

LAW NO. 207
FOR THE YEAR 2020:
New Customs Law in
Egypt

The official publication of the New Customs Law No. 207 for the year 2020 (the “**Law**”) in the Official Gazette, which has been ratified by parliament and signed by the president, formally ratifies the Law as of 11th of November 2020; hence, an official version of the law is now available. However, note that the Executive Regulations are yet to be issued, and are expected to be issued within six months from the aforementioned date. That being said, the Executive Regulations of the previous Customs Law shall apply until the issuance of the new Executive Regulations. The older Executive Regulations are expected to not contradict the Law.

Please find hereinafter our comments on the most relevant articles, which reflect carriers and their agencies role in the shipping industry in Egypt.

Article 1 - 15

- ***Prohibited goods** are defined as goods which the applicable laws or decisions prohibit their export, import, or transit.*

Eldib’s comments:

The definition as stated in the law, specifically the addition of “or transit,” may open the door to a number of practical difficulties. To highlight, when it comes to its implementation with regards to the direct transit system, the inclusion of “or transit” may obstruct the flow of maritime trade, and negatively affect international efforts to achieve growth within the field. From a practical standpoint certain goods which are considered prohibited under the laws and regulations of Egypt are not necessarily prohibited within the territories of other countries, and thus the need for their passage within the Egyptian customs territory should occur without customs control given that their final destination permits their importation.

Article 8 & 9

- *Importers, Exporters, Customs Clearing Agents, Shipping and Transport Companies, Offices and Companies of natural, legal persons and others related to customs operations, are obliged to hold documents, records, and registers relating to customs operations for a period of 5 years starting from the date of final release of the cargo in question; in a similar respect, registers shall be held as from the date of last remark confirming completion or closure of the register.*
- *Anyone who possess foreign goods for the purpose of trading, should possess the documents indicating their source.*
- *The Customs Administration employee who has the capacity of applying judicial seizure, according to a written permission from the head of the authority or whomever he delegates, has the right to enter the premises of the aforementioned offices and/or companies to peruse the papers, registers and documents relating to customs operations or which indicate the source of the goods, to examine them, to conduct an audit and to provide a post-release review in order to seize it in case of the presence of any violation.*

Moreover, he is also entitled to examine the cargo in question if available, whenever necessary. There is a possibility that customs tax and fees due are recalculated if it is found that their calculation was made on a fraudulent basis. The executory regulation to this law shall determine the rules and regulations organizing the subsequent audit and review and the records that shall be kept manually or electronically.

Eldib's comments on the provisions of Articles 8 & 9:

As provided for in the above articles, the parties and persons addressed herein are bound to keep all papers, records and documents related to the customs operations for a period of five years starting as of the date of the release. In all cases, the customs and dues taxes may be re-calculated without prejudice to the provisions of Chapter 4 (pertaining to Customs' Exemptions) of this Law. The Executive Regulations shall determine the terms and the procedures regulating the follow up inspection and format in which such records that shall be kept be it electronically or otherwise.

Eldib's opinion on Articles 8 & 9:

The rights granted to the customs officers should be applicable on the importers and exporters, since technically, all marine and transport companies, lines and agents do not actually take part of the import and export operations in order for them to be required to keep such documents and records, but rather such burden as mentioned earlier should fall on the importers and exporters.

We hope that the Executive Regulations of the Law which should be issued within six months, defines and clarifies the rules and procedures on how to deal with the "marine and transport companies" and the records they should be keeping for customs purposes, if any.

Article 75 – penalty applicable for non-compliance the above-mentioned articles:

- *Anyone who violates the provisions of Article 8 and Clauses 2 and 5 of Article 24 of this law, shall be penalized with a fine equivalent to the customs tax. If the audit and subsequent review cannot be carried out and prevents the person from the customs authority from implementing the written permission referred to in Article 9 of this law, a fine of EGP 20,000.00 shall be imposed, unless there are justifiable reasons acceptable to the Customs Authority.*

Eldib's comments on the provisions of Article 75:

It is clear from above article that the parties mentioned in the Article 8 should hold all the documents related to the consignment in question for a period of five years, as otherwise they shall be subject to settle a fine equivalent to the customs tax. Whereas, if the said party prevents the customs officer from performing his permitted duties, fine of EGP 20,000.00 shall be imposed.

