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BARBADOS

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Act 2021-28

REMEDIATION AGREEMENTS (DEFERRED PROSECUTIONS) ACT, 2021-28

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SCHEDULE

OFFENCES IN RESPECT OF WHICH REMEDIATION AGREEMENTS MAY BE MADE

BARBADOS

I assent
S. MASON
President of Barbados
23rd December, 2021.

2021-28

An Act to provide for a prosecutor to enter into an agreement to defer prosecution of an alleged offender and impose certain obligations on the offender, where such an agreement would be in the interest of justice.

[Commencement: by Proclamation]

ENACTED by the Parliament of Barbados as follows:

Short title

1. This Act may be cited as the *Remediation Agreements (Deferred Prosecutions) Act, 2021*.

Interpretation

2. In this Act

"alleged offence" means an offence specified in paragraph 1 of the *Schedule*;

"alleged offender" means a person whom the prosecutor is considering prosecuting for an alleged offence;

"expiry date", in relation to a remediation agreement, means the date on which the agreement ceases to have effect where it has not already been terminated under section 12;

"prosecutor" means the Director of Public Prosecutions or the Director General of the Anti-Corruption and Anti-Terrorism Agency established by section 4 of the *Anti-Corruption and Anti-Terrorism Agency Act, 2021 (Act 2021-)*, as the case may be;

"publish" means to publish in the *Official Gazette*;

"remediation agreement" has the meaning assigned to it by section 4.

Objectives of Act

3. The objectives of this Act are

(a) to encourage the voluntary disclosure of wrongdoing;

(b) to hold persons accountable for wrongdoing through effective, proportionate and dissuasive penalties;

(c) to impose an obligation on persons who engage in wrongdoing to implement corrective measures and promote a culture of compliance;

(d) to reduce the negative consequences of wrongdoing for persons such as employees and customers who did not engage in the wrongdoing; and

(e) to provide reparation for harm done as a result of wrongdoing.

Making of remediation agreement

4.(1) For the purposes of this Act, a remediation agreement means an agreement between the prosecutor and an alleged offender in which

(a) the alleged offender agrees to comply with the requirements imposed by the agreement; and

(b) the prosecutor agrees that, upon approval of the agreement by the High Court pursuant to section 11, section 5 shall apply in relation to the prosecution of the alleged offender for the alleged offence.

(2) In determining whether to enter into a remediation agreement, the prosecutor shall have regard to the objectives of this Act.

(3) The prosecutor shall not enter into a remediation agreement with an alleged offender unless the prosecutor is of the opinion that

(a) there is a reasonable prospect of conviction with respect to the alleged offence;

(b) the act that forms the basis of the alleged offence

(i) did not cause, and was not likely to have caused, serious bodily harm or death;

(ii) did not prejudice national defence or national security;

(iii) was not committed for the benefit of, at the direction of, or in association with, a terrorist or terrorist organisation; and

(c) entering into the agreement with the alleged offender is likely to be in the interest of justice.

(4) In determining whether a remediation agreement is likely to be in the interest of justice, the following factors shall be taken into account:

(a) the circumstances in which the act that forms the basis of the alleged offence was brought to the attention of the investigative authorities;

(b) the nature and gravity of the act and its impact on any victim;

(c) the degree of involvement of senior officers, if any, of the alleged offender in the act;

(d) whether the alleged offender has

(i) taken disciplinary action, including termination of employment, against any person who was involved in the act;

(ii) made reparation or taken other measures to remedy the harm caused by the act and to prevent the commission of similar acts;

(iii) identified, or expressed a willingness to identify, any person involved in wrongdoing related to the act; or

(iv) entered into a previous remediation agreement or other settlement, in Barbados or elsewhere, for similar acts;

(e) whether the alleged offender or any representatives of the alleged offender

(i) was convicted of an offence or sanctioned by a regulatory authority; or

(ii) is alleged to have committed any other offences, including offences not listed in the *Schedule*; and

(f) any other relevant factor.

(5) The prosecutor may enter into a remediation agreement with an alleged offender at any time before the institution of criminal proceedings for an alleged offence.

(6) For the purpose of subsection (5), proceedings shall be taken to have been instituted for an alleged offence when a person is charged with the offence.

Effect of remediation agreement on court proceedings

5. Where the prosecutor and an alleged offender enter into a remediation agreement, no person shall prosecute the alleged offender for the alleged offence at any time when the agreement is in force.

Eligibility to enter into remediation agreement

6.(1) Any alleged offender may enter into a remediation agreement.

(2) Where a remediation agreement is to be entered into by

(a) a partnership

(i) the agreement must be entered into in the name of the partnership, and not in that of any of the partners; and

(ii) any money payable under the agreement must be paid out of the funds of the partnership;

(b) an unincorporated association

(i) the agreement must be entered into in the name of the association, and not in that of any of the members; and

(ii) any money payable under the agreement must be paid out of the funds of the association.

Notice regarding negotiation of remediation agreement

7.(1) Where the prosecutor wishes to negotiate a remediation agreement, the prosecutor shall give the alleged offender written notice of the offer to enter into negotiations.

(2) A notice referred to in subsection (1) shall include

(a) a brief description of the alleged offence to which the agreement would apply;

(b) an indication of the voluntary nature of the negotiation process;

(c) a statement on the legal effect of the agreement;

(d) an indication that, by agreeing to the terms of the notice, the alleged offender explicitly waives the inclusion of the negotiation period and the period during which the agreement is in force in any assessment of the reasonableness of the delay in instituting proceedings for the alleged offence;

(e) an indication that negotiations must be conducted in good faith and that the alleged offender must provide all information requested by the prosecutor that the alleged offender is aware of or can obtain through reasonable efforts, including information enabling the identification of any person involved in the act that forms the basis of the alleged offence or any wrongdoing related to that act;

(f) an indication of how the information disclosed by the alleged offender during the negotiations may be used in accordance with section 16;

(g) a warning that knowingly providing inaccurate, misleading or incomplete information during the negotiations may lead to the institution of proceedings for the alleged offence or prosecution for obstruction of justice;

(h) an indication that either party may withdraw from the negotiations by providing written notice to the other party;

(i) an indication that reasonable efforts must be made by both parties to identify any victim of the alleged offence as soon as practicable; and

(j) a deadline to accept the offer to negotiate in accordance with the terms of the notice.

Content of remediation agreement

8.(1) A remediation agreement shall include

(a) a statement of facts relating to the alleged offence, which may include admissions made by the alleged offender, and an undertaking by the alleged offender not to make or condone any public statement that contradicts those facts;

(b) an indication of the use that can be made of information obtained as a result of the agreement in accordance with section 16;

(c) a statement on the legal effect of the agreement;

(d) an indication of the obligation of the alleged offender to report on the implementation of the agreement to the prosecutor, or such independent monitor as the prosecutor may appoint for the purpose, and an indication of the manner in which the report is to be made, and any other terms with respect to reporting;

(e) a statement that the agreement may be varied in accordance with section 13;

(f) a warning that the breach of any term of the agreement may lead to an application by the prosecutor for termination of the agreement and the institution of proceedings against the alleged offender for the alleged offence; and

(g) an expiry date.

(2) A remediation agreement may include a requirement for an alleged offender to

(a) pay a financial penalty to the Court;

(b) compensate victims of the alleged offence;

(c) donate money to a charity or other third party;

(d) disgorge any profits made by the alleged offender from the alleged offence;

(e) implement a compliance programme or make changes to an existing compliance programme relating to the policies of the alleged offender or to the training of the employees of the alleged offender or both;

(f) co-operate in any investigation related to the alleged offence;

(g) pay any reasonable costs associated with the alleged offence or the agreement; or

(h) comply with any other appropriate obligation.

(3) A remediation agreement may provide time limits within which the alleged offender must comply with the requirements imposed.

Code on remediation agreements

9.(1) The Minister may by Order issue a code giving guidance on

(a) the general principles to be applied in determining whether a remediation agreement is likely to be appropriate in a given case; and

(b) the disclosure of information by the prosecutor to an alleged offender in the course of negotiations for a remediation agreement and after such an agreement has been made.

(2) The code may, in addition to the matters set out in subsection (1), provide guidance on any other relevant matter including

(a) the use of information obtained by the prosecutor in the course of negotiations for a remediation agreement;

(b) the variation of the agreement;

(c) the termination of the agreement and the steps that may be taken by the prosecutor following such termination; and

(d) the steps that may be taken by the prosecutor where the prosecutor suspects that the agreement has been breached.

(3) The prosecutor shall take account of the code in exercising his functions under this Act.

Preliminary hearing for court approval of remediation agreement

10.(1) After the commencement of negotiations between the prosecutor and an alleged offender in respect of a remediation agreement but before the terms of the agreement are agreed, the prosecutor shall apply to the High Court for a declaration that

(a) entering into a remediation agreement with the alleged offender is likely to be in the interest of justice; and

(b) the proposed terms of the agreement are fair, reasonable and proportionate to the gravity of the alleged offence.

(2) The court shall give reasons for its decision to make, or not to make, a declaration under subsection (1).

(3) The prosecutor may make a further application to the court for a declaration under subsection (1) where, following the previous application, the court declined to make a declaration.

(4) A hearing at which an application under this section is determined shall be held, any declaration under subsection (1) shall be made, and the reasons referred to in subsection (2) shall be given, in camera.

Final hearing for court approval of remediation agreement

11.(1) Where the prosecutor and an alleged offender have agreed the terms of a remediation agreement, the prosecutor shall apply to the High Court for a declaration that

(a) the remediation agreement is in the interest of justice; and

(b) the terms of the agreement are fair, reasonable and proportionate to the gravity of the alleged offence.

(2) Notwithstanding subsection (1), the prosecutor shall not make an application under subsection (1) unless the court has made a declaration under section 10(1).

(3) A remediation agreement comes into force only when it is approved by the court making a declaration under subsection (1).

(4) The court shall give reasons for its decision to make, or not to make, a declaration under subsection (1).

(5) A hearing at which an application under this section is determined may be held in camera.

(6) Notwithstanding subsection (5), where the court decides to approve a remediation agreement and make a declaration under subsection (1) the court shall do so, and give its reasons, in open court.

(7) Where the court approves a remediation agreement, the prosecutor shall publish

(a) the fact that the agreement has been made;

(b) the declaration of the court under section 10 and the reasons for its decision to make the declaration;

(c) where the court initially declined to make a declaration under section 10, the reasons for that decision; and

(d) the declaration of the court under this section and the reasons for its decision to make the declaration,

unless the prosecutor is prevented from doing so by any other enactment or by an order of the court under section 15.

Breach of remediation agreement

12.(1) Where a remediation agreement is in force and the prosecutor believes that the alleged offender has failed to comply with the terms of the agreement,

the prosecutor may make an application to the High Court for it to determine the matter.

(2) The court shall, on an application referred to in subsection (1), decide whether, on the balance of probabilities, the alleged offender has failed to comply with the terms of the agreement.

(3) Where the court finds that the alleged offender has failed to comply with the terms of the remediation agreement, the court may

(a) invite the prosecutor and the alleged offender to agree proposals to remedy the failure of the alleged offender to comply; or

(b) terminate the agreement.

(4) The court shall give reasons for its decisions under subsections (2) and (3).

(5) Where the court decides that the alleged offender has not failed to comply with the terms of the remediation agreement, the prosecutor shall publish the decision of the court and its reasons for that decision, unless the prosecutor is prevented from doing so by any other enactment or by an order of the court under section 15.

(6) Where the court invites the prosecutor and the alleged offender to agree proposals to remedy the failure of the alleged offender to comply with the terms of the remediation agreement, the prosecutor shall publish the decisions of the court under subsections (2) and (3) and the reasons for those decisions, unless the prosecutor is prevented from doing so by any other enactment or by an order of the court under section 15.

(7) Where the court terminates a remediation agreement under subsection (3) *(b)*, the prosecutor shall publish

(a) the fact that the remediation agreement has been terminated by the court following a failure by the alleged offender to comply with the terms of the agreement; and

(b) the reasons of the court for its decisions under subsections (2) and (3),

unless the prosecutor is prevented from doing so by any other enactment or by an order of the court under section 15.

(8) Where the prosecutor believes that an alleged offender has failed to comply with the terms of a remediation agreement but decides not to make an application to the court under this section, the prosecutor shall publish details relating to that decision, including the reasons for

(a) the belief of the prosecutor that the alleged offender has failed to comply; and

(b) the decision of the prosecutor not to make an application to the court,

unless the prosecutor is prevented from doing so by any other enactment or by an order of the court under section 15.

Variation of remediation agreement

13.(1) The prosecutor and an alleged offender may agree to vary the terms of a remediation agreement where

(a) the High Court has invited the parties to vary the agreement under section 12(3)*(a)*; or

(b) variation of the agreement is necessary to avoid a failure by the alleged offender to comply with its terms in circumstances that were not, and could not have been, foreseen by the prosecutor or the alleged offender at the time that the agreement was made.

(2) Where the prosecutor and an alleged offender have agreed to vary the terms of a remediation agreement, the prosecutor shall apply to the High Court for a declaration that

(a) the variation is in the interest of justice; and

(b) the terms of the agreement as varied are fair, reasonable and proportionate to the gravity of the alleged offence.

(3) A variation of a remediation agreement only takes effect when it is approved by the court making a declaration under subsection (2).

(4) The court shall give reasons for its decision on whether or not to make a declaration under subsection (2).

(5) A hearing at which an application under this section is determined may be held in camera.

(6) Notwithstanding subsection (5), where the court decides to approve the variation of a remediation agreement and make a declaration under subsection (2) it shall do so, and give its reasons, in open court.

(7) Where the court decides not to approve the variation, the prosecutor shall publish the decision of the court and the reasons for it, unless the prosecutor is prevented from doing so by any other enactment or by an order of the court under section 15.

(8) Where the court decides to approve the variation of a remediation agreement, the prosecutor shall publish the declaration of the court under this section and the reasons for its decision to make the declaration, unless the prosecutor is prevented from doing so by any other enactment or by an order of the court under section 15.

Proceedings not to be instituted on expiry of remediation agreement

14.(1) Where a remediation agreement remains in force until its expiry date, after the expiry of the agreement, subject to subsection (2), no proceedings shall be instituted against the alleged offender for the alleged offence.

(2) Subsection (1) does not prevent proceedings from being instituted against an alleged offender where, after a remediation agreement has expired, the prosecutor finds that, during the course of the negotiations for the agreement

(a) the alleged offender provided inaccurate, misleading or incomplete information to the prosecutor; and

(b) the alleged offender knew or ought to have known that the information was inaccurate, misleading or incomplete.

(3) A remediation agreement shall not be treated as having expired for the purposes of subsection (1) where, on the expiry date specified in the agreement

(a) an application made by the prosecutor under section 12 has not yet been decided by the court;

(b) following an application under section 12 the court has invited the parties to agree proposals to remedy the failure of the alleged offender to comply with the remediation agreement, but the parties have not yet reached an agreement; or

(c) the parties have agreed proposals to remedy the failure of the alleged offender to comply with the agreement following an invitation of the court under section 12(3)*(a)* but the alleged offender has not yet complied.

(4) In the case referred to in

(a) subsection (3)*(a)*, where the court

(i) decides that the alleged offender has not failed to comply with the terms of the remediation agreement or that the alleged offender has failed to comply, but does not take action under section 12(3), the agreement shall be treated as expiring when the application is decided;

(ii) terminates the remediation agreement, the agreement shall be treated as not having remained in force until its expiry date, and subsection (1) therefore does not apply;

(iii) invites the parties to agree proposals to remedy the failure of the alleged offender to comply the remediation agreement, the remediation agreement shall be treated as expiring when the parties have reached such an agreement and the alleged offender has complied with it;

(b) subsection (3)*(b)*, the remediation agreement shall be treated as expiring when the parties have reached an agreement and the alleged offender has complied with it; and

(c) subsection (3)*(c)*, the remediation agreement shall be treated as expiring when the alleged offender complies with the agreement.

(5) Where, by virtue of subsection (1), no proceedings can be instituted against the alleged offender for the alleged offence, the prosecutor shall publish

(a) the fact that the remediation agreement has expired; and

(b) details of the compliance of the alleged offender with the agreement,

unless the prosecutor is prevented from doing so by any other enactment or by an order of the court under section 15.

Postponement of publication of information by prosecutor

15. The High Court may order that the publication of information by the prosecutor under section 11(7),12(5), (6), (7) or (8), 13(7) or (8) or 14(5) be postponed for such period as the court considers necessary if it appears to the court that postponement is necessary for avoiding a substantial risk of prejudice to the administration of justice in any legal proceedings.

Use of material in criminal proceedings

16.(1) Where a remediation agreement between the prosecutor and an alleged offender has been approved by the High Court under section 11, the statement of facts contained in the agreement shall, in any criminal proceedings brought against the alleged offender for the alleged offence, be treated as an admission by the alleged offender.

(2) Where the prosecutor and an alleged offender have entered into negotiations for a remediation agreement but the agreement has not been

approved by the court under section 11, material described in subsection (4) shall only be used in evidence against the alleged offender on a prosecution for

(a) an offence consisting of the provision of inaccurate, misleading or incomplete information; or

(b) some other offence where in giving evidence the alleged offender makes a statement inconsistent with the material.

(3) Notwithstanding subsection (2)*(b)*, material shall not be used against an alleged offender by virtue of subsection (2)*(b)* unless evidence relating to it is adduced, or a question relating to it is asked, by or on behalf of the alleged offender in the proceedings arising out of the prosecution.

(4) The material referred to in subsection (2) is

(a) material that shows that the alleged offender entered into negotiations for a remediation agreement, including in particular

(i) any draft of the agreement;

(ii) any draft of a statement of facts intended to be included in the agreement; and

(iii) any statement indicating that the alleged offender entered into such negotiations; and

(b) material that was created solely for the purpose of preparing the agreement or statement of facts.

Limitation periods

17. The running of a limitation period in respect of any offence to which a remediation agreement applies is suspended while the agreement is in force.

Money received by prosecutor under remediation agreement

18. Any money received by the prosecutor under a term of a remediation agreement that provides for an alleged offender to pay a financial penalty to the

Court or to disgorge profits made from an alleged offence shall be paid into the Consolidated Fund.

Reports to Parliament

19. The Minister shall, within 3 months of the end of each year, cause to be laid in Parliament a report of the remediation agreements made, varied, breached and terminated during the year.

Application of Act

20. This Act applies in relation to conduct occurring before the commencement of this Act as if an alleged offence included any corresponding offence under the law in force at the time of the conduct.

Amendment of Schedule

21. The Minister may by Order subject to negative resolution amend the *Schedule* by

(a) adding an offence; or

(b) removing an offence.

Regulations

22. The Minister may make Regulations for giving effect to this Act.

Transitional provision

23.(1) Conduct constituting an alleged offence that occurred before the relevant commencement day may be taken into account for the purposes of this Act.

(2) In this section, "relevant commencement day" means

(a) where the alleged offence is an offence that is specified in the *Schedule* when this Act comes into effect, the day on which this Act comes into effect;

(b) where the alleged offence is an offence that is subsequently added to the *Schedule*, the day on which the enactment adding the offence to the *Schedule* comes into effect.

Commencement

24. This Act comes into effect on a day to be fixed by Proclamation.

SCHEDULE

(Sections 2, 21 and 23)

OFFENCES IN RESPECT OF WHICH REMEDIATION AGREEMENTS MAY BE MADE

1. A remediation agreement may be entered into in respect of the following:

(a) an offence under Part II of the *Prevention of Corruption Act, 2021* (Act 2021-);

(b) an offence under section 3, 15 or 18 of the *Theft Act*, Cap. 155;

(c) any ancillary offence relating to an offence specified in this paragraph.

2. For the purpose of paragraph 1*(c)*, "ancillary offence" in relation to an offence specified in paragraph 1 means

(a) aiding, abetting, counselling or procuring the commission of the offence; or

(b) attempting or conspiring to commit the offence.

BARBADOS

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Act 2021-29

WHISTLEBLOWER PROTECTION ACT, 2021-29

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BARBADOS

I assent
S. MASON
President of Barbados
23rd December, 2021.

2021-29

An Act to deter and combat corruption and other improper conduct by encouraging and facilitating disclosures of such conduct, protecting the persons who make such disclosures and regulating the receipt, investigation and other treatment of such disclosures.

[Commencement: by Proclamation]

ENACTED by the Parliament of Barbados as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Whistleblower Protection Act, 2021*.

Interpretation

2. In this Act,

"appointed day" means the date of commencement of this Act;

"associated person" means a person who

(a) provides or attempts to provide supporting information in respect of a disclosure or otherwise assists or attempts to assist a whistleblower; or

(b) is a member of the family of a whistleblower;

"detrimental action" means any act that results in a person being

(a) harassed, intimidated or victimized;

(b) unfairly denied appointment to any employment, profession or office;

(c) unfairly subjected to disciplinary action;

(d) unfairly dismissed, suspended or demoted;

(e) transferred against his will;

(f) unfairly refused transfer or promotion;

(g) subject to a term or condition of employment or retirement from employment that has been altered to his disadvantage;

(h) unfairly provided with an adverse reference or refused a reference;

(i) threatened with any of the actions specified in paragraphs *(a)* to *(h)*; or

(j) otherwise adversely affected in respect of his employment, profession or office, including in respect of employment opportunities and job security,

or in a person otherwise suffering injury, loss or damage, whether personally or in relation to his family life, career, employment, profession, office, trade or business;

"disclosure" means a disclosure of information which shows, or potentially shows, that improper conduct has occurred, is occurring or is likely to occur;

"Disclosure Monitoring Authority" means the authority designated as such under section 15(1) for the purposes of this Act;

"disclosure procedures" means the procedures described in section 10(1);

"Disclosure Receiving Authority" means a person specified in the *First Schedule*;

"document" includes

(a) anything on which there is writing;

(b) a map, plan, drawing or photograph; and

(c) any information recorded or stored by means of any tape recorder, computer or other device, and any material subsequently derived from the information so recorded or stored;

"employee" has the meaning assigned to it by section 2(1) of the *Employment Rights Act, 2012* (Act 2012-9);

"employer" has the meaning assigned to it by section 2(1) of the *Employment Rights Act, 2012* (Act 2012-9);

"improper conduct" includes any

(a) criminal offence;

(b) failure to carry out a legal obligation, other than one arising under an employee's contract of employment whereby the employee undertakes to perform personally any work or services;

(c) conduct that is likely to result in a miscarriage of justice;

(d) conduct that is likely to threaten the health or safety of a person;

(e) conduct that is likely to threaten or damage the environment;

(f) conduct that shows gross mismanagement, negligence, impropriety or misconduct in the carrying out of any activity that involves the use of public funds;

(g) act of reprisal against, or victimization of, a whistleblower, an associated person or a person mistakenly perceived or identified as a whistleblower or an associated person;

(h) conduct that tends to show unfair discrimination, whether under the *Employment (Prevention of Discrimination) Act, 2020* (Act 2020-26) or otherwise;

(i) other conduct that represents a significant threat or harm to the public interest;

(j) wilful concealment of any act described in paragraphs *(a)* to *(i)*; or

(k) wilful concealment or destruction of any information tending to show that any act described in paragraphs*(a)*to*(i)* has been, is being or is likely to be committed;

"persons exercising public functions" includes

(a) public officers;

(b) members, chief executive officers, managers, directors and employees of state-owned enterprises; and

(c) any other person who holds a legislative, executive, administrative or judicial office in the Government of Barbados, whether appointed or elected, permanent or temporary, paid or unpaid;

"privileged information" means

(a) communications between an attorney-at-law and his client or any person representing his client, made in connection with the giving of legal advice to the client;

(b) communications between an attorney-at-law and his client or any person representing his client, or between such an attorney-at-law or his client or any such representative and any other person, made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and

(c) materials enclosed with or referred to in such communications and made

(i) in connection with the giving of legal advice; or

(ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when the communications or materials are in the possession of a person who is entitled to such possession and are not held with the intention of furthering a criminal purpose;

"protected disclosure" means a disclosure described in section 12;

"public body" means

(a) a Ministry, department, agency or other authority of Government;

(b) a state-owned enterprise;

"state-owned enterprise" means

(a) a statutory board;

(b) a company that is substantially owned and effectively controlled by the Government;

"whistleblower" means any person who is personally aware of improper conduct and who intends or attempts to make, makes or has made, a disclosure.

Application of Act

3. This Act applies to any disclosure made after the appointed day, notwithstanding that

(a) the conduct to which the disclosure relates may have occurred before the appointed day;

(b) the whistleblower is not able to identify a particular person to whom the disclosure relates.

PART II

DISCLOSURES

Disclosure to Disclosure Receiving Authority

4.(1) A whistleblower may make a disclosure to any Disclosure Receiving Authority.

(2) Where a whistleblower makes a disclosure to a Disclosure Receiving Authority, the whistleblower shall ensure, as far as practicable, that the matter to which the disclosure relates falls within the area of responsibility of the Disclosure Receiving Authority.

(3) Notwithstanding subsection (2), a whistleblower shall not be denied the protection afforded by Part IV merely on the basis that he made a disclosure to a Disclosure Receiving Authority of a matter that does not fall within the area of responsibility of the Disclosure Receiving Authority.

Disclosure to employer

5. Without prejudice to the generality of section 4, a whistleblower who is an employee may, where the improper conduct he wishes to disclose relates to his employment or to the business of his employer, make the disclosure to his employer.

Special procedure for matters relating to national security etc.

6. Notwithstanding sections 4 and 5, a whistleblower who wishes to disclose a matter that would prejudice the national security, defence or international relations of Barbados shall make the disclosure to the Minister responsible for the matter or to the Prime Minister or to both.

Legal professional privilege

7. For the avoidance of doubt, nothing in this Act authorizes the disclosure of information that is protected by legal professional privilege.

Content and form of disclosure

8.(1) A disclosure may be made orally or in writing and shall contain, as far as practicable, the following information:

(a) the full name, address and occupation of the whistleblower;

(b) details of the improper conduct in respect of which the disclosure is made;

(c) the name of the person alleged to have committed, to be committing or to be about to commit the improper conduct;

(d) the time and place where the improper conduct is alleged to have taken place, to be taking place or to be about to take place;

(e) the full name, address and description of a person, if any, who witnessed the commission of the improper conduct;

(f) whether the whistleblower made a disclosure of the same or of some other improper conduct on a previous occasion and, if so, about whom and to whom the disclosure was made; and

(g) where the whistleblower is an employee making a disclosure about his employer or a fellow employee, whether the whistleblower remains in the same employment.

(2) Where a disclosure is made orally, the person who receives the disclosure shall, within 24 hours of receiving the disclosure, cause the disclosure to be reduced into writing containing the particulars specified in subsection (1).

(3) A disclosure shall be made substantially in accordance with any applicable disclosure procedure.

(4) A whistleblower shall not be denied the protection afforded by Part IV merely on the basis of a defect in the form or content of a disclosure.

Anonymous disclosures

9.(1) Notwithstanding any other provision of this Act, a disclosure may be made anonymously.

(2) A person who receives an anonymous disclosure shall not refuse to act upon the disclosure merely on the basis that it was made anonymously.

Disclosure procedures

10.(1) Every person to whom disclosures may be made under this Act shall have and implement procedures for the making, receipt, inquiry into and other treatment of such disclosures.

(2) Disclosure procedures shall

(a) be set out in writing; and

(b) include as a minimum requirement

(i) a list of the Disclosure Receiving Authorities;

(ii) a description, in accordance with sections 4, 5 and 6, of the options available for the making of disclosures; and

(iii) as far as is practicable, the information specified in section 8,

(3) An employer shall provide his employees with a copy of the disclosure procedures.

(4) Nothing in this section precludes a person required to establish disclosure procedures under this Act from implementing other procedures for disclosure that are not inconsistent with this Act.

Disclosure receiving officers

11.(1) Every director, chief executive officer or other head of a Disclosure Receiving Authority and every employer shall identify within his organization, at least one individual, to be known as a disclosure receiving officer, who may receive disclosures on behalf of the organization.

(2) Notwithstanding subsection (1), a director, chief executive officer or other head of a Disclosure Receiving Authority or an employer may be the disclosure receiving officer.

(3) A disclosure receiving officer shall have the requisite authority and training to receive, inquire into and otherwise deal with disclosures.

Protected disclosures

12.(1) A disclosure made or intended or attempted to be made in accordance with this Part is a protected disclosure.

(2) A disclosure that is privileged information is a protected disclosure.

(3) A whistleblower shall enjoy the protection afforded by Part IV in respect of a protected disclosure he makes or intends or attempts to make.

(4) Notwithstanding subsection (1)

(a) a disclosure is not a protected disclosure where the whistleblower commits an offence by making it;

(b) a disclosure made anonymously does not become a protected disclosure until the whistleblower identifies himself to the recipient of the disclosure.

PART III

RECEIVING, INQUIRING INTO AND OTHERWISE DEALING WITH DISCLOSURES

Duty to receive and inquire into disclosures

13.(1) A person to whom a disclosure is

(a) made in accordance with section 4, 5 or 6; or

(b) referred in accordance with section 14(4),

shall receive and record the disclosure and take appropriate steps to inquire into the disclosure where he considers that the circumstances specified in section 14(2) do not apply and an inquiry should be undertaken.

(2) A person referred to in subsection (1) who determines to inquire into a disclosure shall

(a) commence the inquiry forthwith;

(b) ensure that the inquiry is carried out fairly;

(c) issue to the whistleblower, periodic updates on the inquiry at intervals of no more than 30 days;

(d) review the results of the inquiry and report its findings to

(i) the whistleblower;

(ii) any other relevant person having regard to the improper conduct and the area of responsibility involved; and

(iii) for the avoidance of doubt, the Commissioner of Police, where the findings suggest that the improper conduct is or involves an offence;

(e) where appropriate

(i) make recommendations regarding the measures to be taken to remedy the improper conduct;

(ii) take steps to remedy the improper conduct, provide redress and reduce any opportunity for recurrence of the conduct; and

(iii) take disciplinary action;

(f) ensure that the rights of the whistleblower, any witness involved and the person alleged to have committed the improper conduct are protected; and

(g) receive, record, review, inquire into and otherwise deal with any complaints made in respect of detrimental action suffered as a result of the disclosure.

(3) A person who receives, inquires into or otherwise deals with a disclosure shall not be liable in any civil, criminal or disciplinary proceedings on account of his receiving, inquiring into or otherwise dealing with the disclosure in accordance with this Act.

Right to refuse; duty to refer

14.(1) A person to whom a disclosure is made may, in good faith, in any of the circumstances set out in subsection (2)

(a) refuse to deal with the disclosure or to commence an inquiry into any improper conduct alleged in the disclosure; or

(b) cease an inquiry into the disclosure.

(2) The circumstances referred to in subsection (1) are

(a) the subject matter of the disclosure or the related inquiry has been adequately dealt with, or could more appropriately be dealt with by another person;

(b) the subject matter of the disclosure is frivolous or not sufficiently important to warrant an inquiry; or

(c) the circumstances surrounding the subject matter of the disclosure have changed, whether by reason of insufficiency of evidence or otherwise, so as to render the inquiry unnecessary.

(3) Where a person refuses to carry out an inquiry, the person shall provide reasons for the refusal in writing to the whistleblower within 15 days of his decision.

(4) Where

(a) a disclosure is made to a Disclosure Receiving Authority; and

(b) the Disclosure Receiving Authority is not the appropriate person to inquire into the matter disclosed,

the Disclosure Receiving Authority shall forthwith refer the disclosure to such other Disclosure Receiving Authority who, in the opinion of the first mentioned Disclosure Receiving Authority, is the appropriate person to inquire into the matter.

Disclosure Monitoring Authority

15.(1) The Minister may by Order declare a person to be the Disclosure Monitoring Authority for the purposes of this Act.

(2) The Disclosure Monitoring Authority shall be responsible for monitoring compliance with this Act.

(3) In furtherance of his function under subsection (2), the Disclosure Monitoring Authority shall

(a) publish such procedural guidelines regarding the making, receiving, inquiring into and other treatment of disclosures, as it considers appropriate;

(b) provide such assistance as may be practicable to any person who is

(i) a whistleblower; or

(ii) a disclosure receiving officer, Disclosure Receiving Authority, employer or other person subject to the requirements of this Act;

(c) on an ongoing basis, plan, implement and monitor public awareness programmes aimed at informing and educating the public, and employees and employers, in particular, about the making of protected disclosures in a responsible manner and about disclosure procedures;

(d) review from time to time the disclosure procedures required to be established under this Act and the implementation and operation of such procedures;

(e) make recommendations to any person arising from any review under paragraph *(d)*; and

(f) where he considers it appropriate to do so initiate an investigation into a disclosure.

(4) The Disclosure Monitoring Authority shall not disclose in any report it prepares for publication any information that would directly or indirectly identify a whistleblower or any person about whose conduct a disclosure was made.

PART IV

PROTECTION OF WHISTLEBLOWERS ETC.

Prohibition against detrimental action

16.(1) No whistleblower shall be subjected to detrimental action on account of his intending or attempting to make, making or having made, a protected disclosure.

(2) Subsection (1) applies notwithstanding any duty of secrecy or confidentiality or other prohibition or restriction on the disclosure of information under any enactment, rule of law, contract, oath or practice.

(3) An employee who is dismissed on account of his intending or attempting to make, making or having made, a protected disclosure shall, without prejudice to any other remedy, be treated as having been unfairly dismissed under the *Employment Rights Act, 2012* (Act 2012-9).

Presumption of detrimental action resulting from disclosure

17. Where a whistleblower suffers detrimental action at or around the same time that he makes a protected disclosure, the detrimental action shall be presumed to be a consequence of the protected disclosure unless the person who took, authorized or caused the detrimental action to be taken shows that the act that constitutes the detrimental action is otherwise justified.

Immunity from civil, criminal and disciplinary proceedings

18.(1) Subject to section 19, a whistleblower shall not be liable in any civil, criminal or disciplinary proceedings on account of his making a protected disclosure.

(2) Subsection (1) applies notwithstanding any duty of secrecy or confidentiality or other prohibition or restriction on the disclosure of information under any enactment, rule of law, contract, oath or practice.

(3) The protection afforded to a whistleblower by this Part shall not be diminished or denied on the basis that

(a) the whistleblower was mistaken about the significance of the disclosure;

(b) any perceived threat to the public interest on which the disclosure was based has not materialised; or

(c) the whistleblower has not fully complied with any applicable disclosure procedures, guidelines or regulations made under this Act.

No immunity where whistleblower was perpetrator or accomplice

19.(1) Subject to subsection (3), nothing in this Part shall prevent the institution of criminal proceedings against a whistleblower where the whistleblower was the perpetrator of, or an accomplice in, any improper conduct

(a) to which the disclosure relates; and

(b) which constitutes an offence.

(2) Subject to subsections (5) and (6), nothing in this Part shall prevent the institution of civil or disciplinary proceedings against a whistleblower where the proceedings arise from conduct of the whistleblower, other than the making of a protected disclosure.

(3) In any criminal proceedings instituted against a whistleblower on the basis that the whistleblower was the perpetrator of, or an accomplice in, the improper conduct disclosed by the whistleblower, the court shall, in giving its judgment or decision, take into due account

(a) the fact that the disclosure was made by the whistleblower; and

(b) whether the whistleblower has assisted members of the Police Force in apprehending any other person involved in the commission of an offence,

and the punishment of the whistleblower may be mitigated or remitted as the court thinks fit.

(4) Where the court acts under subsection (3), the court shall expressly refer to that subsection in its judgment or decision.

(5) In any civil proceedings instituted against a whistleblower on the basis that the whistleblower was the perpetrator of, or was an accomplice in, the improper conduct disclosed by the whistleblower, the court may, where it finds that the whistleblower is responsible for the payment of damages, only hold the whistleblower liable for such part of the damage as he may have caused and not hold him liable jointly and severally with others.

(6) Where a whistleblower is an employee of a public body and disciplinary proceedings are instituted against him on the basis that he was the perpetrator of, or an accomplice in, the improper conduct disclosed by him, the public body shall

(a) endeavour to mitigate the effects of any punishment; and

(b) where possible, not seek the dismissal of the whistleblower as punishment.

Prohibition of disclosure of information to identify whistleblower

20.(1) No disclosure receiving officer or Disclosure Receiving Authority to whom a protected disclosure is made or referred shall disclose information that identifies, or may lead to the identification of, the whistleblower, unless the whistleblower expressly consents in writing to the disclosure of that information.

(2) A disclosure receiving officer shall not communicate the contents of a disclosure to any other person whether within or outside his organization that is not directly involved in receiving, inquiring into or otherwise dealing with disclosures, unless he first inquires into the disclosure and establishes that it is necessary or expedient in the public interest for further investigation to be carried out by the person or by members of the Police Force or any other body with investigative, prosecutorial or regulatory powers in relation to any improper conduct which constitutes an offence or other breach of law.

(3) The Disclosure Monitoring Authority may issue guidelines setting out

(a) the duties of communication between Disclosure Receiving Authorities and whistleblowers and the restrictions thereon; and

(b) the rules for disclosure to

(i) persons within Disclosure Receiving Authorities who are not directly involved in receiving, inquiring into or otherwise dealing with disclosures; and

(ii) other Disclosure Receiving Authorities.

Civil remedies for detrimental action

21.(1) A whistleblower who believes that detrimental action has been, is being or is likely to be taken against him in breach of section 16 may apply to the High Court for

(a) an order requiring the person who has taken the detrimental action to remedy the action;

(b) an injunction; or

(c) any other relief that the court thinks fit.

(2) The High Court may, pending the final determination of an application under this section

(a) make an interim order;

(b) grant an interim injunction; or

(c) grant any other relief it thinks fit.

(3) Where, in determining an application under subsection (2), the High Court is satisfied that a person has taken, is taking or intends to take detrimental action against a whistleblower in breach of section 16, the High Court may

(a) order the person who took the detrimental action to remedy the action and determine the amount of damages due to the whistleblower;

(b) grant an injunction on such terms as the court considers appropriate; or

(c) grant any other relief it thinks fit.

(4) A whistleblower who suffers detrimental action on account of his intending or attempting to make, making or having made, a protected disclosure shall, without prejudice to any other right under any other law, have a right to compensation for any loss or damage sustained as a consequence of the detrimental action.

Other remedies not affected

22. Nothing in this Act affects the right of a whistleblower who believes that, on account of his intending or attempting to make, making or having made a protected disclosure, he has been, is being, or is likely to be, subjected to detrimental action, to seek redress for such action under any other law.

Protection of associated persons, wrongly identified persons etc.

23.(1) An associated person who suffers detrimental action on account of his association with a whistleblower shall enjoy the same protection as a whistleblower under this Part.

(2) A person who suffers detrimental action on account of his being perceived as or wrongly identified as a whistleblower shall enjoy the same protection as a whistleblower under this Part.

(3) This Part applies to a person described in subsections (1) and (2) as it applies to a whistleblower.

PART V

MISCELLANEOUS

Provisions for non-disclosure void

24. Any provision in an agreement which precludes a person from making a protected disclosure or purports to require a person to

(a) agree not to make a disclosure under this Act during or after his period of employment;

(b) refrain from instituting any proceedings under this Act; or

(c) withdraw or abandon any disclosure made or proceedings instituted under this Act,

is void and of no effect.

Confidentiality

25.(1) Every person who receives, inquires into or otherwise deals with a disclosure shall regard and treat as secret and confidential

(a) the disclosure and the identity of the whistleblower; and

(b) any statement given, or information or other thing provided, to the person in connection with the disclosure.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of $200 000 or to imprisonment for 2 years or to both.

(3) For the avoidance of doubt, any statement given or information or other thing provided in furtherance of an investigation or any legal or disciplinary proceedings shall not be regarded as being inconsistent with subsection (1).

Offences and penalties

26.(1) A person who

(a) prevents or restrains another person from making a protected disclosure or hinders such a person in the making of such a disclosure;

(b) subjects another person to detrimental action on account of

(i) his intending or attempting to make or making a protected disclosure; or

(ii) his being an associated person or mistakenly perceived or identified as a whistleblower;

(c) refuses, in bad faith, to receive a disclosure or to carry out an inquiry in relation to a disclosure;

(d) purports to make a disclosure knowing that it contains a statement that is false or misleading, or reckless as to whether the statement is false or misleading;

(e) induces another person by threats, promises or otherwise to

(i) prevent or restrain another person from making a protected disclosure or hinder such a person in the making of such a disclosure;

(ii) subject another person to detrimental action on account of the other person's

(A) his intending or attempting to make or making a protected disclosure; or

(B) his being an associated person or mistakenly perceived or identified as a whistleblower;

(f) knowing that a document or other thing is relevant to a disclosure or the processing of a disclosure under this Act, destroys, mutilates, alters, falsifies or conceals the document or other thing,

is guilty of an offence.

(2) A person who is guilty of an offence under subsection (1) is liable on

(a) summary conviction to a fine of $200 000 or to imprisonment for 2 years or to both; or

(b) conviction on indictment to a fine of $500 000 or to imprisonment for 5 years or to both.

Amendment of First Schedule

27. The Minister may by Order amend the *First Schedule*.

Regulations

28. The Minister may make Regulations for giving effect to this Act and, in particular, with respect to

(a) disclosure procedures; and

(b) the operations of Disclosure Receiving Authorities in respect of their functions under this Act.

Act binds the Crown

29. This Act binds the Crown.

Consequential Amendments

30. The enactment set out in Column 1 of the *Second Schedule* is amended to the extent set out opposite thereto in Column 2.

Commencement

31. This Act comes into operation on a day to be fixed by Proclamation.

FIRST SCHEDULE

(Sections 2 and 27)

DISCLOSURE RECEIVING AUTHORITIES

1. Disclosure Monitoring Authority

2. Director, Anti-Corruption and Anti-Terrorism Agency

3. Police Force

4. Financial Intelligence Unit

5. Audit Department

6. Barbados Revenue Authority

7. Government Procurement Department

8. Central Bank of Barbados

9. Financial Services Commission

10. Fair Trading Commission

11. Environmental Protection Department

12. Town Planning Department

13. Labour Department

14. Ombudsman

15. Chief Medical Officer

SECOND SCHEDULE

(Section 30)

CONSEQUENTIAL AMENDMENTS

Column 1	Column 2
Enactments	*Amendments*
1. *Employment Rights Act, 2012* (Act 2012-9).	**1.** In section 2(1), insert in alphabetical order, the following definition: " "protected disclosure" has the meaning given by section 2 of the *Whistleblower Protection Act, 2021* (Act 2021-);". **2.** In section 30(1), *(a)* in paragraph *(d)*, delete the full-stop and substitute the words "; or"; and *(b)* insert after paragraph *(d)*, the following: "*(e)* the reason for the dismissal is that the employee made, or intended or attempted to make, a protected disclosure under the *Whistleblower Protection Act, 2021* (Act 2021-).".

BARBADOS

The Official Gazette Part A 29th December, 2021

Act 2021-30

PUBLIC PROCUREMENT ACT, 2021-30

Arrangement of Sections

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CONSEQUENTIAL AMENDMENTS

BARBADOS

I assent
S. MASON
President of Barbados
23rd December, 2021.

2021-30

An Act to regulate public procurement and in particular to promote integrity, fairness, transparency, value for money and efficiency in public procurement.

[Commencement: by Proclamation]

ENACTED by the Parliament of Barbados as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Public Procurement Act, 2021*.

