and if so, the stage in the proceedings at which the offender did so or indicated an intention to do so; the conduct of the offender during the investigation period as an indication of remorse or the lack of remorse;
- vi) any action taken by the offender to compensate for the injury, loss or damage arising from the offence;

- vii) the offender's previous offences;
- viii) any mitigating factors;
- ix) previous penalties on similar cases; and
- x) offender's ability to pay.

The ratings below together with the relevant factors above will be used as a general guideline in determining the penalty tariff of settlement by the Comptroller.

	Factors	Ratings					Other comments
		1	2	3	4	5	
1.	Nature and gravity of the particular offending.	1	2	3	4	5	1. Genuine oversight. 2. Oversight but did not exhaust all avenues. 3. Negligence. 4. Deliberate but cannot be proved (insufficient evidence) 5. Fraud.
2.	The Offenders culpability and degree of responsibility for the offence.	1	2	3	4	5	5. Directly responsible and proven guilty. 2. Acted on superior's directive but with NIL responsibility. 3. Acted under directive but with full responsibility. 4. Acted with full responsibility 1. Acted with NIL responsibility.
3.	The impact of the offence on any victim of the offence and the injury, loss or damage resulting from the offence.	1 (≤\$1,000)	2 (>1,000≤5,000)	3 (>5,000≤10,000)	4 (10>=\$50,000)	5 (>50,000)	1. Insignificant 2. Minor 2. 3. Moderate 4. Major 5. Catastrophic.
4.	Whether the offender pleaded guilty to the offence or showed an intention to do so.	1	2	3	4	5	1. Guilty - immediate. 2. Guilty - hesitant. 3. Guilty - during investigation. 4. Guilty - after investigation. 5. Guilty - after charge letter issued.
5.	The conduct of the offender during the investigation of the offence as an indication of remorse or lack of remorse	1	2	3	4	5	1. Full remorse. 2. Major remorse. 3. Moderate remorse. 4. Minor remorse. 5. No remorse.
6.	Any action taken by the offender to make restitution for the loss or damage arising from the offence, including his or her willingness to comply with any order for restitution that the Comptroller or court may make.	1	2	3	4	5	1. Fully actioned. 2. Major action. 3. Moderate action. 4. Minor action. 5. No action.
7.	The offenders previous character	1	2	3	4	5	1. No character. 2. Minor character. 3. Moderate character. 4. Major character. 5. Very significant character.
8.	The presence of any aggravating factors relevant to the commission of the offence	1	2	3	4	5	1. No factor. 2. Minor factor. 3. Moderate factor. 4. Major factor. 5. Very significant factor.
9.	The presence of any mitigating factors relevant to the commission of the offence	1	2	3	4	5	5. No factor. 4. Minor factor. 3. Moderate factor. 2. Major factor. 1. Very significant factor
TOTAL RATINGS							

Ratings Score _____

Score	9-20	21-27	28-35	36-40	41-45
% of Prescribed Penalty	Warning letter	10%-20%	21%-49%	50%-70%	71%-100%

(Prescribed penalty) _____ (% of prescribed penalty)

Recommended Penalty _____
(officer)

(Signature of investigating officer)

IMPLEMENTATION GUIDE

Operational sections are to settle cases with rating scores of **9-27** whereas cases with scores of **28-45** will be immediately handled by CIB.

Offences will be categorised as follows:

- a) Minor - inadvertent errors relating to HS classification, calculations, foreign currency conversions etc;
- b) Serious - negligence through the same errors being repeatedly committed including smuggling; and
- c) Very Serious - fraud related, drugs, smuggling etc.

TRIAL PERIOD

This circular supersedes the Internal CIRCULAR NO.38/2009 ADMINISTRATIVE SETTLEMENT OF CUSTOMS OFFENCES of 05 May 2009 **but will be trialed for 2 months until 26 September 2010** after which it will be reviewed and finalised.

For any clarifications, please contact Mr. Jone Louie, National Manager Customs Risk & Compliance on telephone 3302322 ext 3253, fax 3302929 or by email: jlouie@frca.org.fj



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CHIEF EXECUTIVE OFFICER

FIJI ISLANDS REVENUE & CUSTOMS AUTHORITY

26th July, 2010