Eldib's opinion on Article 75:

We find that the penalties stated in this article to be quite harsh, as there appears to be a disparity between the penalty for customs smuggling and the failure to keep documents and records.

Until the issuance of the executory regulations, we do recommend dealing with the customs officers during their attendance before ship agencies and lines with care and sense of cooperation. It is worthwhile mentioning that in application of the Law, the customs' officers should now hold a permit from the Head of the Customs Authority or his delegate, to review the relevant documents held at the ship agencies and lines.

Article 25 “In Transit Cargo”

- *Cargoes of foreign origin may be transported according to the transit cargoes system without taking the maritime route; whether these cargoes have entered the borders to directly exit from other borders or they were sent from one of the customs branches to another branch after the submission of one of the guarantees accepted by the authority.*
- *Transit cargoes shall not be subject to restriction or ban unless otherwise stipulated in the laws or decisions issued in that regard. The carrier shall be responsible for every loss, shortage or alteration of the cargoes or damage to the seals or tampering with it without prejudice to the responsibility of the owner of the cargoes.*
- *The customs tax and other due taxes and fees shall be estimated on the date of submission of the guarantee.*

Eldib’s opinion on Article 25:

The Law unjustifiably holds the carrier, agents and liner responsible for every loss, shortage or alteration of the cargoes or damage to the seals or tampering with regards to **in transit cargo**. Despite all efforts having been made to explain that the carrier has no responsibility whatsoever in the loss, shortage, misdeclaration of in transit cargoes, the Law fails to uphold international trade practices and it unjustifiably assumes that the carrier has any input in such containerized in transit cargoes.

Article 34

- *In case of the temporary release of the consignment in question as the temporary release of machines, equipment, devices, containers and means of conveyance, except for passengers cars and yachts for work and leasing within the country, a custom duty is levied at the rate of 2% of the customs duty which was due on the date of the temporary release for each month or part of it, and with a maximum of 20% annually, during the duration of its stay inside the country until it is re-exported abroad and finally released.*

Eldib’s opinion on Article 34:

With regards to temporary release, unlike the present/previous practice, it is feared that the Law does not differentiate between the **empty containers** and the machines, equipment, devices, and means of conveyance **and the fully stuffed containers**. This point has to be discussed with the customs and competent ministers in order to remove the empty containers from being considered as those of which customs duties are applicable on as provided for in this article.

Article 39

- *In case of pre-customs clearance by importers of cargoes, the importer or their agent is obliged to submit the documents relevant to the consignment in question to the Customs prior to its shipment, in order for it to be marked with a preliminary customs registration number. The importer should then notify the shipper with said number in order for it to be registered on the shipping documents of the cargo in question.*
- *The carriers, captains of vessels and airplane pilots or their shipping agents or representatives, shall be bound to note the preliminary customs registration number in the shipping documents relating to imported cargoes. In the event that said registration number is not noted in the shipping documents, the cargo in question shall not be*

discharged upon arrival but will be shipped back outside of Egypt at the carriers or their representatives' expense.

- *The importer or their agent may begin the necessary procedures for pre-customs clearance of the cargo in question, and settle the necessary taxes and fees, which shall be preliminary estimated by Customs, prior to the arrival of said cargo at any Egyptian port. The final settlement of which shall be affected upon the arrival of said cargo.*

Eldib's opinion on Article 39:

We are unable to ascertain how carriers are to be made aware that the goods are intended for pre-clearance, and as such, this article is too broad and imposes impractical obligations on the carriers, lines and agents. We are hopeful that discussing the matter with the competent ministers and with the head of the customs, will allow for the Executive Regulations to address such pitfalls and set out some sort of practical mechanism that allows implementation on the ground.