Interpretation

2. In this Act,

"accounting officer" has the meaning assigned to it by section 2 of the *Public Finance Management Act, 2019* (Act 2019-1);

"coercive practice" means harming or threatening to harm, directly or indirectly, a person or the property of a person, so as to influence participation or a decision in procurement proceedings or affect the execution of a procurement contract or framework agreement;

"collusive practice" means a scheme or arrangement between 2 or more suppliers, with or without the knowledge of a procuring entity, designed to establish submissions at prices that are artificial or non-competitive and includes a scheme or arrangement for price-fixing and bid-rigging as described in sections 33 and 35, respectively, of the *Fair Competition Act*, Cap. 326C;

"commercial state-owned enterprise" has the meaning assigned to it by section 2 of the *Public Finance Management Act, 2019* (Act 2019-1);

"common item" means a good or service that is regularly required by more than one procuring entity but does not include a drug;

"conflict of interest" means a situation in which the personal interest of a person or that of a close relative of the person, might be furthered, directly or indirectly, from the official actions of the person or in which the personal interest of the person or that of a close relative, might prevent the person from acting impartially and in the public interest;

"contract management record" means the record required to be kept pursuant to section 106(1)*(b)*;

"corrupt practice" means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the action of an officer in procurement proceedings or in the execution of a procurement contract or framework agreement;

"day" does not include a Saturday, Sunday or public holiday;

"Director" means the Director of Finance and Economic Affairs;

"drug" has the meaning assigned to it by section 2 of the *Pharmacy Act*, Cap. 372D;

"*force majeure*" means an event that is beyond the reasonable control of a person and which makes the person's performance of his obligations impossible or so impractical as to be reasonably considered to be impossible in the circumstances;

"framework agreement" means an agreement that is executed with a supplier upon completion of the first stage of a framework agreement procedure and sets out the terms under which the supplier will enter into a procurement contract during the period to which the agreement relates;

"framework agreement procedure" means a procedure conducted in two stages - a first stage to select a supplier to be a party to a framework agreement and a second stage to award a procurement contract to a supplier who is a party to the agreement;

"fraudulent practice" means the misrepresentation or omission of facts in order to influence procurement proceedings or the execution of a procurement contract or framework agreement;

"head of a procuring entity" means in relation to

(a) a procuring entity that is a state-owned enterprise, the chief executive officer or other officer who holds a similar position in the entity;

(b) a commercial state-owned enterprise, the chief executive officer or other officer who holds a similar position in the entity;

(c) any other procuring entity, the accounting officer of the entity;

"medical practitioner" has the meaning assigned to it by section 2 of the *Medical Profession Act, 2011* (Act 2011-1);

"Minister" means the Minister with responsibility for Finance;

"officer", in relation to a procuring entity, means a public officer or other employee, including a temporary employee, and a chief executive officer and, where the entity is managed or governed by a board or other similar body, the members of the board or other body, as the case may be;

"open framework agreement" means a framework agreement to which any supplier, in addition to the initial parties, may subsequently become a party;

"open tendering" means tendering in response to a solicitation to the public at large;

"pharmacist" has the meaning assigned to it by section 2 of the *Pharmacy Act*, Cap. 372D;

"pre-qualification document" means a document issued by a procuring entity that sets out the terms and conditions of pre-qualification proceedings;

"procurement contract" means a contract between a procuring entity and a supplier in respect of a procurement;

"procurement record" means the record required to be kept pursuant to section 106(1)*(a)*;

"procuring entity" means every

(a) ministry, department, agency, organ, unit or other authority of Government;

(b) state-owned enterprise; and

(c) commercial state-owned enterprise,

whether or not it uses public money;

"proponent" means a person who submits an unsolicited proposal;

"Protocol" means the Protocol on Public Procurement for the Caribbean Community signed by Barbados on 27th February, 2019 at Basseterre, St. Kitts and Nevis, the text of which is set out in the *First Schedule*;

"public money" has the meaning assigned to it by section 2 of the *Public Finance Management Act, 2019* (Act 2019-1);

"public officer" has the meaning assigned to it by section 2 of the *Public Service Act*, Cap. 29;

"public-private partnership" means an arrangement governed by a long term procurement contract between a procuring entity and a private party involving the designing, financing, building and operation of an infrastructure project or the provision of a service through the appropriate sharing of resources, risks and rewards;

"public procurement" or "procurement" means the acquisition of goods, works or services by a procuring entity;

"single-source procurement" means procurement initiated by soliciting one supplier;

"solicitation" means an invitation to tender or to submit quotations or proposals;

"solicitation document" means a document which sets out the terms and conditions of a procurement and is issued by a procuring entity to suppliers to guide their preparation and presentation of submissions;

"standstill period" means the period commencing with the date of dispatch of a successful tender notice pursuant to section 34(1) and ending with such date as a procuring entity determines in accordance with section 34(3) and (4);

"state-owned enterprise" has the meaning assigned to it by section 2 of the *Public Finance Management Act, 2019* (Act 2019-1);

"submission" means a tender, quotation or proposal submitted by a supplier in response to a solicitation by a procuring entity or an unsolicited proposal**;**

"supplier" means a provider of goods, works or services;

"Suppliers Register" means the register referred to in section 85(1);

"tenders committee" means the General Tenders Committee, the Drug Tenders Committee or a special tenders committee established by or pursuant to section 7;

"tender security" means a security that a procuring entity requires from a supplier to secure the performance of an obligation relating to a matter referred to in section 21(1)*(b)* but, for the avoidance of doubt, does not include a security for the performance of a procurement contract;

"Tribunal" means the Public Procurement Tribunal established by section 8;

"undue influence" includes any form of pressure brought to bear by an official, elected or appointed, who is in a position either to provide a benefit to, or exact punishment against, any person involved in procurement activities or decisions;

"unsolicited proposal" means a proposal for the supply of goods, works or services to a procuring entity, made to the entity otherwise than in response to a solicitation.

Application of Act

3.(1) This Act applies to all public procurement.

(2) Notwithstanding subsection (1), to the extent that

(a) any other provision of this Act conflicts with the Protocol; or

(b) this Act conflicts with an obligation of the State under or arising out of a treaty or other form of agreement between Barbados and

(i) another state, including an agreement for technical or other cooperation;

(ii) any subdivision or local authority of another state or any other authority of another state; or

(iii) an international financial institution,

the requirements of the Protocol, treaty or other agreement shall prevail.

PART II

ADMINISTRATION

Management of public procurement

4. The Chief Procurement Officer shall be responsible for the management of public procurement.

Functions of Chief Procurement Officer

5.(1) Without prejudice to the generality of section 4, the Chief Procurement Officer shall

(a) formulate or recommend for the approval of the Minister, policies and rules on public procurement;

(b) formulate or recommend for the approval of the Director, for public dissemination, manuals, standard documents and guidelines to facilitate the implementation and operation of this Act;

(c) monitor the operation and performance of the public procurement system, prepare annual reports on the operation and performance of the system and recommend changes to the system where desirable;

(d) promote and advise on capacity building in the public procurement system and advise on the professional qualifications and competencies required for officers engaged in procurement proceedings;

(e) monitor the procurement proceedings of procuring entities to determine whether such entities are in compliance with this Act;

(f) advise the Director and procuring entities on matters relating to public procurement;

(g) organize and maintain systems for the management and public dissemination of data, statistics and other information on public procurement; and

(h) whether on his own initiative or at the request of the Director, investigate and report to the Director on any procurement proceedings that are suspected to be in violation of this Act.

(2) The Chief Procurement Officer may, in pursuance of his functions and, in particular, in order to determine whether a procuring entity is in compliance with this Act, inspect the offices, and have access to the records, books and other documents, of the entity, and require from the entity such information as may be necessary for the purpose.

Functions of head of procuring entity

6.(1) The head of a procuring entity shall ensure that the entity conducts public procurement in accordance with this Act and performs its functions under this Act in a timely and efficient manner.

(2) Without prejudice to the generality of subsection (1), the head of a procuring entity shall

(a) ensure that

(i) an officer within the entity is designated to coordinate the procurement proceedings of the entity;

(ii) officers engaged in procurement proceedings are supervised to prevent embezzlement, fraud, carelessness or the waste of resources;

(iii) appropriately skilled persons are assigned to

(A) prepare statements of requirements and perform other functions relevant to procurement proceedings; and

(B) sit on evaluation committees; and

(iv) appropriately qualified persons provide technical input into the procurement proceedings; and

(b) before a procurement is initiated, confirm that funds are available to conduct the procurement.

(3) The head of a procuring entity may, in writing, delegate to another officer of the entity on such conditions as he may determine, any of the duties set out in subsections (1) and (2), but such a delegation does not relieve the head of the entity of his responsibility under this Act.

Tenders committees

7.(1) There is established a committee, to be known as the General Tenders Committee, which shall, in respect of procurement by means of open tendering and restricted tendering

(a) review and, where appropriate, approve pre-qualification documents, solicitation documents, notices and shortlists of suppliers and any amendments thereto prior to their issue;

(b) determine whether to grant extensions of deadlines where so requested by procuring entities;

(c) conduct and record openings of tenders;

(d) consider evaluation reports and recommendations by procuring entities as to which tenders should be accepted as successful tenders; and

(e) consider recommendations by procuring entities to cancel particular procurement activities.

(2) There is also established a committee, to be known as the Drug Tenders Committee, which shall, notwithstanding subsection (1), discharge the functions set out in subsection (1) in respect of the procurement of drugs.

(3) Notwithstanding subsection (1), where the State borrows money from an international financial institution and the money is to be expended by the State, there shall be established a committee, to be known as a special tenders committee, which shall discharge the functions set out in subsection (1) in respect of procurement arising out of the purpose for which the money is to be expended.

(4) The *Second Schedule* has effect as to the constitution of the tenders committees and otherwise in relation thereto.

(5) Notwithstanding subsections (1) to (4), the chairman of a tenders committee may, where this Act so provides, discharge a function of the tenders committee on behalf of the committee.

Establishment of Public Procurement Tribunal

8.(1) There is established a body to be known as the Public Procurement Tribunal which shall hear and determine matters that come before it pursuant to this Act.

(2) The Tribunal is a body corporate to which section 21 of the *Interpretation Act*, Cap. 1 applies.

(3) The *Third Schedule* has effect as to the constitution of the Tribunal and otherwise in relation thereto.

PART III

PLANNING AND INITIATION OF PROCUREMENT

Planning of procurement

9.(1) A procuring entity shall

(a) plan its procurement activities in a rational manner;

(b) aggregate its requirements for goods, works and services, where practicable, to obtain value for money and to reduce the cost of procurement;

(c) prepare and submit to the Chief Procurement Officer by 31st January each year

(i) an annual procurement plan; and

(ii) an estimation of its requirements for goods, works and services,

for the next financial year; and

(d) prepare, where requested to do so by the Chief Procurement Officer, an individual procurement plan for any particular procurement identified by the Chief Procurement Officer.

(2) Notwithstanding subsection (1)*(c)*, the Chief Procurement Officer may permit a procuring entity to submit a procurement plan in respect of a period other than a year.

Publication of forthcoming procurement

10.(1) A procuring entity shall, prior to a financial year, publish a list of the procurement activities it plans to conduct during the year.

(2) The list shall

(a) contain an indication of the types of goods, works and services likely to be required; and

(b) be updated, where necessary, and published every 6 months.

(3) A procuring entity may publish advance notice of any forthcoming procurement.

(4) Publication under this section does not

(a) constitute a solicitation;

(b) oblige a procuring entity to issue a solicitation; or

(c) confer any rights on suppliers.

Initiation of procurement

11. Procurement shall not be initiated unless

(a) the subject matter of the procurement, the quantity of goods, works or services required and the estimated value of the procurement contract are documented in the procurement record; and

(b) the head of the procuring entity or an officer designated by him for the purpose under section 6, authorizes the initiation of the procurement.

Procurement to be conducted with certain objectives

12. Procurement shall be conducted in a manner that

(a) ensures integrity, fairness, transparency and accountability in procurement proceedings;

(b) promotes fair competition among, participation by, and equal treatment of, suppliers;

(c) maximizes economy and efficiency and promotes best value for money; and

(d) promotes sustainable development.

Estimation of value of procurement

13.(1) A procuring entity shall not

(a) divide its procurement activities or value a contract in parts; or

(b) use any valuation method for estimating the value of a procurement,

so as to limit competition among suppliers or otherwise avoid its obligations under this Act.

(2) A procuring entity shall, in estimating the value of a procurement contract, include the estimated maximum total value of the contract or, where a framework

agreement is contemplated, of all procurement contracts envisaged under the agreement over its entire duration, taking into account all forms of remuneration.

Procurement of common items

14.(1) Common items shall be procured, at the discretion of the Chief Procurement Officer, by

(a) the Chief Procurement Officer on behalf of procuring entities; or

(b) procuring entities under arrangements established for the purpose by the Chief Procurement Officer.

(2) The Chief Procurement Officer

(a) shall

(i) consult with procuring entities in order to determine

(A) which goods and services are common items; and

(B) the estimated need for the items;

(ii) distribute to procuring entities every 6 months, a list of items designated as common items;

(iii) enter into appropriate contractual arrangements for the procurement of common items; and

(iv) issue regularly updated information to procuring entities on the common items available and the prices, delivery times and arrangements established for ordering or obtaining the items; and

(b) may utilize warehouses, where appropriate, for the cost-effective storage and distribution of common items.

(3) The Chief Procurement Officer shall, for the purpose of procurement under subsection (1)*(a)*, operate a bank account into which shall be paid

(a) money provided for the procurement of common items;

(b) money by way of repayments made by procuring entities in respect of procurement conducted on their behalf; and

(c) any other money which he may receive in the course of his official duties.

(4) The Chief Procurement Officer shall pay out of the account referred to in subsection (3), any amounts due in settlement for common items procured.

Use of agents

15. The Chief Procurement Officer, or a procuring entity with the approval of the Chief Procurement Officer, may procure goods or services through an agent, whether local or overseas, where it appears prudent to do so.

PART IV

METHODS OF PROCUREMENT

Selection of method of procurement

16.(1) A procuring entity

(a) shall, subject to subsection (2)*(a)* and *(b)*, conduct procurement by means of open tendering where the estimated or actual value of the procurement contract equals or exceeds

(i) $300 000, for the procurement of goods or services or a combination of goods and services; and

(ii) $500 000, for the procurement of works or a combination of works and goods, of works and services or of works, goods and services; and

(b) may conduct procurement by means of open tendering in any other case where it considers it appropriate to do so.

(2) A procuring entity may

(a) conduct procurement by means of restricted tendering in the circumstances set out in section 18(1);

(b) engage in single-source procurement in the circumstances set out in section 47(1); and

(c) conduct procurement by means of a request for quotations where the estimated or actual value of the procurement contract does not equal or exceed the relevant threshold specified in subsection (1)*(a)*.

(3) A procuring entity may, in conducting procurement, utilize a framework agreement procedure in accordance with section 53.

(4) Subject to subsections (1) and (2), a procuring entity shall, in selecting a method of procurement, select the method that is the most efficacious in the circumstances of the procurement and seek to maximise competition to the extent practicable.

(5) The Minister may, by Order subject to negative Resolution, vary the amounts set out in subsection (1).

Open Tendering and Restricted Tendering

Open tendering

17.(1) Where a procuring entity intends to engage in open tendering, the entity shall publish a notice to be called an invitation to tender.

(2) The invitation to tender shall include

(a) any key technical, eligibility or qualification requirements;

(b) whether the entity will convene a meeting of suppliers; and

(c) the procedure, place and deadline for presenting tenders.

(3) Subsection (1) does not apply where a procuring entity engages in pre-qualification proceedings.

Restricted tendering

18.(1) Subject to subsection (2), a procuring entity may, with the permission of the Director, conduct procurement by means of restricted tendering in any of the following circumstances:

(a) the goods, works or services to be procured are available from 10 suppliers or less; or

(b) there is an urgent need for the goods, works or services to be procured and

(i) the circumstances giving rise to the urgency were neither foreseeable by the entity nor the result of dilatory conduct on the part of the entity; and

(ii) engaging in open tendering would be impractical.

(2) A procuring entity shall submit a request for permission to engage in restricted tendering to the Chief Procurement Officer for transmission to the Director.

(3) The entity shall submit with its request, in a case where it seeks to engage in restricted tendering on the ground set out in

(a) subsection (1)*(a)*, a list of the suppliers from whom the entity believes the goods, works or services are available; or

(b) subsection (1)*(b)*, the list of suppliers from whom the entity intends to solicit tenders.

(4) The Director may, on the advice of the Chief Procurement Officer, grant permission to a procuring entity to engage in restricted tendering where any of the circumstances set out in subsection (1) exists.

(5) Notwithstanding subsections (1) and (4), where, after a procuring entity applies to the Director for permission to engage in restricted tendering on the ground set out in subsection (1)*(a)*, it is discovered that the goods, works or

services are available from more than 10 suppliers, the Director may grant permission to the entity to engage in restricted tendering where he is satisfied, on the advice of the Chief Procurement Officer, that the entity made reasonable efforts to discover the number of suppliers from whom the goods, works or services are available.

(6) Where a procuring entity engages in restricted tendering on the ground set out in

(a) subsection (1)*(a)*, the entity shall solicit tenders from all suppliers from whom the goods, works or services are available;

(b) subsection (1)*(b)*, the entity shall

(i) in a non-discriminatory manner, select suppliers from whom to solicit tenders; and

(ii) in order to ensure effective competition, select a sufficient number of suppliers.

Solicitation documents for tendering

19.(1) A procuring entity shall provide a solicitation document

(a) to each supplier who responds to its invitation to tender in accordance with the procedures and requirements specified therein;

(b) to each supplier who pre-qualifies pursuant to pre-qualification proceedings or, where the entity selects a limited number of pre-qualified suppliers from whom to solicit tenders, who is among the number of selected, pre-qualified suppliers; or

(c) in a case of restricted tendering on the ground set out in

(i) section 18(1)*(a)*, to each supplier from whom the goods, works or services are available; or

(ii) section 18(1)*(b)*, to each supplier from whom the entity intends to solicit tenders.

(2) The entity shall prepare the solicitation document in the form of the standard document, if any, issued or approved by the Director for the purpose and include in the document

(a) information on the management of the procurement proceedings and the applicable laws;

(b) the eligibility requirements of suppliers and an indication of any documentary evidence required to be submitted as proof of eligibility;

(c) a clear statement of the qualification criteria, the procedures to be used to ascertain the qualifications of suppliers and any documentary evidence required to be submitted to demonstrate those qualifications;

(d) a description of the subject matter of the procurement in the form of a statement of requirements;

(e) instructions on the preparation and presentation of tenders, including any requirement for the presentation of separately sealed technical and financial tenders, and the procedure, place and deadline for presenting tenders;

(f) where a tender security is required, a statement to that effect, and any requirement as to the nature, form, amount and other principal terms and conditions of the security and the issuer, with sufficient specificity to enable a supplier to be reasonably certain of the type of security that the procuring entity would consider acceptable;

(g) the duration of the standstill period or, where no standstill period will be applied, a statement to that effect and the reason for not applying one;

(h) the procedure, place, date and time for the opening of tenders;

(i) the criteria and procedure for evaluating tenders including

(i) whether the successful tender will be ascertained on the basis of price or of price and other criteria;

(ii) where price and other criteria are to be used in the evaluation, the relative weights of all criteria; and

(iii) the manner of application of the criteria in the evaluation;

(j) any formalities required for a procurement contract to be executed once a successful tender is accepted;

(k) the principal terms and conditions and proposed form of the procurement contract; and

(l) notice of the right to challenge decisions or actions of a procuring entity or tenders committee that are allegedly not in compliance with this Act.

(3) The entity may charge a non-refundable fee for the provision of a solicitation document to a supplier but the fee shall reflect only the cost of providing the document to the supplier.

Clarification and modification of invitations to tender and solicitation documents

20.(1) Where a procuring entity receives, at least 2 weeks prior to the deadline for the presentation of tenders, a request from a supplier for clarification of an invitation to tender or a solicitation document, the entity shall, without identifying the source of the request, provide the clarification to all suppliers involved in the procurement proceedings, including the supplier who made the request, at the same time and within sufficient time to enable them to present their tenders before the deadline for presentation.

(2) Without prejudice to the generality of subsection (1), a procuring entity shall provide clarification of a solicitation document to all suppliers to whom the entity provided the document.

(3) A procuring entity may, prior to the deadline for presenting tenders, and with the approval of the chairman of the relevant tenders committee, whether on its own initiative or as a result of a request by a supplier for a clarification, modify an invitation to tender or a solicitation document by issuing an addendum.

(4) The addendum shall

(a) in the case of

(i) an invitation to tender, be published in the same manner and place as the invitation to tender; and

(ii) a solicitation document, be made available to each supplier to whom the entity provided the solicitation document; and

(b) be binding on the suppliers.

Tender securities

21.(1) Where a procuring entity requires a tender security

(a) the requirement shall apply to all suppliers who present tenders; and

(b) any requirement that the entity sets out in the solicitation document in respect of the security that refers directly or indirectly to the conduct of a supplier shall relate to

(i) the withdrawal or modification of the tender after the deadline for presenting tenders; or

(ii) the failure to

(A) execute a procurement contract where so required by the solicitation document;

(B) provide a security, where so required by the solicitation document, for the performance of the procurement contract after the successful tender is accepted; or

(C) comply with any other condition precedent to executing the procurement contract, as specified in the solicitation document.

(2) Where a supplier breaches a requirement set out in a solicitation document in relation to a matter specified in subsection (1)*(b)*(i) or (ii), his tender security shall be forfeited.

(3) A procuring entity shall

(a) make no claim to the amount of a tender security; and

(b) promptly return the security document where any of the following occurs:

(i) the expiry of the tender security;

(ii) the execution of a procurement contract and the provision of a security for the performance of the contract, where such a security for performance is required by the solicitation document;

(iii) the cancellation of the procurement; or

(iv) the withdrawal of the relevant tender prior to the deadline for presenting tenders.

(4) A procuring entity may reject a tender security on the ground that the issuer has become insolvent or has otherwise ceased to be creditworthy.

Meetings with suppliers prior to presentation of tenders

22.(1) Where a procuring entity convenes a meeting of suppliers prior to the deadline for presenting tenders, the entity shall prepare minutes of the meeting.

(2) The minutes shall

(a) include any request, without identifying the source of the request, submitted at the meeting for clarification of the solicitation document, and the response of the entity to the request; and

(b) be provided promptly to the suppliers to whom the entity provided the solicitation document to enable the suppliers to take the minutes into account in preparing their tenders.

Deadline for presenting tenders

23.(1) A procuring entity shall express a deadline for presenting tenders as a specific date and time and shall, taking into account the reasonable needs of the entity, allow sufficient time for suppliers to prepare and present tenders.

(2) Where a procuring entity issues a clarification or modification of an invitation to tender or a solicitation document, the entity shall, prior to the deadline for presenting tenders, request the chairman of the relevant tenders committee to extend the deadline, where necessary, in order to afford suppliers sufficient time to take the clarification or modification into account in preparing their tenders.

(3) The chairman of a tenders committee may, in his absolute discretion, prior to a deadline for presenting tenders, extend the deadline where it is not possible for one or more suppliers to present tenders by the deadline because of any circumstance beyond their control.

(4) Notice of an extension of a deadline shall, in the case of a clarification or modification of

(a) an invitation to tender, be published in the same manner and place as the invitation to tender; and

(b) a solicitation document, be given to each supplier to whom the entity provided the solicitation document.

Presentation of tenders

24.(1) A tender shall be presented

(a) in accordance with the procedure, and at the place and by the deadline, specified in the solicitation document;

(b) in writing, signed and, where in

(i) paper form, in a sealed envelope; or

(ii) any other form, according to the requirements specified in the solicitation document, which shall ensure at least a similar degree of authenticity, security, integrity and confidentiality.

(2) The relevant tenders committee shall

(a) provide a secure means by which suppliers may submit tenders and provide each supplier with a receipt showing the date and time when his tender was received;

(b) preserve the security, integrity and confidentiality of the tender; and

(c) ensure that the content of the tender is examined only after its opening in accordance with section 27.

(3) A tender received by a tenders committee after the deadline for presenting tenders shall not be opened and shall be returned to the supplier who presented it.

(4) Notwithstanding subsection (3), a tender received by a tenders committee after the deadline for presenting tenders may be accepted and opened in circumstances where it can be ascertained that the presentation of the tender was delayed by *force majeure*.

Presentation of separately sealed technical and financial tenders

25. A procuring entity may request separately sealed technical and financial tenders where the entity needs to consider the financial aspects of the tenders separately and only after completion of the examination and evaluation of the technical, quality and performance characteristics of the tenders.

Validity of tenders, modification and withdrawal of tenders

26.(1) Tenders shall remain valid for the period specified in the solicitation document.

(2) A procuring entity may, prior to the expiry of the period of validity, request suppliers to extend the period for an additional specified period.

(3) A supplier may refuse to extend the period of validity of his tender without forfeiting his tender security, if any.

(4) A supplier who agrees to an extension of the validity of his tender shall extend the period of validity of any tender security he provided or provide a new tender security to cover the extended period of validity of his tender.

(5) A supplier whose tender security is not extended or who does not provide a new tender security shall be considered to have refused the request to extend the period of validity of his tender.

(6) A supplier may modify or withdraw his tender prior to the deadline for presenting tenders without forfeiting his tender security.

(7) A modification or notice of withdrawal of a tender is effective where it is received by the procuring entity prior to the deadline for presenting tenders.

Opening of tenders

27.(1) Tenders shall be opened at the time and place specified in the solicitation document and in accordance with the procedure specified in that document.

(2) A supplier who presents a tender or his representative shall be

(a) permitted by the tenders committee to be present at the opening of tenders; and

(b) deemed to have been permitted to be present at the opening of tenders where he is notified of the time and place for the opening of tenders.

(3) The name and address of each supplier whose tender is opened and the tender price shall be

(a) announced to the persons present at the opening of tenders;

(b) communicated, on request, to a supplier who presents a tender but is not present or represented at the opening of tenders; and

(c) included immediately in the procurement record.

(4) Notwithstanding subsections (2) and (3), section 31 shall apply where a procuring entity requests separately sealed technical and financial tenders.

(5) Notwithstanding subsection (3), tender prices need not be announced where it is impractical to do so because of the volume of the prices.

(6) With the exception of late tenders, which shall be returned in accordance with section 24, no tender shall be accepted, rejected or evaluated at the opening of tenders.

(7) A tenders committee shall note, in a record to be called a record of tender opening, any discrepancies or missing documents in respect of a tender, but shall not otherwise comment on such discrepancies or missing documents at the opening of tenders.

Evaluation committees

28.(1) A procuring entity shall, for each procurement, establish an evaluation committee to be responsible for the evaluation of tenders and the preparation of an evaluation report.

(2) The membership of the committee shall depend on the value and complexity of the procurement but shall in all cases be not less than 3 persons.

(3) The entity may appoint an external, technical specialist or procurement agent to conduct the evaluation of tenders and prepare an evaluation report on its behalf.

(4) The entity shall require any person appointed pursuant to subsection (1) or (3) to declare whether he has any conflict of interest in respect of the procurement being evaluated.

(5) Where a person declares a conflict of interest, the person shall have no further involvement in the procurement proceedings and shall be immediately replaced by the entity.

(6) The entity shall require from a person appointed under subsection (3) an undertaking that he will treat as confidential and not disclose any information that comes to his attention as a result of his appointment.

(7) An evaluation report prepared under this section may include

(a) the method of assessment;

(b) a copy of any relevant notice and the date of issue of the notice;

(c) the deadline for presentation of tenders;

(d) the date of the opening of tenders;

(e) any addendum issued or query received;

(f) copies of all other relevant documents;

(g) comments on arithmetic corrections;

(h) any notification to a supplier of an arithmetic correction and any response to such a notification;

(i) a table showing any corrected prices with relevant comments;

(j) a comparison of tenders; and

(k) the recommendation of the committee or person appointed pursuant to subsection (3), including any recommendation to negotiate with a supplier together with appropriate justification for the recommendation.

(8) A procuring entity shall submit each evaluation report to the relevant tenders committee for consideration.

Evaluation criteria and procedures

29.(1) The criteria to be used to evaluate a tender shall relate to the goods, works or services to be procured.

(2) The evaluation criteria may include

(a) the price;

(b) the cost of operating, maintaining and repairing goods or works;

(c) the time for the delivery of the goods, completion of the works or provision of the services, as the case may be;

(d) the characteristics of the goods, works or services, such as functional and environmental characteristics;

(e) the terms of payment and of guarantees in respect of the goods, works or services; and

(f) where relevant, the experience, reliability and professional and managerial competence of the supplier and of the personnel to be involved in providing the goods, works or services.

(3) All non-price evaluation criteria shall, to the extent practicable, be objective and quantifiable.

(4) A procuring entity shall, in evaluating tenders and determining the successful tender, use only the criteria and procedures specified in the solicitation document and apply the criteria and procedures in the manner specified in that document.

(5) No criterion or procedure that has not been set out in accordance with this section and section 19(2) shall be used in any evaluation under this Act.

Examination and evaluation of tenders

30.(1) A procuring entity may ask a supplier for clarification of his tender where the clarification would assist the entity in the examination and evaluation of the tender.

(2) A procuring entity shall correct purely arithmetic errors discovered during the examination of a tender and give prompt notice of the correction to the supplier who presented the tender.

(3) No change in a matter of substance in the tender, including a change in price and a change aimed at making an unresponsive tender responsive, shall be sought, offered or permitted.

(4) Any items having a zero price shall be deemed to be included in the price of other items except in the case of line-item bidding where a zero price shall be considered a non-offer for the item.

(5) A procuring entity shall regard a tender as responsive where it conforms to all requirements set out in the solicitation document.

(6) Notwithstanding subsection (5), a procuring entity may regard a tender as responsive even where it contains

(a) minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set out in the solicitation document; or

(b) errors or oversights that are capable of being corrected without touching on the substance of the tender,

and any such deviations shall be quantified, to the extent possible, and appropriately taken into account in the evaluation of the tender.

(7) Notwithstanding subsection (6), where a specification states that an item is critical to the functioning of the entire lot or procurement, the failure of such critical item to be responsive shall be cause for the tender in respect of the entire lot or procurement to be regarded as unresponsive.

(8) A procuring entity shall reject a tender

(a) where the supplier who presented the tender is not qualified or the entity is obliged, under this Act, to exclude the supplier from participation in public procurement;

(b) where the supplier who presented the tender does not accept a correction of an arithmetic error made pursuant to subsection (2);

(c) where the tender is unresponsive; or

(d) in the circumstances set out in section 32.

(9) The entity shall evaluate the tenders that have not been rejected in order to ascertain the successful tender in accordance with the criteria and procedures set out in the solicitation document.

(10) The successful tender shall be

(a) where price is the only criterion, the tender with the lowest price; or

(b) where there are price and other criteria, the most advantageous tender ascertained on the basis of the criteria and procedures, specified in the solicitation document, for evaluating the tenders.

(11) Where tender prices are expressed in two or more currencies, for the purpose of evaluating and comparing tenders, the tender prices of all tenders shall be converted to the currency specified in the solicitation document according to the rate set out in that document.

(12) A procuring entity may, whether or not it has engaged in pre-qualification proceedings, require a supplier who presented a tender that is determined to be a successful tender to demonstrate or reconfirm his qualifications.

(13) The criteria and procedures to be used for the demonstration or reconfirmation of the qualifications of a supplier shall be set out in the solicitation document.

(14) Where a procuring entity has engaged in pre-qualification proceedings, the criteria for confirming qualifications shall be the same as those used in the pre-qualification proceedings.

(15) Where a supplier who presented a successful tender is requested to demonstrate or reconfirm his qualifications but fails to do so within 10 days of the request, the entity shall reject the tender and shall

(a) subject to section 35(2), select the next highest ranked tender from among those remaining valid; or

(b) cancel the procurement.

Separate opening, examination and evaluation of technical and financial tenders

31.(1) This section applies, in addition to section 30, where a procuring entity intends to consider the financial aspects any of tenders separately and only after the completion of the examination and evaluation of the technical, quality and performance characteristics of the tenders.

(2) A procuring entity shall, before it requests the opening by the tenders committee of the financial tenders, examine and evaluate the technical, quality and performance characteristics of tenders in accordance with the criteria and procedures specified in the solicitation document.

(3) The results of the examination and evaluation of the technical, quality and performance characteristics of the tenders shall be immediately included in the procurement record.

(4) Where the technical, quality and performance characteristics of a tender

(a) meet or exceed the relevant minimum requirements, the tender shall be regarded as responsive;

(b) fail to meet the relevant minimum requirements, the tender shall be regarded as unresponsive and shall be rejected on that ground.

(5) The procuring entity shall, in the case of

(a) a responsive tender,

(i) promptly communicate to the supplier who presented the tender, the score of the technical, quality and performance characteristics of his tender; and

(ii) invite all such suppliers or their representatives to the opening, by the tenders committee of the financial tenders; and

(b) an unresponsive tender

(i) promptly send to the supplier who presented the tender a notice of rejection together with the reason for the rejection; and

(ii) ensure that his financial tender is returned unopened.

(6) The name and address of each supplier whose tender is responsive, the score of the technical, quality and performance characteristics of his tender and the price of his financial tender shall

(a) be announced to the persons present at the opening of the financial tenders; and

(b) communicated, on request, to a supplier who was invited to, but was not present or represented at, the opening of tenders.

(7) The price of each corresponding financial tender referred to in subsection (6) shall be included in the procurement record.

(8) The procuring entity shall compare the financial aspects of the responsive tenders and on that basis identify the successful tender in accordance with the criteria and procedures set out in the solicitation document.

(9) The successful tender shall be the tender with the best combined evaluation in terms of

(a) the criteria, other than price, specified in the solicitation document; and

(b) the price.

Rejection of abnormally low tenders

32.(1) A procuring entity may, subject to subsection (2), reject a tender where the entity determines that the price, in combination with other constituent elements of the tender, is abnormally low in relation to the goods, works or services to be procured and raises concerns with the entity as to the ability of the supplier who presented the tender to perform the procurement contract.

(2) A procuring entity shall not reject a tender pursuant to subsection (1) unless the entity

(a) requests in writing from the supplier details of the aspect of the tender that gives rise to its concerns as to the ability of the supplier to perform the procurement contract; and

(b) takes account of any information provided by the supplier pursuant to the request and of the information included in the tender but continues, on the basis of all such information, to hold such concerns.

(3) The decision of a procuring entity to reject the tender of a supplier pursuant to this section and the reason for the decision shall be communicated to the supplier.

Determination of successful tender

33.(1) Where a procuring entity determines that a tender is the successful tender in respect of a procurement, the entity shall submit to the relevant tenders committee for consideration, the evaluation report on the matter and a recommendation that the tenders committee treat and accept as the successful tender, the tender identified as such by the entity.

(2) The tenders committee may

(a) accept the recommendation of the procuring entity as to the successful tender; or

(b) where it does not accept the recommendation, subject to sections 29 to 32 and taking the evaluation report into account, make its own decision as to which tender is the successful tender.

(3) A determination as to the successful tender does not constitute acceptance of the tender.

Successful tender notice and standstill period

34.(1) Where the relevant tenders committee determines that a tender should be accepted as a successful tender, the procuring entity shall dispatch simultaneously to each supplier who presented a tender, a notice, to be called a successful tender notice, informing the supplier that the entity intends to accept the successful tender at the end of the standstill period.

(2) The successful tender notice shall include

(a) the name and address of the supplier who presented the successful tender;

(b) the contract price or, where the successful tender was ascertained on the basis of price and other criteria, the contract price and a summary of the other characteristics of the tender that made the tender the successful tender; and

(c) the duration of the standstill period.

(3) The standstill period shall be at least 10 days from the date of dispatch of the notice.

(4) Where the means of dispatch of the notice is not expected to result in the delivery of the notice to a supplier in less than 5 days, the entity shall extend the standstill period for such additional period as the entity may consider appropriate in the circumstances.

(5) Notwithstanding subsection (1), no successful tender notice or standstill period is required where the entity determines that urgent public interest considerations require the procurement to proceed without a standstill period.

(6) Where a supplier whose tender was unsuccessful so requests within 5 days of notification of the successful tender, the entity shall, within 10 days of receipt of the request, communicate to the supplier the reason that his tender was unsuccessful.

Successful tender acceptance notice

35.(1) A procuring entity shall, upon the expiry of the standstill period, or, where no standstill period is required, as soon as practicable after the successful tender is determined, dispatch to the supplier who presented the successful tender, a notice to be called a successful tender acceptance notice.

(2) Notwithstanding subsection (1), no successful tender acceptance notice or other communication in any form conveying acceptance of a successful tender or the award of a procurement contract shall be issued unless

(a) the relevant tenders committee determines that a particular tender should be accepted as the successful tender; and

(b) it is confirmed that

(i) the procurement is not subject to an application for reconsideration under section 96 or an appeal to the Tribunal;

(ii) funding is available for the procurement; and

(iii) any regulatory approvals required have been granted.

(3) A procuring entity shall not be liable for the provision of goods, works or services by a supplier who receives a successful tender acceptance notice or for anything done by the supplier in connection with such provision unless the supplier, prior to the provision of the goods, works or services or the doing of anything in connection with such provision, enters into a procurement contract with the entity in accordance with this Act.

Negotiations

36.(1) Where the relevant tenders committee determines that a tender should be accepted as a successful tender, negotiations may be held with the supplier who presented the tender.

(2) Negotiations shall not relate to the price of the tender except where price was not a factor in the evaluation.

(3) Negotiations may relate to

(a) minor amendments to the special conditions of the contract, the delivery or completion schedule or work plan or the technical details of the statement of requirements; or

(b) the minor reduction of quantities for budgetary reasons.

(4) Notwithstanding subsection (3), negotiations shall not be conducted

(a) to alter substantially the technical, quality or performance characteristics of a tender, including the scope of the responsibilities of the supplier;

(b) to alter materially the terms and conditions of the proposed procurement contract;

(c) solely for the purpose of reducing prices or fee rates except where changes are required to reflect any agreed technical changes; or

(d) to alter substantially anything that was a deciding factor in the evaluation.

(5) A procuring entity shall

(a) prepare minutes of any negotiations held; and

(b) obtain the written agreement of the supplier that the minutes are a true and accurate record of the negotiations.

Execution of procurement contract

37.(1) Where a solicitation document requires a supplier whose tender is accepted to execute a procurement contract conforming to the terms and conditions of the accepted tender

(a) the procuring entity and the supplier shall execute the procurement contract within a reasonable period after the successful tender acceptance notice is dispatched to the supplier; and

(b) between the time when a successful tender acceptance notice is dispatched to the supplier and the execution of the procurement contract, neither the entity nor the supplier shall take any action that is likely to interfere with the execution of the procurement contract or with its performance.

(2) Where a supplier whose tender is accepted fails to

(a) execute a procurement contract as required; or

(b) provide any required security for the performance of the contract,

the procuring entity may, subject to section 35(2), select the next highest ranked tender from among those remaining valid or cancel the procurement.

Notice of award of procurement contract

38.(1) A procuring entity shall, within 3 days of the execution of a procurement contract, dispatch simultaneously to each supplier whose tender was unsuccessful, a notice of the award of the contract.

(2) The notice shall state the name of the supplier to whom the contract was awarded and the contract price.

(3) A procuring entity shall, on 31st March and 30th September each year, publish a cumulative list of all procurement contracts awarded in the year.

Management of procurement contract

39.(1) A procuring entity shall nominate a contract administrator for each procurement contract awarded.

(2) The contract administrator shall

(a) monitor the performance of a supplier to ensure that all delivery or performance obligations are met and that appropriate action is taken by the procuring entity in the event that obligations are not met;

(b) prepare any required amendments to the procurement contract and refer the amendments for the approval of the Solicitor General or another

legal officer nominated by the Solicitor General, or, in the case of a procuring entity that is a state-owned enterprise or a commercial state-owned enterprise, of such legal officer as the entity may approve for the purpose;

(c) manage any handover or acceptance procedures;

(d) refer any recommendation for the termination of the contract for the consideration of the Solicitor General or another legal officer nominated by the Solicitor General, or, in the case of a procuring entity that is a state-owned enterprise or a commercial state-owned enterprise, of such legal officer as the entity may approve for the purpose; and

(e) ensure that

(i) the supplier submits all required documentation;

(ii) the procuring entity meets all its payment and other obligations on time and in accordance with the contract;

(iii) there is adequate cost, quality and time control, where required;

(iv) all tests required in the contract are satisfactorily completed;

(v) performance under the contract is satisfactorily completed before closing the contract management record; and

(vi) the contract management record is kept in accordance with this Act.

Reports on supplier performance

40.(1) A procuring entity shall submit to the Chief Procurement Officer, a report on the performance of each supplier with whom the entity has a procurement contract.

(2) The report shall

(a) be in such form as the Chief Procurement Officer requires; and

(b) include

(i) the final price paid for the goods, works or services and an explanation of any differences between that price and the original contract price;

(ii) information on the conformance of the goods, works or services with the statement of requirements and an explanation of any concerns in relation to quality;

(iii) the time taken for completion of performance under the contract and an explanation of any differences between that time and the delivery or completion schedule in the contract; and

(iv) such other information as the Chief Procurement Officer may require; and

(c) be submitted, in the case of a procurement contract the duration of which is

(i) less than a year, at the end of the quarter in which performance under the contract is completed; and

(ii) a year or more, at least annually.

(3) The Chief Procurement Officer may, in addition to the report referred to in subsection (1), require such other reports from the entity as may be necessary for the performance of his functions.

(4) Nothing in this section prevents a procuring entity from submitting a report to the Chief Procurement Officer, at any other time, on the performance of a supplier.

Cancellation of procurement

41.(1) A procuring entity may cancel a procurement

(a) prior to the acceptance of a successful tender; or

(b) where a successful tender is accepted, in the circumstances set out in section 37(2).

(2) A procuring entity shall not cancel a procurement without the approval of the relevant tenders committee.

(3) Where a procuring entity cancels a procurement

(a) no tenders shall be opened after the decision to cancel the procurement is taken;

(b) any tenders that remain unopened at the time the decision to cancel the procurement is taken shall be returned to the suppliers who presented them; and

(c) the entity shall

(i) promptly

(A) communicate to any supplier who presented a tender, the decision of the entity to cancel the procurement; and

(B) issue a notice of the cancellation of the procurement in the same manner and place as the original information regarding the procurement proceedings; and

(ii) where the supplier so requests, communicate to the supplier within a reasonable time, the reason for the cancellation.

Requests for Quotations

Requests for quotations

42.(1) Where a procuring entity intends to conduct procurement by means of a request for quotations, the entity shall request written quotations from a shortlist of suppliers.

(2) The entity, in developing a shortlist,

(a) shall select from the Suppliers Register, as many suppliers as practicable but at least 3; and

(b) shall, in order to ensure effective competition and fair and equal opportunities to all suppliers

(i) implement a rotation of suppliers on successive shortlists; and

(ii) not include

(A) suppliers who are not expected to satisfy fully any eligibility or qualification requirements;

(B) where there are suppliers that are practically owned by the same person, more than one such supplier.

(3) A supplier shall not be permitted to

(a) give more than one quotation; or

(b) change his quotation after the deadline for presenting quotations.

(4) Notwithstanding subsections (1) and (2), where a procuring entity intends to conduct procurement by means of a request for quotations, the entity may, instead of requesting quotations from a shortlist of suppliers from the Suppliers Register, publish the request to enable all interested suppliers to submit quotations.

Solicitation documents for requests for quotations

43.(1) A procuring entity shall, in order to request quotations, prepare and issue a solicitation document in the form of the standard document, if any, issued or approved by the Director for the purpose.

(2) A solicitation document referred to in subsection (1) shall include

(a) information on the management of the procurement proceedings and the applicable laws;

(b) a description of the subject matter of the procurement in the form of a statement of requirements;

(c) instructions on the preparation and presentation of quotations, including any documents required to be submitted with the quotation and the procedure, place and deadline for presenting quotations;

(d) a statement as to whether elements, other than the cost of the goods or services, such as any applicable transportation and insurance charges or customs duties and taxes, are to be included in the price;

(e) the criteria and procedures for evaluating quotations;

(f) the principal terms and conditions and proposed form of the procurement contract; and

(g) notice of the right to challenge decisions or actions of a procuring entity that are allegedly not in compliance with this Act.

(3) Section 20 applies in respect of solicitation documents referred to in this section, with such modifications and adaptations as may be necessary, as that section applies in respect of solicitation documents referred to in that section except that any role to be performed by a tenders committee or a chairman of a tenders committee pursuant to that section shall be performed by the procuring entity in respect of a request for quotations.

Meetings with suppliers and presentation of quotations

44.(1) Sections 22, 23 and 24 apply to the presentation of quotations and any meetings with suppliers prior to the presentation of quotations, with such modifications and adaptations as may be necessary, as those sections apply to the presentation of tenders and meetings with suppliers prior to the presentation of tenders.