Article 46

- *Any consignment carried by sea or by road should be mentioned in the general cargo manifest of all consignments carried on said means of transport, which should be signed by the master or his shipping agent, and should mention the name and nationality of the means of transport and the consignments description, according to its materials, quantities, number of parcels, marks, container numbers, shipper names, consignee names and loading ports.*
- *Carriers (or their representatives) are bound not to ship any goods, which do not belong to importers registered before the Customs' Authority except in case of personal effects.*
- *Carriers are obligated to ship back prohibited goods outside of Egypt, or to destroy said goods at their own expenses in the event that incorrect data was submitted by them, and also in the event of the absence of the concerned party to complete the customs procedures; provided that cargo destruction procedures shall take place under the supervision of the Customs' Administration with the coordination of the competent authorities.*

Eldib's opinion on contents of para (1 &2) Article 46:

The customs have to provide carriers, liners and agencies access to such data, which shall be defined in the Executive Regulations. The customs should also define the process on how to provide such data to the carrier or his agents in order to follow the above-mentioned rule. It should be clarified if carriers, liners and agencies will have online access to this information or if such information will be circulated through regular updates.

Eldib's opinion on contents of para (3) Article 46:

The Law stipulates in another article (Article 49) that the vessel's masters, pilots of other means of transport, their maritime agents or their representatives shall discharge the cargoes in accordance to their quantities, number of packages and contents as listed in the shipping manifest until final delivery at the warehouses or stores or to the consignees, whereas the carriers will not be

responsible for such obligation in case the seals are intact, which is violates the above-mentioned rule.

Therefore, the Executive Regulations shall define the meaning of the incorrect data, by taking into consideration that according to the Maritime Egyptian Law as well as the Hamburg Rules, the shipper is the party who provides the carrier with such data.

Article 62

- *The competent authorities shall undertake the destruction of rejected goods inside or outside the customs area in the presence of a Customs representative and cargo owner or its representative. If the cargo owner or his representative fails to attend, a police minute report shall be filed in this respect, and in all events the cargo destruction operation shall be at the cargo owner's expenses.*
- *In case that the competent authorities decide not to destroy the cargo in question for any particular reason, the cargo owner should re-export the said cargo. The Executive Regulations shall determine the rules and procedures for the destruction of goods or its re-exportation, the necessary period to carry out said operations and the tax refunds, for taxes previously paid on them, after deducting any dues.*

Eldib's opinion on Article 62:

Finally, the customs law has not placed an obligation on the carrier/agents to destroy cargoes found unfit by the competent control authorities and places this obligation and its cost on the cargo receivers.

Article 71

- *Without prejudice to any harsher punishment stipulated by any other law, the vessels' masters or airplanes pilots and other means of transport or their representatives shall be penalized with a fine amounting to EGP 30,000 if they commit any of the following acts:*
 - 1- *Not presenting the cargo manifest, their addenda or the declarations statement in articles (46, 47) of this law or for the delay in doing so from the set date.*
 - 2- *Omitting to specify what should be mentioned on the cargo manifest or listing invalid statement.*
 - 3- *Using vessel with a weight less than two hundred tons for shipping banned cargoes or cargoes that are subject to expensive taxes or violating traffic inside the domain of the customs control unless the aforementioned had arisen out of force majeure or maritime emergency.*
 - 4- *Berthing of vessels in ports at berths not prepared for it or berthing in Suez Canal, its lakes, waterways or in the Nile estuary without the prior permission of the competent customs unless the aforementioned had arisen out of force majeure or maritime emergency.*
 - 5- *Landing of airplanes in other airports than the ones having customs offices, except for cases of force majeure or sudden accidents.*
 - 6- *Departure of vessels, airplanes or other means of transport from the Customs Zone without the approval of the Department.*
 - 7- *Discharging cargoes inside the Customs Zone in places other than those prepared for it.*
 - 8- *Loading or discharging of cargoes inside the Customs Zone without the approval of the Department and the attendance of its employees.*

Eldib's opinion on Article 71:

The customs fines that are imposed on carriers/local agents have been significantly increased. For instance, a fine of EGP 30,000 shall be imposed on the carrier or its agent in the event of non-submission of the manifest and its annexes, or in the event that an omission or misdeclaration is made in the manifest, which is significantly higher than it was previously. It should be taken into consideration that the fines should not be over exaggerated. It is quite common that an unintended error occurs, and which does not result in any shortage. The above article grants the customs employees authority which can be easily misused and taken advantage of. Vigilance and further clarification would be best advised in the Executive Regulations.