(2) Notwithstanding subsection (1),

(a) no public opening of quotations is required but all quotations shall be opened and recorded by a procuring entity immediately after the deadline for presenting quotations; and

(b) any role to be performed by a tenders committee or a chairman of a tenders committee pursuant to sections 23 and 24 shall be performed by the procuring entity in respect of quotations.

Negotiations on quotations prohibited

45. No negotiations shall take place between a procuring entity and a supplier with respect to a quotation presented by the supplier.

Evaluation of quotations, determination of successful quotations, procurement contracts, supplier performance and cancellation of procurement

46. Sections 28, 29, 30, 32, 34(6), 35, 37, 38, 39, 40 and 41 apply to procurement by means of a request for quotations, with such modifications and adaptations as may be necessary, as those sections apply to procurement by means of open tendering except that any role to be performed by a tenders committee or a chairman of a tenders committee pursuant to those sections shall be performed by the procuring entity in respect of quotations.

Single-Source Procurement

Criteria for single-source procurement

47.(1) Subject to subsection (2) and **section 48**(1), a procuring entity may engage in single-source procurement where

(a) the goods or services are available only from a particular supplier or a particular supplier has exclusive rights in respect of the goods or services, so that no reasonable alternative or substitute exists, and the

use of any other method of procurement would therefore not be possible;

(b) the entity, having procured goods or services from a supplier, determines that additional goods or services must be procured from the supplier for reasons of standardization or because of the need for compatibility with existing goods or services, taking into account

(i) the effectiveness of the original procurement in meeting the needs of the entity;

(ii) the limited size of the proposed procurement in relation to the original procurement;

(iii) the reasonableness of the price; and

(iv) the unsuitability of alternatives to the goods or services;

(c) owing to a catastrophic event, there is an extremely urgent need for the goods, works or services and engaging in any other method of procurement would be impractical because of the time involved in using the method; or

(d) the entity determines, in the interest of national security or public health, that the use of any other method of procurement is not appropriate.

(2) Where a procuring entity engages in single-source procurement for reasons of urgency in accordance with subsection (1)*(c)*, the entity shall limit the procurement contract to the quantity of goods or services or the extent of works required to deal with the catastrophic event.

Permission to engage in single-source procurement

48.(1) A procuring entity shall, before engaging in single-source procurement

(a) confirm, where relevant, that the goods or services are not available under arrangements for the procurement of common items; and

(b) seek permission from

(i) the Director, where the estimated value of the procurement contract equals or exceeds the relevant threshold specified in section 16(1)*(a)*; or

(ii) the Chief Procurement Officer, where the estimated value of the procurement contract exceeds $50 000 but does not exceed the relevant threshold specified in section 16(1)*(a)*.

(2) A procuring entity shall, where subsection (1)*(b)*(i) applies, submit the request for permission to the Chief Procurement Officer for transmission to the Director.

(3) Where he is satisfied as to the existence of any of the circumstances set out in section 47(1)

(a) the Director, on the advice of the Chief Procurement Officer; or

(b) the Chief Procurement Officer,

as the case may be, may grant permission to the entity to engage in single-source procurement.

Solicitation documents for single-source procurement

49.(1) A procuring entity shall, in order to solicit a proposal or price quotation pursuant to single-source procurement, prepare and issue a solicitation document in the form of the standard document, if any, issued or approved by the Director for the purpose.

(2) The solicitation document shall include

(a) a description of the subject matter of the procurement in the form of a statement of requirements; and

(b) the principal terms and conditions and proposed form of the procurement contract.

(3) Notwithstanding subsection (1), where a procuring entity undertakes single-source procurement on the ground set out in section 47(1)*(c)*, the entity may engage in negotiations with a supplier without the issue of a solicitation document.

Evaluation of single-source submission

50.(1) Where a procuring entity receives a submission pursuant to single-source procurement, the submission shall be evaluated to determine whether

(a) the submission

(i) meets the requirements of the entity, including any technical needs, as defined by the statement of requirements, and any requirement for urgent delivery or completion;

(ii) offers value for money, based on prices previously obtained for similar procurement contracts or on an analysis of the cost of each component, taking into account the circumstances and value of the procurement contract;

(b) the supplier accepts the contractual terms and conditions proposed by the entity or offers other terms and conditions which are acceptable to the entity; and

(c) negotiations with the supplier are necessary.

(2) Section 28(1) to (6) apply to single-source procurement, with such modifications and adaptations as may be necessary, as those provisions apply to procurement by means of open tendering.

Negotiations for single-source procurement

51.(1) Where negotiations with a supplier are necessary in relation to single-source procurement, a procuring entity shall prepare a plan for the negotiations.

(2) The plan shall specify the issues to be negotiated and objectives to be achieved and shall, to the extent possible, quantify the objectives and set maximum and minimum negotiation parameters.

(3) A procuring entity shall

(a) prepare minutes of any negotiations held; and

(b) obtain the written agreement of the supplier that the minutes are a true and accurate record of the negotiations.

(4) A procuring entity shall not commit itself to a proposed agreement arising out of negotiations under this section unless the entity obtains the approval of the person who, pursuant to section 48, granted the entity permission to engage in single-source procurement.

Procurement contracts, supplier performance and cancellation in relation to single-source procurement

52. Sections 37(1), 38(3), 39, 40 and 41 apply to single-source procurement, with such modifications and adaptations as may be necessary, as those sections apply to procurement by means of open tendering except that any role to be performed by a tenders committee pursuant to section 41 shall be performed by the person who, pursuant to section 48, granted the procuring entity permission to engage in single-source procurement.

Framework Agreements

Framework agreements

53.(1) A procuring entity may engage in procurement through such framework agreements, whether open or closed and whether in respect of common items or otherwise, as are executed by the Chief Procurement Officer.

(2) The Chief Procurement Officer shall, upon the execution of a framework agreement, publish a notice of the agreement, specifying whether the agreement

is an open framework agreement or a closed framework agreement, the names of the suppliers involved and the goods or services to be supplied.

(3) The Chief Procurement Officer shall, on 31st March and 30th September each year, publish a cumulative list of all framework agreements awarded in the year.

Procurement of services of individual consultants

54. Notwithstanding section 16(1) and (2), where a procuring entity intends to procure the services of an individual consultant, the entity shall do so in accordance sections 55 to 59.

Solicitation in relation to individual consultants

55.(1) A procuring entity shall, in order to procure the services of an individual consultant, publish a notice inviting consultants to express interest in the assignment.

(2) The notice shall include

(a) the principal terms and conditions of the procurement contract;

(b) any key technical, eligibility or qualification requirements; and

(c) the procedure, place and deadline for expressing interest.

(3) Notwithstanding subsection (1), a procuring entity need not publish a notice where

(a) there is an urgent need for the services to be procured and

(i) the circumstances giving rise to the urgency were neither foreseeable by the entity nor the result of dilatory conduct on the part of the entity; and

(ii) publication would be impractical;

(b) the services required are a continuation of services already provided by a consultant and the entity determines that the services must be

procured from the same consultant for reasons of continuity, use of experience acquired or continued professional liability; or

(c) the entity determines, in the interest of national security or public health, that publication is not appropriate.

(4) A procuring entity may, where it does not publish a notice referred to in subsection (1), directly invite at least 3 consultants to express interest in the assignment.

Solicitation document not required in respect of individual consultants

56.(1) A procuring entity is not required to prepare a solicitation document for the procurement of the services of an individual consultant but shall make the terms of reference for the assignment available to all interested consultants on request or to all consultants invited to express interest.

(2) Terms of reference shall clearly state the skills, qualifications and experience required and the basis for evaluation.

(3) No tender security shall be requested for the procurement of the services of an individual consultant.

Presentation of submissions by individual consultants and evaluation of submissions

57.(1) A submission from an individual consultant shall include his curriculum vitae and a proposed fee rate which may be requested as separately sealed technical and financial submissions, respectively.

(2) Evaluation of submissions from individual consultants

(a) shall be based on the skills, qualifications and experience of the consultants, as stated in the terms of reference;

(b) may take into account references;

(c) may include interviews to assess further the skills, qualifications and experience of the consultants; and

(d) shall rank consultants according to their skills, qualifications and experience.

(3) Section 28(1) to (6) apply to the procurement of the services of an individual consultant, with such modifications and adaptations as may be necessary, as those provisions apply to procurement by means of open tendering.

Negotiations with individual consultants

58. A procuring entity may negotiate fees and the terms and conditions of the procurement contract with the consultant ranked first in the evaluation and, where negotiations fail, may negotiate with the consultant ranked next after him.

Procurement contracts, supplier performance and cancellation in relation to services of individual consultants

59. Sections 34(6), 37, 38, 39, 40 and 41 apply to procurement of the services of individual consultants, with such modifications and adaptations as may be necessary, as those sections apply to procurement by means of open tendering except that any role to be performed by a tenders committee pursuant to section 41 shall be performed by the procuring entity.

Procurement of Public-Private Partnerships

Act applies to public-private partnership

60. For the avoidance of doubt, this Act applies to the procurement of public-private partnerships.

Feasibility study for public-private partnership

61.(1) A procuring entity shall not conduct procurement for a public-private partnership unless there is undertaken a feasibility study that

(a) explains the strategic and operational benefits of the public-private partnership for the entity in terms of its strategic objectives and public policy;

(b) describes, in specific terms, in the case of a public-private partnership for

(i) the performance of a function of the entity, the nature of the function and the extent to which the function, both by law and by nature, may be performed by a private party under a public-private partnership agreement; and

(ii) the use of state property, the state property concerned, the uses, if any, to which the state property has been previously put and the types of use to which a private party may legally subject the state property under a public-private partnership agreement;

(c) establishes, in the case of a public-private partnership pursuant to which the entity will pay the private party any consideration, that the entity can afford the payment;

(d) sets out the proposed allocation of risk between the entity and the private party;

(e) demonstrates the value for money to be achieved by the public-private partnership; and

(f) explains the capacity of the entity to procure, enforce, monitor, report on and regulate the implementation of the public-private partnership agreement.

(2) Where before a public-private partnership agreement is executed, there is a material change in any assumption made in the feasibility study on the public-private partnership, in particular, with regard to affordability, value for money or substantial technical, operational and financial risk transfer, the entity

(a) shall

(i) promptly notify the Director of the change;

(ii) submit details of any intended revision to the study;

(iii) revise the study; and

(iv) submit to the Director, the revised study together with a statement on the impact of the revision on the feasibility of the public-private partnership; and

(b) shall not conduct procurement for the public-private partnership unless the permission of the Director to do so is obtained on the basis of the revised study.

Permission to procure public-private partnership

62.(1) A procuring entity may, with the permission of the Director, conduct procurement for a public-private partnership by such method under this Part as may be appropriate in the circumstances.

(2) The entity shall submit the request for permission to the Chief Procurement Officer for transmission to the Director.

(3) Where he is satisfied on the basis of the feasibility study that the public-private partnership is feasible, the Director may, on the advice of the Chief Procurement Officer, grant permission to the entity to conduct the procurement.

PART V

UNSOLICITED PROPOSALS

Receipt of unsolicited proposal

63.(1) A procuring entity shall, within 5 days of receipt of an unsolicited proposal, notify the Chief Procurement Officer in writing of its receipt.

(2) The Chief Procurement Officer shall promptly transmit a notification received under subsection (1) to the Director.

Procuring entity not required to consider unsolicited proposal

64. A procuring entity is not required to consider any unsolicited proposal it receives.

Eligibility of unsolicited proposal for consideration

65.(1) An unsolicited proposal shall, in order to be eligible for consideration, contain the following information:

(a) in respect of the proponent

(i) the name, address and other contact information of the proponent, including, where applicable, the address of the registered office of the proponent;

(ii) the taxpayer identification number and national insurance number of the proponent;

(iii) documentary evidence regarding the legal capacity of the proponent to enter into an unsolicited proposal agreement or a procurement contract;

(iv) any qualification and experience in relation to the proposal; and

(v) where the proponent is registered under section 86, the unique registration number assigned to him pursuant to section 86(4);

(b) in respect of the proposed good, work or service

(i) a concise title, and an abstract of approximately 200 words, of the good, work or service; and

(ii) a statement that

(A) indicates the objectives, approach and scope of the good, work or service;

(B) describes how the proposal is demonstrably innovative, supported by any evidence available that the proponent is the sole provider of the innovation;

(C) outlines the anticipated benefits or cost advantages to the procuring entity, including the proposed price or total estimated cost of supplying the good, work or service, in sufficient detail to allow a meaningful evaluation by the entity; and

(D) shows whether, and if so, how, the proposed project supports the entity's strategic growth and development plan and its other objectives;

(c) an indication of any confidential or proprietary data in the proposal that must not be made public;

(d) a declaration from the proponent, in such form as may be approved by the Chief Procurement Officer

(i) as to any interest of the proponent that may give rise to a conflict of interest;

(ii) that the making of the proposal was not as a result of any non-public information obtained from the entity to which the proposal was submitted or from another procuring entity;

(e) the period for which the proposal is valid for consideration, which shall not be less than 6 months; and

(f) the name of any other person to whom the proposal or a similar proposal was submitted by the proponent.

General criteria for consideration of unsolicited proposal

66.(1) Subject to section 78, a procuring may consider an unsolicited proposal where

(a) the proposal contains a clear business case established by a comprehensive and relevant feasibility study; and

(b) the good, work or service concerned

(i) involves an innovative design or an innovative approach to project development and management; or

(ii) presents a new and cost-effective method of service delivery.

(2) A procuring entity shall, where it determines to consider an unsolicited proposal, notify the proponent or his authorized representative in writing of its decision.

Evaluation of unsolicited proposal generally

67.(1) A procuring entity shall establish an evaluation committee to

(a) evaluate each unsolicited proposal it determines to consider; and

(b) prepare an evaluation report.

(2) Section 28(2) to (6) apply to an evaluation committee established under subsection (1), with such modifications and adaptations as may be necessary, as those provisions apply to an evaluation committee established for the purpose of procurement.

(3) Where under section 28(3)

(a) the entity appoints a person to conduct an evaluation and prepare an evaluation report on its behalf; and

(b) the proponent withdraws the proposal before the period for which the proposal was stated to be valid for consideration expires,

the proponent shall bear the costs of the person in relation to the evaluation.

Evaluation of unsolicited proposal not involving public-private partnership

68. Where an unsolicited proposal does not involve a public-private partnership, the evaluation of the proposal shall include a feasibility study that evaluates the costs and benefits of procuring the good, work or service from the proponent including, where relevant, an assessment of

(a) any unique, innovative, researched or meritorious methods, approaches or concepts demonstrated in the proposal;

(b) the overall scientific, technical or socio-economic merit of the proposal;

(c) the potential contribution of the proposal to the entity's strategic objectives as identified in its strategic growth and development plan;

(d) whether the proposed cost of the project is realistic, affordable and justified; and

(e) any other factor which, in the opinion of the entity, is relevant to the proposal.

Evaluation of unsolicited proposal involving public-private partnership

69. Where an unsolicited proposal involves a public-private partnership, the evaluation of the proposal shall include a feasibility study described in section 61(1).

Consideration of unsolicited proposal not involving public-private partnership - sole supplier

70.(1) Where a procuring entity is satisfied, upon evaluation of an unsolicited proposal under section 68, that

(a) the proposal satisfies the criteria in section 66(1);

(b) the good, work or service concerned is a unique, innovative concept that will be exceptionally beneficial or bring exceptional cost advantages to the entity;

(c) the proponent is the sole supplier of the good, work or service; and

(d) the entity's need for the good, work or service has been established during its strategic planning and budgeting processes,

the entity may, subject to subsections (2) and (3), enter into negotiations with the proponent for the procurement of the good, work or service, and may procure the good, work or service.

(2) The entity shall, before entering into negotiations pursuant to subsection (1), seek permission to engage in the related procurement from

(a) the Director, where the estimated value of the procurement contract likely to result from the proposal equals or exceeds the relevant threshold specified in section 16(1)*(a)*; or

(b) the Chief Procurement Officer, where the estimated value of the procurement contract likely to result from the proposal exceeds $50 000 but does not exceed the relevant threshold specified in section 16(1)*(a)*.

(3) The entity shall, where subsection (2)*(a)* applies, submit the request for permission to the Chief Procurement Officer for transmission to the Director.

(4) Where he is satisfied as to the circumstances set out in subsection (1)*(a)* to *(d)*,

(a) the Director, on the advice of the Chief Procurement Officer; or

(b) the Chief Procurement Officer,

as the case may be, may grant permission to the entity to engage in the procurement.

Negotiations on unsolicited proposal made by sole supplier

71.(1) Section 51(1), (2) and (3) apply to negotiations pursuant to section 70(1), with such modifications and adaptations as may be necessary, as those provisions apply to negotiations for single-source procurement.

(2) A procuring entity shall not commit itself to a proposed agreement arising out of negotiations pursuant to section 70(1) unless the entity obtains the permission of the person who, pursuant to section 70(4), granted the entity permission to engage in the procurement.

Procurement contracts, supplier performance and cancellation in relation to procurement pursuant to unsolicited proposal by sole supplier

72. Sections 37(1), 38(3), 39, 40 and 41 apply to procurement pursuant to section 70(1), with such modifications and adaptations as may be necessary, as those sections apply to procurement by means of open tendering except that any role to be performed by a tenders committee pursuant to section 41 shall be performed by the person who, pursuant to section 70(4), granted the procuring entity permission to engage in the procurement.

Consideration of unsolicited proposal not involving public-private partnership - more than one supplier

73.(1) Where a procuring entity is satisfied, upon evaluation of an unsolicited proposal under section 68, that

(a) the proposal satisfies the criteria in section 66;

(b) the good, work or service concerned is a unique, innovative concept that will be exceptionally beneficial or bring exceptional cost advantages to the entity; and

(c) the entity's need for the good, work or service has been established during its strategic planning and budgeting processes,

but the proponent may not be the sole supplier of the good, work or service, the entity may, subject to subsections (2) and (3), enter into negotiations with the proponent for an unsolicited proposal agreement, and may enter into the agreement.

(2) The entity shall, before entering into negotiations pursuant to subsection (1), seek permission to enter into the related agreement from

(a) the Director, where the estimated value of the procurement contract likely to result from the proposal equals or exceeds the relevant threshold specified in section 16(1)*(a)*; or

(b) the Chief Procurement Officer, where the estimated value of the procurement contract likely to result from the proposal exceeds $50 000 but does not exceed the relevant threshold specified in section 16(1)*(a)*.

(3) The entity shall, where subsection (2)*(a)* applies, submit the request for permission to the Chief Procurement Officer for transmission to the Director.

(4) Where he is satisfied as to the circumstances set out in subsection (1)*(a)* to *(c)*,

(a) the Director, on the advice of the Chief Procurement Officer; or

(b) the Chief Procurement Officer,

as the case may be, may grant permission to the entity to enter into the agreement.

Consideration of unsolicited proposal involving public-private partnership

74.(1) Where a procuring entity is satisfied, upon evaluation of an unsolicited proposal that involves a public-private partnership, that

(a) the proposal satisfies the criteria in section 66;

(b) the good, work or service concerned is a unique, innovative concept that will be exceptionally beneficial or bring exceptional cost advantages to the entity; and

(c) the entity's need for the good, work or service has been established during its strategic planning and budgeting processes,

the entity may, subject to subsections (2) and (3), enter into negotiations with the proponent for an unsolicited proposal agreement, and may enter into the agreement.

(2) The entity shall, before entering into negotiations pursuant to subsection (1), seek permission to enter into the related agreement from the Director.

(3) The entity shall submit the request for permission to the Chief Procurement Officer for transmission to the Director.

(4) Where he is satisfied as to the circumstances set out in subsection (1)*(a)* to *(c)*, the Director may, on the advice of the Chief Procurement Officer, grant permission to the entity to enter into the agreement.

Unsolicited proposal agreement

75.(1) An unsolicited proposal agreement shall include terms and conditions on

(a) the methodology for determining any costs to be reimbursed to the proponent, should procurement proceedings result in the award of a procurement contract for the good, work or service to a person other than the proponent or be cancelled;

(b) the procedure for further developing the project and responding to matters raised by the procuring entity;

(c) the allocation of responsibility for preparing solicitation documents;

(d) the confidential treatment of information in the proposal; and

(e) the purchase of intellectual property rights, if any.

(2) Where pursuant to subsection (1), responsibility for preparing solicitation documents is allocated to a person other than the entity, the preparation of the documents shall be under the supervision of the entity.

(3) For the purposes of subsection (1)*(a)*,

(a) the entity and the proponent shall restrict their consideration to direct costs incurred by the proponent in developing technical and other materials relevant to meeting the criteria set out in section 73(1) or 74(1), as the case may be; and

(b) the quantum of reimbursement to the proponent shall be the audited costs of the proponent from the date of submission of the proposal to the entity to conclusion of the related procurement proceedings.

(4) Where the entity and the proponent do not reach consensus on the terms and conditions of the agreement, the entity shall not

(a) be responsible for any costs which the proponent incurred in preparing and submitting the unsolicited proposal;

(b) implement the project proposed in the proposal for the current or next financial year; and

(c) utilize any proprietary information provided by the proponent in the proposal.

Procurement proceedings after execution of unsolicited proposal agreement

76.(1) A procuring entity may, upon the execution of an unsolicited proposal agreement in respect of a proposal that

(a) does not involve a public-private partnership but may involve more than one supplier; or

(b) involves a public-private partnership,

conduct procurement in respect of the proposal in accordance with Part IV.

(2) Without prejudice to the generality of subsection (1), the entity

(a) may engage in pre-qualification proceedings, where appropriate; and

(b) shall in the pre-qualification notice, pre-qualification document and solicitation document, as the case may be

(i) disclose that the procurement proceedings originate from an unsolicited proposal;

(ii) state the costs and terms of payment agreed between the entity and the proponent in relation to the proposal; and

(iii) require that every supplier, other than the proponent, make allowance for the costs and pay the costs to the proponent should his submission be successful.

Restriction on use of unsolicited proposal

77.(1) A procuring entity shall not

(a) use any data, concept, idea or other part of an unsolicited proposal as the basis or part of the basis for a solicitation or in negotiations with a person other than the proponent unless

(i) the project proceeds to procurement proceedings in accordance with this Part; and

(ii) the proponent is notified of and agrees to the intended use;

(b) disclose information identified in an unsolicited proposal agreement as confidential.

(2) Subsection (1)*(a)* does not preclude the use of any data, concept or idea in an unsolicited proposal that is or becomes otherwise available without restriction.

Rejection of unsolicited proposal

78.(1) A procuring entity shall reject an unsolicited proposal where the proposal

(a) relates to known requirements of the entity that can, within reasonable and practicable limits, be acquired by open tendering, restricted tendering or a request for quotations;

(b) relates to goods, works or services which are generally available;

(c) does not fall within the entity's functions;

(d) does not comply substantially with sections 65 and 66;

(e) has not been submitted by a duly authorized representative of the proponent; or

(f) contravenes the provisions of any law.

(2) A procuring entity shall, where it rejects an unsolicited proposal

(a) notify the proponent or his authorized representative in writing of the rejection of the proposal;

(b) ensure that the entity does not make use of any intellectual property or proprietary data in the proposal;

(c) return to the proponent or his authorized representative all paper-based documents received in respect of the proposal; and

(d) destroy any copies of the proposal, whether electronic or paper-based, made or obtained by the entity.

Record of unsolicited proposals

79.(1) A procuring entity shall maintain for a period of no less than 7 years from the date of receipt of an unsolicited proposal, a record in respect of the proposal.

(2) The record shall include

(a) a brief description of the proposal;

(b) the name and contact information of the proponent;

(c) whether the proposal was considered or returned to the proponent and, where the proposal was considered

(i) the evaluation report;

(ii) minutes of any negotiations entered into with the proponent;

(iii) a copy of any unsolicited agreement executed; and

(iv) a copy of any procurement contract awarded as a result of the proposal.

PART VI

GENERAL RULES REGARDING PROCUREMENT

Description of subject matter of procurement

80.(1) A procuring entity shall set out in the pre-qualification document, if any, and in the solicitation document, a description of the subject matter of the procurement in the form of a statement of requirements.

(2) The statement of requirements

(a) shall

(i) include the minimum requirements that submissions must meet in order to be considered responsive and the manner in which the minimum requirements are to be applied;

(ii) set out the relevant technical, quality and performance characteristics of the subject matter of the procurement; and

(iii) to the extent practicable, be objective, functional and generic;

(b) may include specifications, plans, drawings, designs, testing and test methods, packaging, marking, labelling, conformity certification and symbols and terminology; and

(c) shall not include a requirement for, or reference to, a particular trademark or trade name, patent, design or type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the subject matter of the procurement, and provided that words such as "or equivalent" are included.

Standardization of trade terms and conditions etc.

81. A procuring entity shall, in formulating

(a) the terms and conditions of a procurement and procurement contract and other relevant aspects of a pre-qualification document, if any, and a solicitation document, use standardized trade terms and standardized conditions, where available; and

(b) the description of the subject matter of the procurement to be included in the pre-qualification document, if any, and in the solicitation document, use standardized features, requirements, symbols and terminology relating to the technical, quality and performance characteristics of the goods, works or services to be procured, where available.

Publication of notices

82.(1) A notice to be published pursuant to this Act

(a) shall be published

(i) at least once in one daily newspaper with nationwide circulation in Barbados; and

(ii) on such government websites as the entity may consider appropriate; and

(b) may, notwithstanding a requirement for the notice to be published in a particular manner and place, be also published in such media as the entity may consider appropriate.

(2) Where foreign participation is required for sufficient competition or where so required by an international agreement, the notice shall also be published

(a) in media of wide regional or international circulation;

(b) on widely read internet sites; or

(c) in such publication as may be required by the agreement.

(3) Where a procuring entity believes that it is necessary to ensure wide competition, the entity may, in addition to the publication required by subsections (1) and (2), after the date of publication of an invitation to tender, send a copy of the notice directly to

(a) suppliers who are registered in the Suppliers Register, past suppliers or any other identified, potential suppliers;

(b) professional or industry associations; and

(c) embassies of Barbados in countries, suppliers from which are likely to participate or foreign embassies of such countries in Barbados or both.

Corrections to published information

83. Where information published by a procuring entity to invite the participation of suppliers in pre-qualification or other procurement proceedings is discovered to be, or becomes, materially inaccurate for any reason, the entity shall correct the information and publish the corrected information in the same manner and place in which the original information was published.

Communications

84.(1) Any document, notification, decision or any other information generated in the course of a procurement and communicated, including anything communicated in connection with proceedings for an application for

reconsideration under section 96 or an appeal to the Tribunal or in the course of a meeting or forming part of the procurement record, shall be in a form that provides a record of the content of the information and that is accessible so as to be usable for subsequent reference.

(2) Direct solicitation and any communication of information between suppliers and a procuring entity referred to in section 26(2) and (3), 30(1) and (2) or 91(1)*(a)* may be made by means that do not provide a record of the content of the information on the condition that, immediately thereafter, confirmation of the communication is given to the recipient of the communication in a form that

(a) provides a record of the content of the information; and

(b) is accessible so as to be usable for subsequent reference.

(3) All documents and communications shall be in English.

(4) A procuring entity shall, where it first solicits the participation of suppliers in particular procurement proceedings, specify

(a) the means to be used to

(i) communicate information by or on behalf of the entity to a supplier or to the public or by a supplier to the entity or to another person acting on behalf of the entity;

(ii) satisfy any requirement for information to be in writing or for a signature; and

(iii) hold any meeting of suppliers; and

(b) in relation to any procurement involving information that a procuring entity considers to be secret, where the entity considers it necessary, any measures and requirements needed to ensure that the information is kept confidential.

(5) A procuring entity may use only those means of communication that are in common use by suppliers in the context of the particular procurement.

(6) In any meeting held with suppliers, a procuring entity shall use only those means that ensure that suppliers can fully and contemporaneously participate in the meeting.

(7) A procuring entity shall implement appropriate measures to secure the authenticity, integrity and confidentiality of information concerning procurement proceedings.

(8) Where a procuring entity requires the approval or permission of a tenders committee, a chairman of a tenders committee, the Director, the Chief Procurement Officer or any other person in order to make a determination or pursue a course of action, the entity shall not, unless the approval or permission is granted, communicate the determination or the decision to pursue the course of action to any supplier or to the public at large.

(9) In this section, "direct solicitation" means solicitation addressed directly to one supplier or a restricted number of suppliers but does not include solicitation addressed to a limited number of suppliers following pre-qualification proceedings.

PART VII

REGISTRATION, ELIGIBILITY AND QUALIFICATION

Suppliers Register

85.(1) The Chief Procurement Officer shall establish and maintain a register to be called the Suppliers Register.

(2) The Suppliers Register shall

(a) include in respect of every supplier registered pursuant to section 86

(i) the name, address and other contact information of the supplier;

(ii) the taxpayer identification number and national insurance number of the supplier;

(iii) the bank account information of the supplier;

(iv) the unique registration number assigned to the supplier pursuant to section 86(4);

(v) the date of registration;

(vi) any documentary evidence regarding the legal capacity of the supplier to enter into a procurement contract;

(vii) any other information available as to the eligibility of the supplier to participate in public procurement;

(viii) a statement as to whether the supplier is registered as a supplier of goods, services or works or a combination of the three;

(ix) any information available as to the qualifications of the supplier to supply the goods, services or works he proposes to supply;

(x) a record of the current and past procurement contracts of the supplier, if any, and of his performance under the contracts; and

(xi) such other information as the Chief Procurement Officer may consider appropriate; and

(b) be reviewed and updated at least once every 6 months.

(3) Without prejudice to section 87, a supplier shall, twice yearly, by 15th March and 15th September each year, ensure that the information entered in the Suppliers Register in relation to him is accurate and complete.

(4) The Chief Procurement Officer shall, on 31st March and 30th September each year, publicize the existence of the Suppliers Register and publish

(a) the procedure for applying for registration;

(b) the criteria to be satisfied for entry in the register and the documentary evidence to be submitted; and

(c) the period for which registration is valid and any requirement for updating an entry in the register or for renewing registration.

(5) The entry of the name of a supplier in the Suppliers Register shall not be construed as an indication that the supplier is suitable to participate in any particular procurement.

Suppliers to be registered

86.(1) A procuring entity shall not enter into a procurement contract with a supplier unless the supplier is registered under this section.

(2) A person may, in such form as the Chief Procurement Officer may require, apply to the Chief Procurement Officer for registration as a supplier.

(3) The Chief Procurement Officer shall, within 30 days of receipt of an application for registration and payment of such fee as may be prescribed, notify the supplier in writing of

(a) the approval of his application and the inclusion of his name in the Suppliers Register; or

(b) the rejection of his application and the reason for the rejection.

(4) The Chief Procurement Officer shall issue a unique registration number to every supplier who is registered.

(5) Registration under this section is valid for 3 years and may be renewed, upon application to the Chief Procurement Officer, for further periods of 3 years.

(6) The Chief Procurement Officer shall, within 20 days of receipt of an application for renewal of registration, notify the supplier in writing of

(a) the renewal of his registration; or

(b) the rejection of his application and the reason for the rejection.

(7) The Chief Procurement Officer may refuse to register a supplier or to renew the registration of a supplier where the supplier is or becomes ineligible to participate in public procurement.

(8) The Chief Procurement Officer shall not refuse to register a supplier or to renew the registration of a supplier unless he gives the supplier a reasonable

opportunity to be heard on why registration or renewal of registration should not be refused.

Changes affecting registration

87.(1) Where a material change in the circumstances of a supplier renders the information submitted to the Chief Procurement Officer for the purpose of registration in the Suppliers Register misleading, inaccurate or incomplete, the supplier shall, as soon as practicable and in any event within 14 days of the change, notify the Chief Procurement Officer in writing of the change.

(2) In subsection (1), "material change" includes a change that would render a supplier ineligible to participate in public procurement and a change of the name under which, or the address at which, the supplier conducts business.

(3) The Chief Procurement Officer shall

(a) upon receipt of a notification pursuant to subsection (1); or

(b) where he is otherwise satisfied that any information in the Suppliers Register is misleading, inaccurate or incomplete,

make such alteration to the register as may be necessary to ensure that the register is not misleading and that it is accurate and complete.

(4) The Chief Procurement Officer shall, before making an alteration to the Suppliers Register pursuant to subsection (3)*(b)*, notify the supplier involved of his intention to make the alteration.

(5) The Chief Procurement Officer shall promptly notify in writing a supplier in respect of whom an alteration is made under subsection (3), of the fact of the alteration and the nature of it.

Eligibility of suppliers to participate in public procurement

88.(1) A supplier is eligible to participate in public procurement where

(a) he has the legal capacity to enter into a procurement contract;

(b) he is not insolvent, in receivership, bankrupt or being wound up;

(c) his affairs are not being administered by a person appointed by a court; and

(d) he is not the subject of legal proceedings for any of the matters referred to in paragraph*(b)*or*(c)*.

(2) A supplier is ineligible to participate in public procurement where he, or in the case of a supplier that is a body corporate, any of its directors or officers, within a period of 5 years prior to his application for registration or the initiation of procurement proceedings, as the case may be

(a) knowingly or recklessly provided false information in a submission or any other document submitted to a procuring entity in connection with procurement proceedings or a procurement contract;

(b) interfered with the participation of other suppliers in public procurement;

(c) engaged in misconduct in relation to procurement proceedings or a procurement contract including

(i) corrupt practices;

(ii) fraudulent practices,

(iii) collusive practices;

(iv) coercive practices;

(v) knowingly underpricing submissions; and

(vi) breaches of confidentiality;

(d) did not perform substantially, contractual obligations under a procurement contract, where the non-performance was not due to circumstances beyond his control;

(e) refused to furnish a security for the performance of a procurement contract in accordance with the terms of the solicitation document;

(f) was convicted of an offence under this Act or related to

(i) obtaining a procurement contract or sub-contract; or

(ii) dishonesty or professional activities;

(g) was suspended, disbarred or disqualified by any professional body; or

(h) was suspended or prohibited from participating in procurement by an international organization or a foreign government, provided that the Chief Procurement Officer verified that the proceedings of the international organization or foreign government that led to the suspension or prohibition

(i) were based on a fair, independent review of the facts of the case; and

(ii) provided the supplier with the opportunity to be heard in his defence and to appeal to an independent body against the original decision.

(3) A foreign supplier shall be permitted to submit, as documentary evidence of eligibility to participate in public procurement

(a) certified copies of equivalent documents from the relevant authority of the country in which the supplier is incorporated or otherwise organized; or

(b) an official statement certifying that equivalent documentation is not issued in the country in which the supplier is incorporated or otherwise organized.

(4) The Director may, upon the recommendation of the Chief Procurement Officer, determine in accordance with this section that a supplier is ineligible to participate in public procurement but such a decision shall not be made unless

(a) the Chief Procurement Officer conducts a thorough investigation of the facts of the case; and

(b) the supplier receives reasonable notice, in writing, of the grounds for the decision and the details of the grounds, and is given a reasonable opportunity to be heard on the matter.

(5) A decision that a supplier is ineligible to participate in public procurement and the reason for the decision shall be promptly communicated to the supplier.

Exclusion of supplier from particular procurement proceedings

89.(1) A procuring entity shall, with the approval of the Director upon the recommendation of the Chief Procurement Officer, exclude a supplier from participation in procurement proceedings where the supplier

(a) has a conflict of interest that is likely to impair the integrity of the procurement proceedings; or

(b) is or becomes ineligible to participate in public procurement.

(2) A supplier shall not be excluded from participation in procurement proceedings unless

(a) the Chief Procurement Officer conducts a thorough investigation of the facts of the case; and

(b) the supplier receives reasonable notice, in writing, of the grounds for the proposed exclusion and the details of the grounds, and is given a reasonable opportunity to be heard on why he should not be excluded.

(3) A decision to exclude a supplier from participation in procurement proceedings and the reason for the exclusion shall be promptly communicated to the supplier.

Removal from Suppliers Register

90.(1) The Chief Procurement Officer may remove from the Suppliers Register, the name of a supplier who becomes ineligible to participate in public procurement.

(2) The Chief Procurement Officer shall not remove the name of a supplier from the Suppliers Register pursuant to subsection (1) unless he gives the supplier a reasonable opportunity to be heard on why his name should not be removed from the register.

(3) The Chief Procurement Officer shall promptly notify in writing a supplier whose name has been removed from the Suppliers Register of the fact of the removal and the reason for it.

Qualifications of suppliers

91.(1) A procuring entity may, at any stage of procurement proceedings, including through pre-qualification proceedings, require a supplier to

(a) meet such qualification criteria as the entity considers appropriate in the circumstances; and

(b) demonstrate that he has the capability and resources to perform the procurement contract effectively.

(2) Qualification criteria may include

(a) professional, technical and environmental qualifications;

(b) professional and technical competence;

(c) financial resources and equipment and other physical facilities;

(d) managerial capability, reliability and experience; and

(e) a sufficient number of personnel capable of discharging the obligations of the supplier under the procurement contract.

(3) A procuring entity may, at any stage of procurement proceedings, verify the qualifications of a supplier.

(4) A procuring entity shall

(a) impose on or apply to a supplier, whether in pre-qualification proceedings or otherwise, no qualification criterion other than that set

out in the pre-qualification notice or document, if any, or in the solicitation document;

(b) in determining whether to qualify a supplier, apply qualification criteria equally to all suppliers and evaluate the qualifications of each supplier in accordance with such criteria;

(c) establish no qualification criterion, requirement or procedure that discriminates against or among suppliers or categories of suppliers unless the criterion is objectively justifiable.

(5) Where a procuring entity assesses the qualifications of suppliers, the entity shall

(a) promptly notify each supplier in writing of whether or not he qualified, and where the supplier did not qualify, inform the supplier, upon his request, of the reasons that he did not qualify; and

(b) supply to any person upon his request, the names of the suppliers who qualified.

Pre-qualification of suppliers

92.(1) A procuring entity may engage in pre-qualification proceedings in order to identify, prior to solicitation, suppliers who are qualified to present submissions.

(2) A procuring entity shall, in particular, consider engaging in pre-qualification proceedings where

(a) the subject matter of the procurement is highly complex or specialised or requires detailed design or methodology;

(b) the cost of preparing a detailed submission would discourage competition; or

(c) the evaluation of a submission would necessarily be particularly detailed and the evaluation of a large number of submissions would therefore require excessive time and resources from the entity.

(3) Where a procuring entity desires to have suppliers pre-qualify, the entity shall publish a notice, to be called a pre-qualification notice, inviting suppliers to submit applications to pre-qualify.

(4) The pre-qualification notice shall include

(a) the principal terms and conditions of the procurement contract;

(b) whether a pre-qualification document is to be issued or whether applications to pre-qualify should be submitted to the entity;

(c) where no pre-qualification document is to be issued, the qualification criteria and the procedures to be used for ascertaining the qualifications of suppliers;

(d) whether tenders are to be solicited from all pre-qualified suppliers or only from a limited number of suppliers who best meet the qualification criteria;

(e) where tenders are to be solicited only from a limited number of suppliers, the maximum number of pre-qualified suppliers from whom tenders are to be solicited and the manner in which that number is to be selected; and

(f) the procedure, place and deadline for submitting applications to pre-qualify.

(5) Where a pre-qualification document is to be issued, the entity shall

(a) prepare the document in the form of the standard document, if any, issued or approved by the Director for the purpose;

(b) include in the document

(i) instructions for preparing and submitting applications to pre-qualify; and

(ii) a clear statement of the qualification criteria and of any documentary evidence or information required to be submitted to

demonstrate, and the procedures to be used to ascertain, the qualifications of suppliers; and

(c) supply the document to any supplier who requests it.

(6) Where a procuring entity engages in pre-qualification proceedings, only suppliers that the entity has pre-qualified are entitled to participate further in the procurement proceedings.

Clarification of pre-qualification notices and documents

93.(1) Where a procuring entity receives, within a reasonable time prior to the deadline for the submission of applications to pre-qualify, a request from a supplier for clarification of a pre-qualification notice or a pre-qualification document, the entity shall

(a) provide the clarification to the supplier; and

(b) without identifying the source of the request, in the case of

(i) a pre-qualification notice, publish the clarification; or

(ii) a pre-qualification document, communicate the clarification to all other suppliers to whom the entity provided the document.

(2) A procuring entity shall provide a clarification referred to in subsection (1), whether by publication or otherwise, to all suppliers at the same time and within sufficient time to enable them to present their applications to pre-qualify before the deadline for submission.

(3) A procuring entity may, prior to the deadline for submitting applications to pre-qualify, and, where required pursuant to section 7, with the approval of the relevant tenders committee, whether on its own initiative or as a result of a request for clarification by a supplier, modify a pre-qualification notice or a pre-qualification document by issuing an addendum.

(4) The addendum shall

(a) in the case of

(i) a pre-qualification notice, be published promptly; and

(ii) a pre-qualification document, be communicated promptly to the suppliers to whom the entity provided the pre-qualification document; and

(b) be binding on the suppliers.

(5) Where a procuring entity issues a clarification or modification of a pre-qualification notice or a pre-qualification document, the entity shall, prior to the deadline for presenting applications to pre-qualify, extend, or where required pursuant to section 7, request the relevant tenders committee to extend the deadline where necessary in order to afford suppliers sufficient time to take the clarification or modification into account in preparing their applications.

(6) The procuring entity, or where required pursuant to section 7, the relevant tenders committee may, in its absolute discretion, prior to a deadline for presenting applications to pre-qualify, extend the deadline where it is not possible for one or more suppliers to present their applications by the deadline because of any circumstance beyond their control.

(7) Notice of an extension of a deadline shall

(a) in the case of a pre-qualification notice, be published; and

(b) in the case of a pre-qualification document, be given to all suppliers to whom the entity provided the document.

(8) The functions of a tenders committee under this section shall be discharged by the chairman of the committee.

PART VIII

CHALLENGE PROCEEDINGS

Appeals to Tribunal in respect of registration, exclusion etc.

94. A supplier may, upon payment of such fee as may be prescribed, appeal to the Tribunal against a decision

(a) to refuse to register him or renew his registration;

(b) that he is ineligible to participate in public procurement;

(c) to exclude him from participation in public procurement; or

(d) to remove his name from the Suppliers Register.

Procedure for appeal

95.(1) An appeal under section 94 shall be

(a) in writing; and

(b) submitted within 14 days of receipt by the supplier of notice of a decision referred to in that section.

(2) The Tribunal shall, within 15 days of receipt of the appeal, determine whether to entertain or dismiss the appeal.

(3) The Tribunal may dismiss an appeal where it determines that the appeal

(a) is manifestly without merit; or

(b) was not submitted by the deadline set out in subsection (1)*(b)*,

and a dismissal constitutes a decision on the appeal.

Reconsideration of decision or action by procuring entity or tenders committee

96.(1) A supplier who participates in procurement proceedings and alleges that he has suffered or is likely to suffer loss or injury because a decision or action of a procuring entity or tenders committee in relation to the proceedings does not comply with this Act may, upon payment of such fee as may be prescribed, apply to the entity or committee to reconsider the decision or action.

(2) An application for reconsideration shall

(a) be in writing;

(b) include particulars of the decision or action that the supplier alleges does not comply with this Act; and

(c) where the application relates to

(i) the terms of solicitation or pre-qualification or a decision or action taken in pre-qualification proceedings, be submitted prior to the deadline for presenting submissions; or

(ii) any other decision or action taken in the procurement proceedings, be submitted within the standstill period, if any, or, where no standstill period is applied, prior to the execution of

(A) the procurement contract; or

(B) the framework agreement, where a framework agreement is involved.

(3) A procuring entity or tenders committee shall

(a) within 5 days of receipt of an application for reconsideration

(i) publish a notice of the application; and

(ii) notify all participants in the procurement proceedings of the submission of the application and its substance; and

(b) within 10 days of publication of the notice

(i) determine whether to entertain or dismiss the application and, where it determines to entertain the application, whether to suspend the procurement proceedings to which the application relates; and

(ii) notify the applicant and all other participants in the procurement proceedings of its decision to entertain or dismiss the application and where the application is

(A) to be entertained, of whether the procurement proceedings are suspended and if so, the duration of the suspension or, if not, the reason for the decision not to suspend the proceedings; or

(B) dismissed, the reason for the dismissal.

(4) A procuring entity or tenders committee may dismiss an application for reconsideration where it determines that the application

(a) is manifestly without merit; or

(b) was not submitted by the deadline set out in subsection (2)*(c)*,

and a dismissal constitutes a decision on the application.

(5) Where a procuring entity or tenders committee determines to entertain an application for reconsideration, the entity or committee

(a) may overturn, correct, vary or uphold any decision or action it took in the procurement proceedings to which the application relates or the entity may cancel the procurement; and

(b) shall, within 20 days of publication of the notice referred to in subsection (3)*(a)*,

(i) issue its decision on the application; and

(ii) communicate its decision to the applicant, all other participants in the proceedings for reconsideration and all other participants in the procurement proceedings.

(6) A procuring entity or tenders committee shall give its decision and the reason for it, and state any action taken pursuant to it, in writing.

Appeals to Tribunal in respect of reconsideration proceedings

97.(1) A supplier who applies to a procuring entity or tenders committee for reconsideration of a decision or action may, upon payment of such fee as may be prescribed, appeal to the Tribunal where

(a) the entity or committee does not

(i) give notice to him in accordance with section 96(3)*(b)*(ii) and (6); or

(ii) communicate its decision to him in accordance with section 96(5) and (6); or

(b) he is dissatisfied with the decision of the entity or committee in respect of his application.

(2) An appeal to the Tribunal shall

(a) be in writing; and

(b) where

(i) it relates to a failure of a procuring entity or tenders committee to

(A) give notice to a supplier in accordance with section 96(3)*(b)* (ii) and (6); or

(B) communicate its decision to a supplier in accordance with section 96(5) and (6),

be submitted within 14 days after the notice should have been given or the decision should have been communicated to the supplier in accordance with section 96; or

(ii) it is against a decision of a procuring entity or tenders committee in respect of an application for reconsideration, be submitted within 14 days of the communication to the supplier of the decision of the entity or committee.

(3) Where a supplier appeals to the Tribunal

(a) the authority of the procuring entity or tenders committee to entertain his application ceases; and

(b) the entity or committee shall, upon receipt from the Tribunal of notice of the appeal, promptly provide the Tribunal with all documents relating to the procurement proceedings.

(4) The Tribunal shall

(a) within 5 days of receipt of an appeal, publish a notice of the appeal; and

(b) within 10 days of publication of the notice,

(i) unless it decides that urgent public interest considerations require the procurement proceedings to continue, order the suspension of the proceedings where and for as long as it determines that a suspension is necessary to protect the interests of the appellant; and

(ii) notify the procuring entity, the tenders committee and all participants in the procurement proceedings to which the appeal relates of the appeal and its substance and its decision

(A) to suspend the proceedings and the duration of the suspension; or

(B) not to suspend the proceedings and the reason for its decision.

(5) The Tribunal may order that any suspension imposed under subsection (4) be extended or lifted.

(6) The Tribunal may dismiss an appeal and order that any suspension imposed be lifted where it determines that the appeal

(a) is manifestly without merit; or

(b) was not submitted by the deadline set out in subsection (2)*(b)*,

and a dismissal constitutes a decision on the appeal.

(7) The Tribunal shall within 20 days of publication of the notice referred to in subsection (4)*(a)*

(a) issue its decision on the appeal; and

(b) communicate its decision to the appellant, the procuring entity, the tenders committee and all other participants in the procurement proceedings.

Hearing of appeal

98.(1) An appeal to the Tribunal shall be heard and determined by the chairman and not less than 2 members of the Tribunal selected by the chairman, and the chairman and the members so selected shall have all the powers of the Tribunal in relation to the appeal.

(2) In the event of a difference of opinion among members sitting together, the opinion of the majority shall prevail.

(3) The Tribunal may, if it thinks fit, receive oral or written evidence, and under oath or otherwise, but it is not bound by the rules of evidence in the *Evidence Act*, Cap. 121 and it may take into account opinion evidence and such facts as it considers relevant and material.

(4) The Tribunal shall allow every party to an appeal to appear in person or by representative, and, where the Tribunal receives oral evidence, to examine and cross-examine witnesses.

(5) Notwithstanding subsection (4), the Tribunal may proceed in the absence of a party who has been given reasonable notice in writing to attend.

(6) The Tribunal shall, subject to section 101, receive evidence in public.

(7) The Tribunal may issue summonses, make orders and give directions to such persons and in such manner as it thinks fit for the purpose of summoning witnesses, requiring the disclosure of documents or other evidence and requiring parties or witnesses to answer questions and, generally, for conducting its proceedings in a proper and orderly manner.

(8) The Tribunal may report to the High Court the conduct of any person who disobeys any subpoena, order or direction properly issued under subsection (7), or says or does any other thing that would, if the Tribunal were a superior court of law, be contempt of court.

(9) Where a report is made under subsection (8), the High Court shall hear the complaint and any defence, and may punish the person concerned in the same manner as if the person were guilty of contempt of the High Court.

Decisions by Tribunal

99.(1) In taking its decision on an appeal that it has entertained, the Tribunal may review the whole case in respect of law and fact, and the exercise of any discretion, and shall determine the case in accordance with its own judgment.

(2) Without prejudice to the generality of subsection (1), the Tribunal may

(a) confirm a lawful decision;

(b) revise an unlawful decision or substitute its own decision for such a decision;

(c) overturn, wholly or in part, an unlawful act or decision, other than a decision that results in the execution of a procurement contract or framework agreement;

(d) prohibit any individual or entity from acting or deciding unlawfully or from following an unlawful procedure;

(e) require any individual or entity that has acted or proceeded in an unlawful manner or that has reached an unlawful decision, to act or proceed in a lawful manner or reach a lawful decision;

(f) order that procurement proceedings be terminated; or

(g) dismiss the appeal.

(3) The Tribunal shall give reasons for any decision it makes on a matter before it, including a decision to dismiss a matter, and shall state the decision and the reasons for it, in writing.

(4) Nothing in this Part shall permit the Tribunal to interfere with a procurement contract or framework agreement that has been executed.

(5) Decisions of the Tribunal shall be made available for public inspection.

Costs

100. The Tribunal shall not award costs to any party to an appeal other than sums in respect of the reasonable costs incurred in

(a) the preparation of the submission relating to an application for reconsideration or the appeal; and

(b) the obtaining of an expert report,

and any such award shall be at the discretion of the Tribunal.

Disclosure in reconsideration and appeal proceedings

101. No information shall be disclosed in proceedings under sections 94 to 99 and no public hearing shall be held under those sections where

(a) the Tribunal is of the opinion that evidence may be disclosed relating to financial or other personal circumstances of any person and that the balance of advantage is in favour of preventing the disclosure of the evidence in public, having regard both to the public interest and the interest of the person concerned; or

(b) to do so would prejudice national security, impede law enforcement, prejudice the legitimate, commercial interests of a supplier or impede fair competition.

Rights of participants in reconsideration and appeal proceedings

102.(1) A supplier who is a party in procurement proceedings to which an application for reconsideration of a decision or action by a procuring entity or tenders committee or an appeal relates and the procuring entity, the tenders committee and any other governmental authority the interests of which are, or are likely to be, affected by the application or appeal have the right to

(a) participate in the proceedings under sections 94 to 99;

(b) be present and represented at all hearings during the proceedings;

(c) be heard;

(d) present evidence, including from witnesses;

(e) request, subject to **section 101**, that any hearing should take place in public; and

(f) obtain, subject to section 101, access to the record of the proceedings.

(2) A supplier who fails to participate in proceedings for a reconsideration or an appeal referred to in subsection (1) is barred from subsequently challenging the decisions or actions that are the subject matter of the application for reconsideration or the appeal.

Effect of an application for reconsideration or an appeal

103.(1) A procuring entity shall not take any step that would result in the execution of a procurement contract or framework agreement where the entity receives, in respect of a decision or action taken in procurement proceedings related to the contract or agreement

(a) an application for reconsideration within the time limits prescribed in section 96;

(b) notice, from a tenders committee, of an application for reconsideration submitted to the committee within the time limits prescribed in section 96; or

(c) notice of an appeal before the Tribunal under section 97.

(2) The prohibition referred to in subsection (1) shall expire on the fifteenth day after the decision of the procuring entity, tenders committee or Tribunal on the application for reconsideration or the appeal, as the case may be, is communicated to

(a) the applicant or appellant, as the case may be;

(b) the procuring entity, where applicable;

(c) all other participants in the proceedings for reconsideration or all parties to the appeal, as the case may be; and

(d) all other participants in the procurement proceedings to which the application or appeal relates.

(3) A procuring entity may, at any time, apply to the Tribunal to authorize the entity to enter into a procurement contract or framework agreement on the ground that urgent public interest considerations so justify.

(4) The decision of the Tribunal and the reason for the decision shall promptly be communicated to the persons referred to in paragraphs *(a)* to *(d)* of subsection (2).

Court proceedings

104.(1) A party to an appeal to the Tribunal may appeal from the decision of the Tribunal to the Court of Appeal.

(2) In disposing of an appeal under this section, the Court of Appeal may

(a) confirm or vacate the determination;

(b) make an order referring the determination back to the Tribunal for re-determination in accordance with the directions of the court; or

(c) make such other orders as it considers necessary.

PART IX

MISCELLANEOUS

Form of procurement contract

105.(1) A procurement contract shall, subject to subsection (2), be a written agreement drawn up in a form approved by the Solicitor General.

(2) Where the estimated value of the procurement contract is less than $50 000, the contract may be a purchase order in a form approved by the Director.

(3) All contract documents shall be in the form, and include the terms and conditions, included or indicated in the solicitation document, subject to any changes resulting from the acceptance of the successful submission or from negotiations.

(4) Where

(a) the value of a contract equals or exceeds the relevant threshold specified in section 16(1)*(a)*; or

(b) the contract includes terms and conditions other than those provided in the standard form approved by the Solicitor General,

the procuring entity shall, prior to executing the contract, ensure that the contract is approved by the Solicitor General or another legal officer nominated by the Solicitor General, or, in the case of a procuring entity that is a state-owned enterprise or a commercial state-owned enterprise, by such legal officer as the entity may approve for the purpose.

(5) Where

(a) the value of a contract exceeds 5 per cent of the operational budget of a state-owned enterprise or a commercial state-owned enterprise; or

(b) the terms and conditions of a contract will result in more than one per cent of recurrent expenditure being added to the operational budget of any procuring entity,

the procuring entity shall, prior to executing the contract, in addition to complying with subsection (4), ensure that the contract is approved by the Minister.

Procurement record and contract management record

106.(1) A procuring entity shall maintain for a period of no less than 7 years from the date of completion of performance under a procurement contract, a record of

(a) the procurement proceedings; and

(b) the management of the procurement contract.

(2) A procurement record shall include

(a) any request to initiate the procurement proceedings and the consistency of the request with a procurement plan;

(b) a brief description of the goods, works or services involved**;**

(c) where a procuring entity uses a method of procurement other than open tendering, a statement of the reasons and circumstances relied upon to justify the use of such other method and evidence of any permission granted for the use of the method;

(d) a copy of any notice published;

(e) any list of suppliers or organizations to which an invitation to tender or other similar notice was sent directly;

(f) any shortlist of suppliers or list of pre-qualified suppliers used;

(g) a copy of any pre-qualification or solicitation document issued and any amendment to, or clarification of, such document;

(h) a record of the submissions received, including the name and address of each supplier who presented a submission;

(i) a record of any opening of tenders;

(j) copies of all submissions evaluated and any clarification requested from a supplier and the response received;

(k) any evaluation report prepared, including in respect of applications for pre-qualification;

(l) minutes of any meeting held with suppliers;

(m) a copy of the successful tender notice, or, where no standstill period was applied and no successful tender notice issued, a statement of the reasons and circumstances relied upon by the procuring entity in deciding, in accordance with section 34(5), not to apply a standstill period;

(n) the name and address of the successful supplier and a copy of the successful tender acceptance notice;

(o) any submissions to, and decisions of, a tenders committee;

(p) any reason given to a supplier for the rejection of his submission;

(q) any decision of a procuring entity to reject a submission as abnormally low and the reason for the decision and, in particular, the concerns that led the entity to reject the submission and its reasons for holding such concerns, and all communications with the supplier in relation to the submission;

(r) any decision to cancel the procurement and the reason for the decision;

(s) any decision to exclude a supplier from the procurement proceedings and the reason for the decision; and

(t) in the case of an application for reconsideration or an appeal under Part VIII, a copy of the application for reconsideration or appeal, as the case may be, and of all decisions taken in the relevant proceedings and the reasons for the decisions.

(3) A contract management record shall include

(a) the successful tender acceptance notice;

(b) a copy of the executed contract document and any agreed contract amendments;

(c) any variations issued under the contract or call-off orders issued under a framework agreement;

(d) all post-contract documentation relating to the fulfilment of contractual obligations including copies of guarantees;

(e) minutes of any meetings related to the management of the contract, including contract progress or review meetings;

(f) all documentation evidencing deliveries of goods or completion certificates in relation to contracts for works or services;

(g) copies of test reports relating to any tests performed on the goods and works;

(h) copies of all invoices including supporting documentation and details of the actual payment authorized;

(i) details of any claims made or penalties imposed by the procuring entity in accordance with the contract;

(j) all correspondence between the procuring entity and the supplier; and

(k) a copy of the report referred to in section 40(1).

(4) Procurement records and contract management records shall be accurately maintained and kept up to date and may be in electronic form.

(5) Where procurement and contract management records are in electronic form, the procuring entity shall establish and maintain measures to safeguard the integrity and the reliability of the records.

Public procurement manuals, standard documents and instructions

107. The Director may issue public procurement instructions and manuals to provide guidance on, and standard documents and forms for the implementation of, this Act.

Annual reports

108.(1) The Chief Procurement Officer shall, at the end of a financial year, prepare a report on the operation and performance of the public procurement system for the year.

(2) The report shall include

(a) a figure representing the total value of contracts awarded by procuring entities and another figure representing the cost of the total value of procurement contract variances for the year;

(b) the number of unfulfilled contracts awarded;

(c) a summary of the procurement activities of each procuring entity that sets out

(i) the number of procurement contracts awarded;

(ii) the number of procurement contracts varied and the reason for the variance;

(iii) the quantum of the variances;

(iv) the number of unfulfilled procurement contracts and the quantum of cost incurred thereby;

(v) with respect to procurement for a project, a brief description of the project and the name of the supplier to whom the contract was awarded and the value, scope of works and expected deliverables of the project;

(vi) any lessons learnt as a consequence of the management of the procurement contracts; and

(vii) the number of unsolicited proposal agreements entered into together with a brief description of the proposal, the name of the proponent and any procurement contract awarded as a result of the proposal;

(d) details of changes implemented to ensure that current best practice for public procurement is observed;

(e) the names of any procuring entities that have failed to comply with this Act;

(f) an assessment of the overall operation and performance of the public procurement system;

(g) a summary of any issues to be resolved; and

(h) any recommendations requiring action on the part of a procuring entity.

(3) The report need not include details of contracts valued at less than the relevant threshold specified in section 16(1)*(a)* other than the total number and value.

(4) The Minister shall cause a report prepared pursuant to subsection (1) to be laid in Parliament within 4 months of the end of the financial year to which the report relates.

Confidentiality in procurement proceedings

109.(1) A procuring entity shall not, unless in accordance with an order of the court, disclose any information related to its procurement proceedings or suppliers where to do so would prejudice national security, impede law enforcement, prejudice the legitimate, commercial interests of suppliers or impede fair competition.

(2) A procuring entity shall, unless it is required to provide or publish information in accordance with this Act or any rules made under this Act, treat

applications to pre-qualify and submissions in such a manner as to avoid the disclosure of their contents to competing suppliers or to any other person not authorized to have access to the information.

(3) Subject to subsection (1), in procurement involving information that a procuring entity considers to be secret, a procuring entity may

(a) impose on suppliers requirements aimed at protecting the information; and

(b) require suppliers to ensure that their sub-contractors comply with such requirements.

(4) A procuring entity shall, subject to any other law to the contrary, keep confidential the commercial and proprietary information that comes into its possession in relation to procurement proceedings.

Disclosure of interest

110.(1) Where an officer or a member of a tenders committee or of the Tribunal is interested in any matter requiring the consideration and decision of the officer, committee or Tribunal, or is interested in any party to any such matter, the person so interested shall

(a) disclose such interest as soon as practicable after he becomes aware of the matter; and

(b) absent himself from, and refrain from participation in, the deliberations or decision-making process in relation to the matter.

(2) A disclosure of interest shall be recorded in the minutes of the meeting at which it is made or to which it relates or in the record of the hearing of the Tribunal to which it relates.

(3) Subsections (1) and (2) apply, with such modifications and adaptations as may be necessary, to advisers and technical specialists who provide advice to a tenders committee or the Tribunal and to staff who provide secretarial services to a tenders committee or the Tribunal.

Protection from suit, victimization etc.

111.(1) No action shall be instituted against a member of the Tribunal in respect of the discharge or purported discharge, in good faith, of his functions under this Act.

(2) Notwithstanding any other law, a person shall not be discharged, demoted, suspended, threatened, harassed, financially prejudiced or otherwise discriminated against or victimized for making a report under section 112(1)*(d)*.

(3) A person who is discharged, demoted, suspended, threatened, harassed, financially prejudiced or otherwise discriminated against or victimized for making a report under section 112(1)*(d)* shall, where applicable, be reinstated in his original office with no loss of benefit and without prejudice to any other legal recourse available to him.

(4) A person who discharges, demotes, suspends, threatens, harasses or in any manner discriminates against or victimizes a person or acts so as to prejudice the livelihood of a person as a consequence of his making a report under section 112(1)*(d)* is guilty of an offence and is liable on summary conviction to a fine of $100 000 or to imprisonment for 3 years or to both such fine and imprisonment.

Officers engaged in procurement activities

112.(1) An officer who is engaged in the procurement activities of a procuring entity shall

(a) have regard to the objectives specified in section 12 in relation to public procurement and otherwise comply with this Act;

(b) exercise any functions that he has in relation to public procurement

(i) diligently and with the degree of care and efficiency that a reasonable person would exercise in the circumstances; and

(ii) impartially to ensure that suppliers have fair and competitive access to opportunities in public procurement;

(c) keep confidential any information relating to public procurement that comes into his possession including any proprietary information of suppliers; and

(d) disclose to the Chief Procurement Officer any information in his possession concerning any act of impropriety or illegality in respect of such activities or any breach of this Act.

(2) An officer who is engaged in the procurement activities of a procuring entity shall not participate as a supplier in such activities.

(3) Where the Chief Procurement Officer or the Tribunal has reasonable cause to believe that there has been misconduct or a breach of this Act by an officer, the Chief Procurement Officer or Tribunal shall refer the matter to the appropriate authority for further investigation.

Offences and penalties

113.(1) A person who

(a) is not a public officer and does not declare a conflict of interest as required by section 28(4);

(b) without reasonable excuse, fails or refuses to give information, or produce any books, documents or records required under section 5(2) or section 98(7);

(c) without reasonable excuse, refuses to answer a summons as required under **section 98**(7);

(d) knowingly gives false or misleading information or evidence in purported compliance with a request or summons under section 5(2) or **section 98**(7);

(e) assaults, resists or obstructs the Chief Procurement Officer or staff designated by him, in the exercise of their powers to access or require relevant information in accordance with section 5(2); or

(f) contrary to this Act, interferes, with or exerts undue influence on, the Director or the Chief Procurement Officer or any officer appointed to assist the Director or the Chief Procurement Officer or on a procuring entity in the performance of the functions assigned to the person or entity or in the exercise of the powers granted under this Act,

is guilty of an offence and is liable on conviction on indictment to a fine of $170 000 or to imprisonment for 7 years or to both such fine and imprisonment.

(2) Notwithstanding subsection (1), a person who fails or refuses to answer any question or make any statement that may incriminate him is not guilty of an offence under that subsection.

Rules

114. The Minister may make Rules for giving effect to this Act.

Repeal and consequential changes

115.(1) The *Financial Management and Audit (Supplies) Rules, 1971 (S.I. 1971 No. 47)* are repealed.

(2) The enactment set out in first column of the ***Fourth Schedule*** is amended to the extent set out opposite thereto in the second column.

Transitional provisions

116. This Act does not apply to procurement initiated before the commencement of this Act and such procurement shall be conducted and dealt with as if this Act had not commenced.

Commencement

117. This Act shall come into operation on a day to be fixed by Proclamation.

FIRST SCHEDULE

(Sections 2 and 3)

Public Procurement Bill, 2021
(Act 2021-)

PROTOCOL

ON

PUBLIC PROCUREMENT

FOR THE CARIBBEAN COMMUNITY

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PREAMBLE

THE STATES PARTIES,

Recalling the undertaking of the Member States in Article 239 of the Revised Treaty of Chaguaramas to elaborate a Protocol relating, *inter alia*, to government procurement;

Recognising the importance of the contribution of government procurement to the gross domestic product (GDP) of the Member States;

Conscious of the Member States' transition from government procurement to public procurement;

Aware that the Member States provide considerable procurement opportunities for CARICOM-based suppliers of goods, services and works in the CARICOM Single Market and Economy (CSME);

Conscious that the Member States are likely to secure the best value for money if the procurement policies of their Governments are informed by policies of fair competition, non-discrimination and transparency;

Desirous of strengthening the regional supplier base and providing opportunities for micro, small and medium-sized enterprises to participate in procurement opportunities;

Acknowledging that the Less Developed Countries are disadvantaged by reason of the size, structure and vulnerability of their economies and require a greater policy space in the context of public procurement contracts for the procurement of works in order to facilitate adjustment to competition in the Community public procurement regime;

First Schedule - (Cont'd)

Committed to enhancing the quality of governance in the Caribbean Community through the promotion of fairness, transparency and accountability in the supply of goods, services and works within the CSME;

Convinced that a sound, efficient, transparent and credible policy of public procurement by the Member States will contribute significantly to the achievement of the objectives of the Caribbean Single Market,

Have agreed as follows:

First Schedule - (Cont'd)

PART ONE

GENERAL PROVISIONS

ARTICLE 1

USE OF TERMS

In this Protocol, unless the context otherwise requires:

"bidder" means a supplier who has submitted a bid;

"bidding documents":

(a) means documentation containing information in respect of a procurement opportunity; and

(b) includes the invitation to bid, specific information concerning the item(s) to be procured including any technical or other specifications, conditions for supplier participation, the manner, date and time for the submission of bids, the form and format of the bid, evaluation criteria, the form of contract, the implementation period and any other relevant information;

"CARICOM" means the Caribbean Community;

"Community" means the Caribbean Community established by Article 2 of the Revised Treaty and includes the CSME as established by the Revised Treaty;

"Community Council of Ministers" or "Community Council" means the Organ of the Community so named in paragraph 1(b) of Article 10 of the Revised Treaty;

"Community Public Procurement Notice Board" means the electronic notice board established by the Contracting Parties pursuant to Article 31;

First Schedule - (Cont'd)

"Community public procurement regime" means the regime operated among Contracting Parties in which public procurements to which this Protocol applies are conducted;

"Community Rules of Origin" means the Rules of Origin set out in Article 84 of the Revised Treaty, in so far as they may be applicable, and as amended from time to time;

"Community Suppliers Register" means the register described in paragraph 1 of Article 32;

"concession" means a long-term contract for works in relation to which:

(a) the consideration for the works to be carried out consists:

(i) solely of the right to exploit the activity; or

(ii) of a combination of the right set out in subparagraph (i) and the right to payment; and

(b) the concessionaire bears the risk inherent in the exploitation by providing funding for the activity or otherwise;

"Contracting Party" means a Member State that is a party to this Protocol;

"Council for Trade and Economic Development" or "COTED" means the Organ of the Community so named in paragraph 2 (b) of Article 10 of the Revised Treaty;

"CSME" means the regime established by the provisions of the Revised Treaty replacing Chapters Three through Seven of the Annex to the Treaty Establishing the Caribbean Community and Common Market signed at Chaguaramas, The Republic of Trinidad and Tobago on 4 July 1973;

"disadvantaged country, region or sector" means a country, region or sector so designated under paragraph 2 of Article 142 of the Revised Treaty;

"effectively controlled" in the context of a company or other legal entity, means the power to name a majority of its directors or to otherwise legally direct its actions;

First Schedule - (Cont'd)

"force majeure":

(a) means an event that is beyond the reasonable control of a person and which makes the person's performance of his or her obligations impossible or so impractical as to be reasonably considered to be impossible in the circumstances; and

(b) includes –

(i) war, riots, civil disorder, strikes, lockouts, industrial action (except where such strikes, lockouts or industrial action are within the power of the person invoking the force majeure), confiscation or any other action by Government agencies; and

(ii) earthquakes, fire, floods, storms or explosions;

"green procurement" means the acquisition of goods, services or works in a manner that causes minimal adverse environmental impact and includes:

(a) improved recyclability;

(b) high recycled content;

(c) greater energy efficiency;

(d) utilising clean technology or clean fuels;

(e) reduced water consumption;

(f) reduced emissions of irritating or toxic substances during installation or use; and

(g) reduced production of toxic substances during use or disposal;

First Schedule - (Cont'd)

"in writing" means any expression of information in words, numbers or other symbols, including electronic symbols which can be read, reproduced and stored;

"less developed countries" means the countries referred to as less developed countries in Article 4 of the Revised Treaty;

"Member State" means a Member State of the Community, excluding an Associate Member within the meaning of Article 231 of the Revised Treaty;

"more developed countries" means the countries referred to as more developed countries in Article 4 of the Revised Treaty;

"national of a Contracting Party" means:

(a) an individual who:

(i) is a citizen of a Contracting Party; or

(ii) has a connection with a Contracting Party of a kind which entitles him to be regarded as belonging to it or as being a native or resident of a Contracting Party for the purposes of the laws of the respective Contracting Party relating to immigration; or

(b) a company or other legal entity constituted in a Contracting Party in conformity with the laws thereof and which that Contracting Party regards as belonging to it, provided that such company or other legal entity:

(i) has its registered office and central administration, and carries on substantial activity within a Contracting Party; and

(ii) is substantially owned and effectively controlled by an individual mentioned in paragraph (a);

First Schedule - (Cont'd)

"offsets" means any conditions or undertakings that encourage local development or improve a Contracting Party's balance of payments account, such as the application of margins of preference for the use of domestic content or domestic suppliers, requirements for the licensing or the transfer of technology, domestic investment requirements, counter trade and similar actions;

"open bidding" means a procurement method in which an interested supplier may submit a bid for a procurement contract;

"Permanent Joint Council" means the Permanent Joint Council on Public Procurement established under Article 30;

"private party" in the context of public-private partnerships, means a majority privately owned company or consortium;

"procurement" means the acquisition of goods, services or works or any combination thereof;

"procurement method" means the method to be used to engage in public procurement;

"procurement opportunity" means an opportunity for suppliers to participate in procurement proceedings;

"procurement proceedings" means the initiation and conduct of the process of effecting a public procurement up to the award of a contract;

"procuring entity" in relation to a Contracting Party, means a central, sub-central or local government entity, statutory body, state-owned entity or other undertaking in a Contracting Party that engages in public procurement;

"public asset" means any new or existing infrastructure for public use;

"public funds" means monies derived from:

(a) revenue including all tolls, taxes, imposts rates, duties, fees, penalties, forfeitures, rents and dues, proceeds of sale and all other receipts of a Contracting Party's Government, from whatever sources arising, and over which Parliament has the

First Schedule - (Cont'd)

power of appropriation, including the proceeds of all loans raised; and

(b) any trust or other monies held, whether temporarily or otherwise, in the name of a Contracting Party's Government;

"public-private partnership" means a long-term contract between a procuring entity and a private party:

(a) to develop (possibly by significant upgrade or renovation) and to manage a public asset or to provide a service on behalf of the procuring entity;

(b) in which the private party bears significant risk and management responsibility throughout the life of the contract;

(c) in which the private party provides a significant portion of the finance at its own risk; and

(d) where the remuneration to the private party is significantly linked to performance or the demand for or use of the public asset or service related to, or offered by means of, the public asset so as to align the interests of the procuring entity and the private party;

"public procurement" means procurement for or on behalf of a procuring entity using public funds by way of purchase, rental, lease, concession or hire-purchase with or without an option to buy but not with a view to commercial resale or use in the production of goods and services by private commercial entities for commercial use;

"public use" means for use by or for the benefit of the public;

"publish" means to disseminate information in an electronic, paper or other medium that is distributed widely and is readily accessible to suppliers who are entitled to participate and are interested in participating in a procurement opportunity;

"Revised Treaty" means the Revised Treaty of Chaguaramas signed at Nassau, The Bahamas on 5 July 2001;

First Schedule - (Cont'd)

"Secretariat" means the Secretariat of the Community referred to in Article 23 of the Revised Treaty;

"substantially owned" in the context of a company or other legal entity, means having a beneficial ownership of more than 50 per cent of the equity interest therein;

"supplier" means a national of a Contracting Party, who offers the execution of works or the supply of goods or services on a market but does not include State-owned entities;

"technical specification" means a detailed description which:

(a) specifies the characteristics of the goods, services or works to be procured or their related processes and production methods, including the applicable administrative provisions, and a requirement relating to conformity assessment procedures that a procuring entity prescribes; and

(b) addresses quality, performance, safety, dimensions, symbols, terminology, packaging, marking and labelling as they apply to a good, process, service, production or operating method;

"third country" means a country that is not a Member State;

"traditional media" includes television, radio, newspapers, magazines, newsletters and other print publications; and

"Treaty" means the Treaty Establishing the Caribbean Community and Common Market signed at Chaguaramas, The Republic of Trinidad and Tobago on 4 July 1973;

ARTICLE 2

OBJECTIVES

This Protocol establishes the conditions and procedures for the progressive integration of the national public procurement market of each Contracting Party into a single, unified and open area through the design and implementation of a regional best practice regime for public

First Schedule - (Cont'd)

procurement and, in so doing:

(a) creates the necessary competitive and non-discriminatory conditions to facilitate achievement of best value for money;

(b) provides opportunities for access to a single market with regional sales opportunities;

(c) strengthens the competitiveness of the regional supplier base in particular in relation to micro, small and medium-sized enterprises; and

(d) encourages the rational use of scarce resources.

ARTICLE 3

OPERATING PRINCIPLES

1. Consistent with the objective of this Protocol, each Contracting Party shall, in its public procurements to which this Protocol applies, give effect to the following principles:

(a) national treatment and most favoured nation treatment;

(b) transparency;

(c) accountability;

(d) best value for money; and

(e) procedural fairness.

2. In accordance with paragraph 1, each Contracting Party shall:

(a) ensure that procurement policies, administrative rules, guidelines, procedures and practices which are within the scope of application of this Protocol, as set out in Article 5, are not prepared, adopted or applied so as to afford protection or favour

First Schedule - (Cont'd)

to, or bias against, the goods, services, works or suppliers of any other Contracting Party;

(b) grant the goods, services, works and suppliers of any other Contracting Party treatment that is no less favourable than that accorded by them to domestic goods, services, works and suppliers;

(c) grant the goods, services, works and suppliers of any other Contracting Party treatment that is no less favourable than that accorded by them to the goods, services, works and suppliers of a Member State not party to this Protocol or a third country;

(d) ensure that procuring entities do not treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of affiliation to, or ownership by a person or persons of any other Contracting Party; and

(e) ensure that adequate and relevant information on public procurement and procurement opportunities is made accessible and widely available to suppliers in a consistent and timely manner at reasonable or no cost.

ARTICLE 4

IMPLEMENTATION

In the context of public procurements to which this Protocol applies, each Contracting Party:

(a) shall enact, monitor and enforce appropriate public procurement legislation that is compatible with the provisions of this Protocol;

(b) shall establish, strengthen and maintain national institutional arrangements to ensure the enforcement of and compliance with public procurement legislation enacted in accordance with paragraph (a); and

(c) shall not introduce in its territory any new restrictions, whether or not so expressly stated, the effect of which would be to prohibit or otherwise limit the participation of suppliers in public procurements to which this Protocol applies.

First Schedule - (Cont'd)

PART TWO

SCOPE AND COVERAGE

1. Subject to paragraph 2, this Protocol applies to every public procurement of a value equal to or greater than the relevant threshold specified in Annex A.

2. The provisions of this Protocol shall not apply to public procurements:

   (a) under agreements between a Contracting Party and an international organisation which limit participation in public procurement;

   (b) under agreements between a Contracting Party and:

      (i) a Member State that is not party to this Protocol; or

      (ii) a third country,

      for the joint implementation or exploitation of a project by the parties which are financed by the Member State or third country and limit participation in public procurement; or

   (c) of the types specified in Annex B.

ARTICLE 6

THRESHOLD REVIEW

1. Subject to paragraph 2, the Contracting Parties may, from time to time, amend Annex A in accordance with Article 39, in order to ensure the achievement of the objectives of this Protocol.

2. The Permanent Joint Council shall review the thresholds specified in Annex A at least every two years, taking into account the considerations referred to in paragraph 4 and shall, where necessary and appropriate, recommend to the Contracting Parties that the

First Schedule - (Cont'd)

thresholds be amended.

3. Recommendations of the Permanent Joint Council shall be made on the affirmative vote of two-thirds of the members of the Permanent Joint Council, present and voting.

4. The Permanent Joint Council and the Contracting Parties shall take the following into consideration to determine whether to recommend the amendment of the thresholds or to amend the thresholds, respectively –

(a) the strength of the economies;

(b) the strength of the currencies; and

(c) such other factors as the Permanent Joint Council and the Contracting Parties consider appropriate.

ARTICLE 7

CONTRACT VALUATION RULES

1. Paragraphs 2 to 6 shall apply in determining the value of individual public procurement contracts to which this Protocol applies.

2. Valuation shall take into account all forms of remuneration, including any premiums, fees, commissions and interest receivable.

3. Each Contracting Party shall ensure that its procuring entities do not select valuation methods or divide public procurement into multiple parts with the intention of avoiding the application of this Protocol.

4. Where the public procurement is to be conducted in multiple parts, with contracts to be awarded at the same time or over a given period to one or more suppliers (hereinafter referred to as "recurring contracts"), the basis for calculating the estimated total maximum value shall be:

First Schedule - (Cont'd)

(a) where no similar recurring contracts have been concluded over the previous 12 months, the estimated value of similar recurring contracts to be concluded during the 12 months subsequent to the initial contract; or

(b) the actual value of similar recurring contracts concluded over the previous 12 months adjusted, where possible, for anticipated changes in quantity and value over the subsequent 12 months;

5. Where the public procurement is to be conducted in a single lot and the total price is not known, the basis for estimating the value shall be, with respect to:

(a) a fixed-term contract where the term:

(i) is 12 months or less, the total estimated contract value for the contract's duration; or

(ii) exceeds 12 months, the total estimated contract value, including the estimated residual value, where applicable; or

(b) a contract for an indefinite period, the estimated monthly instalment multiplied by 36.

6. In cases where an intended public procurement specifies the need for option clauses, the basis for valuation shall be the total value, inclusive of optional purchases.

ARTICLE 8

RULES OF ORIGIN

Each Contracting Party shall apply the Community Rules of Origin to public procurements under this Protocol.

First Schedule - (Cont'd)

ARTICLE 9

PROHIBITION OF OFFSETS

Each Contracting Party shall ensure that its procuring entities do not seek to impose offsets against suppliers in the:

(a) qualification and selection of suppliers;

(b) evaluation of bids; or

(c) award of contracts.

PART THREE

INFORMATION AND COMMUNICATION TECHNOLOGIES

ARTICLE 10

COMMUNICATION MODALITIES

1. Unless otherwise required by this Protocol, and consistent with the requirements of the procuring entity and the conditions of the market, information dissemination and other communication shall be effected through electronic or paper media.

2. Each Contracting Party shall employ its best endeavours in the use of information technology taking into consideration:

(a) the high cost of paper publication;

(b) the volume of publication necessary in the operation of the Community public procurement regime;

(c) the complexities of intra-regional transport and delivery of documents;

First Schedule - (Cont'd)

(d) time constraints involved in the Community public procurement regime; and

(e) regional progress in the use of electronic data processing and telecommunication technologies.

ARTICLE 11

INFORMATION SYSTEMS

Each Contracting Party shall establish information systems comprising traditional and electronic media which shall be accessible by procuring entities and suppliers.

PART FOUR

PROCUREMENT PROCEEDINGS

ARTICLE 12

COMMUNITY STANDARD BIDDING DOCUMENTS

1. The Community Standard Bidding Documents shall include:

(a) standard forms and content of the invitation to bid;

(b) instructions to bidders;

(c) form of bid;

(d) form and conditions of contract; and

(e) any necessary appendices, such as formats for bid securities.

First Schedule - (Cont'd)

2. The Community Standard Bidding Documents shall be published on the Community Public Procurement Notice Board.

3. Subject to paragraph (6), each Contracting Party shall ensure that its procuring entities use the Community Standard Bidding Documents in public procurements to which this Protocol applies.

4. The Permanent Joint Council shall be responsible for considering and approving any modifications of or amendments to the Community Standard Bidding Documents as well as ensuring the accuracy and currency of such documentation.

5. Each Contracting Party may submit requests for modifications of and amendments to the Community Standard Bidding Documents to the Permanent Joint Council for its consideration and approval.

6. Notwithstanding paragraph 3, the Permanent Joint Council may approve the use of a Contracting Party's bidding documents for use in public procurements to which this Protocol applies.

ARTICLE 13

ANNUAL PROCUREMENT PLAN

1. Each Contracting Party shall ensure that its procuring entities publish their Annual Procurement Plans on the Community Public Procurement Notice Board as early as possible in every fiscal year.

2. A procuring entity's Annual Procurement Plan shall contain information concerning its intended public procurements to which this Protocol applies for the relevant year, including the subject matter of the intended public procurements together with volumes and values, and the proposed dates or range of dates for the publication of related invitations to bid, where such information is available.

3. Each Contracting Party shall employ its best endeavours to ensure that its procuring entities conduct procurement proceedings in accordance with their Annual Procurement

First Schedule - (Cont'd)

Plans.

4. Annual Procurement Plans shall not be binding on the procuring entities that publish them.

ARTICLE 14

PUBLICATION OF PROCUREMENT OPPORTUNITIES

1. Subject to paragraph 2, each Contracting Party shall ensure that its procuring entities publish invitations to bid on the Community Public Procurement Notice Board.

2. Where a method which does not require the publication of an invitation to be bid is being employed, paragraph 1 shall not apply.

ARTICLE 15

PROCUREMENT METHODS

1. Subject to paragraph 2, each Contracting Party, shall ensure that its procuring entities employ open bidding for public procurements valued at or above the relevant threshold.

2. Notwithstanding paragraph 1, a Contracting Party may permit its procuring entities to employ procurement methods other than open bidding if:

   (a) there is an extremely urgent need for the subject matter of the procurement and an open and competitive method of procurement is impractical because of the time involved in using such a method;

   (b) in relation to a specific procurement opportunity, the procuring entity reasonably decides that only a limited number of suppliers can perform the contract for technical or artistic reasons or reasons connected with the protection of exclusive rights and no reasonable alternative or substitute for the goods, services or works to be procured exists;

First Schedule - (Cont'd)

(c) additional goods, services or works which were not included in the initial procurement contract, but which were within the objectives of the original bidding documents have, through unforeseen circumstances, become necessary to satisfactorily complete the procurement, provided that the total value of the contract awarded for such additional goods, services or works does not exceed fifty per cent (50%) of the amount of the initial contract;

(d) goods are purchased on commodity markets or where goods and services are made available under exceptionally advantageous conditions that only arise in the very short term;

(e) no suitable bids were received in response to an earlier invitation to suppliers to participate in an open bid;

(f) due to a catastrophic event, there is an extremely urgent need for the subject matter of the procurement, and engaging in open bidding would be impractical because of the time involved in using such a method;

(g) the procuring entity has:

(i) procured from a particular supplier goods, services or works which are, to the procuring entity's satisfaction, effective in meeting the needs of the procuring entity; and

(ii) determined the need for additional supplies to be procured from the supplier for reasons of standardisation or compatibility with existing goods, services or works;

(h) the public procurement contract is awarded to the winner of a design or artistic contest; or

(i) the procurement is between procuring entities.

3. Where the procuring entities within a Contracting Party employ a procurement method other than open bidding, the Contracting Party shall ensure that procuring entities select bidders in a non-discriminatory manner so as to maximise competition to the extent

First Schedule - (Cont'd)

practicable.

4. In establishing procedures for procurement methods, each Contracting Party shall develop appropriate and effective rules and guidelines governing procurement planning, advertising media, e-procurement, security of bids, establishment of bid evaluation committees, time-frames and content and fees for bidding documents.

ARTICLE 16

TIME LIMITS

Each Contracting Party shall ensure that:

(a) all time limits applied to procurement opportunities offered by procuring entities under this Protocol are adequate to allow interested suppliers to prepare and submit bids;

(b) its procuring entities take into account the complexity of the procurement opportunity, the possibility of publication delays and the implications of cross-border transport of relevant documentation consistent with the procuring entity's own reasonable needs when determining time limits;

(c) where its procuring entities use open bidding, they shall provide no less than forty (40) calendar days between the date of publication of the bid and the deadline for the submission of bids; and

(d) when its procuring entities use procurement methods other than open bidding they comply with paragraph (b) and provide reasonable time limits consistent with the requirements of the procurement and the objectives of this Protocol.

First Schedule - (Cont'd)

ARTICLE 17

SUBMISSION, RECEIPT AND OPENINGS OF BIDS

1. Each Contracting Party shall ensure that procuring entities:

   (a) require the submission of bids in writing;

   (b) receive and open bids under conditions and procedures that guarantee transparency, fairness and objectivity; and

   (c) subject to paragraph 2, return unopened to the senders, bids received after the closing date and time for submission.

2. Notwithstanding paragraph 1(c), each Contracting Party shall ensure that its legislation permits procuring entities to accept late bids in circumstances where it can be ascertained that the submission of such bids was delayed by *force majeure*.

3. Each Contracting Party shall elaborate procedures and conditions that guarantee transparency, fairness and objectivity in the receiving and opening of bids.

ARTICLE 18

EVALUATION OF BIDS AND NOTICE

OF SUCCESSFUL BID

1. Each Contracting Party shall ensure that procuring entities:

   (a) evaluate only bids which, at the time of opening, materially comply with the requirements for participation as described in the bidding documents; and

   (b) evaluate bids fairly and objectively and solely on the basis of the evaluation criteria contained in the relevant bidding documents.

First Schedule - (Cont'd)

2. Subject to paragraph 4, each Contracting Party shall ensure that procuring entities issue a notice of successful bid to the bidder whose bid is determined to be the most advantageous based on the criteria in the bidding documents. The notice of successful bid shall be transmitted simultaneously to all participating bidders.

3. Each Contracting Party shall ensure that procuring entities provide reasons for rejecting a bid to the unsuccessful bidder who so requests. Such request must be received by the procuring entity within five (5) working days of notification of the successful bid. The procuring entity shall respond to such requests within ten (10) calendar days of receipt of same.

4. Each Contracting Party shall ensure that where its procuring entities cancel procurement opportunities:

   (a) such cancellations are done prior to an award of contract; and

   (b) the procuring entities provide reasons for cancellations, within a reasonable time, to any supplier who so requests.

ARTICLE 19

PUBLICATION OF NOTICE OF CONTRACT AWARD

1. In the context of public procurement to which this Protocol applies, each Contracting Party shall ensure that when its procuring entities award procurement contracts, the procuring entities:

   (a) immediately notify all bidders participating in the procurement proceedings of the contract award;

   (b) publish a notice of contract award on the Community Public Procurement Notice Board for general information; and

   (c) ensure that notifications and publications done pursuant to sub-paragraphs (a) and (b), respectively, are dispatched within three (3) working days from the date of the

First Schedule - (Cont'd)

award of contract.