Further comments on the Law:

The articles covering smuggling matters, such as Article 81, have also seen drastic amendments; specifically, in terms of the imposed fines, periods of imprisonment, limitation times, and the involvement of parties. The final draft of the law before publication in the Official Gazette provided that the smuggling criminal cases were not subject to the application of a statutory of limitations. However, no mention was made in the Law after its enactment and publication in the Official Gazette in this regard, which leaves the general rules of law to apply.

Furthermore, the latest decrees issued by the Customs Authority after the publication of the Law in the Official Gazette imply that the Egyptian Customs are aware of the involved parties concerns and that some articles in the said Law will have a negative impact on the maritime field and foreign trade. As such, they have made the following clarifications:

(1): Article (39) para 1 & 2 of the Law addresses the point of presentation of the cargo documents to the authority before shipment to Egypt. The Head of the Customs circulated that a new system is being implemented (*the Advanced Cargo Information System "ACI"*), and the customs stated that the provisions of this article shall be applicable upon activation of the ACI system.

(2): Article 39 para 3 addresses the point of advanced customs clearance procedures before the arrival of the cargoes into Egypt, this paragraph shall temporarily be executed based on the Executive Regulation the preceding customs law pending issuance of the Law's Executive Regulation to activate prompt release of the cargoes, decrease of clearance time, and reduce of cargoes import cost in support of the national economy.

(3): Article 4 of the Law provides that the Executive Regulations of the previous customs law in general shall temporarily be executed pending issuance of the new customs law Executive Regulations, as long as there are no contradictions between them and the provisions of the new law.

The Head of the Customs Authority provided further guidance in the application of the general rules, the applicable law regarding crimes (violations – misdemeanors – etc) is the one applicable at the material time.

To further clarify the above, the Head of the Customs Authority stated that the following shall be taken into consideration:

- 1- The provisions of the customs law No.207 for the year 2020 shall not be applicable on such shipments that have been shipped and with their cargo manifest being issued before the date of the coming into force of the new customs law i.e. before 12/11/2020. These shipments

shall remain subject to the provisions of the customs law No.66 for the year 1963 as amended.

- 2- The provisions of contraventions and fines stipulated in article 71/2 of the Customs Law No.207 for the year 2020 shall be applicable on the cargo manifest and the ones in charge of their preparation and presentation rather than on each bill of lading which the cargo manifest consists of.
- 3- The provisions of Articles (44, 45, 46, 47) of the preceding Customs Law's Executive Regulations - which are related to amendments to be made on the cargo manifests - shall apply given they do not contradict the Law, and pending issuance of the new customs law's executory regulation.

Please find below our recommendations/steps to be considered, in order to secure dealings with customers, as well as dealings with the customs, pending the issuance of the Law's Executive Regulations.

- Dealing with customs officers with care and sense of cooperation.
- Carriers or their agents shall keep the documents, records, and registers relating to customs operations for a period of 5 years starting from the date of final release of the cargo in question; in a similar respect, registers shall be held as from the date of last annotation confirming completion or closure of the register.
- Before the acceptance to import any goods to an Egyptian importer, the carriers or their representatives have to ensure that the shipper submits the evidence confirming that the Egyptian importer is registered in the Customs' Authority register.
- Carriers or their agents shall inform any exporter to Egypt that the latter will be liable for any fine in case of omissions to the list what should be mentioned in the cargo manifest or of listing invalid items, and it is preferable to add the same as a term of the terms & conditions which governs the bills of lading (contract of carriage).
- We recommend not to accept any sort of waiver to any bill of lading pending issuance of the Executive Regulations, fearing that the assignee may not be registered with the customs as an importer which would subject the carrier to fines as provided for in Article (46) of the Law.

Note, that the Law aims to maximize the advantages of digitalization as compared to its predecessor's paper-oriented system and encourages electronic documentation, remote follow-up of goods up to the final release stage, as well as the pre-clearance of goods.

Finally, in cooperation with the Egyptian Chambers of Shipping, shipping lines and agents, we are currently setting up meetings with the competent authorities, ministries and customs in order to once again raise the numerous objections in relation to the Law, which will hopefully be taken into consideration when drafting the Executive Regulations which are to be issued within six months.