2. Notices of contract award shall remain posted on the Community Public Procurement Notice Board for at least thirty (30) calendar days following the date of publication.

ARTICLE 20

RECORD OF PROCUREMENT PROCEEDINGS

1. Each Contracting Party shall ensure that its procuring entities establish, document and maintain records of their procurement proceedings in the manner specified in paragraph 2 of this Article.

2. Without prejudice to the means of retention or storage employed, each Contracting Party shall ensure that its procuring entities' procurement records are retained for a period of at the least five (5) years and contain, at the minimum:

   (a) a brief description of the works, goods or services procured;

   (b) the names and addresses of the bidders;

   (c) the procurement method employed;

   (d) the name and address of the successful bidder;

   (e) the date of contract award;

   (f) the contract price and actual completion cost;

   (g) the duration of the contract;

   (h) information relating to the qualification of bidders;

   (i) a summary of the evaluation and comparison of bids;

First Schedule - (Cont'd)

(j) the reasons for the rejection of any or all bids;

(k) a summary of the requests for clarification or verification of the bid documents and any modifications thereof;

(l) information relating to the successful bidder's performance on the contract; and

(m) information relating to any complaints and their determination including their determination on appeal.

ARTICLE 21

CONTRACT ADMINISTRATION

1. Each Contracting Party shall employ its best endeavours to ensure that procurement personnel are adequately trained and qualified to administer procurement and contract administration procedures.

2. On an ongoing basis, best endeavours shall be made to design regional training programmes on public procurement and to assist the Contracting Parties with the implementation of such programmes.

ARTICLE 22

STATISTICAL REPORTING

1. Each Contracting Party shall record, compile and store information relating to public procurement proceedings and shall submit the information annually to the Secretariat for inclusion in the database referred to in paragraph 3.

2. The Contracting Parties shall develop common rules with respect to the content, submission, maintenance and accessibility of the information to be submitted pursuant to paragraph 1.

First Schedule - (Cont'd)

3. An electronic database of statistical information shall be developed for the storage of information submitted by each Contracting Party pursuant to paragraph 1.

4. Subject to paragraph 2, each Contracting Party shall have access to the database.

PART FIVE

TRANSPARENCY, FAIRNESS AND SUPPLIER CHALLENGE

ARTICLE 23

TECHNICAL SPECIFICATIONS

1. Each Contracting Party shall ensure that its procuring entities' use of design and technical specifications in their procurement proceedings is not intended to and does not have the effect of, unfairly limiting competition by directing the award of a contract to a particular supplier.

2. Each Contracting Party shall ensure that where its procuring entities prescribe technical specifications, such specifications:

   (a) are included in the bidding documents;

   (b) are worded in terms of performance, conformance and functional requirements, wherever possible, rather than design or descriptive characteristics;

   (c) are based on regional standards, where available, or on national standards or internationally recognised standards or codes; and

   (d) do not refer to a particular trademark, patent, copyright, design or type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the requirements.

First Schedule - (Cont'd)

3. Where a specification referred to in paragraph 2 (d) is unavoidable, words such as "equivalent to" or "similar to" shall be included in the specification.

ARTICLE 24

QUALIFICATION AND ELIGIBILITY OF SUPPLIERS

1. Each Contracting Party shall ensure that:

   (a) any conditions for participation in a procurement opportunity that a procuring entity requires of an interested supplier are limited to conditions necessary to ensure that the supplier possesses the capabilities to fulfil the requirements of the procurement contract;

   (b) its procuring entities do not discriminate between suppliers who are their own nationals and suppliers who are nationals of other Contracting Parties when identifying suppliers who are qualified to participate in a procurement opportunity;

   (c) its procuring entities' decisions regarding the qualifications of suppliers are based solely on the conditions for participation specified in the bidding documents;

   (d) where a supplier is rejected on the basis of qualifications, the procuring entity, at the request of the supplier, communicates to the supplier the reasons for its decision within a reasonable time.

2. Nothing in this Protocol shall prevent a Contracting Party from permitting a procuring entity to disqualify a supplier from a procurement opportunity on the grounds of unfair competitive advantage, conflict of interest, bankruptcy, false declarations or conviction for criminal offences.

3. Each Contracting Party shall ensure that its procuring entities do not, as a prerequisite for award of a contract, impose artificial constraints that serve to limit procurement opportunities, such as conditions that require previous awards of contracts by the procuring entity or prior work experience in the territory of the procuring entity.

First Schedule - (Cont'd)

4. The Contracting Parties shall establish common rules for the disqualification of suppliers mentioned in paragraph 2.

5. The Contracting Parties shall establish common rules and minimum standards for procuring entities' use in their assessments of a supplier's eligibility to participate in procurement proceedings.

ARTICLE 25

LIMITATION ON DISCLOSURE OF INFORMATION

Each Contracting Party shall ensure that, unless ordered to do so by a court of competent jurisdiction and subject to the conditions of such an order, its procuring entities do not disclose information:

(a) that prejudices legitimate commercial interests of bidders or inhibits fair competition; or

(b) that relates to the examination, evaluation and comparison of bids, other than the summary referred to in Article 20 (2) (i).

ARTICLE 26

ANTI-CORRUPTION AND CONFLICTS OF INTEREST

1. Each Contracting Party shall establish legal and administrative frameworks which require the procurement personnel of its procuring entities to:

(a) discharge their duties impartially so as to ensure that qualified suppliers have fair and competitive access to procurement opportunities to which this Protocol applies; and

(b) conduct themselves in such a manner as to foster public confidence in the integrity of the Community public procurement regime.

First Schedule - (Cont'd)

2. Notwithstanding the generality of paragraph 1, the legal and administrative frameworks shall require procurement personnel to:

(a) abstain from attempting to realise personal gain from public office by conduct inconsistent with the proper discharge of duties;

(b) avoid direct or indirect involvement in public procurement proceedings where:

(i) an officer or a member of the officer's immediate family has a financial interest pertaining to the procurement;

(ii) a business or organisation in which the officer or any member of the officer's immediate family has a financial interest is involved in the procurement; or

(iii) any other person, business or organisation with whom the officer or any member of the officer's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement;

(c) abstain from soliciting or accepting from a supplier a gratuity or offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a procurement, influencing the content of any specification, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any public procurement contract, sub-contract or activity; and

(d) abstain from using confidential information for their actual or anticipated personal gain or for the actual or anticipated gain of any other person.

3. Each Contracting Party shall ensure that where an officer is involved in or is about to become involved in procurement proceedings under any of the circumstances referred to in paragraph 2 (b), the officer immediately declares his or her interest, in writing, and recuses himself from the procurement proceedings.

First Schedule - (Cont'd)

ARTICLE 27

NORMS AND STANDARDS

The Contracting Parties shall develop and adopt norms and standards to be complied with by the procuring entities' procurement personnel as well as by suppliers and bidders to be included in the Community public procurement regime for the implementation and enforcement by all Contracting Parties. Non-compliance with these norms and standards shall be subject to the laws of the Contracting Party where the non-compliance occurred.

ARTICLE 28

SUPPLIER CHALLENGE AND REVIEW

1. The Contracting Parties shall develop common non-discriminatory, timely, transparent and effective challenge and review procedures.

2. Each Contracting Party shall provide for the independent hearing and consideration of supplier challenges. Such hearings may be at the administrative or judicial levels. Where an authority other than a court hears a supplier challenge, the Contracting Party shall ensure that the supplier's right to seek judicial review is not prejudiced.

3. Each Contracting Party shall ensure that the exercise of a supplier's right to challenge and seek review of a procuring entity's procurement decisions does not prejudice that supplier's participation in ongoing or future procurement opportunities within the Contracting Party to which the procuring entity belongs.

First Schedule - (Cont'd)

PART SIX

TECHNICAL COOPERATION AND ASSISTANCE

ARTICLE 29

TECHNICAL COOPERATION AND ASSISTANCE

1. At the request of any disadvantaged country, region or sector, the COTED shall provide technical cooperation and assistance for the purpose of enabling the disadvantaged country, region or sector to participate in the Community public procurement regime and to discharge relevant responsibilities thereunder.

2. The mode, scope and extent of such technical cooperation and assistance shall be determined by the COTED and notified to the Permanent Joint Council.

PART SEVEN

INSTITUTIONAL ARRANGEMENTS

ARTICLE 30

THE PERMANENT JOINT COUNCIL ON PUBLIC PROCUREMENT

1. There is hereby established, for the purposes of this Protocol, the Permanent Joint Council on Public Procurement which shall:

   (a) oversee the implementation of the Community Policy on Public Procurement and compliance with the provisions of this Protocol;

   (b) have responsibility for the long-term monitoring of the Community public procurement regime with the assistance of the Caribbean Community Secretariat and shall draw the attention of the Community Council of Ministers to breaches of

First Schedule - (Cont'd)

this Protocol;

(c) in accordance with Article 6, at least every two years review the thresholds specified in Annex A and, where necessary and appropriate, recommend that the Contracting Parties amend Annex A;

(d) convene, as necessary, to examine and evaluate the operation of the Community public procurement regime and its progress in achieving its objectives, including performance of the periodic reviews in respect of the disadvantaged countries, regions and sectors;

(e) report to COTED on the Community public procurement regime every two (2) years to enable COTED to take action, as necessary, pursuant to Article 29;

(f) pursuant to Article 12 paragraph 4, be responsible for considering and approving modifications of and amendments to the Community Standard Bidding Documents;

(g) pursuant to Article 12 paragraph 6, be responsible for approving the use of a Contracting Party's bidding documents for use in public procurements to which this Protocol applies;

(h) in its decision-making processes promote, as far as practicable, the use of electronic communications in light of the reasonableness of cost, scope and ease of access;

(i) coordinate the development of an electronic database of statistical information relating to public procurement proceedings for use by the Contracting Parties and make recommendations to the Contracting Parties regarding common rules for the content, submission, maintenance and accessibility of the information it contains; and

(j) coordinate and promote the design of training programmes, as necessary, and support the implementation processes in Contracting Parties.

2. The report referred to in paragraph 1(e) shall include information on the application of any provisions pursuant to Part Six of this Protocol and Chapter 7 of the Revised Treaty and shall be made available to the Contracting Parties at the earliest opportunity after its

First Schedule - (Cont'd)

completion.

3. The Permanent Joint Council shall consist of senior public procurement officials or senior trade officials designated by the Contracting Parties. Each Contracting Party shall designate one senior public procurement official or senior trade official as its representative on the Permanent Joint Council.

4. At its first meeting, the Permanent Joint Council shall determine its rules of procedure.

5. The Permanent Joint Council shall establish, as it considers necessary, ad hoc working groups comprised of trade and public procurement officials to assist in the discharge of its responsibilities detailed in this Protocol.

ARTICLE 31

COMMUNITY PUBLIC PROCUREMENT

NOTICE BOARD

1. There shall be, for the purposes of this Protocol, a Community Public Procurement Notice Board which shall be:

   (a) established by the Contracting Parties;

   (b) used for the purposes of displaying the information relating to the obligations specified in paragraph 2; and

   (c) accessible to all interested stakeholders.

2. Each Contracting Party shall use the Community Public Procurement Notice Board to discharge their obligations under this Protocol, including those relating to:

   (a) supplier exchange of information to facilitate joint bidding activities;

First Schedule - (Cont'd)

(b) publication of the following:

(i) annual procurement plans;

(ii) procurement opportunities;

(iii) contract award notices;

(iv) designated national and Community contact points;

(v) Community Suppliers Register; and

(vi) Community standard bidding documents;

(c) the electronic database of regional public procurement statistics.

3. Each Contracting Party shall employ the respective administrative and technical capacities required to utilise optimally the Community Public Procurement Notice Board in accordance with the provisions of this Protocol.

ARTICLE 32

COMMUNITY AND NATIONAL SUPPLIERS REGISTERS

1. The Contracting Parties shall establish a Community Suppliers Register, which shall –

(a) consist of the names and contact and other information of suppliers registered in the national register of suppliers in each Contracting Party;

(b) be published on the Community Public Procurement Notice Board; and

(c) to varying degrees, be accessible to procuring entities, suppliers and any member of the general public.

2. Each Contracting Party shall compile and maintain a national suppliers register of

First Schedule - (Cont'd)

suppliers registered in that Contracting Party.

3. Each Contracting Party shall be responsible for submitting its national suppliers register for publication on the Community Public Procurement Notice Board.

PART EIGHT

SPECIAL PROVISIONS

ARTICLE 33

DISPUTE SETTLEMENT

The dispute settlement procedures set out in Chapter Nine of the Revised Treaty shall apply, *mutatis mutandis*, to the resolution of disputes between Contracting Parties within the contemplation of this Protocol.

ARTICLE 34

PUBLIC PROCUREMENT AND THE ENVIRONMENT

Nothing in this Protocol shall be construed as precluding a Contracting Party from employing its best endeavours to incorporate green procurement considerations in its public procurement.

ARTICLE 35

GENERAL AND SECURITY EXCEPTIONS

The provisions contained in Articles 225 and 226 of the Revised Treaty shall apply to this Protocol, *mutatis mutandis*.

First Schedule - (Cont'd)

PART NINE

FINAL PROVISIONS

ARTICLE 36

SIGNATURE AND PROVISIONAL APPLICATION

1. A Member State may, upon the signing of this Protocol or at any later date before it enters into force, declare its intention to apply it provisionally.

2. Upon such declaration by five (5) Member States, the provisions of this Protocol shall be applied provisionally pending its entry into force in accordance with Article 38.

ARTICLE 37

RATIFICATION

This Protocol shall be subject to ratification. Instruments of Ratification shall be deposited with the Secretariat which shall transmit certified copies to the Government of each Contracting Party.

ARTICLE 38

ENTRY INTO FORCE

This Protocol shall enter into force one month after the date on which the fifth Instrument of Ratification is deposited with the Secretariat.

First Schedule - (Cont'd)

ARTICLE 39

AMENDMENTS

1. This Protocol may be amended by the unanimous decision of the Contracting Parties.

2. An amendment shall enter into force one month after the date on which the last Instrument of Ratification is deposited with the Secretariat.

ARTICLE 40

RESERVATIONS

Reservations may be entered to this Protocol with the consent of the signatory States.

ARTICLE 41

ACCESSION

1. After the entry into force of this Protocol, a Member State may accede to this Protocol.

2. Instruments of Accession shall be deposited with the Secretariat which shall transmit a certified copy to the Government of each Contracting Party.

3. Where a Member State accedes to this Protocol, it shall enter into force for that Member State one month after the date on which the Member State deposits its Instrument of Accession with the Secretariat.

First Schedule - (Cont'd)

ANNEX A

THRESHOLDS

(referred to in Article 5 paragraph 1)

This Annex specifies the threshold values at and above which public procurement contracts are governed by the Protocol on Public Procurement for the Caribbean Community.

Thresholds

TYPE OF CONTRACT	CONTRACT VALUES	
	More Developed Countries (USD) $	Less Developed Countries (USD) $
Goods	150,000.00	150,000.00
Services	150,000.00	150,000.00
Works	3,000,000.00	4,000,000.00
Combination of goods and works or services and works	3,000,000.00	4,000,000.00
Combination of goods and services	150,000.00	150,000.00

First Schedule - (Cont'd)

ANNEX B

EXCLUDED TYPES OF PUBLIC PROCUREMENT

(referred to in Article 5 paragraph 2 (c))

1. The table, below, indicates the types of public procurement contracts for the procurement of goods, services and works that are excluded from the scope of the Protocol on Public Procurement for the Caribbean Community.

2. The table is composed of –

   (a) three columns with the headings "Goods", "Services" and "Works", respectively; and

   (b) rows in which types of public procurement contracts that are excluded from the scope of the Protocol are specified.

Goods Contracts	Services Contracts	Works Contracts
Works of art, cultural performances, products associated with creative expression for cultural performances	Works of art, cultural performances, products associated with creative expression for cultural performances	
Relating to the staging of productions in support of or associated with creative expression and cultural events, including – (a) artistic coordination, direction and management;	Relating to the staging of productions in support of or associated with creative expression and cultural events, including – (a) artistic coordination, direction and management;	

First Schedule - (Cont'd)

(b) management of artistic works and events; (c) management of intellectual property rights; (d) venue rental; (e) infrastructure and technical effects; (f) design and technical direction of cultural performances	(b) management of artistic works and events; (c) management of intellectual property rights; (d) venue rental; (e) infrastructure and technical effects; (f) design and technical direction of cultural performances	
	Legal advisory and legal representation	
Medallions and insignias for use in national honours and national awards	Medallions and insignias for use in national honours and national awards	
Goods of a sensitive nature for use in or for the purpose of national defence or national security	Services of a sensitive nature for use in or for the purpose of national defence or national security	Works of a sensitive nature for use in or for the purpose of national defence or national security
Relating to or connected with the operations of diplomatic missions or consulates	Relating to or connected with the operations of diplomatic missions or consulates	Relating to or connected with the operations of diplomatic missions or consulates
	Fiscal agency or depository services	

First Schedule - (Cont'd)

	Liquidation and management services for regulated financial institutions	
	Related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities	
	Co-sponsorship arrangements, trade and travel shows and cooperative advertising	
	Funded by public-private partnerships between the Government of a Contracting Party and one or more suppliers	Funded by public-private partnerships between the Government of a Contracting Party and one or more suppliers
	For research and development of a sensitive or confidential nature	
	Relating to the management of employee pension funds	
	Postal, courier and express courier services	
	Utility services such as services for the supply of electricity, telecommunications and piped water	

First Schedule - (Concl'd)

		Immovable property or rights in relation thereto
	Contracts of service or contracts for service for the hiring of Government employees and related employment measures	
In relation to privately funded charities	In relation to privately funded charities	In relation to privately funded charities

SECOND SCHEDULE

(Section 7(4))

TENDERS COMMITTEES

Part I

General Tenders Committee

Composition of General Tenders Committee

1.(1) The General Tenders Committee shall comprise *ex officio*

(a) the Chief Procurement Officer;

(b) the Solicitor General;

(c) the Permanent Secretary in the Ministry responsible for Finance;

(d) the Chief Technical Officer in the Ministry responsible for Works;

(e) the Senior Mechanical Engineer in the Ministry responsible for Works;

(f) the Director of the Department of Commerce and Consumer Affairs;

(g) the Director of the Data Processing Department;

(h) the Manager of the Public Investment Unit;

(i) the Chief Executive Officer of Barbados Investment and Development Corporation; and

(j) the Chief Executive Officer of Barbados National Oil Company Limited.

(2) A person listed in paragraph (1)*(b), (c), (d), (f), (g), (h), (i)* or *(j)* may nominate a senior officer to be a member of the committee in his place.

Chairman and Deputy Chairman

2.(1) The Chief Procurement Officer shall be the Chairman of the General Tenders Committee.

(2) The committee shall, at its first meeting in a financial year, elect one of its members, other than the Solicitor General or his nominee, to be the Deputy Chairman of the committee.

(3) Where the Chairman is absent from a meeting of the committee, the Deputy Chairman shall preside over the meeting.

Quorum

3. The quorum of the General Tenders Committee is 6 members including the Chairman or the Deputy Chairman.

Secretary

4. The Chief Procurement Officer shall designate a public officer to be the secretary of the General Tenders Committee.

Part II

Special Tenders Committee

Composition of special tenders committee

1. A special tenders committee shall comprise

(a) the members of the General Tenders Committee; and

(b) such other persons, not exceeding 5, as the Director may appoint with the approval of the Minister, having regard to the procurement concerned and the obligations of the State under the agreement for the loan to which the procurement relates.

Chairman and Deputy Chairman of special tenders committee

2.(1) The Chairman of the General Tenders Committee shall be the Chairman of a special tenders committee.

(2) The Deputy Chairman of the General Tenders Committee shall be the Deputy Chairman of a special tenders committee.

(3) Where the Chairman is absent from a meeting of the committee, the Deputy Chairman shall preside over the meeting.

Quorum

3. The quorum of a special tenders committee is two-thirds of its members including the Chairman or the Deputy Chairman.

Term of office

4. A member of a special tenders committee shall hold office for the duration of the procurement proceedings in respect of which the committee was established.

Secretary

5. The Chief Procurement Officer shall designate a public officer to be the secretary of a special tenders committee.

Part III

Drug Tenders Committee

Composition

1. The Drug Tenders Committee shall comprise

(a) ex officio

(i) the Director of the Drug Service;

(ii) the Chief Procurement Officer or his nominee;

(iii) the Assistant Director of the Drug Service charged with responsibility for Supply and Inventory;

(iv) the Director of Medical Services of the Queen Elizabeth Hospital;

(v) the Hospital Pharmacist of the Queen Elizabeth Hospital;

(vi) the Chairman of the Drug Formulary Committee established by section 5 of the *Drug Service Act,* Cap. 40A or a member of that committee nominated by him; and

(vii) the Solicitor General or a legal officer nominated by the Solicitor General;

(b) a pharmacist in actual private practice and not employed in the Public Service, nominated by the Barbados Pharmaceutical Society; and

(c) a medical practitioner in actual private practice and not employed in the Public Service, nominated by the most representative association of medical practitioners.

Chairman and Deputy Chairman of Drug Tenders Committee

2.(1) The Director of the Drug Service shall be the Chairman of the Drug Tenders Committee and shall preside at meetings of the committee.

(2) The Assistant Director of the Drug Service charged with responsibility for Supply and Inventory shall be the Deputy Chairman of the committee and shall preside at any meeting from which the Chairman is absent.

Quorum

3. The quorum of the Drug Tenders Committee is 6 members including the Chairman or Deputy Chairman.

Term of office

4. A member of the Drug Tenders Committee, other than an *ex officio* member, shall hold office for 3 years and is eligible for re-appointment.

Secretary

5. The Director of the Drug Service shall designate a public officer to be the secretary of the Drug Tenders Committee.

Part IV

General Provisions

Meetings of tenders committees

1.(1) A tenders committee shall meet as often as is necessary for the proper discharge of its functions under this Act.

(2) The Chairman, in consultation with the secretary of the committee, shall determine the times and places for meetings and convene meetings accordingly.

(3) A decision of a tenders committee shall be by a majority of votes, and where there is an equality of votes, the Chairman shall have a casting vote.

Urgent decisions

2.(1) A tenders committee may make a decision on an urgent matter by the circulation of the relevant papers among the members of the committee and the expression, in writing, of the views of the majority of the members.

(2) Notwithstanding sub-paragraph (1), a member is entitled to require that a decision be deferred until the matter is considered at a meeting of the committee.

Observers and advisers

3.(1) A tenders committee may

(a) permit observers to attend a meeting of the committee; and

(b) co-opt advisers to assist the committee in the discharge of its functions.

(2) Observers and advisers shall not vote and advisers shall only attend the part of the meeting on which their advice is required.

Minutes

4.(1) A tenders committee shall keep minutes of the proceedings of its meetings.

(2) The minutes shall include

(a) the names of the members present at the meeting;

(b) the names of any advisers or observers attending the meeting;

(c) any disclosure of interest;

(d) the key issues discussed in relation to evaluation reports, including any advice given or disagreement among the members; and

(e) where the recommendation of a procuring entity is rejected, the reason for the rejection.

(3) Minutes and decisions of the committee shall be made available and distributed within 7 days of the meeting of the committee to which they relate.

(4) Minutes shall be distributed to all members of the committee and decisions shall be transmitted to the relevant procuring entity.

THIRD SCHEDULE

(Section 8)

PUBLIC PROCUREMENT TRIBUNAL

Composition

1.(1) The Tribunal shall comprise 5 persons of high integrity appointed by the Minister as follows:

(a) an attorney-at-law of at least 10 years' standing or a person who has held high judicial office, who shall be the Chairman of the Tribunal; and

(b) 4 other persons each with 5 years' experience, at a senior level, in public procurement or a related field.

(2) In selecting persons to be members of the Tribunal, the Minister shall seek to establish a balance of relevant knowledge and experience among members to ensure that the Tribunal has both

(a) knowledge of any applicable public procurement laws, rules, proceedings and practices; and

(b) a range of technical knowledge relating to various types of procurement contracts.

(3) Members are entitled to such remuneration and allowances as the Minister determines.

Term of office

2. Subject to paragraphs 4 and 5, a member of the Tribunal shall hold office for not more than 5 years but is eligible for re-appointment.

Temporary absence

3. Where a member of the Tribunal is temporarily absent or unable to act, the Minister may appoint a suitable person to act in the member's place.

Resignation

4.(1) A member of the Tribunal, other than the Chairman, may resign his office by instrument in writing addressed to the Chairman, who shall forthwith cause the same to be forwarded to the Minister.

(2) The Chairman may resign his office by instrument in writing addressed to the Minister.

(3) A person shall cease to be a member of the Tribunal upon the date of receipt of the instrument by the Chairman under sub-paragraph (1) or the Minister under sub-paragraph (2), unless another date for his resignation is specified in the instrument.

Removal

5. The Minister may remove a member of the Tribunal from office where the member

(a) fails to disclose a conflict of interest in relation to a matter before the Tribunal;

(b) fails, without reasonable excuse, to attend 3 consecutive meetings of the Tribunal;

(c) has become bankrupt or has made an arrangement with his creditors;

(d) is incapacitated by physical or mental illness;

(e) engages in misconduct or has a conflict of interest as a result of engaging in paid employment that conflicts with the functions of the Tribunal; or

(f) is otherwise unable or unfit to discharge the functions of a member.

Publication of appointments etc.

6. The names of all of the members of the Tribunal as first constituted and every change in the membership of the Tribunal shall be published in the *Official Gazette*.

Seal

7.(1) The seal of the Tribunal

(a) shall be kept in the custody of the Chairman or such other member as the members may approve;

(b) may be affixed to documents or instruments pursuant to a resolution of the Tribunal;

(c) shall be affixed in the presence of the Chairman and the Secretary to the Tribunal; and

(d) shall be authenticated by the signature of the Secretary to the Tribunal and the signature of the Chairman.

(2) All documents other than those required by law to be under seal may be signed under the hand of the Chairman or the Secretary.

Specialists

8. The Tribunal may engage specialists in technical disciplines to assist in its work where so required and may, in particular, where it determines it to be necessary in any case, consult any person having experience in any relevant field to assist it in dealing with a matter.

Tribunal may regulate procedure

9. Subject to this Act, the Tribunal may regulate its own procedure.

FOURTH SCHEDULE

(Section 115)

CONSEQUENTIAL AMENDMENTS

Column 1 Enactments	Column 2 Amendments
Financial Management and Audit (Financial) Rules, 2011.	1. In rule 2, delete the definitions of "Special Tenders Committee" and "Tenders Committee". 2. In rules 80(7), 161(2)*(a)*, 162(2), 195(1) and (2) and 230, delete the words "Chief Supply Officer" and substitute the words "Chief Procurement Officer". 3. Delete rules 204, 205, 218 to 227 and 231 to 239. 4. Delete the Second and Third Schedules.

BARBADOS

The Official Gazette Part A 29th December, 2021

Act 2021-31

FAIR CREDIT REPORTING ACT, 2021-31

Arrangement of Sections

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1. Short title

2. Interpretation

PART II

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3. Powers, duties and functions of Central Bank

PART III

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4. Credit bureau to be licensed

5. Application for licence

6. Grant of licence

7. Refusal to grant licence

8. Terms and conditions of licence

9. Variation of licence, terms and conditions

10. Restrictions on the transfer of licence

11. Duration of licence

12. Revocation

13. Material change in circumstances affecting the credit bureau

14. Publication by the Central Bank

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CREDIT REPORTING ACTIVITY

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16. Credit information providers

17. Provision of credit information

18. Duties of credit information providers

19. Credit reports

20. Permissible purposes

21. The requirement for consent

22. Restrictions regarding disclosure of data subject information

23. Supplying false information

24. Subscriber agreements

25. Data management and quality control

26. Security and control measures

27. Data subject’s rights of access and correction

28. Adverse actions against data subjects

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43. Protection of databases upon liquidation

44. Application of Data Protection Act, 2019 (Act 2019-29)

45. Regulations

46. Transitional provisions

47. Commencement

BARBADOS

I assent
S. MASON
President of Barbados
24th December, 2021.

2021-31

An Act to provide for a credit reporting system in Barbados that is fair, for the regulation of the use of data collected and for related purposes.

[Commencement: by Proclamation]

ENACTED by the Parliament of Barbados as follows:

PART 1

PRELIMINARY

Short title

1. This Act may be cited as the *Fair Credit Reporting Act, 2021*.

Interpretation

2. In this Act,

"adverse action" means a decision taken by a credit information provider, based on the data subject's information from the credit bureau, that adversely affects a data subject, including

(a) the refusal of an application for credit;

(b) an increase in the interest rate on a loan or other credit facility;

(c) a decrease in the credit limit on a revolving credit facility;

(d) the cancellation, freezing or suspension of a loan or other credit account;

(e) the refusal of business or employment;

(f) an unfavourable change in terms of coverage and the amount of any credit or insurance, existing or applied for in connection with underwriting credit or insurance, on the part of the data subject or the request for a guarantor or collateral; or

(g) any other action that adversely affects a transaction between the data subject and the credit provider;

"applicant" means a person applying for a licence under section 5;

"authorized person" means

(a) a credit bureau; or

(b) a person authorized by the Central Bank to perform an activity set out in section 16;

"Caribbean Community" has the meaning assigned to it by section 2 of the *Caribbean Community Act*, Cap. 15 and includes The Bahamas;

"Central Bank" means the Central Bank of Barbados established by section 3 of the *Central Bank of Barbados Act, 2020* (Act 2020-30);

"company" means a body incorporated, continued or registered under the *Companies Act*, Cap. 308;

"credit"

(a) means any transaction the terms of which provide for payment to be made at a future date in respect of money lent or money payable in relation to goods, services, real property sold or leased or any other financial arrangement between the data subject and a third party; and

(b) includes any money payable pursuant to an order of court.

"credit bureau" means a person licensed under section 6 to prepare, produce or provide credit reports, credit scores, credit references and other value-added products;

"credit file" means in relation to a data subject, a file in electronic form or otherwise containing the data subject's information and other records collected, kept, maintained or otherwise processed by a credit bureau with respect to a data subject from which a credit report is prepared or produced;

"credit information" means any positive or negative information bearing on a data subject's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living, including the history or profile of the data subject with regard to credit, assets or financial obligations;

"credit information provider" means a person specified in section 16 that gives credit information on a data subject to a credit bureau;

"credit report" in relation to a data subject, means credit information processed by a credit bureau, whether in electronic form or otherwise;

"credit reporting system" includes the institutions, individuals, rules, procedures, standards and technology that enables information flow relevant to making decisions for any purpose mentioned in section 20;

"credit scoring" means a statistical analysis with the goal of estimating the probability of a data subject fulfilling its financial obligations related to the extension of credit;

"cross-border" means the transfer of information electronically or otherwise from the country of origin to the target country;

"data" means information that

(a) is being processed by means of equipment operating automatically in response to instructions given for that purpose;

(b) is recorded with the intention that it should be processed by means of such equipment;

(c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system;

(d) does not fall within paragraph *(a)*, *(b)* or *(c)* but forms part of an accessible record; or

(e) does not fall within paragraph *(a)*, *(b)*, *(c)* or *(d)* but is recorded information held by a public authority;

"data base" means a collection of credit information administered by a credit bureau or a credit information provider, which is stored electronically or otherwise;

"data breach" means any act or omission leading to the accidental loss, alteration, unauthorized disclosure or access to credit information;

"data subject" means any individual who, or partnership, corporation, trust, estate, cooperative, association, government or ministry or state-owned

enterprise or agency, or other entity which, is the subject of personal information that may be or has been furnished to or by a credit bureau.

"data subject information" includes any information relating to the credit information or personal information of a data subject, whether such information is obtained from the data subject, a third party or a specified public register, that may be processed under this Act;

"director" means, in relation to a credit bureau, a member of its board of directors;

"inspector" means a person appointed by the Central Bank under section 31;

"licence" means a licence granted under section 6 to carry on business as a credit bureau;

"licensee" means a credit bureau which is licensed under this Act;

"loan" includes

(a) direct, indirect or contingent obligations incurred by a person with a third party;

(b) a discount, advance or overdraft;

(c) export bills or other bills purchased or receivable;

(d) import bills or data subject's liabilities on off-balance sheet items; or

(e) any other credit facilities extended to a data subject by a credit provider;

"manager" in relation to a credit bureau includes the chief executive officer, chief financial officer, treasurer, chief internal auditor and the manager of a significant unit of the credit bureau;

"material change in circumstances" means, in relation to a credit bureau, a change in circumstances set out in this Act or prescribed by the regulations;

"Minister" means the Minister responsible for Finance;

"negative credit information" includes, in relation to a credit transaction between a data subject and a credit information provider,

(a) credit defaults, collections and late payments;

(b) accounts compulsorily closed other than for administrative reasons;

(c) voluntary or mandatory surrender of assets;

(d) convictions involving financial impropriety, fraud or theft;

(e) receiverships, bankruptcies and liquidations;

(f) liens;

(g) garnishment or any other order of court; and

(h) any other act or information which could cause a credit application or existing credit to be declined or restricted according to a creditor's policy relating to the overdue, past due, charge off, or delinquent status of the credit transaction between a data subject and a credit provider;

"personal information" means any information about a data subject that may be used to identify a data subject, including

(a) credit information;

(b) a data subject's present and past names;

(c) a data subject's current contact information;

(d) the national registration number, tax identification number or other numerical reference or reference scheme used in relation to a data subject for identification purposes; and

(e) any other relevant information about a data subject which is

(i) reasonably required in order to enable the credit information to be utilized for the purposes of this Act; or

(ii) in the possession of or is likely to come into the possession of the credit information provider or a credit bureau;

"positive credit information" means any information relating to the historical status of a credit transaction between a data subject and a credit provider, including

(a) the date an account was opened;

(b) the date of the last payment;

(c) credit approval terms and conditions on which credit was granted;

(d) the payments made;

(e) the current balance;

(f) repayment patterns;

(g) utilization of credit and any collateral pledged; or

(h) any other act or information which could cause a credit application to be approved;

"process" means

(a) to collect, record, hold or store data subject information or data;

(b) to carry out an operation or set of operations on data subject information or data including its

(i) organization, adaptation, alteration or updating;

(ii) retrieval, consultation or use;

(iii) disclosure by transmission, transfer, dissemination or being otherwise made available;

(iv) alignment, combination, correction, erasure; or

(v) destruction;

"public information" means any information subject to disclosure to the general public according to the laws of any country;

"record" means, in relation to a credit bureau, a book, paper, file, document in electronic form or otherwise, that may contain information regarding the finances or business of the credit bureau;

"sensitive personal information" means personal information on a data subject's

(a) racial or ethnic origin;

(b) political opinions;

(c) religious beliefs or other beliefs of a similar nature;

(d) membership of a political body;

(e) membership of a trade union;

(f) genetic data;

(g) biometric data;

(h) sexual orientation or sex life;

(i) physical or mental health or condition; or

(j) criminal record;

"subscriber" means a credit information provider or other person that has entered into a subscriber agreement to provide or access credit information;

"subscriber agreement" means an agreement referred to in section 24(1) between a credit bureau and a subscriber whereby the subscriber furnishes data subject information to the credit bureau in an agreed format;

"Tribunal" means such tribunal as may be established by an Act for the purpose of determining disputes under this Act;

"user" means any person or entity other than a subscriber that has access to a credit bureau's products and services;

"value-added product" means any product or service based on the data or information provided by credit information providers and any other data lawfully obtained by a credit bureau which the credit bureau may, in addition to credit reporting, provide to increase the value of the service it offers, including alert, anti-fraud, credit scoring and identity theft prevention.

PART II

ADMINISTRATION

Powers, duties and functions of Central Bank

3.(1) The Central Bank shall be responsible for

(a) the overall management of this Act; and

(b) the day to day administration, supervision and implementation of this Act and the regulations.

(2) Without prejudice to the generality of subsection (1), the Central Bank shall

(a) regulate and supervise the activities of credit bureaux;

(b) issue standards and targets regarding the provision of fair credit reporting services;

(c) institute proper standards of conduct and acceptable credit reporting practices;

(d) protect the integrity of the credit reporting system in Barbados against abuses; and

(e) take measures to protect the rights and interests of data subjects.

(3) In the exercise of its duties and functions under subsections (1) and (2), the Central Bank may

(a) grant licences to credit bureaux;

(b) in accordance with this Act and the regulations;

(i) evaluate every application for a licence to operate or carry on the business of a credit bureau;

(ii) issue guidelines for operating a credit bureau;

(iii) inspect the premises, systems and operations of a credit bureau;

(c) exercise such other duties and functions as may be conferred upon or assigned to the Central Bank by or under this Act; and

(d) impose any sanction set out in subsection (4).

(4) The sanctions that the Central Bank may impose under subsection (3)*(e)* are

(a) a warning or reprimand;

(b) a monetary penalty not exceeding $100 000;

(c) suspension or revocation of the licence; or

(d) the giving of a directive that the Central Bank deems appropriate.

PART III

LICENSING

Credit bureau to be licensed

4.(1) No person shall

(a) operate as or carry on the business of a credit bureau; or

(b) use or continue to use words implying that the person is a credit bureau in the description or title pursuant to which such person is carrying on business,

unless such person is licensed under this Act.

(2) Any person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of $50 000 or to imprisonment for 3 years or to both.

(3) In the prosecution of a person for an offence under this section, evidence that the accused person provided credit information to another person with the knowledge that such information is being relied on by the recipient to make a decision pertaining to the credit of another is proof in the absence of evidence to the contrary, that the accused person operated as or carried on the business of a credit bureau under this Act.

Application for licence

5.(1) An application for the grant of a licence to carry on the business of a credit bureau shall be submitted to the Central Bank in the prescribed form and shall include

(a) a copy of its articles, by-laws or other instrument under which the company is incorporated or organized;

(b) an address for service in Barbados;

(c) a statement of the address of the applicant's registered office and the location of the principal and other places where it proposes to do business in Barbados;

(d) the prescribed application fee which is non-refundable; and

(e) any other document or information that the Central Bank may require.

(2) Where the Central Bank is not satisfied with the adequacy of any information submitted by the applicant under subsection (1), the Central Bank may request such further information including,

(a) the incorporation and ownership structure of the applicant;

(b) the nature and sufficiency of the financial resources of the applicant's shareholders to provide continuing financial support for the applicant;

(c) the nature of any activity regulated under this Act or the regulations that the applicant conducts or seeks authorization to conduct;

(d) the soundness and feasibility of the business plan of the applicant;

(e) the adequacy of the systems and arrangements that have been put in place by the applicant to ensure compliance with the provisions of this Act;

(f) whether the overall design and flexibility of the data collection mechanism for data subject information conforms to relevant provisions of this Act and the regulations;

(g) any information needed to minimise the extent to which it is possible for the business carried on by the applicant to be used for a purpose connected with financial crime; and

(h) the qualifications, experience and integrity of the proposed directors, officers and significant shareholders and whether they are fit and proper persons to operate or, as the case may be, hold shares in a credit bureau.

(3) For the purposes of this section, a "significant shareholder" is a person who holds 10 percent of any class of shares of the company.

Grant of licence

6.(1) The Central Bank may, after consideration of an application made under section 5, grant a licence to the applicant subject to such terms and conditions as the Central Bank thinks fit where

(a) it is satisfied with respect to the matters referred to in section 5; and

(b) the applicant has paid the prescribed licence fee.

(2) The Central Bank shall advise the Minister in writing of its decision to grant a licence under this section.

Refusal to grant licence

7.(1) The Central Bank shall refuse to grant a licence where

(a) the application is not made in accordance with this Act;

(b) the Central Bank is of the opinion that

(i) the applicant has failed to satisfy the matters set out in section 5;

(ii) the applicant has, with respect to a matter that it considers material, knowingly or intentionally made a false or misleading statement in the application or in the information, particulars, declarations, documents or other materials submitted to the Central Bank in support of the application; or

(iii) it is not in the public interest to grant the licence.

(2) Where the Central Bank refuses to grant a licence, it shall

(a) notify the applicant in writing within 7 days of making the decision;

(b) state the reasons for its refusal;

(c) inform the applicant of his right to seek review under section 35; and

(d) inform the Minister of its decision.

Terms and conditions of licence

8.(1) An applicant under section 5 of this Act shall

(a) within 30 days of being granted a licence, submit to the Central Bank an irrevocable guarantee from a financial institution or credit union in Barbados in such an amount as may be prescribed;

(b) within 6 months of being granted a licence, or within such further period as the Central Bank may specify, commence operations as a credit bureau;

(c) adhere to such capital requirements as the Central Bank may specify;

(d) inform the Central Bank of the fees it will charge customers for its services or any change in such fees.

(2) The irrevocable guarantee referred to in paragraph *(a)* of section 8(1) shall be in a form determined by the Central Bank.

(3) Where credit information providers or the beneficial owners of credit information providers are permitted to acquire shares in a credit bureau

(a) the credit bureau shall restrict the aggregate share ownership in the credit bureau by such credit information providers and beneficial owners of credit information providers to a maximum of 49 per cent; and

(b) a single credit information provider or beneficial owner of such credit information provider, as the case may be, shall hold no more than 5 per cent of the shares of the credit bureau.

(4) A credit bureau shall comply with such terms and conditions as may be prescribed.

Variation of licence, terms and conditions

9.(1) The Central Bank may at any time amend or vary the terms and conditions set out in section 8 relating to the grant of a licence.

(2) The Central Bank shall, before it amends or varies the terms and conditions of a licence,

(a) give written notice to the credit bureau of its intention to amend or vary the terms and conditions and include in the notice the reason for the intended amendment or variation; and

(b) give the credit bureau, within such time as may be specified in the notice, an opportunity to make representation on the intended amendment or variation.

Restrictions on the transfer of licence

10.(1) A licensee shall not, without the prior written approval of the Central Bank,

(a) transfer a licence granted or reinstated pursuant to this Part; or

(b) sell, lease or transfer title to any of its credit files except to another credit bureau licensed under this Act.

(2) A licensee which contravenes or fails to comply with a provision of subsection (1) is guilty of an offence.

Duration of licence

11.(1) A licence granted under this Act is valid for a period of one year and is renewable annually on the anniversary of the date on which it is first granted and on payment of the prescribed fee.

(2) The Minister may prescribe the fee payable

(a) on application for the grant of a licence;

(b) for the grant of a licence;

(c) for the renewal of a licence; and

(d) for the reinstatement of a licence that was revoked.

Revocation

12.(1) Subject to subsection (2), the Central Bank may revoke a licence where

(a) there is a request in writing by the licensee for revocation of the licence;

(b) the licensee has failed to pay the annual renewal fee;

(c) the licensee has failed to comply with

(i) a term or condition specified in the licence;

(ii) this Act or the regulations;

(iii) a direction issued under this Act by the Central Bank; or

(d) the licensee

(i) has provided the Central Bank with false, inaccurate or misleading information;

(ii) does not commence operations within 6 months after the issuance of its licence or within such longer period as the Central Bank may approve after the grant of a licence;

(iii) becomes insolvent or makes an arrangement with its creditors;

(iv) is found to have committed an act of fraud or dishonesty;

(v) has demonstrated incompetence or untrustworthiness in the operation of its business;

(vi) has acted in a manner that has caused data subjects' rights and interests in respect of their data to be compromised; or

(vii) is carrying on business in a manner that is no longer in the interest of the public or puts the effective and efficient operation of the credit reporting system at risk.

(2) The Central Bank shall, before it revokes a licence,

(a) give the licensee one month's notice in writing of its intention to revoke the licence;

(b) include in the notice the reason for the intended revocation; and

(c) give the credit bureau, within such time as may be specified in the notice, an opportunity to show cause why the licence should not be revoked.

(3) Where a licensee shows cause to the Central Bank pursuant to subsection (2), the Central Bank shall within one month

(a) consider the credit bureau's case and make a determination; and

(b) subject to subsection (4), notify the credit bureau in writing of its determination.

(4) Where the Central Bank revokes a licence, it shall notify the licensee in writing of its decision.

(5) The Central Bank shall in the notice referred to in subsection (4)

(a) state the reasons for its decision; and

(b) inform the credit bureau of its right of review under section 35.

(6) A credit bureau shall cease to carry on business from the date specified in the notice of revocation.

(7) Notwithstanding anything contained in this section, the Central Bank may at any time revoke a licence where the licensee ceases to carry on the business of a credit bureau for a period exceeding 6 months.

(8) The Central Bank may restore a licence that has been revoked,

(a) for non-payment of the annual renewal fee, upon payment of that fee;

(b) for a cause other than non-payment of the annual renewal fee upon request of the Tribunal, after the Tribunal has conducted a review pursuant to section 35.

Material change in circumstances affecting the credit bureau

13.(1) A licensee or an applicant shall, within 7 days, notify

(a) the Central Bank; and

(b) any other body which it is required to notify by virtue of any enactment

of a material change in the circumstances affecting the operations of the licensee or the applicant.

(2) For the purposes of subsection (1) a material change includes

(a) a merger or consolidation with another credit bureau;

(b) a change of the name of the applicant or the licensee;

(c) an amendment of the articles of incorporation or any other constituent document under which the credit bureau is incorporated, registered or continued;

(d) engagement in any business other than that of a credit bureau;

(e) a change of majority shareholding or beneficial ownership;

(f) a change in the directors or officers of the applicant or licensee whether by death, retirement, resignation or termination;

(g) a change of the address of the registered office, head office or other place of business where the credit bureau or the applicant carries on or proposes to carry on business in Barbados and details on where the credit bureau or applicant's data server is hosted;

(h) an event that results in a compromise of the confidentiality, security or integrity of data subject information;

(i) any civil or criminal proceedings instituted against the credit bureau or applicant, whether in Barbados or elsewhere;

(j) an event or irregularity that impedes or prevents access to or impairs the usual operations of the licensee or applicant;

(k) the credit bureau or applicant becomes or is likely to become, insolvent or unable to meet its financial, statutory, contractual or other obligations; or

(l) the occurrence of any other event that the Minister may prescribe or specify by notice in writing as a material change in circumstances.

Publication by the Central Bank

14. The Central Bank shall cause every notice of the grant, revocation or reinstatement of a licence to be published in the *Official Gazette* .

PART IV

CREDIT REPORTING ACTIVITY

Permissible credit reporting activities

15.(1) A credit bureau shall not engage in any activity other than

(a) an activity specified in subsection (2); or

(b) an activity approved by the Central Bank by notice published in the *Official Gazette*.

(2) A credit bureau may, for its own account or on behalf of an individual or a data subject, engage in the following activities:

(a) ascertain whether a credit information provider holds information relevant to the financial standing of an individual or a data subject;

(b) develop and make credit reports, credit scores and value-added products available to subscribers or users;

(c) collect, compile, manage, and update the contents of information referred to in paragraphs *(a)* and *(b)*;

(d) carry out market and statistical research on matters related to credit reports or assessments;

(e) provide, on a consistent basis, consultancy services and training regarding credit reporting, including the publication of educational material;

(f) collect, process and manage public information resulting from the enforcement of actions and judgments and declarations of bankruptcy and the insolvency of data subjects;

(g) collect, process and manage information of consumer dispute settlements;

(h) develop and apply credit scores and ratings as well as other systems of classification of data subjects;

(i) analyse statistics relating to credit and credit behaviour of data subjects and aggregate analyses;

(j) manage identity theft and debtor tracing;

(k) compile reports for the purposes of its business; and

(l) compile and maintain databases in respect of data subjects' information and generate reports from such databases.

Credit information providers

16.(1) For the purposes of this Act, the following credit information providers shall provide data subject's information to a credit bureau:

(a) a financial institution licensed under the *Financial Institutions Act*, Cap. 324A;

(b) an insurance company licensed under the *Insurance Act*, Cap. 310, if such information is limited to information obtained by such a company in its capacity as a credit provider; and

(c) a credit union registered under the *Co-operative Societies Act*, Cap. 378A.

(2) A credit information provider may engage in the following activities permitted under this Act

(a) securing the correction of or the omission of anything from or the making of any other kind of modification to credit information, if the making of such modification is fair to the data subject and does not contravene this Act; and

(b) advising a data subject with respect to the taking of any steps from credit reports or assessments generated for this purpose.

(3) The Central Bank may in the public interest, by notice, designate any of the following as credit information providers:

(a) the Barbados Light and Power Company Limited continued under the *Companies Act*, Cap. 308;

(b) the Barbados Water Authority established under the *Barbados Water Authority Act*, Cap. 274A;

(c) the Corporate Affairs and Intellectual Property Office established under the *Corporate Affairs and Intellectual Property Office Act;*, Cap. 21A

(d) the Land Registry established under the *Land Registration Act*, Cap. 229;

(e) the Registration Office established under the *Registration Office Act*, Cap. 33;

(f) any person licensed pursuant to the *Telecommunications Act*, Cap. 282B;

(g) any person carrying on the business of selling goods pursuant to a hire purchase agreement, conditional sale agreement or credit sale agreement pursuant to the *Hire Purchase Act*, Cap. 328;

(h) a dealer in securities who is licensed under the *Securities Act*, Cap. 318A;

(i) the Student Revolving Loan Fund established under the *Student Revolving Fund Act*, Cap. 54A; and

(j) any other entity possessing credit information not referred to in subsection (1).

(4) Before the Central Bank designates an entity as a credit information provider under subsection (3), the Central Bank must be satisfied that

(a) the entity has systems in place for proper data management, security and control; and

(b) adequate systems and arrangements have been put in place by the entity to ensure compliance with the provisions of this Act,

and the Central Bank shall consult with the relevant Minister or the regulator of the entity as appropriate.

(5) Notwithstanding that an entity has not been designated under subsection (3), it may, with the consent of a data subject, and subject to subsection (7), opt to furnish data subject information to a credit bureau.

(6) Where an entity proposes to provide data subject information to a credit bureau pursuant to subsection (6), it shall submit a request to the Central Bank for approval setting out its procedures and standards for data capturing, data transmission and compliance with this Act and any proposed subscriber agreement.

(7) The Central Bank may in its own discretion opt to provide information to a credit bureau on data subjects who are its employees where such information is limited to information obtained by the Central Bank in its capacity as a credit provider.

Provision of credit information

17. A credit information provider shall, upon providing credit to a data subject or entering into a credit or loan agreement with a data subject, furnish a credit bureau with information relating to the data subject

(a) from the date of the provision of the credit to the data subject; and

(b) within the time specified in the subscriber agreement with the credit bureau.

Duties of credit information providers

18.(1) A credit information provider shall

(a) provide any information required to be furnished to a credit bureau in the standard data format specified by the Central Bank;

(b) upon receipt of any new credit information about the data subject, furnish the information to the credit bureau within the time specified in the applicable subscriber agreement;

(c) ensure the timely, sufficient and accurate provision of credit information to a credit bureau; and

(d) comply with the security standards and measures prescribed in respect of the data subject's credit information it keeps and maintains, including taking all necessary actions prescribed in this Act or the regulations in order to protect the information.

(2) Notwithstanding the provisions of subsection (1)*(c)*, a credit information provider shall provide information monthly to a credit bureau on the status of the performance of the obligations of the data subject under a credit or loan agreement.

(3) The information respecting a data subject that a credit information provider shall furnish to a credit bureau includes

(a) the personal information of the data subject;

(b) in the case of a loan from a credit information provider

(i) the type, nature and amount of the loan or other similar credit facility granted to the data subject from a credit information provider;

(ii) all outstanding loans including contingent liabilities extended to the data subject by the credit information provider;

(iii) the date on which the loan account was opened and the dates for payment of the principal and the interest as agreed;

(iv) information on the composition and the types of collateral or security provided by any data subject which secured the debt obligation;

(v) the loan balance and the maximum balance on the loan;

(vi) the account status and the liability of the data subject on the account, including the date of the last activity respecting the loan obligations; and

(vii) the nature of any guarantee or other secondary debt obligation to which the data subject is a party;

(c) in the case of an entity that sells goods or offers services on a credit basis or with delayed payment terms,

(i) the amount of the goods and services provided on a credit basis together with contingent and possible obligations;

(ii) the dates on which the goods or services were provided;

(iii) the agreed schedule of payment for the goods or services; and

(iv) information on the composition and the types of collateral that secured the payment obligations;

(d) any comments made in respect of the loan obligations of the data subject on the file kept for this purpose by the credit information provider;

(e) the amount, if any, that is past due;

(f) the minimum payment due;

(g) the date and the amount of the last payment, the closed date of the account and the expiry date;

(h) credit information about a data subject's income, creditworthiness or history of financial transactions including antecedents and adverse court judgments obtained by the credit information provider in relation to transactions involving the credit provider;

(i) other credit information required to be disclosed under this Act;

(j) any other information that the Central Bank

(i) considers appropriate to include as credit information for the purposes of this Act and the regulations; and

(ii) specifies by notice published in the *Official Gazette* and a newspaper circulating in Barbados; and

(k) analysis of the information referred to in paragraphs *(a)* to *(j)*, including any conclusions as to creditworthiness, whether in the form of a system of credit or other numerical or alphabetical scores or otherwise.

(4) Notwithstanding the provisions of this section, the Minister may by regulations provide for additional obligations of credit information providers.

Credit reports

19.(1) Subject to section 21, a user may, with the consent of the data subject request a credit report, credit score, any value-added product or any other credit information with respect to a data subject from a credit bureau in accordance with the appropriate permissible purpose for the request.

(2) A credit bureau shall ensure that a credit report

(a) specifies the name of the person making the credit report or value-added product or the person on whose behalf the report or value-added product is made; and

(b) is provided in the standard data format specified by the Central Bank.

(3) The credit bureau shall omit from a credit report

(a) the identity of creditors, unless the information disclosed therein is directed to the data subject to which the credit report relates, in which case, the report shall also include the identity of all institutions which have accessed the information in the previous 24 months;

(b) any price related information such as interest rates so as to prevent anti-competitive coordination and collusion among reporting institutions; and

(c) any sensitive personal information.

(4) A credit bureau shall not

(a) provide a credit report or value-added product that lists all data subjects with good payment history unless there is a permissible purpose under section 21 regarding such listing;

(b) omit from a credit report of a data subject, information that can affect the ability of the data subject to access credit;

(c) give an undertaking to remove negative information which is accurate from a customer's credit file, including entries concerning negative credit information and court judgments;

(d) mislead a customer about the length of time that negative information is held on the customers's credit file or any official register; or

(e) give an undertaking to create a new credit file by changing the address of the customer or in any other way.

(5) In processing credit information for any of the purposes of this Act or the regulations a credit bureau must take reasonable steps to ensure that

(a) a credit report is balanced, clear, fair and not misleading particularly where it contains a comparison or contrast;

(b) each credit report or value-added product is clearly identifiable as such, is accurate, balanced and is sufficient for and presented in a way that is likely to be understood by the average member of the group to which it is directed, or by which it is likely to be received;

(c) does not disguise, omit, diminish or obscure important information, statements or warnings;

(d) credit information processed for the purpose of this Act and the regulations must be accurate and, where necessary, kept up to date;

(e) statements based on facts are distinguished from credit information based on personal assessments;

(f) credit information which is inaccurate, incomplete or not capable of being brought up to date is not transmitted or made available for any of the purposes of this Act or the regulations and is erased or rectified without delay;

(g) the quality of credit information is verified before it is transmitted or made available; and

(h) in all transmissions of credit information, the necessary information enabling the recipient to assess the degree of accuracy, completeness and reliability of the data and the extent to which it is up to date is included in such transmissions.

(6) Subsection (5) is not to be regarded as being contravened by reason of any inaccuracy in a credit report which accurately recorded information obtained by the credit bureau from a credit information provider in a case where**,** having regard to the purpose for which the credit information was obtained and further processed, the credit bureau has taken reasonable steps to ensure its accuracy.

(7) A credit bureau which wilfully or intentionally contravenes or fails to comply with a provision of this section is guilty of an offence and is liable on summary conviction to a fine of $50 000 or to imprisonment for 3 years or to both.

Permissible purposes

20.(1) A credit bureau may not knowingly provide to any person any information from the credit files of a data subject except for a purpose specified in subsection (2).

(2) A credit bureau may, where it is satisfied that a data subject has consented, provide a credit report, credit score or value-added product on the basis of

information contained in the credit file of the data subject to a subscriber or user for

(a) the consideration of

(i) an application for credit; or

(ii) an offer to act as a guarantor of an applicant for credit;

(b) use in connection with

(i) the purchase or collection of a debt of a data subject;

(ii) the entering into or the renewal of a tenancy agreement with a data subject; or

(iii) the underwriting of insurance involving a data subject;

(c) use, relating to a pre-employment check of a data subject for a position that entails significant financial responsibilities;

(d) periodic portfolio monitoring and risk assessment purposes, collection and skip tracing; or

(e) any other purpose prescribed by regulations under this Act.

(3) Where a person requires data subject information for any purpose under this Act from a credit bureau, the person shall

(a) submit sufficient information to the credit bureau in order to enable the credit bureau to confirm and validate the identity of the data subject and the identity of the person requiring the information;

(b) submit to the credit bureau evidence of the data subject's consent;

(c) agree to properly dispose of the data subject's information so that the data subject's information cannot reasonably be read or reconstructed; and

(d) ensure that the confidentiality of the data subject's information is maintained and prevent unauthorized access to or misuse of the information or reconstruction of the credit report.

(4) Subject to the provisions of any subscription or other agreements pertaining to the provision of credit reports, the credit bureau shall, before forwarding the information required under subsection (3),

(a) confirm receipt of the data subject's consent as required by subsection (3)*(b)*;

(b) confirm the identity of the data subject and the identity of the person who requires the information; and

(c) ensure that the integrity of the information provided is not altered during its transmission.

(5) A person who obtains data subject information under this section shall ensure that the information is processed only for the purpose for which it was obtained and not be further processed in any manner incompatible with that purpose.

(6) A credit bureau may provide a data subject with a copy of the data subject's own credit report, but it shall first confirm and validate the identity of the data subject before disclosing the information.

(7) A credit bureau shall take steps to ensure that

(a) a credit report is clear, fair, and not misleading; and

(b) that credit information processed for the purposes of this Act or the regulations is accurate and, where necessary, kept up to date.

(8) A credit bureau which discloses data subject information in contravention of this section is guilty of an offence and is liable on summary conviction to a fine of $50 000.

The requirement for consent

21.(1) A credit information provider may disclose credit information to a credit bureau

(a) with the consent of a data subject; or

(b) if the credit information provider gives notice to the data subject at the time of entering into an agreement between the credit information provider and the data subject, that credit information and personal information may be disclosed to a credit bureau.

(2) The notice and consent referred to in subsection (1) must be included in any written application, document or process completed by the data subject.

(3) Without prejudice to subsection (2), the credit information provider may also give notice

(a) by affixing a legible sign to that effect at its place of business;

(b) by publication on its website; or

(c) by any other method that would effectively bring the notice to the attention of the data subject.

(4) Subject to this section and the regulations, a person other than a credit information provider or a user may, with the consent of the data subject, obtain a credit report in respect of the data subject for a purpose referred to in section 20.

(5) Subject to section 22, the consent of a data subject shall expire when the agreement with respect to the credit relationship between the credit information provider or other user and the data subject is terminated; but the credit information respecting the data subject shall remain in the database of the credit bureau and the user in accordance with section 22.

(6) A credit bureau which discloses a data subject's information in contravention of this section is guilty of an offence and is liable on summary conviction to a fine of $50 000.

(7) Any person who obtains information relating to a data subject from a credit bureau by deception is guilty of an offence and liable on summary conviction to a fine of $50 000 or to imprisonment for 3 years or to both.

(8) A credit bureau does not contravene this section where the data subject information is required

(a) in response to an order of a court of competent jurisdiction;

(b) to avoid prejudice to the administration of justice including the prevention, detection, investigation, prosecution or punishment of offences;

(c) to enable an insurer to investigate any allegation of insurance fraud;

(d) for the enforcement of any law;

(e) for protection of the public revenue;

(f) for the conduct of proceedings before any court or tribunal;

(g) to be used in a form in which the identity of the data subject concerned is protected; or

(h) for statistical or research purposes.

(9) Data subject information published pursuant to paragraph *(h)* of subsection (8) shall be in a form which protects the identity of the data subject to whom it relates.

Restrictions regarding disclosure of data subject information

22.(1) The Minister may, on the recommendation of the Central Bank, make regulations relating to the disclosure and protection of data information.

(2) Where a credit bureau or user obtains credit information regarding credit extended to or in respect of a data subject, the credit bureau or user shall not disclose such information or retain it for a period longer than 7 years after the date of settlement of such credit.

(3) Notwithstanding subsection (2), a credit bureau or a user may, for historical, statistical, research or regulatory purposes, retain data subject information for a period in excess of 7 years.

(4) The Central Bank may issue guidelines with respect to the terms of retention of negative information and the calculation of the period of retention.

(5) A credit bureau or user that contravenes subsection (2) is guilty of an offence and is liable on summary conviction to a fine of $50 000 or to imprisonment for 3 years or to both.

Supplying false information

23.(1) A person shall not knowingly supply false or misleading information regarding a data subject to any credit information provider or credit bureau.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of $50 000 or to imprisonment for 3 years or to both.

Subscriber agreements

24.(1) A credit bureau and credit information provider may, with the approval of the Central Bank, enter into a subscriber agreement to provide for the receipt of data subject information by the credit bureau from the credit information provider in accordance with paragraph *(a)* of section 18(1).

(2) A subscriber agreement referred to in subsection (1), is void where the agreement states or implies that

(a) the provisions of this Act or the regulations do not apply to the agreement; and

(b) a right or remedy provided by or pursuant to this Act or the regulations

(i) does not apply to the agreement; or

(ii) is in any way limited, modified or abrogated by the agreement.

(3) A credit bureau which contravenes this section is guilty of an offence and is liable on summary conviction to a fine of $50 000.

Data management and quality control

25.(1) A credit bureau shall

(a) implement procedures that ensure that the information registered or contained in its database is updated as frequently as needed or at least monthly;

(b) implement strict quality control procedures in order to ensure the accuracy and completeness of its database;

(c) take all necessary steps to ensure that data subject information maintained by the credit bureau is up to date, authentic, legitimate, reliable, accurate and comprehensive;

(d) maintain and keep all records prescribed by this Act and regulations; and

(e) otherwise maintain reasonable procedures to limit the furnishing of data subject credit reports to the permissible purposes referred to in section 20.

(2) A credit bureau which contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of $50 000.

Security and control measures

26.(1) A credit bureau shall ensure that credit information processed for any purpose under this Act or the regulations is processed in a manner that ensures appropriate security of that information, using appropriate technical or organisational measures, including protection against unauthorized or unlawful processing and against accidental loss, destruction or damage.

(2) The measures referred to in subsection (1) must ensure a level of security appropriate to

(a) the harm that might result from such unauthorized or unlawful processing or accidental loss, destruction or damage; and

(b) the nature of the data to be protected.

(3) A credit bureau shall take reasonable steps to ensure the reliability of any of its employees who have access to credit information.

(4) A credit bureau shall, in respect of data subject information kept and maintained by the credit bureau,

(a) take the necessary security and control measures in order to avoid

(i) illegal interception or interruption of the data subject information during transmission; or

(ii) other misuse regarding the data subject information, including misuse by anyone with authorized access to the data subject information;

(b) keep and maintain an access log regarding the data subject information, including procedures performed; and

(c) make available to the data subject upon request, the name of each user and the date on which the user obtained access to the data subject's information.

(5) Without limiting paragraph *(a)* of subsection (4), a credit bureau shall, for the purpose of safeguarding and protecting the data subject information which it keeps and maintains,

(a) develop written policies and procedures to be followed by its employees, agents and contractors in relation to the provision of credit reporting services pursuant to this Act and the regulations;

(b) ensure that there is a subscriber agreement before disclosing information to a subscriber;

(c) provide information and training to ensure compliance with the policies and procedures referred to in paragraph *(a)*; and

(d) monitor usage of, and regularly check for compliance with or breaches of the subscriber agreement and the policies, procedures and controls required by this section.

(6) A credit bureau which contravenes this section is guilty of an offence and is liable on summary conviction to a fine of $50 000.

Data subject's rights of access and correction

27.(1) A data subject is entitled to be given by a credit bureau once every calendar year, a copy of the data subject's credit report without cost to the data subject.

(2) A credit bureau and a credit information provider shall, at the request of the data subject, give electronically or otherwise to the data subject, a written report in a language that the data subject specifies relating to

(a) the credit information of which that individual is the data subject;

(b) the purposes for which the credit information is being or is to be processed; and

(c) the recipients or classes of recipients to whom the credit information has been or may be disclosed.

(3) A data subject is entitled to submit a letter of dispute to a credit bureau regarding any inaccurate data respecting the data subject held in the credit bureau's database and request correction of the inaccurate data by the credit bureau.

(4) Where a letter of dispute has been submitted under subsection (3), the credit bureau shall, within 7 business days,

(a) investigate the dispute and the inaccuracy of any data and report its findings to the data subject making any corrections as may be warranted; and

(b) inform the data subject that he may report the dispute to the Central Bank.

(5) Where a data subject requests from a credit bureau, a credit report or other data subject information processed in respect of the data subject, the credit bureau shall, within no more than 3 business days after receipt of the request, furnish to the data subject, the credit report or other information.

(6) Where a credit bureau discloses personal information in pursuance of section 19, the credit bureau shall forward, together with the disclosure, a statement informing the data subject of his rights and the procedures for accessing or correcting data kept and maintained by that credit bureau in relation to the data subject.

(7) A credit bureau is not obligated to supply any information unless the credit bureau has

(a) received a request in writing; and

(b) received such fee as the credit bureau may require, unless otherwise prescribed.

(8) Where a credit bureau

(a) requires further information in order to

(i) satisfy itself as to the identity of the person making a request; or

(ii) locate the information which that person seeks; and

(b) has informed the requesting person of the requirement for further information,

the credit bureau is not obliged to comply with the request unless it is supplied with that further information.

(9) A data subject is entitled by notice in writing to require a credit bureau, within such period as is reasonable in the circumstances of the case,

(a) to cease processing for a specified purpose or in a specified manner; or

(b) not to commence processing

any credit information relating to the data subject for the reasons specified in subsection (10).

(10) The reasons referred to in subsection (9) are

(a) the data is inaccurate or misleading;

(b) the processing of the data or the processing for that purpose or in that manner is causing or is likely to cause substantial damage or substantial distress to him or to another; and

(c) that damage or distress is or would be unwarranted.

(11) The credit bureau shall within 21 days of receiving a notice, hereinafter referred to as "the data subject notice", give the data subject a written response

(a) stating that it has complied or intends to comply with the data subject notice; or

(b) stating its reasons for regarding the data subject notice as being unjustified and the extent, if any, to which it has complied or intends to comply with the data subject notice.

(12) Where the Central Bank is satisfied, on the application of a data subject, that a data subject notice which appears to be justified has not been complied with, the Central Bank may order the credit bureau to take such steps as the Central Bank deems appropriate to comply with the data subject notice.

Adverse actions against data subjects

28.(1) Where, as a result of any data subject information contained in a credit report, a credit provider

(a) takes any adverse action against the data subject;

(b) denies credit to a data subject, in whole or in part; or

(c) changes the terms and conditions of an existing credit to the detriment of a data subject,

the credit provider shall, within 30 days after taking the action, inform the data subject by notice in writing hereinafter called "an adverse action notice".

(2) An adverse action notice under subsection (1) shall contain the following information:

(a) the adverse action and the reasons for the action;

(b) the name, address and phone number of the credit bureau which provided the data subject information; and

(c) the right of the data subject

(i) to dispute the data subject information with the credit bureau; and

(ii) to have the information corrected where the data subject information is erroneous or outdated.

(3) A credit provider is deemed to have notified the data subject under subsection (1) where the credit provider sends the adverse action notice

(a) by registered mail to the data subject's last known address; or

(b) to the data subject's last known email address.

(4) Notwithstanding any other provision of this Act, a data subject is entitled to a copy of the credit report from the credit bureau without cost to the data subject whenever an adverse action is taken against the data subject by reason of negative information in a credit report.

Cross-border credit reporting

29.(1) A credit bureau may, with the prior written approval of the Central Bank

(a) outsource to a person or an entity operating in a country within the Caribbean Community; and

(b) enter into a contract with such a person or entity

for the processing of data subject information in its possession or under its control.

(2) A credit bureau may, with the consent of the data subject and with the prior approval of the Central Bank, transfer credit information relating to the data subject from Barbados to a place outside Barbados if that place has an adequate level of protection for the rights and freedoms of data subjects with respect to the processing of credit information.

(3) For the purposes of subsection (2), in determining an adequate level of protection, regard shall be had to

(a) the nature of the credit information;

(b) the country or territory of origin of the information contained in the data;

(c) the country or territory or final destination of that information;

(d) the purposes for which and period during which the data is intended to be processed;

(e) the law in force in the country or territory;

(f) the international obligations of that country or territory;

(g) the relevant codes of conduct or other rules which are enforceable in that country or territory, whether generally or by arrangement in particular cases; and

(h) the security measures taken in respect of the data in that country or territory.

(4) Subsection (3) does not apply to a transfer of credit information falling within any of the following cases:

(a) where the data subject has given his consent to the transfer;

(b) where the transfer is necessary for the performance of a contract between the data subject and the credit bureau, or for the taking of steps

at the request of the data subject, with a view to his entering into a contract with the credit bureau;

(c) where the transfer is necessary for the conclusion or the performance of a contract between the credit bureau and a person other than the data subject which is entered into at the request of the data subject, or is in the interest of the data subject;

(d) where the transfer is necessary for reasons of substantial public interest;

(e) where the transfer is necessary

(i) for the purpose of or in connection with legal proceedings, including prospective legal proceedings;

(ii) for the purpose of obtaining legal advice;

(iii) for the purpose of establishing, exercising or defending legal rights;

(f) where the transfer is part of the credit information on a public register and any conditions subject to which the register is open to inspection are complied with by any person to whom the data is or may be disclosed after the transfer;

(g) where the transfer is made on terms which are of a kind approved by the Central Bank as ensuring adequate safeguards for the rights and freedoms of data subjects; and

(h) where the transfer has been authorized by the Central Bank as being made in such a manner as to ensure adequate safeguards for the rights and freedoms of data subjects.

PART V

SUPERVISION BY THE CENTRAL BANK

Information gathering powers of the Central Bank

30.(1) For the purposes of carrying out its functions under this Act and the regulations with respect to a licensee, the Central Bank

(a) may request from the credit bureau any information that the Central Bank requires in order to determine any matter arising

(i) under this Act or the regulations; or

(ii) from the operations of the credit bureau;

(b) may issue such guidelines, rules or directives as the Central Bank considers appropriate;

(c) may require access to the books, records, accounts, vouchers, minutes of meetings and any other document of the licensee;

(d) may demand the production of and inspect any record of the licensee or a person with respect to whom an inspection or inquiry is being made or conducted under this Part; and

(e) shall exercise such other information gathering and enforcement powers set out in this Part or the regulations or as are necessary to fulfil its functions under this Part.

(2) Where the Central Bank demands the production of any record under paragraph *(d)* of subsection (1), any person who has the custody, possession or control of the record shall produce such record to the Central Bank.

(3) Every credit bureau shall comply with any guidelines, rules or directives issued by the Central Bank under paragraph *(b)* of subsection (1).

(4) A credit bureau which fails to comply with any guidelines, rules or directives issued by the Central Bank is guilty of an offence and liable on summary conviction to a fine of $50 000.

Inspections

31.(1) The Central Bank or an officer appointed by the Central Bank may conduct an inspection of

(a) an applicant prior to the grant of a licence pursuant to section 6; and

(b) a licensee in order to determine that the licensee is compliant with the provisions of this Act and the regulations and is in a sound financial position.

(2) Where the Central Bank or an officer appointed under subsection (1)(b) on inspection of a licensee has reason to believe that the licensee is

(a) conducting its business in an unlawful manner; or

(b) in a condition that endangers, or is likely to endanger, the credit worthiness, credit standing, credit capacity, character, general reputation or personal characteristics of data subjects,

the Central Bank may direct the licensee to take such measures as the Central Bank may specify to rectify the situation.

(3) The Central Bank may, in carrying out an inspection under subsection (1), inquire into and examine

(a) the business affairs of the credit bureau with respect to which the inspection is being made;

(b) any record of the credit bureau with respect to which the inspection is being made, including any payments to, by or on behalf of, in relation to or in connection with, the credit bureau; and

(c) any property or assets of, or things owned, acquired or alienated in whole or in part by

(i) the credit bureau with respect to which the inspection is being made; and

(ii) any person acting on behalf of a credit bureau or as agent for the credit bureau with respect to which the inspection is being made.

(4) A credit bureau and any other person referred to in subsection (3) shall, within the period specified by the Central Bank, comply with any direction or request made by the Central Bank under this section.

(5) Where a credit bureau or any other person referred to in subsection (3) contravenes or fails to comply with subsection (4), the credit bureau or that person is guilty of an offence and liable on summary conviction to a fine of $50 000 or to imprisonment for 3 years or to both.

Warrants

32.(1) A magistrate may issue a warrant permitting any member of the Police Force or other person named in the warrant to enter any premises belonging to or in the possession or control of a credit bureau or any officer or employee of such credit bureau and to search the premises and remove any document, material or other thing therein, where the magistrate is satisfied by evidence on oath by the Governor of the Central Bank that there are reasonable grounds to believe that a credit bureau has failed to produce any record required by the Central Bank under this Act.

(2) Any document, material or other thing removed pursuant to subsection (1) may be returned to the credit bureau upon completion of any investigation unless it is required for purposes of legal proceedings.

Costs of inspections

33. Where an inspector conducts an inspection or inquiry into a credit bureau pursuant to this Part, the person with respect to whom the inspection or

inquiry is made shall pay the prescribed fees and costs of the inspection or inquiry, including the costs of any travel undertaken in the course of the conduct of the inspection or inquiry.

Auditors and annual reports

34.(1) Every credit bureau shall appoint an independent auditor to conduct an annual audit and compliance review of the credit bureau in accordance with this Act and applicable best practice.

(2) The auditor shall, as part of the auditors's annual audit, obtain from the credit bureau a copy of

(a) the most recent report respecting the inspection of the credit bureau prepared by the Central Bank; and

(b) any order, direction, notice or other action issued or taken by the Central Bank under this Act or the regulations to verify compliance.

(3) Every credit bureau shall, within 4 months of the end of its financial year, submit to the Central Bank

(a) a signed copy of its audited financial statements;

(b) a signed management letter;

(c) a list of shareholders of the credit bureau specifying the shareholdings of each shareholder; and

(d) such other documents as the Central Bank may reasonably require.

(4) A credit bureau shall, no later than 3 months after the end of its financial year, publish its audited financial statements in the *Official Gazette* and in a newspaper circulating in Barbados and also on its website.

PART VI

MISCELLANEOUS

Determination of disputes

35. Any person aggrieved by a decision made under this Act may apply to the Tribunal for relief.

Civil liability for negligent non-compliance

36.(1) A person who, due to negligence, fails to comply with a requirement imposed by this Act or any regulations made under this Act shall be liable to a data subject for any injury suffered by the data subject by reason of such failure.

(2) Where 2 or more directors or officers of an authorized person are liable in respect of a failure under subsection (1), their liability shall be joint and several.

Agreement with another regulatory authority

37.(1) The Central Bank may enter into an agreement with a local or an overseas regulatory authority

(a) for the purpose of administering or enforcing this Act; or

(b) for any other purpose respecting credit reporting services that the Central Bank believes to be in the public interest.

(2) The Central Bank must, in relation to third countries and international organizations, take appropriate steps to

(a) develop international cooperation mechanisms to facilitate the effective enforcement of legislation for the protection of personal data;

(b) provide international mutual assistance in the enforcement of legislation for the protection of personal data, subject to appropriate safeguards for the protection of personal data, and other fundamental rights and freedoms;

(c) engage relevant stakeholders in discussion and activities aimed at furthering international cooperation in the enforcement of legislation for the protection of personal data; and

(d) promote the exchange and documentation of legislation and practice for the protection of personal data, including legislation and practice relating to jurisdictional conflicts with third countries.

Confidentiality and restrictions regarding access to information

38.(1) Information obtained by the Central Bank as a result of an inspection, audit, investigation or inquiry under this Act, shall not be available for access by any person except

(a) directors, officers or employees of the Central Bank whose responsibilities require or allow them to have access to the information; or

(b) such persons as may be authorized in writing by the Central Bank to have access to such information.

(2) No person, director, officer or employee of the Central Bank shall, unless authorized by this Act or any other enactment or with the consent of the person to whom the information relates,

(a) communicate, or allow to be communicated, information obtained pursuant to this Act to a person who is not legally entitled to obtain the information; or

(b) allow a person who is not legally entitled to information obtained pursuant to this Act to have access to such information.

Limitation on prosecution

39. No prosecution for an offence committed under this Act or the regulations shall be commenced after a period of 2 years has elapsed after the date on which the offence is alleged to have been committed.

Penalties

40. A person guilty of an offence under this Act for which no penalty is otherwise specifically provided is liable on summary conviction, to a fine of $100 000 or to imprisonment for 5 years or to both.

Fixed penalty

41.(1) Notwithstanding section 40, where the Central Bank has reason to believe that a person has committed an offence pursuant to this Act or the regulations, the Central Bank may issue to the person a notice in writing

(a) specifying the offence against the Act or the regulations the Central Bank has reason to believe has been committed;

(b) offering the person the option to discharge any liability to prosecution and conviction in respect of the offence by payment of a fixed penalty of $10 000; and

(c) giving the person no less than 7 days from the date of receipt of the notice to show cause why the fixed penalty should not be imposed.

(2) A fixed penalty may be imposed by the Central Bank after the period referred to in paragraph *(c)* of subsection (1) has elapsed, by order of the Central Bank.

(3) A fixed penalty payable under paragraph *(b)* of subsection (1), any other provision of this Act or the regulations shall be paid to the Central Bank within 10 days from the date of its imposition, unless otherwise stated.

(4) Subject to subsection (6), the Central Bank may, where a credit bureau fails to pay a fixed penalty within such time as may be specified in a notice issued pursuant to subsection (1), recover the amount due on the fixed penalty from a bank guarantee provided under section 8.

(5) The Central Bank shall, for the purpose of recovering from a bank guarantee the amount due on a fixed penalty payable by a credit bureau, issue an order to the bank issuing the guarantee

(a) notifying the bank of the failure of the credit bureau to pay the amount due on the fixed penalty; and

(b) directing the bank to immediately pay up the amount to the Central Bank.

(6) Where the amount due on a fixed penalty has been recovered from a bank guarantee in accordance with this section

(a) the Central Bank shall by notice in writing inform the credit bureau of the recovery; and

(b) the credit bureau shall, within 30 days of being notified by the Central Bank of the recovery from the bank guarantee, furnish the Bank with a new irrevocable bank guarantee

(i) in the amount required to be submitted pursuant to paragraph *(b)* of subsection (2) of section 8; and

(ii) in a format acceptable to the Central Bank.

(7) Without prejudice to any action taken by the Central Bank pursuant to paragraph (a) of subsection (6), the Central Bank may suspend or revoke the licence of a credit bureau which fails to comply with subsection (3) or with paragraph *(b)* of subsection (6).

Immunity

42.(1) No action or proceeding lies or shall be commenced against the Central Bank, its directors, officers, employees or agents or an authorized person, for anything done, caused, permitted or authorized to be done, attempted to be

done or omitted to be done in good faith by the Central Bank, its directors, officers, employees or agents or such authorized persons

(a) in the exercise or purported exercise of a power conferred by this Act or the regulations; or

(b) in the carrying out or purported carrying out of an order made pursuant to this Act or a duty imposed by this Act or the regulations.

(2) The Central Bank shall indemnify its directors, officers, employees, agents and authorized persons against the cost of defending their actions while discharging their functions under this Act or the regulations in good faith.

Protection of databases upon liquidation

43.(1) Notwithstanding any provision to the contrary contained in the *Companies Act*, Cap. 308, a credit bureau shall not pass a resolution for the suspension of its activity or the voluntary winding up of its business unless the credit bureau first obtains the approval in writing of the Central Bank.

(2) Where a credit bureau is being wound up or liquidated

(a) the database containing data subject information shall be transferred to the Central Bank;

(b) the Central Bank shall determine whether the credit reporting activities which were undertaken by the credit bureau shall be continued or whether the data subject information shall be destroyed or transferred to another licensed credit bureau, following a bidding process; or

(c) where the Central Bank determines not to transfer data subject information to another licensed credit bureau, it may issue an order regarding the disposal or destruction of the data subject information held by the credit bureau which is being wound up or liquidated.

Application of Data Protection Act, 2019 (Act 2019-29)

44. Where this Act is deficient in any respect for the protection of personal data, the *Data Protection Act, 2019* (Act 2019-29) shall apply to remedy the deficiency.

Regulations

45. The Minister may, after consultation with the Central Bank, make regulations

(a) prescribing the fees to be paid for

(i) the grant or renewal of a licence; and

(ii) the reinstatement of a licence that has been revoked;

(b) prescribing any matter that is required or authorized by this Act to be prescribed;

(c) relating to the disclosure and protection of data subject information; and

(d) generally for the proper administration of this Act.

Transitional provisions

46.(1) Where on the day immediately preceding the commencement of this Act any person carried on the business of a credit bureau, that person may continue to carry on that business after the commencement of this Act but shall within 6 months after the commencement of this Act, make application to the Central Bank under section 5 for the grant of a licence to carry on the business of a credit bureau.

(2) Where a person fails to comply with the provisions of subsection (1), the Central Bank shall order that person to cease its business forthwith.

(3) Where a person fails to comply with the provisions of this section, that person and every manager thereof is guilty of an offence and in the case of

(a) a body corporate, it is liable on summary conviction to a fine of $200 000; and

(b) a manager, he is liable on summary conviction to a fine of $50 000 or to imprisonment for 3 years or to both.

Commencement

47. This Act shall come into operation on a date to be fixed by Proclamation.

BARBADOS

The Official Gazette Part A 29th December, 2021

Act 2021-32

DEBT SETTLEMENT (ARREARS) ACT, 2021-32

Arrangement of Sections

1. Short title

2. Interpretation

3. Purpose

4. Creation of Series J Bonds

5. Issuance of Series J Bonds

6. Prepayment of principal

SCHEDULE

BARBADOS

I assent
S. MASON
President of Barbados
24th December, 2021.

2021-32

An Act to enable the Government of Barbados to settle its obligations due to certain persons and make provision for the creation and issuance of Series J Bonds to those persons.

[Commencement: 29th December, 2021]

ENACTED by the Parliament of Barbados as follows:

Short title

1. This Act may be cited as the *Debt Settlement (Arrears) Act, 2021*.

Interpretation

2. In this Act,

"Natural Disaster Clause" has the meaning assigned to it in the *Schedule*;

"Series J Bonds" means the bonds described in the *Schedule* issued by the Government.

Purpose

3. The purpose of this Act is to provide for the creation and issuance of Series J Bonds in settlement of

(a) obligations of the Government to persons whose lands were acquired under the *Land Acquisition Act*, Cap. 228;

(b) obligations of the Government to persons in respect of causes or legal claims instituted against the Government;

(c) Barbados denominated arrears incurred or assumed by the Government; and

(d) outstanding liabilities of the Government subject to section 5(2).

Creation of Series J Bonds

4. The Government shall create Series J Bonds on the terms and conditions set out in the *Schedule*.

Issuance of Series J Bonds

5.(1) The bonds created under section 4 shall be issued

(a) to a person whose land was acquired by the Government under the *Land Acquisition Act*, Cap. 228 and no compensation has been paid or fully satisfied in respect of the compulsory acquisition of the land;

(b) to a person whose cause or legal claim instituted against the Government has not been satisfied; and

(c) in respect of any outstanding liabilities of the Government.

(2) For the avoidance of doubt, paragraph (1)*(c)* does not apply to salaries, pensions, gratuities or any other emolument payable to public officers or any person employed by the Government.

Prepayment of principal

6. The Government may, with not less than 15 days prior written notice to the instrument holder, prepay

(a) part of; or

(b) all of,

any unpaid principal and unpaid accrued interest up to the date of such prepayment on the bonds.

SCHEDULE

(Sections 2 and 4)

Series J Bonds

Maturity:	42 months from the date of issuance
Interest Rate:	None
Principal Repayment:	Principal will be repaid in 42 equal monthly instalments
Natural Disaster Clause:	Yes

Schedule - (Cont'd)

Natural Disaster Clause

(a) This natural disaster clause applies following the occurrence of any Caribbean Earthquake Event, Caribbean Tropical Cyclone Event or Covered Area Rainfall Event covered in the Caribbean Catastrophe Risk Insurance Facility (CCRIF) Policy, in respect of which a Policy Payment has been made to Barbados, and subject to paragraph *(d)* below, Barbados may elect to defer payment of the Deferred Payment Amount on a Deferral Date. Any such Deferred Payment Amount shall remain outstanding and shall continue to accrue interest in accordance with paragraph *(c)* below.

(b) Beginning with the next Payment Date following a Deferral Date, each remaining principal amortization of the Affected Series will be increased by an amount equal to a pro rata portion of principal that is being deferred on the Deferral Date, taking into account the number of remaining principal amortization payments of that Affected Series.

(c) The portion of a Deferred Payment Amount that is comprised of interest will be capitalized and added to principal as each such interest payment falls due under the terms of the Affected Series after the relevant Deferral Date. As such interest is converted into principal, the principal amount of the Affected Series shall be increased in the amount of such deferred interest.

(d) Barbados shall be entitled to defer the Deferred Payment Amount following the occurrence of an Event only if all of the following conditions are satisfied:

(i) the CCRIF Policy is in full force and effect and CCRIF has issued a written report confirming that the Event is an Insured Event in respect of which a Policy Payment has been made to Barbados;

(ii) since the 22nd day of April, 2021, neither of the Coverage Limit or the Exhaustion Point applicable to earthquakes, tropical cyclone or excess rainfall has been reduced, unless it has been reduced by CCRIF and CCRIF has declined a request submitted by Barbados to CCRIF to maintain such Coverage Limit or Exhaustion Point, as the case may be; and

Schedule - (Cont'd)

Natural Disaster Clause - *(Cont'd)*

(iii) the Modelled Loss (as defined below), in the case of a Caribbean Earthquake Event or Caribbean Tropical Cyclone Event, or the Rainfall Index Loss, in the case of a Covered Area Rainfall Event, to Barbados from the Event is greater than U.S.$5 million.

Upon electing to defer the Deferred Payment Amount, Barbados shall at its own expense provide notice thereof (a "Deferral Claim") to the Holders as provided in the Notices provision of the relevant Affected Series, describing in reasonable detail the particulars of the Event giving rise to the right to make such Deferral Claim. Barbados shall be entitled to make no more than three Deferral Claims under each Affected Series.

(e) For purposes of this clause,

"Affected Series" means any series of Government of Barbados BBD-denominated debt securities that incorporates by reference this Natural Disaster Clause;

"Caribbean Earthquake Event", "Caribbean Tropical Cyclone Event", "Covered Area Rainfall Event", "Coverage Limit", "Exhaustion Point", "Insured Event", "Policy Payment" and "Rainfall Index Loss" have the meanings given to those terms in the CCRIF Policy;

"CCRIF" means CCRIF SPC (formerly, the Caribbean Catastrophe Risk Insurance Facility), or any successor thereof, with whom the Government of Barbados has entered into the CCRIF Policy;

"CCRIF Policy" means the Parametric Insurance Contract dated 1st June, 2020 which the Government of Barbados has entered into with CCRIF to insure against risks of earthquake, tropical cyclone and excess rainfall, including any documents incorporated by reference therein and any attachments, annexes, appendices or supplements thereto (including but not limited to the applicable coverage summary and associated loss curve data spreadsheet), as such CCRIF Policy may be amended or supplemented from time to time;

Schedule - (Concl'd)

Natural Disaster Clause - *(Concl'd)*

"Deferral Claim", in respect of an Event, has the meaning given to that term in paragraph *(d)* of this clause;

"Deferral Date" means the Payment Date under the relevant series next following submission of a Deferral Claim;

"Deferred Payment Amount" means all principal amortizations and interest payments falling due on an Affected Series for the consecutive two-year period immediately following the Deferral Date;

"Modelled Loss" has the meaning given to that term in the CCRIF Policy, provided that if the Modelled Loss from an Event is more than 10.0% higher than the Reference Modelled Loss, "Modelled Loss" for purposes of subclause *(d)*(iii) and the definition of "Deferral Date" in this clause will be the Reference Modelled Loss;

"Payment Date", for any Affected Series, means the dates specified for the payments of interest and/or principal thereunder;

"Reference Modelled Loss" means the Modelled Loss in respect of an Event, calculated under the CCRIF Policy as in effect on the Closing Date, using the relevant Return Period (years) applicable to the Event. When calculating the Reference Modelled Loss, the Return Period (years) applicable to the Event, if not divisible by 5, shall be rounded down to the nearest number that is divisible by 5;

"Return Period", in relation to years, means the return period applicable to the Event as that term is used in the model and formulae detailed in the CCRIF Policy.

BARBADOS

The Official Gazette Part A 29th December, 2021

Act 2021-33

FACILITATION OF INTERNATIONAL MARITIME TRAFFIC ACT, 2021-33

Arrangement of Sections

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3. Convention to have force of law

4. Application of Act

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5. Establishment of National Maritime Transport Facilitation Programme

6. Establishment of National Maritime Transport Facilitation Committee

7. Functions of Committee

8. Functions of the Barbados Port Inc.

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National Maritime Transport Facilitation Committee

SECOND SCHEDULE

1965 Convention on Facilitation Of International Maritime Traffic (FAL 1965)

THIRD SCHEDULE

Pre-arrival Documents

FOURTH SCHEDULE

Documents relating to Stowaways

FIFTH SCHEDULE

List of officers to whom pre-arrival and pre-departure documents to be submitted

SIXTH SCHEDULE

Certificates of Clearance on Pre-Arrival and Arrival

SEVENTH SCHEDULE

Form of Notice of Intended Departure

EIGHTH SCHEDULE

Certificates of Clearance on Departure

NINTH SCHEDULE

List of officers to whom fines are to be paid for outstanding pre-arrival and pre-departure documents

TENTH SCHEDULE

Consequential Amendments

BARBADOS

I assent
S. MASON
President of Barbados
14th December, 2021.

2021-33

An Act to provide for the implementation of the *Convention on Facilitation of International Maritime Traffic* to make provision for the electronic transmission and exchange of information in order to facilitate and expedite the clearance of international maritime traffic and to provide for related purposes.

[Commencement: by Proclamation]

ENACTED by the Parliament of Barbados as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Facilitation of International Maritime Traffic Act, 2021*.

Interpretation

2.(1) In this Act,

"advance cargo information" means a manifest, an airway bill, a bill of lading, information or data in respect of

(a) cargo and stores including all imports, exports in transit and transshipment of goods; or

(b) any package of which there is no bill of lading or airway bill on board a ship;

"advance passenger information" means the information in respect of a passenger, crew member or other person transported in a ship;

"attempted stowaway" means a person who is

(a) secreted on a ship, or in cargo which is subsequently loaded on the ship, without the consent of the shipowner or master; and

(b) detected on board the ship before it has departed from the port;

"clearance" means the accomplishment of customs or other formalities necessary to permit

(a) goods to enter for home use, to be exported or to be placed under another customs procedure;

(b) persons to enter Barbados; or

(c) a ship to enter or depart the Port;

"coastal state" means a sovereign state that is not land locked and has territory connected to the ocean or whose coastlines lie on exorheic basins which naturally externally drain into rivers or oceans;

"Committee" means the National Maritime Transport Facilitation Committee established under section 6;

"Convention" means the International Maritime Organization Convention on Facilitation of International Maritime Traffic, 1965

(a) the text of which is set out in the *Second Schedule*; and

(b) to which Barbados is a party;

"cruise ship" means a ship on an international voyage carrying passengers participating in a group programme and accommodated on board for the purpose of making scheduled temporary tourist visits at one or more different ports, and which during the voyage does not normally

(a) embark or disembark any other passengers; or

(b) load or discharge any cargo;

"customs officer" means a customs officer appointed under section 13 of the *Public Service Act*, Cap. 29 and includes the Comptroller of Customs, a Deputy Comptroller of Customs, an Assistant Comptroller of Customs and a Customs Guard;

"document" includes information presenting data by electronic means or by non-electronic means;

"domestic space" means the countries of Anguilla, Antigua and Barbuda, Bahamas, Belize, Bermuda, British Virgin Islands, Cayman Islands, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago, Turks and Caicos Islands and any other country so designated under an enactment governing the customs system in Barbados;

"goods" means tangible products and includes animals and plants transported on an international voyage or for utilization on board a ship;

"immigration officer" means an immigration officer appointed under section 13 of the *Public Service Act*, Cap. 29 and includes the Chief Immigration Officer, the Deputy Chief Immigration Officer, an Assistant Chief Immigration Officer and a Senior Immigration Officer;

"IMPACS" means the CARICOM Implementing Agency for Crime and Security established under the Agreement Establishing the CARICOM Implementation Agency for Crime and Security, 2006;

"International Health Regulations" are the regulations adopted by the World Health Assembly on the 23rd May, 2005 which entered into force on the 15th June, 2007 to which Barbados is a party;

"JRCC" means the Joint Regional Communication Centre which is a sub-agency of IMPACS which receives advance passenger information data and advance cargo information data;

"maritime autonomous surface ship" means a ship which to a varying degree can operate independently of human interaction;

"Maritime Single Window" means a one-stop service environment that covers maritime and port administrative procedures;

"master" means the person having command of a ship;

"Minister" means the Minister responsible for Maritime Affairs;

"non-coastal state" means a land locked state whose territory is not connected to the ocean or whose coastlines lie on endorheic basins which internally drain into lakes or swamps, and allows no natural outflow to rivers or oceans;

"passport" means a valid passport referring to the person producing the same, furnished with a photograph of that person and duly issued to him by or on behalf of the Government of the country of which he is a subject or citizen and for a period which, according to the law in force in that country, has not expired, and includes a travel permit or other document establishing to the

satisfaction of an immigration officer the nationality and identity of the person to whom it refers;

"Port" means the Port of Bridgetown as described in the *First Schedule* to the *Barbados Port Inc. (Transfer of Management and Vesting of Assets) Act*, Cap. 285B;

"port" includes any port, terminal, offshore terminal, ship and repair yard or roadstead which is normally used for the loading, unloading, repair and anchoring of ships or any other place at which a ship can call;

"Programme" means the National Maritime Transport Facilitation Programme established under section 5;

"Seafarers' Identity Document" means the form of identification issued to a seafarer for the purpose of the *Seafarers' Identity Documents Convention*, 1958, of the International Labour Organization to which Barbados is a party;

"ship" means a vessel which is designed, used or capable of being used solely or partly for navigation in, on, through, or immediately above the water, without regard to method or lack of propulsion and includes a maritime autonomous surface ship;

"ship agent" means

(a) the party representing the owner of the ship; or

(b) the charterer in port;

"ship owner" means a person who owns or operates a ship and includes any person other than the ship agent acting on the behalf of the owner or the operator;

"ship document" includes certificates and other documents which must be made available by the master of the ship in order to demonstrate that the ship is in compliance with national and international regulations;

"ship equipment" includes articles, other than the spare part of the ship, that are on board a ship for use on the ship and which are removable but not of a

consumable nature, including accessories such as life boats, life-saving devices, furniture, ship apparel and similar items;

"ship spare parts" includes articles of a repair or replacement nature for incorporation into the ship in which they are carried;

"ship stores" includes goods that are to be used in the ship, including consumable goods, goods carried for sale to passengers and crew members, fuel and lubricants but does not include ship equipment and ship spare parts;

"shore leave" means permission for a crew member to go ashore during the stay of a ship in port within such geographical or time limits, if any, as may be decided by the public authorities;

"SOLAS" means the International Convention for Safety of Life at Sea, 1974 to which Barbados is a party;

"stowaway" means a person who

(a) is secreted on a ship, or in cargo which is subsequently loaded on the ship without the consent of the ship owner or master;

(b) is detected on board the ship after it has departed from a port, or in the cargo while unloading it in the port of arrival; and

(c) is reported as a stowaway by the master to the appropriate authorities.

(2) In this Act, "Annex" shall be construed as a reference

(a) to the Annex to the Convention as modified from time to time; or

(b) where the Annex is replaced by an instrument, to that instrument.

(3) For the purposes of subsection (2), the Annex is modified where

(a) omissions, additions or other alterations to the text take effect in accordance with Article VII of the Convention; or

(b) a supplementary provision made under Article VII of the Convention takes effect.

(4) A modification or replacement of the Annex shall come into force in accordance with Article VII(3) of the Convention.

Convention to have force of law

3.(1) Subject to this Act, the Convention set out in the *Second Schedule*, with the exception of standard 7.4, shall have the force of law in Barbados.

(2) In the event of any inconsistency between this Act and the Convention, the Convention shall prevail to the extent of the inconsistency.

Application of Act

4.(1) This Act shall apply to all passenger ships and cargo ships that are

(a) of coastal and non-coastal States, the Governments of which are party to the Convention; and

(b) above 150 gross tons.

(2) This Act shall not apply to a passenger or cargo ship that is 150 gross tons or below.

PART II

ADMINISTRATION

Establishment of National Maritime Transport Facilitation Programme

5.(1) There is established a Programme to be known as the National Maritime Transport Facilitation Programme for the adoption of measures under the Convention to facilitate and expedite the clearance of international maritime traffic which arrives at and departs from the Port.

(2) The Programme shall

(a) set the standards for the formalities, documentary requirements and procedures which should be applied on the arrival, stay and departure of a ship entering or leaving the Port, in relation to:

(i) the ship;

(ii) the crew and passengers;

(iii) baggage and cargo;

(iv) freight containers;

(v) goods;

(vi) postal parcels; and

(vii) human remains;

(b) harmonize the formalities, documentary requirements and procedures set out in the *Health Services Act*, Cap. 44, the *Quarantine Act*, Cap. 53, the *Quarantine (Maritime) Regulations* (S.I. 1947 No. 38) and any enactments governing the customs system and immigration system in Barbados with the standards set out under paragraph *(a)* for the safe arrival, stay and departure of a ship into and from the Port;

(c) create a paperless system for the exchange of information, including the electronic data interchange for the transmission of information relating to maritime transport; and

(d) prevent unnecessary delays to ships, persons and property on board ships while in the Port.

Establishment of National Maritime Transport Facilitation Committee

6.(1) There is established a Committee to be known as the National Maritime Transport Facilitation Committee.

(2) The Committee shall develop the Programme established under section 5 to facilitate and expedite the clearance of international maritime traffic which arrives at and departs from the Port.

(3) The *First Schedule* shall have effect with respect to the constitution of the Committee and otherwise in relation thereto.

Functions of Committee

7. The functions of the Committee are as follows:

(a) to implement and enforce national policies and enactments on the facilitation of international maritime traffic in accordance with the Programme established under section 5;

(b) to develop and maintain technological and administrative systems to support a Maritime Single Window;

(c) to supervise and regulate the operations of the Maritime Single Window in accordance with international best practices;

(d) to advise the Minister on matters relating to this Act; and

(e) to do such other things as are necessary to effectively carry out the purposes of this Act.

Functions of the Barbados Port Inc.

8.(1) The Barbados Port Inc. shall implement the Programme to facilitate and expedite the clearance of international maritime traffic by

(a) establishing and upgrading from time to time a maritime single window at the Port;

(b) establishing and maintaining a monitoring, review and evaluation mechanism to ensure that procedures are simplified and that administrative burdens are reduced for ships engaged in international voyages, arriving to, staying in and departing from the Port;

(c) applying the principles of efficiency, security and convenience;

(d) treating humanely and protecting passengers, crew, seafarers and stowaways who are on board a ship engaged in an international voyage arriving to, stayin g in and departing from the Port;

(e) providing training for port authorities to operate the maritime single window to ensure that international ships comply with the requirements under this Act; and

(f) to do such other things as are necessary to effectively carry out the purposes of this Act.

(2) The Chief Executive Officer of the Barbados Port Inc. shall be responsible for the general administration of this Act.

PART III

ARRIVAL, STAY AND DEPARTURE OF SHIPS

Establishment of Maritime Single Window

9. There is established a Maritime Single Window for Barbados to facilitate and expedite the clearance of international maritime traffic which arrives in Barbados from a port outside Barbados or departs from Barbados for a port outside Barbados.

Documents to be submitted through Maritime Single Window

10.(1) All documents relating to the arrival, stay and departure of a ship which intends to come to Barbados from a port outside Barbados or depart from Barbados for a port outside Barbados shall be submitted in an electronic format, correct in all particulars to

(a) the Chief Executive Officer of the Port, Chief Immigration Officer, Comptroller of Customs, Chief Medical Officer and Chief Environmental Health Officer through the Maritime Single Window; and

(b) the Chief Operations Officer of JRCC through Electronic Manifest Management ASYCUDA.

(2) The Chief Operations Officer of JRCC shall submit the documents received in accordance with paragraph *(b)* of subsection (1) to the Chief Immigration Officer and Comptroller of Customs through the Maritime Single Window.

(3) All documents submitted through the Maritime Single Window shall be signed and dated by

(a) the ship owner, ship agent or master;

(b) a person authorized by the ship owner; or

(c) a person approved by the Chief Executive Officer of the Port, Chief Immigration Officer, Comptroller of Customs, Chief Medical Officer, Chief Environmental Health Officer or Chief Operations Officer of the JRCC depending on the document to be submitted through the Maritime Single Window.

Documents pre-arrival

11.(1) The ship owner, ship agent or master of every ship which intends to come to Barbados from a port outside Barbados and proposing to call at the Port,

(a) shall submit in the form set out in the Convention in the *Second Schedule*, the following documents through the Maritime Single Window:

(i) a General Declaration set out in Form 1;

(ii) a Cargo Declaration set out in Form 2 or a copy of the ship's manifest where the manifest contains the information required in the Cargo Declaration;

(iii) a Ship's Stores Declaration set out in Form 3;

(iv) a Crew's Effects Declaration set out in Form 4;

(v) a Crew List set out in Form 5;

(vi) a Passenger List set out in Form 6, or a list compiled by the owner of the ship if that list contains the information required in the Passenger List;

(vii) a Dangerous Goods Manifest set out in Form 7;

(b) shall submit in the form set out in Part A of the *Third Schedule* the following documents through the Maritime Single Window:

(iii) Advanced Notification Form for Waste Delivery to Port Reception Facilities set out in Form 1;

(iv) a List of Ports of Call set out in Form 2;

(v) a Maritime Declaration of Health set out in Form 3;

(vi) an International Certificate of Vaccination or Prophylaxis set out in Form 4;

(vii) a Yellow Fever Vaccination List set out in Form 5;

(viii) Security-related information as required under SOLAS regulation XI-2/9.2 set out in Form 6;

(ix) a Ship Sanitation Control Exemption Certificate & Ship Sanitation Control Certificate set out in Form 7;

(x) a Letter Bill - Bulk Mail under the Universal Postal Convention set out in Form 8; and

(xii) Ship Particulars set out in Form 9; and

(c) shall submit in the form set out in Part B of the *Third Schedule* the following documents through Electronic Manifest Management ASYCUDA:

(i) Advanced Passenger Information set out in Form 1; and

(ii) Advanced Cargo Information set out in Form 2;

(d) shall, where there are stowaways on board the ship, submit the details of the stowaway in the form set out in Part B of the *Fourth Schedule*.

(2) In the case of a ship arriving from within the domestic space the documents referred to in subsection (1) shall be submitted one hour in advance of the arrival of the ship.

(3) In the case of a ship arriving from outside the domestic space, the documents referred to in subsection (1) shall be submitted 24 hours in advance of the arrival of the ship.

(4) A ship owner, ship agent or master who does not submit the documents referred to in subsection (1) in an electronic format through the Maritime Single Window may, for a period of 12 months after the coming into force of this Act, submit the documents referred to in paragraph *(a)* and *(b)*(v) and (viii) of subsection (1) in original hard copy as follows:

(a) five copies of the General Declaration;

(b) four copies of the Cargo Declaration;

(c) four copies of the Ship Stores Declaration;

(d) two copies of the Crew Effects Declaration;

(e) four copies of the Crew List;

(f) four copies of the Passenger List;

(g) one copy of the Dangerous Goods Manifest;

(h) one copy of the Maritime Declaration of Health; and

(i) one copy of security-related information as required under SOLAS regulation XI-2/9.2.2.

(5) Notwithstanding section 10, a ship owner, ship agent or master shall submit the documents referred to in paragraph *(a)* of subsection (1) in original hard copy, in circumstances resulting from acts beyond the reasonable control of the Barbados Port Inc. which prevents the electronic submission of documents.

(6) The *Fifth Schedule* sets out the officer to whom the documents shall be submitted through the Maritime Single Window.

(7) Every document that is submitted through the Maritime Single Window shall be retrieved, signed and dated by the respective officer in order to facilitate and expedite the clearance of a ship.

Provisional clearance of ship intending to arrive

12.(1) Every ship owner, ship agent or master who submits the documents in accordance with section 11 shall be issued a Provisional Certificate of Clearance on Pre-Arrival in the form set out in Part A of the *Sixth Schedule* as follows:

(a) in the case of a ship arriving from within the domestic space, 12 hours in advance of the arrival of the ship in Barbados; and

(b) in the case of a ship arriving from outside the domestic space 24 hours in advance of the arrival of the ship in Barbados.

(2) Where a ship owner, ship agent or master does not receive a Provisional Certificate of Clearance on Pre-Arrival in accordance with subsection (1) and can provide proof that the documents were submitted in accordance with section 11, a Provisional Certificate of Clearance on Pre-Arrival in the form set out in Part A of the *Sixth Schedule* shall be issued immediately on arrival in Barbados.

Documents on arrival

13. Where a ship owner, ship agent or master submits documents in accordance with section 11 and the information submitted is no longer accurate because there is a change in the circumstances on the ship, the ship owner, ship agent or master shall resubmit the document to which the change is to be made through the Maritime Single Window on arrival in Barbados, without incurring a penalty.

Final clearance of ship on arrival

14. The ship owner, ship agent or master who submits documents in accordance with section 11 shall be issued a Final Certificate of Clearance on Arrival in the form set out in Part B of the *Sixth Schedule* after the ship arrives in Barbados and is inspected by

(a) a customs officer;

(b) an immigration officer; and

(c) an environmental health officer.

Ship arriving for medical emergency

15.(1) Where a ship arrives in Barbados from a port outside Barbados for the purpose of bringing ashore

(a) a sick or an injured passenger or crew member;

(b) a person rescued at sea;

(c) any other person who requires emergency medical treatment; or

(d) a person who requires treatment against

(i) a notifiable disease set out in the *First Schedule* to the *Health Services (Communicable and Notifiable Diseases) Regulations* (S.I. 1969 No. 179); or

(ii) a public health emergency of international concern,

the ship owner, ship agent or master shall submit the documents set out in subsection (2).

(2) In accordance with subsection (1), the ship owner, ship agent or master shall submit the following documents through the Maritime Single Window:

(a) Crew List set out in Form 5 of the Convention in the *Second Schedule*;

(b) Passenger List set out in Form 6 of the Convention in the *Second Schedule* or a list compiled by the owner of the ship if that list contains the information required in the Passenger List;

(c) Maritime Declaration of Health set out in Form 3 in Part A of the *Third Schedule*; and

(d) International Certificate of Vaccination or Prophylaxis set out in Form 4 in Part A of the *Third Schedule*.

Documents pre-departure

16. The ship owner, ship agent or master of every ship which intends to depart from a port in Barbados shall submit a Notice of Intended Departure in the form set out in the *Seventh Schedule* as follows:

(a) in the case of a ship departing to a port within the domestic space, 30 minutes in advance of the departure of the ship; and

(b) in the case of a ship departing to a port outside the domestic space, no less than 30 minutes or more than 4 hours in advance of the departure of the ship.

Provisional clearance on intended departure

17.(1) A ship owner, ship agent or master of a ship who submits a Notice of Intended Departure, in the form set out in the *Seventh Schedule*, in accordance with section 16 shall be issued a Provisional Certificate of Clearance on Departure in the form set out in Part A of the *Eighth Schedule* 3 hours prior to the departure of the ship.

(2) Where a ship owner, ship agent or master does not receive a Provisional Certificate of Clearance on Departure in accordance with subsection (1) and can provide proof that the documents were submitted in accordance with section 16, a Provisional Certificate of Clearance on Departure shall be issued immediately.

Documents on departure

18. When a ship departs from Barbados for a port outside Barbados, the ship owner or ship agent shall submit through the Maritime Single Window the following documents set out in the Convention in the *Second Schedule*:

(a) a General Declaration set out in Form 1;

(b) a Cargo Declaration set out in Form 2, for cargo which was not the subject of a declaration when the ship arrived in Barbados;

(c) a Ship's Stores Declaration set out in Form 3, for ship stores which were not the subject of a declaration when the ship arrived in Barbados; and

(d) a Crew List set out in Form 5, where there is a change in the number or the composition of the crew that arrived in Barbados.

Final clearance of ship on departure

19. The ship owner, ship agent or master who submits documents in accordance with section 18 shall be issued a Final Certificate of Clearance on Departure in the form set out in Part B of the *Eighth Schedule* after the ship has been inspected by

(a) a customs officer;

(b) an immigration officer; and

(c) an environmental health officer.

Failure to submit pre-arrival and pre-departure documents

20.(1) A ship owner, ship agent or master who fails to submit a document required under section 11 or 16 shall submit that document immediately on arrival or departure and the ship owner, ship agent or master is liable to pay the administrative penalty set out in subsections (2) and (3) to the officer specified

in the *Ninth Schedule* for each document that should have been submitted in advance of the arrival or departure of the ship.

(2) Where a ship owner, ship agent or master fails to submit

(a) a Maritime Declaration of Health set out in Form 3 in Part A of the *Third Schedule*;

(b) Security-related information as required under SOLAS regulation XI-2/9.2 set out in Form 6 in Part A of the *Third Schedule*;

(c) Advanced Passenger Information set out in Form 1 in Part B of the Third Schedule; or

(d) Advanced Cargo Information set out in Form 2 in Part B of the *Third Schedule*,

the administrative penalty shall not exceed $200 000.

(3) Where a ship owner, ship agent or master fails to submit any other document, the administrative penalty shall not exceed $150 000.

Request for additional documents

21. The Chief Executive Officer of the Port, Chief Immigration Officer, Comptroller of Customs, Chief Medical Officer, Chief Environmental Health Officer or Chief Operations Officer of JRCC may, where necessary, request a ship owner, ship agent or master to submit documents in addition to those submitted under section 11, 13 and 16.

Documents to be signed

22. Where a document to be submitted through the Maritime Single Window is to be signed, that signature shall be in accordance with subsection (1) of section 8 of the *Electronic Transactions Act*, Cap. 308B.

Correction of errors

23.(1) Where the ship owner, ship agent or master submits a document through the Maritime Single Window that is not correct in all particulars and the ship owner, ship agent or master can show that the error in the particulars

(a) was inadvertent;

(b) was not of a serious nature;

(c) was not due to recurrent carelessness; and

(d) was not made to violate any enactment,

the ship owner, ship agent or master may amend the document and resubmit that document through the Maritime Single Window.

(2) Where the ship owner, ship agent or master submits a document specified in the *Ninth Schedule* through the Maritime Single Window that is not correct in all particulars and it is found that the error in the particulars

(a) was intentional;

(b) was of a serious nature;

(c) was due to recurrent carelessness; and

(d) was made to violate any enactment,

the ship owner, ship agent or master is liable to pay a fine of $200 for each error that is contained in the document.

PART IV

ARRIVAL AND DEPARTURE OF CRUISE SHIPS

Arrival of a cruise ship

24. Sections 11, 12 and 14 shall apply to a cruise ship which arrives in Barbados from a port outside Barbados.

Documents on arrival of a cruise ship

25. Notwithstanding subsection (1) of section 11, when a cruise ship arrives in Barbados from a port outside Barbados, the ship owner, ship agent or master of that ship

(a) shall submit the following documents set out in the Convention in the *Second Schedule* through the Maritime Single Window:

(i) a General Declaration set out in Form 1;

(ii) a Ship's Stores Declaration set out in Form 3;

(iii) a Crew's Effects Declaration set out in Form 4

(iv) a Crew List set out in Form 5;

(v) a Passenger List set out in Form 6, or a list compiled by the owner of the ship if that list contains the information required in the Passenger List, and

(b) shall submit the following documents set out in Part A of the *Third Schedule* through the Maritime Single Window:

(i) a List of Ports of Call set out in Form 2; and

(ii) a Maritime Declaration of Health set out in Form 3.

Documents on departure of a cruise ship

26. Notwithstanding section 18, when a ship is scheduled to depart from Barbados for a port outside Barbados and Barbados is the first port of departure, the ship owner, ship agent or master shall submit through the Maritime Single Window, the following documents set out in the Convention in the *Second Schedule*:

(a) a General Declaration set out in Form 1;

(b) a Crew List in Form 5; and

(c) a Passenger List in Form 6, or a list compiled by the owner of the ship where that list contains the information required in the Passenger List.

PART V

ARRIVAL AND DEPARTURE OF PASSENGERS AND CREW MEMBERS

Final Certificate of Clearance to be issued before disembarking ship

27. No passenger or crew member shall disembark a ship including a cruise ship which arrives in Barbados from a port outside Barbados unless that ship has been issued a Final Certificate of Clearance on Arrival in the form set out in Part B of the *Sixth Schedul*e.

Documents required from passengers on arrival

28. When a Final Certificate of Clearance on Arrival in the form set out in Part B of the *Sixth Schedul*e has been issued, a passenger who seeks to enter Barbados from a port outside Barbados must be the holder of a passport.

Documents required from crew members on arrival

29. When a Final Certificate of Clearance on Arrival in the form set out in Part B of the *Sixth Schedul*e has been issued, a crew member who seeks to

enter Barbados from a port outside Barbados must be the holder of one of the following:

(a) a passport; or

(b) a Seafarers' Identity Document.

Passengers and crew members arriving without documents

30. A passenger or crew member who seeks to enter Barbados and is not the holder of a passport or Seafarers' Identity Document shall not be permitted to enter unless he

(a) explains to an immigration officer why he is not the holder of a passport or Seafarers' Identity Document; and

(b) establishes his identity and national status to the satisfaction of the immigration officer.

Shore Leave

31.(1) When a ship arrives in Barbados from a port outside Barbados and remains in the Port, the master of the ship shall grant shore leave to those crew members who are entitled to shore leave while the ship is in the Port.

(2) A crew member shall not require a visa or special permit for the purpose of shore leave granted in accordance with subsection (1).

(3) Where shore leave has not been granted in accordance with subsection (1), the master of the ship shall provide written reasons to

(a) the crew member whose shore leave was denied; and

(b) the Chief Executive Officer of the Port.

Documents required from passengers and crew members on departure

32. Sections 29 and 30 shall apply to a passenger or crew member who seeks to depart from Barbados for a port outside Barbados.

Improper documents

33. Where a passenger or crew member seeking to enter Barbados from a port outside Barbados, or depart from Barbados for a port outside Barbados

(a) fabricates or falsifies any passport, identity document, seafarers' document or other document; or

(b) uses, utters or possesses, or attempts to use, utter or possess,

(i) any passport, identity document, seafarers' identity document or other document which has not been lawfully issued or which he is not entitled to use, utter or possess; or

(ii) any fabricated or falsified passport, identity document, seafarers' identity document or other document knowing the same to be fabricated or falsified,

that passenger or crew member is guilty of an offence and is liable on summary conviction to a fine of $5 000 or to imprisonment for 12 months or both.

PART VI

STOWAWAYS

Incidences of stowaways and attempted stowaways to be reported

34.(1) When a ship arrives in Barbados from a port outside Barbados and a stowaway is discovered on board the ship, the ship owner, ship agent or master shall report immediately the discovery of the stowaway to the Chief Immigration Officer and the Commissioner of Police in the form set out in Part B of the *Fourth Schedule.*

(2) When a ship is scheduled to depart from Barbados for a port outside Barbados and an attempted stowaway is discovered on board the ship, the ship

owner, ship agent or master shall report immediately the discovery of the stowaway to the Chief Immigration Officer and the Commissioner of Police.

Ship owner to defray cost of maintaining stowaway

35. Where the ship owner, ship agent or master has reported the discovery of a stowaway or attempted stowaway in accordance with section 34 and the stowaway or attempted stowaway disembarks the ship and is taken into the custody of the Chief Immigration Officer, the ship owner shall be responsible for the cost of maintaining the stowaway or attempted stowaway.

Treatment of stowaways

36. The conditions governing the detention, return and repatriation of an attempted stowaway or a stowaway are set out in Part A of the *Fourth Schedule*.

PART VII

OFFENCES AND PENALTIES

Offences relating to the submission of false documents

37.(1) A ship owner, ship agent or master who

(a) submits a false Crew's Effects Declaration set out in Form 4 of the Convention in the *Second Schedule* is guilty of an offence and is liable on summary conviction to a fine of $500 000;

(b) submits a false

(i) General Declaration set out in Form 1 of the Convention in the *Second Schedule*;

(ii) Cargo Declaration set out in Form 2 of the Convention in the *Second Schedule* or a false copy of the ship's Manifest;

(iii) Ship's Store Declaration set out in Form 3 of the Convention in the *Second Schedule*;

(iv) Crew List set out in Form 5 of the Convention in the *Second Schedule*; or

(v) Passenger List set out in Form 6 of the Convention in the *Second Schedule* or a false copy of a compilation listing the passengers on board the ship,

is guilty of an offence and is liable on summary conviction to a fine of $100 000; or

(c) submits a false Dangerous Goods Manifest set out in Form 7 of the Convention in the *Second Schedule* is guilty of an offence and is liable on summary conviction to a fine of $2 000 000.

(2) A ship owner, ship agent or master who

(a) submits a false Letter Bill - Bulk Mail under the Universal Postal Convention set out in Form 8 in Part A of the *Third Schedule* is guilty of an offence and is liable on summary conviction to a fine of $500 000;

(b) submits a false Ship Sanitation Control Exemption Certificate and Ship Sanitation Control Certificate set out in Form 7 in Part A of the *Third Schedule* is guilty of an offence and is liable on summary conviction to a fine of $1 000 000; or

(c) submits a false

(i) Maritime Declaration of Health set out in Form 3 in Part A of the *Third Schedule*;

(ii) security information as required under SOLAS regulation XI-2/9.2 set out in Form 6 in Part A of the *Third Schedule*; or

(iii) International Certificate of Vaccination or Prophylaxis set out in Form 4 in Part A of the *Third Schedule*

is guilty of an offence and is liable on summary conviction to a fine of $2 000 000.

PART VIII

MISCELLANEOUS

Settlement of disputes

38. In the case of a dispute between the ship owner, ship agent or master and the Barbados Port Inc., the parties shall consult together with a view to the settlement of the dispute by mediation.

Regulations

39. The Minister may make regulations generally for giving effect to this Act.

Amendment of Schedules

40. The Minister may by order amend the *First Schedule, Third Schedule, Fifth Schedule, Sixth Schedule, Seventh Schedule, Eighth Schedule* and *Ninth Schedule*.

Consequential amendments

41. The enactments set out in the first column of the *Tenth Schedule* are amended in the manner set out opposite thereto in the second column.

Commencement

42. This Act shall come into operation on a date to be fixed by Proclamation.

FIRST SCHEDULE

(Section 2 and 6(3))

National Maritime Transport Facilitation Committee

Appointment of members

1.(1) The Committee shall comprise of 13 members as follows:

(a) three representatives from the Barbados Port Inc.;

(i) one representative from Port Security;

(ii) one representative from the Port Information Technology Department;

(iii) one representative from the Port Corporate Department;

(b) two representatives from Port Health;

(c) two representatives from the Customs Department;

(d) two representatives from the Immigration Department;

(e) one representative from a cruise tour operator organization;

(f) one representative from a local shipping company;

(g) two persons appointed by the Minister as follows:

(i) one person who appears to the Minister to be qualified and experienced in economics, accounts, finance, tax, law, public administration or business or such other area as, in the opinion of the Minister, is required for the discharge of the functions of the Board; and

(ii) one person nominated by the most representative organisation of employees from among its members.

(2) A member shall subject to the provisions of this *Schedule*

(a) hold office for a term not exceeding 3 years; and

(b) be eligible for reappointment.

(3) The Minister shall, pursuant to subparagraph (3), determine the term of office of a member in such a manner that in any one year the respective terms of office of no more than 3 members expire.

Chairman and Deputy Chairman

2. The Minister shall appoint a member to be Chairman, and another to be Deputy Chairman, of the Committee.

Resignation

3.(1) The Chairman may resign his office by instrument in writing addressed to the Minister.

(2) A director, other than the Chairman, may resign his office by instrument in writing addressed to the Chairman, who shall forthwith forward the instrument to the Minister.

(3) A resignation takes effect from the date on which the Minister receives the instrument.

Temporary leave of absence

4. The Minister may, in writing, grant leave of absence to a member.

Temporary appointment

5. Where a member is, or is likely to be, unable to perform the functions of his office for more than 30 days, whether as a result of absence from Barbados, illness or other cause, the Minister may appoint a person to act in the place of the member.

Revocation of appointment

6. The Minister shall revoke the appointment of a member who

(a) fails to carry out any of his functions under this Act;

(b) becomes of unsound mind or becomes permanently unable to perform his functions by reason of ill health;

(c) is convicted of an offence involving fraud or dishonesty or, in the case of any other offence, is sentenced to a term of imprisonment;

(d) is guilty of serious misconduct in relation to his functions;

(e) is bankrupt or compounds with or suspends payment to his creditors; or

(f) fails to declare his interest in a matter before the Committee.

Vacancies

7.(1) A vacancy in the membership of the Committee arises on

(a) the death or resignation of a member;

(b) the revocation of the appointment of a member; or

(c) the absence of a member from 4 consecutive meetings of the Committee without the approval of the Minister.

(2) A person who is appointed to fill a vacancy referred to in subparagraph (1) shall hold office only for the unexpired portion of the term of the former member concerned.

Disqualification

8. A person who

(a) is a member of Parliament;

(b) other than a person specified in paragraph 1*(a)*(ii) or (iii), is a public officer within the meaning of the *Public Service Act*, Cap. 29; or

(c) were he a member, would have to be removed from office pursuant to paragraph 6,

is not eligible to be a member.

Gazetting of appointments

9. The appointment, resignation, death or removal of a member of the Committee shall be notified in the *Official Gazette*.

Seal and execution of documents

10.(1) The seal of the Committee shall be

(a) kept in the custody of the Chairman, the Deputy Chairman or the person performing the functions of secretary to the Committee and may be affixed to documents or instruments pursuant to a resolution of the Committee, in the presence of any 2 of the persons referred to in this subparagraph; and

(b) authenticated by the signature of the Chairman or the Deputy Chairman or the person performing the functions of secretary to the Committee.

(2) All documents or instruments made by the Committee, other than those required by law to be under seal, and all decisions of the Committee shall be signified under the hand of the Chairman or the Deputy Chairman or the person performing the functions of secretary to the Committee.

Meetings

11.(1) The Committee shall meet quarterly or as often as may be necessary or expedient for the transaction of its business; and such meetings shall be held at such places and times and on such days as the Committee may determine.

(2) The Chairman, or in the event of his absence from Barbados or inability to act as such, the Deputy Chairman, may at any time call a special meeting of

the Committee and shall call such a meeting within 7 days of the receipt by him of a request for the purpose addressed to him in writing and signed by not less than 3 members.

(3) The Chairman, or in his absence, the Deputy Chairman, shall preside at all meetings of the Committee.

(4) Where the Chairman and the Deputy Chairman are absent from a meeting, the directors present shall elect a director from among their number to preside at the meeting.

(5) Five members shall constitute a quorum.

(6) The decisions of the Committee shall be by a majority of votes and in a case where the voting is equal, the Chairman or other person presiding at the meeting shall, in addition to an original vote, have a casting vote.

(7) Minutes of each meeting shall be kept by the person performing the functions of secretary to the Committee or by such other officer as the Committee appoints for the purpose and shall be confirmed by the Committee and signed by the Chairman or Deputy Chairman at the next meeting of the Committee.

Attendance of non-members at meetings

12. The Committee may invite any person to attend any of its meetings to assist or advise it with respect to any matter under its consideration, but a person so invited does not have a right to vote.

Board may regulate proceedings

13. Subject to the provisions of this *Schedule,* the Committee may regulate its own proceedings.

SECOND SCHEDULE

(Sections 2, 3(1), 11(1)(a), 15, 18, 25, 26, 37(1))

1965 Convention on Facilitation Of International Maritime Traffic (FAL 1965)

Adopted in London, England on 9 April 1965

THE CONTRACTING GOVERNMENTS:

DESIRING to facilitate maritime traffic by simplifying and reducing to a minimum the formalities, documentary requirements and procedures on the arrival, stay and departure of ships engaged in international voyages;

HAVE AGREED as follows:

ARTICLE I

The Contracting Governments undertake to adopt, in accordance with the provisions of the present Convention and its Annex, all appropriate measures to facilitate and expedite international maritime traffic and to prevent unnecessary delays to ships and to persons and property on board.

ARTICLE II

(1) The Contracting Governments undertake to co-operate, in accordance with the provisions of the present Convention, in the formulation and application of measures for the facilitation of the arrival, stay and departure of ships. Such measures shall be, to the fullest extent practicable, not less favourable than measures applied in respect of other means of international transport; however, these measures may differ according to particular requirements.

(2) The measures for the facilitation of international maritime traffic provided for under the present Convention and its Annex apply equally to the ships of coastal and non-coastal States the Governments of which are Parties to the present Convention.

(3) The provisions of the present Convention do not apply to warships or pleasure yachts.

ARTICLE III

The Contracting Governments undertake to co-operate in securing the highest practicable degree of uniformity in formalities, documentary requirements and procedures in all matters in which such uniformity will facilitate and improve international maritime traffic and keep to a minimum any alterations in formalities, documentary requirements and procedures necessary to meet special requirements of a domestic nature.

ARTICLE IV

With a view to achieving the ends set forth in the preceding Articles of the present Convention, the Contracting Governments undertake to co-operate with each other or through the Inter-Governmental Maritime Consultative Organization (hereinafter called the "Organization") in matters relating to formalities, documentary requirements and procedures, as well as their application to international maritime traffic.

ARTICLE V

(1) Nothing in the present Convention or its Annex shall be interpreted as preventing the application of any wider facilities which a Contracting Government grants or may grant in future in respect of international maritime traffic under its national laws or the provisions of any other international agreement.

(2) Nothing in the present Convention or its Annex shall be interpreted as precluding a Contracting Government from applying temporary measures considered by that Government to be necessary to preserve public morality, order and security or to prevent the introduction or spread of diseases or pests affecting public health, animals or plants.

(3) All matters that are not expressly provided for in the present Convention remain subject to the legislation of the Contracting Governments.

ARTICLE VI

For the purposes of the present Convention and its Annex:

(a) "Standards" are those measures the uniform application of which by Contracting Governments in accordance with the Convention is necessary and practicable in order to facilitate international maritime traffic;

(b) "Recommended Practices" are those measures the application of which by Contracting Governments is desirable in order to facilitate international maritime traffic.

ARTICLE VII

(1) The Annex to the present Convention may be amended by the Contracting Governments, either at the proposal of one of them or by a conference convened for that purpose.

(2) Any Contracting Government may propose an amendment to the Annex by forwarding a draft amendment to the Secretary-General of the Organization (hererinafter called the "Secretary-General"):

(a) Upon the express request of a Contracting Government, the Secretary-General shall communicate any such proposal directly to all Contracting Governments for their consideration and acceptance. If he receives no such express request, the Secretary-General may proceed to such consultations as he deems advisable before communicating the proposal to the Contracting Governments;

(b) Each Contracting Government shall notify the Secretary-General within one year from the receipt of any such communication whether or not it accepts the proposal;

(c) Any such notification shall be made in writing to the Secretary-General who shall inform all Contracting Governments of its receipt;

(d) Any amendment to the Annex under this paragraph shall enter into force six months after the date on which the amendment is accepted by a majority of the Contracting Governments;

(e) The Secretary-General shall inform all Contracting Governments of any amendment which enters into force under this paragraph, together with the date on which such amendment shall enter into force.

(3) A conference of the Contracting Governments to consider amendments to the Annex shall be convened by the Secretary-General upon the request of at least one-third of these Governments. Every amendment adopted by such conference by a two-thirds majority of the Contracting Governments present and voting shall enter into force six months after the date on which the Secretary-General notifies the Contracting Governments of the amendment adopted.

(4) The Secretary-General shall notify promptly all signatory Governments of the adoption and entry into force of any amendment under this Article.

ARTICLE VIII

(1) Any Contracting Government that finds it impracticable to comply with any Standard by bringing its own formalities, documentary requirements or procedures into full accord with it or which deems it necessary for special reasons to adopt formalities, documentary requirements or procedures differing from that Standard, shall so inform the Secretary-General and notify him of the differences between its own practice and such Standard. Such notification shall be made as soon as possible after entry into force of the present Convention for the Government concerned, or after the adoption of such differing formalities, documentary requirements or procedures.

(2) Notification by a Contracting Government of any such difference in the case of an amendment to a Standard or of a newly adopted Standard shall be made to the Secretary-General as soon as possible after the entry into force of such amended or newly adopted Standard, or after the adoption of such differing formalities, documentary requirements or procedures and may include an indication of the action proposed to bring the formalities, documentary requirements or procedures into full accord with the amended or newly adopted Standard.

(3) Contracting Governments are urged to bring their formalities, documentary requirements and procedures into accord with the Recommended Practices insofar as practicable. As soon as any Contracting Government brings its own formalities, documentary requirements and procedures into accord with any Recommended Practice, it shall notify the Secretary-General thereof.

(4) The Secretary-General shall inform the Contracting Governments of any notification made to him in accordance with the preceding paragraphs of this Article.

ARTICLE IX

The Secretary-General shall convene a conference of the Contracting Governments for revision or amendment of the present Convention at the request of not less than one-third of the Contracting Governments. Any revision or amendments shall be adopted by a two-thirds majority vote of the Conference and then certified and communicated by the Secretary-General to all Contracting Governments for their acceptance. One year after the acceptance of the revision or amendments by two-thirds of the Contracting Governments, each revision or amendment shall enter into force for all Contracting Governments except those which, before its entry into force, make a declaration that they do not accept the revision or amendment. The Conference may by a two-thirds majority vote determine at the time of its adoption that a revision or amendment is of such a nature that any Contracting Government which has made such a declaration and which does not accept the revision or amendment within a period of one year after the revision or amendment enters into force shall, upon the expiration of this period, cease to be a party to the Convention.

ARTICLE X

(1) The present Convention shall remain open for signature for six months from this day's date and shall thereafter remain open for accession.

(2) The Governments of States Members of the United Nations, or of any of the specialized agencies, or the International Atomic Energy Agency, or Parties to the Statute of the International Court of Justice may become Parties to the present Convention by:

(a) signature without reservation as to acceptance;

(b) signature with reservation as to acceptance followed by acceptance; or

(c) accession.

Acceptance or accession shall be effected by the deposit of an instrument with the Secretary-General.

(3) The Government of any State not entitled to become a Party under paragraph 2 of this Article may apply through the Secretary-General to become a Party and shall be admitted as a Party in accordance with paragraph 2, provided that its application has been approved by two-thirds of the Members of the Organization other than Associate Members.

ARTICLE XI

The present Convention shall enter into force sixty days after the date upon which the Governments of at least ten States have either signed it without reservation as to acceptance or have deposited instruments of acceptance or accession. It shall enter into force for a Government which subsequently accepts it or accedes to it sixty days after the deposit of the instrument of acceptance or accession.

ARTICLE XII

Three years after entry into force of the present Convention with respect to a Contracting Government, such Government may denounce it by notification in writing addressed to the Secretary- General who shall notify all Contracting Governments of the content and date of receipt of any such notification. Such denunciation shall take effect one year, or such longer period as may be specified in the notification, after its receipt by the Secretary-General.

ARTICLE XIII

(1) (a) The United Nations in cases where they are the administering authority for a territory, or any Contracting Government responsible for the international relations of a territory, shall as soon as possible consult with such territory in an endeavour to extend the present Convention to that territory, and may at any time by notification in writing given to the Secretary-General declare that the Convention shall extend to such territory.

(b) The present Convention shall from the date of the receipt of the notification or from such other date as may be specified in the notification extend to the territory named therein.

(c) The provisions of Article VIII of the present Convention shall apply to any territory to which the Convention is extended in accordance with the present Article; for this purpose, the expression "its own formalities, documentary requirements or procedures" shall include those in force in that territory.

(d) The present Convention shall cease to extend to any territory one year after the receipt by the Secretary-General of a notification to this effect, or on such later date as may be specified therein.

(2) The Secretary-General shall inform all the Contracting Governments of the extension of the present Convention to any territory under paragraph 1 of this Article, stating in each case the date from which the Convention has been so extended.

ARTICLE XIV

The Secretary-General shall inform all signatory Governments, all Contracting Governments and all Members of the Organization of:

(a) the signatures affixed to the present Convention and the dates thereof;

(b) the deposit of instruments of acceptance and accession together with the dates of their deposit;

(c) the date on which the Convention enters into force in accordance with Article XI;

(d) any notification received in accordance with Articles XII and XIII and the date thereof;

(e) the convening of any conference under Articles VII or IX.

ARTICLE XV

The present Convention and its Annex shall be deposited with the Secretary-General who shall transmit certified copies thereof to signatory Governments and to acceding Governments. As soon as the present Convention enters into force, it shall be registered by the Secretary-General in accordance with Article 102 of the Charter of the United Nations.

ARTICLE XVI

The present Convention and its Annex shall be established in the English and French languages, both texts being equally authentic. Official translations shall be prepared in the Russian and Spanish languages and shall be deposited with the signed originals.

IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed the present Convention.

DONE at London this ninth day of April 1965.

ANNEX

Section 1 - Definitions and general provisions

A. Definitions

For the purpose of the provisions of this annex, the following meanings shall be attributed to the terms listed:

Attempted stowaway. A person who is secreted on a ship, or in cargo which is subsequently loaded on the ship, without the consent of the shipowner or the master or any other responsible person, and who is detected on board the ship before it has departed from the port.

Cargo. Any goods, wares, merchandise, and articles of every kind whatsoever carried on a ship, other than mail, ship's stores, ship's spare parts, ship's equipment, cargo transport units not carried under a contract of carriage with a shipper, crew's effects and passengers' accompanied baggage.

Cargo transport unit (CTU). A freight container, swap-body, vehicle, railway wagon or any other similar unit.

Clearance. Accomplishment of customs and/or other formalities necessary to:

(a) Permit goods to enter home use, to be exported or to be placed under another customs procedure (so called customs clearance),

(b) Permit persons to enter the territory of a State, or

(c) Permit a ship to enter or depart a port within the territory of a State.

Crew's effects. Clothing, items in everyday use and other articles, which may include currency, belonging to the crew and carried on the ship.

Crew member. Any person actually employed for duties on board during a voyage in the working or service of a ship and included in the crew list.

Cruise ship. A ship on an international voyage carrying passengers participating in a group programme and accommodated aboard, for the purpose of making scheduled temporary tourist visits at one or more different ports, and which during the voyage does not normally:

(a) embark or disembark any other passengers;

(b) load or discharge any cargo.

Document. Information presenting data by electronic means or by non-electronic means.

Estimated time of arrival (ETA). Time when a ship estimates it will arrive at the pilot station serving a port or, when it expects to enter a specific location in the port area, where port regulations apply.

Freight container. An article of transport equipment that is of a permanent character and accordingly strong enough to be suitable for repeated use; specially designed to facilitate the transport of goods, by one or other modes of transport, without intermediate reloading: designed to be secured and/or readily handled, having fittings for these purposes, and approved in accordance with the International Convention for Safe Containers (CSC), 1972, as amended. The term "freight container" includes neither vehicle nor packaging; however a freight container that is carried on a chassis is included.

ISPS Code. The "International Ship and Port Facility Security (ISPS) Code" adopted on 12 December 2002 by resolution 2 of the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974 (SOLAS), as may be amended by the Organization.

Manifest. Document recapitulating the various data from bills of lading and other transport documents issued for the carriage of goods on board ships.

Master. The person having command of a ship.

Passenger in transit. A passenger who arrives by ship from a foreign country for the purpose of continuing his/her journey by ship or some other means of transport to a foreign country.

Passengers' accompanied baggage. Property, which may include currency, carried for a passenger on the same ship as the passenger, whether in his/her personal possession or not, so long as it is not carried under a contract of carriage of goods or other similar agreement.

Port. Any port, terminal, offshore terminal, ship and repair yard or roadstead which is normally used for the loading, unloading, repair and anchoring of ships, or any other place at which a ship can call.

Postal items. Correspondence and other objects tendered to be carried by a ship for carriage by postal administrations and intended for delivery to postal administrations in the ship's ports of call.

Public authorities. The agencies or officials in a State responsible for the application and enforcement of the laws and regulations of that State which relate to any aspect of the Standards and Recommended Practices contained in this annex.

Release. Action taken by customs authorities to permit goods undergoing clearance to be placed at the disposal of the persons concerned.

Security measures. Measures developed and implemented in accordance with international agreements to improve security on board ships, in port areas, facilities and of goods moving in the international supply chain to detect and prevent unlawful acts.

Ship agent. The party representing the ship's owner and/or charterer (the Principal) in port. If so instructed, the agent is responsible to the Principal for arranging, together with the port, a berth, all relevant port and husbandry services, tending to the requirements of the master and crew, clearing the ship with the port and other authorities (including preparation and submission of appropriate documentation) along with releasing or receiving cargo on behalf of the Principal.

Shipowner. One who owns or operates a ship, whether a person, a corporation or other legal entity, and any person other than the ship agent acting on behalf of the owner or operator.

Ship's documents. Certificates and other documents which must be made available by a ship's master in order to demonstrate the ship's compliance with international or national regulations.

Ship's equipment. Articles, other than ship's spare parts, on board a ship for use thereon, which are removable but not of a consumable nature, including accessories such as lifeboats, life-saving devices, furniture, ship's apparel and similar items.

Ship's spare parts. Articles of a repair or replacement nature for incorporation into the ship in which they are carried.

Ship's stores. Goods for use in the ship, including consumable goods, goods carried for sale to passengers and crew members, fuel and lubricants, but excluding ship's equipment and ship's spare parts.

Shipper. The party named on the bill of lading or waybill as shipper and/or who concludes a contract of carriage (or in whose name or on whose behalf a contract of carriage has been concluded) with a carrier. The shipper is known also as the sender.

Shore leave. Permission for a crew member to be ashore during the ship's stay in port within such geographical or time limits, if any, as may be decided by the public authorities.

Single Window. A facility that allows submission of standardized information covered by the Convention to a single entry point.

Stowaway. A person who is secreted on a ship, or in cargo which is subsequently loaded on the ship, without the consent of the shipowner or the master or any other responsible person and who is detected on board the ship after it has departed from a port, or in the cargo while unloading it in the port of arrival, and is reported as a stowaway by the master to the appropriate authorities.

Temporary admission. The customs procedure under which certain goods can be brought into a customs territory conditionally relieved, totally or partially, from payment of import duties and taxes and without application of import prohibitions or restrictions of economic character; such goods must be imported for a specific purpose and must be intended for re-exportation within a specified period and without having undergone any change except normal depreciation owing to the use made of them.

Time of arrival. Time when a ship first comes to rest, whether at anchor or at a dock, in a port.

Transport document. Information evidencing a contract of carriage between a shipowner and a shipper, such as a sea waybill, a bill of lading or a multi-modal transport document.

B. General Provisions

In conjunction with paragraph 2 of article V of the Convention, the provisions of this annex shall not preclude public authorities from taking such appropriate measures, including calling for further information, as may be necessary in cases of suspected fraud, or to deal with special problems constituting a grave danger to public order (ordre public), public security or public health, such as unlawful acts against the safety of maritime traffic and illicit trafficking in narcotic drugs and psychotropic substances, or to prevent the introduction or spread of disease or pests affecting animals or plants.

1.1. **Standard**. Public authorities shall in all cases require only essential information to be furnished, and shall keep the number of items to a minimum.

1.1.1. *Not in use*.

1.2. **Recommended Practice**. Notwithstanding the fact that documents for certain purposes may be separately prescribed and required in this annex, public authorities, bearing in mind the interests of those who are required to complete the documents as well as the purposes for which they are to be used, should provide for any two or more such documents that are to be submitted by the same party to be combined into one in any case in which this is practicable and in which an appreciable degree of facilitation would result.

1.3. **Recommended Practice.** Measures and procedures imposed by Contracting Governments for the purposes of security or preventing the trafficking of narcotics should be efficient. Such measures and procedures (e.g. risk management and cross-checking of information) should be implemented in such a manner as to cause a minimum of interference with, and to prevent unnecessary delays to, ships and persons or property on board**.**

C. **Systems for the electronic exchange of information**

1.3*bis*. **Standard**. Public authorities shall take all necessary measures for the establishment of systems for the electronic exchange of information by 8 April 2019.

1.3*ter*. **Standard**. Public authorities, when introducing systems for the electronic exchange of information to assist clearance processes, shall provide shipowners and other parties concerned with the necessary information about the systems requirements and give an adequate period of transition before the use of the systems are made mandatory. A period of no less than 12 months for transition to the mandatory use of the systems shall be provided from the date of the introduction of such systems.

1.3*quart*. **Recommended Practice**. Public authorities should, for a transitional period, allow for the submission of required information for clearance processes in both electronic and paper form.

1.3*quin*. **Recommended Practice**. Contracting Governments should encourage public authorities to introduce arrangements to enable the submission of all the information required by public authorities in connection with the arrival, stay and departure of ships, persons and cargo, avoiding duplication, to a "Single Window".

Consideration should also be given to such a Single Window serving as the mechanism through which the public authorities communicate decisions and other information covered by this Convention.

1.4. *Not in use*.

1.5. *Not in use*.

1.6. **Standard**. Public authorities, when introducing systems for the electronic exchange of information for clearance processes, shall limit the information they require from shipowners and other parties concerned to that required by the FAL Convention.

1.6*bis*. **Standard**. When introducing systems for the electronic exchange of information required by public authorities for the arrival, stay and departure of the ship, persons and cargo to facilitate clearance processes, Contracting Governments shall encourage public authorities and other parties concerned (shipowners, handling companies, seaports, and/or cargo agents, etc.) to exchange data in conformity with the relevant UN Standards, including UN Electronic Data Interchange for Administration, Commerce and Transport (UN/EDIFACT) Standards, or other internationally agreed Standards, such as the XML Standard.

1.6*ter*. **Recommended Practice**. When introducing new electronic message formats, public authorities should continue to allow for the usage of existing electronic message formats in agreement with the parties concerned.

1.7. **Recommended Practice**. When planning for, introducing or modifying systems for the electronic exchange of information for clearance processes, public authorities should:

(a) afford all interested parties, from the outset, the opportunity for consultation;

(b) evaluate existing procedures and eliminate those which are unnecessary;

(c) determine those procedures which are to be computerized;

(d) use United Nations (UN) Recommendations, WCO Information Packages and relevant ISO Standards to the maximum extent practicable;

(e) adapt these systems for multimodal applications;

(f) take appropriate steps to minimize the cost of implementing these systems to operators and other private parties; and

(g) give attention to the desirability of obtaining compatibility with other relevant information systems.

1.7.1. **Recommended Practice**. Contracting Governments should encourage public authorities and other parties concerned to cooperate or participate directly in the development of electronic systems using internationally agreed Standards with a view to enhancing the exchange of information relating to the arrival, stay and departure of ships, persons and cargo and assuring inter-operability between the systems of public authorities and other parties concerned.

1.8. Not in use.

1.8.1. Not in use.

D. **Illicit drug trafficking**

1.9. **Recommended Practice**. Public authorities should seek to establish cooperation arrangements with shipowners and other parties concerned to improve their ability to combat drug smuggling, while providing enhanced facilitation. Such arrangements could be based on the World Customs Organization Memoranda of Understanding and the associated guidelines.

1.10. **Standard**. Where, as part of cooperation arrangements, public authorities, shipowners, and other parties concerned are provided access to sensitive commercial and other information, the information shall be treated confidentially.

E. **Control techniques**.

1.11. **Standard**. Public authorities shall use risk management to enhance their border control procedures related to:

the release/clearance of cargo;

security requirements; and

their ability to target smuggling,

thereby facilitating the legitimate circulation of persons and goods.

Section 2 - Arrival, stay and departure of the ship

This section contains the provisions concerning the formalities required of shipowners by the public authorities on the arrival, stay and departure of the ship and shall not be read so as to preclude a requirement for the presentation, for inspection by the appropriate authorities, of certificates and other documents made available by the ship pertaining to its registry, measurement, safety, manning and other related matters.

A. General

2.1. **Standard**. Public authorities shall not require for their retention, on arrival or departure of ships to which the Convention applies, any documents other than those covered by the present section. The documents in question are:

General Declaration

Cargo Declaration

Ship's Stores Declaration

Crew's Effects Declaration

Crew List

Passenger List

Dangerous Goods Manifest

The document required under the Universal Postal Convention for mail

Maritime Declaration of Health

Security-related information as required under SOLAS regulation XI-2/9.2.2

Advance electronic cargo information for customs risk assessment purposes

Advanced Notification Form for Waste Delivery to Port Reception Facilities, when communicated to the Organization.

2.1.1. **Standard**. Contracting Governments shall not require consular formalities, charges or fees in connection with documents for the clearance of ships, including the electronic submission of documents.

2.1.2. **Standard**. Public authorities shall develop procedures for the lodgement of pre-arrival and pre-departure information in order to facilitate the processing of such information for the expedited subsequent release/clearance of cargo and persons.

2.1.3. **Recommended Practice**. National legislation should specify the conditions for the lodgement of pre-arrival and pre-departure information. With regard to the point in time of transmission of the pre-arrival information, it should not normally be set before the moment the ship has left the country of departure. However, national legislation could, in addition to the basic rule, also specify the exceptions from this principle where required, e.g. for voyages of short duration.

2.1.3*bis*. **Recommended Practice**. Public authorities should, for the submission of advance electronic cargo information for customs risk assessment purposes, take into account the time limits specified in the WCO SAFE Framework of Standards.

2.1.4. **Recommended Practice**. Public authorities should not require the lodgement of a separate General Declaration, Cargo Declaration, Crew List, Passenger List and Dangerous Goods Manifest if the data elements contained in these documents are included in the pre-arrival or pre-departure information or in the ship's manifest.

2.1.5. **Standard**. Public authorities shall reuse the pre-arrival and pre-departure information in subsequent procedures where such data is required.

B. **Contents and purpose of documents**

2.2. **Standard**. The General Declaration shall be the basic document on arrival and departure providing data required by public authorities relating to the ship.

2.2.1. **Recommended Practice**. The same form of General Declaration should be accepted for both the arrival and the departure of the ship.

2.2.2. **Recommended Practice**. In the General Declaration, public authorities should not require more than the following data:

name, type and IMO number of ship

call sign

flag State of ship

voyage number

particulars regarding registry

particulars regarding tonnage

name of master

name and contact details of ship's agent

brief description of the cargo

number of crew

number of passengers

brief particulars of voyage

date and time of arrival/departure

port of arrival/departure

the ship's requirements in terms of waste and residue reception facilities

last port of call/next port of call.

2.2.3. **Standard**. Public authorities shall accept that the General Declaration is either dated and signed by the master, the ship's agent or some other person duly authorized by the master, or authenticated in a manner acceptable to the public authority concerned.

2.3. **Standard**. The Cargo Declaration shall be the basic document on arrival and departure providing data required by public authorities relating to the cargo. However, particulars of any dangerous cargo may also be required to be furnished separately.

2.3.1. **Recommended Practice**. In the Cargo Declaration, public authorities should not require more than the following data:

(a) on arrival

name and IMO number of ship

flag State of ship

name of master

voyage number

port of loading

port where report is made

freight container identification, where appropriate; marks and numbers; number and kind of packages; quantity and description of the goods or, if available, the Harmonized System (HS) code

transport document numbers for cargo to be discharged at the port in question

ports at which cargo remaining on board will be discharged

original ports of shipment in respect of goods shipped under multimodal transport documents or through bills of lading

(b) on departure

name and IMO number of ship

flag State of ship

name of master

voyage number

port of discharge

in respect of goods loaded at the port in question: freight container identification, where appropriate; marks and numbers; number and kind of packages; quantity and description of the goods or, if available, the Harmonized System (HS) code

transport document numbers for cargo loaded at the port in question.

2.3.2. **Standard**. In respect of cargo remaining on board, public authorities shall require only brief details of the minimum essential items of information to be furnished.

2.3.3. **Standard**. Public authorities shall accept that the Cargo Declaration is either dated and signed by the master, the shipowner issuing the transport document, the ship's agent or some other person duly authorized by the master, or authenticated in a manner acceptable to the public authority concerned.

2.3.4. **Standard**. Public authorities shall accept in place of the Cargo Declaration a copy of the ship's manifest provided it contains at least the information required in accordance with Recommended Practice 2.3.1 and Standard 2.3.2 and is signed or authenticated, and dated, in accordance with Standard 2.3.3.

2.3.4.1. **Recommended Practice**. As an alternative to Standard 2.3.4, public authorities may accept a copy of the transport document signed or authenticated in accordance with Standard 2.3.3, or certified as a true copy, if the nature and quantity of cargo make this practicable and

provided that any data required and identified in accordance with Recommended Practice 2.3.1 and Standard 2.3.2 which does not appear in such documents is also furnished elsewhere and duly certified.

2.3.5. **Standard**. Public authorities shall allow unmanifested parcels in possession of the master to be omitted from the Cargo Declaration provided that particulars of these parcels are furnished separately.

2.4. **Standard**. The Ship's Stores Declaration shall be the basic document on arrival and departure providing information required by public authorities relating to ship's stores.

2.4.1. **Standard**. Public authorities shall accept that the Ship's Stores Declaration is either dated and signed by the master or by some other ship's officer duly authorized by the master and having personal knowledge of the facts regarding the ship's stores, or authenticated in a manner acceptable to the public authority concerned.

2.5. **Standard**. The Crew's Effects Declaration shall be the basic document providing information required by public authorities relating to crew's effects. It shall not be required on departure.

2.5.1. **Standard**. Public authorities shall accept that the Crew's Effects Declaration is either dated and signed by the master or by some other ship's officer duly authorized by the master, or authenticated in a manner acceptable to the public authority concerned. For the purpose of onboard verification, the public authorities may also require each crew member to sign or verify in a manner acceptable to the public authorities the declaration relating to his/her personal effects.

2.5.2. **Recommended Practice**. Public authorities should normally require particulars of only those crew's effects which would not qualify for relief from customs duties and taxes or which are subject to prohibitions or restrictions.

2.6. **Standard**. The Crew List shall be the basic document required by public authorities containing data relating to the number and composition of the crew on the arrival and departure of a ship.

2.6.1. **Standard**. In the Crew List, public authorities shall not require more than the following data:

name and IMO number of ship

flag State of ship

call sign

voyage number

family name

give names

nationality

rank or rating

gender

date and place of birth

nature and number of identity document

issuing State of identity document

expiry date of identity document

port and date of arrival/departure of the ship

last pot of call.

2.6.2. **Standard**. Public authorities shall accept that the Crew List is either dated and signed by the master or by some other ship's officer duly authorized by the master, or authenticated in a manner acceptable to the public authority concerned.

2.6.3. *Not in use*.

2.6.4. **Recommended Practice**. The Passenger List shall be the basic document required by public authorities containing the data relating to passengers on the arrival and departure of a ship.

2.7. **Standard**. In the Crew List, public authorities shall not require more than the following data:

2.7.1. *Not in use*.

2.7.2. **Recommended Practice**. Public authorities should not require embarkation or disembarkation cards in addition to Passenger Lists in respect of passengers whose names appear on those Lists. However, where public authorities have special problems constituting a grave danger to public health, a person on an international voyage may on arrival be required to give a destination address in writing.

2.7.3. **Standard**. In the Passenger List, public authorities shall not require more than the following data

name and IMO number of ship

call sign

flag State of ship

voyage number

family name

give names

nationality

date of birth

place of birth

gender

type of identity document

serial number if identity or travel document

issuing State of identity document

expiry date of identity document

port of embarkation

port and date of arrival/departure of the ship

transit passenger or not.

2.7.4. **Recommended Practice**. A list compiled by the shipowners for their own use should be accepted in place of the Passenger List, provided it contains at least the information required in accordance with Standard 2.7.3 and is dated and signed or authenticated in accordance with Standard 2.7.5.

2.7.5. **Standard**. Public authorities shall accept that the Passenger List is either dated and signed by the master, the ship's agent or some other person duly authorized by the master, or authenticated in a manner acceptable to the public authority concerned.

2.8. **Standard**. The Dangerous Goods Manifest shall be the basic document providing public authorities with the information regarding dangerous goods.

2.8.1. **Standard**. In the Dangerous Goods Manifest public authorities shall not require more than the following information:

name of ship

IMO number

call sign

flag State of ship

port of loading

port of discharge

stowage position

reference number

marks and numbers

freight container identification No(s).

vehicle registration No(s).

UN Number

proper shipping name/(Technical Specifications)

class/(subsidiary risk(s))

packing group

additional information/marine pollutant/flash point/etc.

number and kind of packages

mass (kg) or volume (L)

EmS

shipping agent.

2.9. **Standard**. Public authorities shall not require on arrival or departure of the ship any written declaration in respect of postal items other than that prescribed in the Universal Postal Convention, provided the latter is actually produced. In the absence of such a document, the postal objects (number and weight) must be shown in the Cargo Declaration.

2.10. **Standard**. The Maritime Declaration of Health shall be the basic document containing the data required by port health authorities relating to the state of health on board a ship during the voyage and on arrival at a port.

C. Documents on arrival

2.11. **Standard**. Until the expiration of the transitional period referred to in Standard 1.3*ter*, public authorities shall in respect of a ship's arrival in port not require more than:

5 copies of the General Declaration

4 copies of the Cargo Declaration

4 copies of the Ship's Stores Declaration

2 copies of the Crew's Effects Declaration

4 copies of the Crew List

4 copies of the Passenger List

1 copy of the Dangerous Goods Manifest

1 copy of the Maritime Declaration of Health

1 copy of the security-related information as required under SOLAS regulation XI-2/9.2.2

1 copy of the Advanced Notification Form for Waste Delivery to Port Reception Facilities when communicated to the Organization.

Upon expiration of the transitional period, paper copies shall not be required except in case of force majeure where means of electronic transmission are unavailable.

D. Documents on departure

2.12. Standard. Until the expiration of the transitional period referred to in Standard 1.3*ter*, public authorities shall in respect of a ship's departure from port not require more than:

5 copies of the General Declaration

4 copies of the Cargo Declaration

3 copies of the Ship's Stores Declaration

2 copies of the Crew List

2 copies of the Passenger List

1 copy of the Dangerous Goods Manifest.

Upon expiration of the transitional period, paper copies shall not be required except in case of force majeure where means of electronic transmission are unavailable.

2.12.1. **Standard**. A new Cargo Declaration shall not be required on departure from a port in respect of cargo which has been the subject of a declaration on arrival in that port and which has remained on board.

2.12.2. **Recommended Practice**. A separate Ship's Stores Declaration on departure should not be required in respect of ship's stores which have been the subject of a declaration on arrival, nor in respect of stores shipped in the port and covered by another customs document presented for the purpose in that port.

2.12.3. **Standard**. Where public authorities require information about the crew of a ship on its departure from the port, one of the copies of the Crew List presented on arrival at the port shall be accepted on departure, provided it is signed again by the master or an officer duly authorized by him/her, and endorsed or authenticated in a manner acceptable to the public authority concerned, to indicate any change in the number or composition of the crew at the time of the ship's departure or to indicate that no such change has occurred during the ship's stay in the port.

2.13. *Not in use*.

E. Consecutive calls at two or more ports in the same State

2.14. **Standard**. Taking into account the procedures carried out on the arrival of a ship at the first port of call in the territory of a State, shipowners shall only be obligated to submit required information once to the public authorities of a State. The formalities and documents required by the public authorities at any subsequent port of call in that country visited without intermediate call at a port in another country shall be kept to a minimum.

F. Completion of documents

2.15. **Recommended Practice**. Public authorities should as far as possible accept the documents provided for in this annex, except as regards Standard 3.7, irrespective of the language in which the required data is furnished thereon, provided that they may require a written or oral translation into one of the official languages of their country or of the Organization when they deem it necessary.

2.16. **Standard**. If public authorities require documents in paper form, they shall accept documents conveyed by any legible and understandable medium, including documents handwritten in ink or indelible pencil or produced by the use of information technology.

2.16.1. **Standard**. Public authorities shall accept a signature, when required, in handwriting, in facsimile, perforated, stamped, in symbols, or made by any other mechanical or electronic means, if such acceptance is not inconsistent with national laws. The authentication of information submitted on non-paper media shall be in a manner that is acceptable to the public authority concerned and which facilitates the electronic submission of the information by the parties concerned irrespective of their residence.

2.17. **Standard**. Public authorities of the country of any intended port of arrival, discharge, or transit shall not require any document relating to the ship, its cargo, stores, passengers or crew, as mentioned in this section, to be legalized, verified, authenticated, or previously dealt with by any of their representatives abroad. This shall not be deemed to preclude a requirement for the presentation of a passport or other identity document of a passenger or crew member for visa or similar purposes.

G. Errors and amendments in documentation and penalties therefor

2.18. **Standard**. Public authorities shall, without delaying the ship, allow correction of errors in a document provided for in this annex which they are satisfied are inadvertent, not of a serious nature, not due to recurrent carelessness and not made with intent to violate laws or regulations, on the condition that these errors are discovered before the document is fully checked and the corrections can be effected without delay.

2.19. **Standard**. If errors are found in the data transmitted as provided for in appendix 1 of this annex, which have been signed by or on behalf of a shipowner or master, or otherwise authenticated, no penalties shall be imposed until an opportunity has been given to satisfy the public authorities that the errors were inadvertent, not of a serious nature, not due to recurrent carelessness and not made with intent to violate the laws or regulations of the port State.

2.19*bis*. Standard. Public authorities shall allow for amendments to information already submitted in accordance with applicable laws and regulations.

H. Special measures of facilitation for ships calling at ports in order to put ashore sick or injured crew members, passengers, persons rescued at sea or other persons for emergency medical treatment

2.20. **Standard**. Public authorities shall seek the cooperation of shipowners to ensure that, when ships intend to call at ports for the sole purpose of putting ashore sick or injured crew members, passengers, persons rescued at sea, or other persons for emergency medical treatment, the master shall give the public authorities as much notice as possible of that intention, with the fullest possible details of the sickness or injury and of the identity of the persons.

2.21. **Standard**. Public authorities shall, by the fastest channels available, inform the master, before the arrival of the ship, of the documentation and the procedures necessary to put the sick or injured persons ashore expeditiously and to clear the ship without delay.

2.22. **Standar**d. With regard to ships calling at ports for this purpose and intending to leave again immediately, public authorities shall give priority in berthing if the state of the sick person or the sea conditions do not allow a safe disembarkation in the roads or harbour approaches.

2.23. **Standard**. With regard to ships calling at ports for this purpose and intending to leave again immediately, public authorities shall not require the documents mentioned in Standard 2.1 with the exception of the Maritime Declaration of Health, and, if it is indispensable, the General Declaration. Public authorities shall in such situations waive the time limits for the submission of the documents.

2.24. **Standard**. Where public authorities require the General Declaration, this document shall not contain more data than those mentioned in Recommended Practice 2.2.2 and, wherever possible, shall contain less.

2.25. **Standard**. Where the public authorities apply control measures related to the arrival of a ship prior to sick or injured persons being put ashore, emergency medical treatment and measures for the protection of public health shall take precedence over these control measures.

2.26. **Standard**. Where the public authorities apply control measures related to the arrival of a ship prior to sick or injured persons being put ashore, emergency medical treatment and measures for the protection of public health shall take precedence over these control measures.

2.27. **Standard**. Emergency medical treatment and measures for the protection of public health shall take precedence over any control measures which public authorities may apply to sick or injured persons being put ashore.

Section 3 - Arrival and departure of persons

This section contains the provisions concerning the formalities required by public authorities from crew and passengers on the arrival or departure of a ship.

A. Arrival and departure requirements and procedures

3.1. **Standard**. A valid passport shall be the basic document providing public authorities with information relating to the individual passenger on arrival or departure of a ship.

3.1.1. **Recommended Practice**. Contracting Governments should as far as possible agree, by bilateral or multilateral agreements, to accept official documents of identity in lieu of passports.

3.2. **Standard**. Public authorities shall make arrangements whereby passports, or official documents of identity accepted in their place, from ship's passengers need be inspected by the immigration authorities only once at the time of arrival and once at the time of departure. In addition, these passports or official documents of identity may be required to be produced for the purpose of verification or identification in connection with customs and other formalities on arrival and departure.

3.3. **Standard**. After individual presentation of passports or official documents of identity accepted in their place, public authorities shall hand back such documents immediately after examination rather than withholding them for the purpose of obtaining additional control, unless there is some obstacle to the admission of a passenger to the territory.

3.3.1. **Standard**. Each Contracting Government shall ensure that the public authorities seize fraudulent, falsified or counterfeit travel documents of inadmissible persons. Such documents shall be removed from circulation and returned to the appropriate authorities when practicable. In place of a seized document, a covering letter shall be issued by the removing State and attached to it will be a photocopy of the forged travel documents, if available, as well as any important information. The covering letter and its attachment shall be handed over to the operator responsible for the removal of the inadmissible person. It will serve to give information to the authorities at the transit and/or the original point of embarkation.

3.3.2. **Standard**. Contracting Governments shall accept for examination a person being returned from his/her point of disembarkation after having been found inadmissible if this person had embarked in their territory. Contracting Governments shall not return such a person to the country where he or she was earlier found to be inadmissible.

3.3.3. **Standard**. Before passengers and crew are accepted for examination as to their admissibility into the State, responsibility for their custody and care shall remain with the shipowner.

3.3.4. **Recommended Practice**. After acceptance of passengers and crew for examination, whether conditional or unconditional and if the persons concerned are under the physical control

of the public authorities, the public authorities should be responsible for their custody and care until they are admitted for entry or are found to be inadmissible.

3.3.5. **Standard**. The obligation of a shipowner to transport any person away from the territory of a State shall terminate from the moment such a person has been definitely admitted into that State.

3.3.6. **Standard**. Where a person is found to be inadmissible, the public authorities shall, without unreasonable delay, inform the shipowner and consult the shipowner regarding the arrangements for removal. The shipowner is responsible for the costs of stay and removal of an inadmissible person and, in the case where the person is transferred back to the custody of the shipowner, the shipowner shall be responsible for effecting his/her prompt removal to:

the country of embarkation; or

to any other place where the person is admissible.

3.3.7. **Standard**. Contracting Governments and shipowners shall cooperate, where practicable, to establish the validity and authenticity of passports and visas.

3.4. **Recommended Practice**. Public authorities should not require from embarking or disembarking passengers, or from shipowners on their behalf, any information in writing supplementary to or repeating that already presented in their passports or official documents of identity, other than as necessary to complete any documents provided for in this annex.

3.5. **Recommended Practice**. Public authorities which require written supplementary information, other than as necessary to complete any documents provided for in this annex, from embarking or disembarking passengers should limit requirements for further identification of passengers to the items set forth in Recommended Practice 3.6 (embarkation/disembarkation card). Public authorities should accept the embarkation/disembarkation card when completed by the passenger and should not require that it be completed or checked by the shipowner. Legible handwritten script should be accepted on the card, except where the form specifies block lettering. One copy only of the embarkation/disembarkation card, which may include one or more simultaneously prepared carbon copies, should be required from each passenger.

3.6. **Recommended Practice**. In the embarkation/disembarkation card, public authorities should not require more than the following information:

family name

give names

nationality

number and expiry date of passport or other official identity document

date of birth

place of birth

port of embarkation/disembarkation

gender

destination address

signature.

3.7. **Standard**. In cases where evidence of protection against yellow fever is required from persons on board a ship, public authorities shall accept the International Certificate of Vaccination or Re-Vaccination in the forms provided for in the International Health Regulations.

3.8. **Recommended Practice**. Medical examination of persons on board or of persons disembarking from ships should normally be limited to those persons arriving from an area infected with quarantinable diseases within the incubation period of the disease concerned (as stated in the International Health Regulations). Additional medical examination may, however, be required in accordance with the International Health Regulations.

3.9. **Recommended Practice**. Public authorities should normally perform customs inspections of inbound passengers' accompanied baggage on a sampling or selective basis. Written declarations in respect of passengers' accompanied baggage should be dispensed with as far as possible.

3.9.1. **Recommended Practice**. Public authorities should, wherever possible, waive inspections of accompanied baggage of departing passengers, with due regard to the possible need to impose appropriate security measures preferably by automated means to facilitate review.

3.9.2. **Recommended Practice**. Where inspection of accompanied baggage of departing passengers cannot be waived completely, such inspection should normally be performed on a sampling or selective basis.

3.10. **Standard**. A passport or an identity document issued in accordance with relevant ILO Conventions, or else a valid and duly recognized seafarer's identity document, shall be the basic document providing public authorities with information relating to the individual member of the crew on arrival or departure of a ship.

3.10.1. **Standard**. In the seafarer's identity document, public authorities shall not require more than the following information:

family name

give names

gender

date and place of birth

nationality

physical characteristics

photograph (authenticated)

signature

date of expiry (if any)

issuing public authority.

3.10.2. **Standard**. When it is necessary for a seafarer to enter or leave a country as a passenger by any means of transportation for the purpose of:

(a) joining his/her ship or transferring to another ship,

(b) passing in transit to join his/her ship in another country, or for repatriation, or for any other purpose approved by the authorities of the country concerned,

public authorities shall accept from that seafarer in place of a passport the valid seafarer's identity document, when this document guarantees the readmission of the bearer to the country which issued the document.

3.10.3. **Recommended Practice**. Public authorities should not normally require presentation of individual identity documents or of information supplementing the seafarer's identity document in respect of members of the crew other than that given in the Crew List.

B. **Measures to facilitate clearance of passengers, crew and baggage**

3.11. **Recommended Practice**. Public authorities should, with the cooperation of shipowners and port authorities and/or port administration, take appropriate measures to the end that satisfactory port traffic flow arrangements may be provided so that passengers, crew and baggage can be cleared rapidly, should provide adequate personnel, and should ensure that adequate installations are provided, particular attention being paid to baggage loading, unloading

and conveyance arrangements (including the use of mechanized systems) and to points where passenger delays are frequently found to occur. Arrangements should be made, when necessary, for passage under shelter between the ship and the point where the passenger and crew check is to be made. Such arrangements and installations should be flexible and capable of expansion to meet increased security measures during higher security levels.

3.11.1. **Recommended Practice**. Public authorities should:

(a) in cooperation with shipowners and port authorities, introduce suitable arrangements, such as:

(i) an individual and continuous method of processing passengers and baggage;

(ii) a system which would permit passengers readily to identify and obtain their checked baggage as soon as it is placed in an area where it may be claimed; and

(iii) ensuring that facilities and services are available to meet the needs of elderly and disabled passengers;

(b) ensure that port authorities take all necessary measures so that:

(i) easy and speedy access for passengers and their baggage, to and from local transport, is provided; and

(ii) if crews are required to report to premises for governmental purposes, those premises should be readily accessible, and as close to one another as practicable.

3.11.2. **Recommended Practice**. Public authorities should consider, as a means of ensuring prompt clearance, the introduction of the dual-channel system for the clearance of passengers, and their baggage and private road vehicles.

3.12. **Standard**. Public authorities shall require that shipowners ensure that ship's personnel take all appropriate measures which will help expedite arrival procedures for passengers and crew. These measures may include:

(a) furnishing public authorities concerned with an advance message giving the best estimated time of arrival, followed by information as to any change in time, and stating the itinerary of the voyage where this may affect inspection requirements;

(b) having ship's documents ready for prompt review;

(c) providing for ladders or other means of boarding to be rigged while the ship is en route to berth or anchorage; and

(d) providing for prompt, orderly assembling and presentation of persons on board, with necessary documents, for inspection, with attention to arrangements for relieving crew members for this purpose from essential duties in engine-rooms and elsewhere.

3.13. **Recommended Practice**. The practice of entering names on passenger and crew documents should be to put the family name or names first. Where both paternal and maternal family names are used, the paternal family name should be placed first. Where for married women both the husband's and wife's paternal family names are used, the husband's paternal family name should be placed first.

3.14. **Standard**. Public authorities shall, without unreasonable delay, accept persons present on board a ship for examination as to their admissibility into the State.

3.15. **Recommended Practice**. Public authorities should not impose unreasonable or disproportionate fines upon shipowners, in the event that any control document in possession of a passenger is found by public authorities to be inadequate, or if, for that reason, the passenger is found to be inadmissible to the State.

3.15.1. **Standard**. Public authorities shall encourage shipowners to take precautions at the point of embarkation with a view to ensuring that passengers are in possession of any control documents prescribed by the receiving or transit States.

3.15.2. **Standard**. When a person is found to be inadmissible and is removed from the territory of the State, the shipowner shall not be precluded from recovering, from such a person, any costs arising from his/her inadmissibility.

3.15.3. **Recommended Practice**. For use at marine terminals and on board ships in order to facilitate and expedite international maritime traffic, public authorities should implement or, where the matter does not come within their jurisdiction, recommend responsible parties in their country to implement standardized international signs and symbols developed or accepted by the Organization in cooperation with other appropriate international organizations and which, to the greatest extent practicable, are common to all modes of transport.

C. **Special facilities for marine transport of elderly and disabled passengers**

3.16. **Recommended Practice**. Measures should be taken to ensure that all necessary information on transport and safety is readily available for passengers who have impaired hearing or vision.

3.17. **Recommended Practice**. For elderly and disabled passengers being set down or picked up at a terminal building, reserved points should be located as close as possible to main entrances. These should be clearly marked with appropriate signs. Access routes should be free of obstacles.

3.18. **Recommended Practice**. Where access to public services is limited, every effort should be made to provide accessible and reasonably priced public transportation services by adapting current and planned services or by providing special arrangements for passengers who have impaired mobility.

3.19. **Recommended Practice**. Provisions of suitable facilities should be made in terminals and on ships, as appropriate, to allow safe embarkation and disembarkation for elderly and disabled passengers.

D. **Facilitation for ships engaged on cruises and for cruise passengers**

3.20. **Standard**. Public authorities shall authorize granting of pratique by electronic means to a cruise ship when, on the basis of information received from it prior to its arrival, the health authority for the intended port of arrival is of the opinion that its arrival will not result in the introduction or spread of a quarantinable disease.

3.21. **Recommended Practice**. For cruise ships, the General Declaration, the Passenger List and the Crew List should be required only at the first port of arrival and final port of departure in a country, provided that there has been no change in the circumstances of the voyage.

3.22. **Standard**. For cruise ships, the Ship's Stores Declaration and the Crew's Effects Declaration shall be required only at the first port of arrival in a country.

3.23. **Standard**. Passports or other official documents of identity shall at all times remain in the possession of cruise passengers.

3.24. **Recommended Practice**. If a cruise ship stays at any port within the Contracting Government's territory for less than 72 hours, it should not be necessary for cruise passengers to have visas, except in special circumstances determined by the public authorities concerned.

3.25. **Standard**. Cruise passengers shall not be unduly delayed by the control measures exercised by public authorities.

3.26. **Standard**. In general, except for security purposes and for the purposes of establishing identity and admissibility, cruise passengers shall not be subject to personal examination by public authorities responsible for immigration control.

3.27. **Standard**. If a cruise ship calls consecutively at more than one port in the same country, passengers shall, in general, be examined by public authorities at the first port of arrival and at the final port of departure only.

3.28. **Recommended Practice**. To facilitate their prompt disembarkation, the inward control of passengers on a cruise ship, where practicable, should be carried out on board before arrival at the place of disembarkation.

3.29. **Recommended Practice**. Cruise passengers who disembark at one port and rejoin the same ship at another port in the same country should enjoy the same facilities as passengers who disembark and rejoin a cruise ship at the same port.

3.30. **Recommended Practice**. The Maritime Declaration of Health should be the only health control necessary for cruise passengers.

3.31. **Standard**. Duty-free ship's stores shall be allowed aboard ship for cruise passengers during the ship's stay in port.

3.32. **Standard**. Cruise passengers shall not normally be required to provide a written declaration for their personal effects. However, in the case of articles which involve a high amount of customs duties and other taxes and charges, a written declaration and a security may be required.

3.33. **Recommended Practice**. Cruise passengers should not be subject to any currency control.

3.34. **Standard**. Embarkation/disembarkation cards shall not be necessary for cruise passengers.

3.35. *Not in use.*

E. **Special measures of facilitation for passengers in transit**

3.36. **Standard**. A passenger in transit who remains on board the ship on which he or she arrived and departs with it shall not normally be subjected to routine control by public authorities except in extraordinary circumstances determined by the public authorities concerned.

3.37. **Recommended Practice**. A passenger in transit should be allowed to retain his/her passport or other identity document.

3.38. **Recommended Practice**. A passenger in transit who remains on board the ship on which he or she arrived and departs with it should not be required to complete a disembarkation/ embarkation card.

3.39. **Recommended Practice**. A passenger in transit who is continuing his/her journey from the same port in the same ship should normally be granted temporary permission to go ashore during the ship's stay in port if he/she so wishes subject to the public authorities' admissibility and visa requirements.

3.40. **Recommended Practice**. A passenger in transit who is continuing his/her journey from the same port in the same ship should not be required to have a visa, except in special circumstances determined by the public authorities concerned.

3.41. **Recommended Practice**. A passenger in transit who is continuing his/her journey from the same port in the same ship should not normally be required to give a written Customs Declaration.

3.42. **Recommended Practic**e. A passenger in transit who leaves the ship at one port and embarks in the same ship at a different port in the same country should enjoy the same facilities as a passenger who arrives and departs in the same ship at the same port.

F. Measures of facilitation for ships engaged in scientific services

3.43. **Recommended Practice**. A ship engaged in scientific services carries personnel who are necessarily engaged on the ship for such scientific purposes of the voyage. If so identified, such personnel should be granted facilities at least as favourable as those granted to the crew members of that ship.

G. Further measures of facilitation for foreigners belonging to the crews of ships engaged in international voyages - shore leave

3.44. **Standard**. Crew members shall be allowed ashore by the public authorities while the ship on which they arrive is in port, provided that the formalities on arrival of the ship have

been fulfilled and the public authorities have no reason to refuse permission to come ashore for reasons of public health, public safety or public order. Shore leave shall be allowed in a manner which excludes discrimination such as on the grounds of nationality, race, colour, sex, religion, political opinion, or social origin and irrespective of the flag State of the ship on which they are employed, engaged or work.

3.44*bis*. **Standard**. In any case where permission for shore leave has been refused, the relevant public authorities shall communicate their reasons for shore leave denial to the seafarer concerned and the master. If requested by the seafarer concerned or the master, such reasons shall be provided in writing.

3.45. **Standard**. Crew members shall not be required to hold a visa for the purpose of shore leave.

3.46. **Recommended Practice**. Crew members, before going on or returning from shore leave, should not normally be subjected to personal checks.

3.47. **Standard**. Crew members shall not be required to have a special permit, e.g. a shore leave pass, for the purpose of shore leave.

3.48. **Recommended Practice**. If crew members are required to carry documents of identity with them when they are on shore leave, these documents should be limited to those mentioned in Standard 3.10.

3.49. **Recommended Practice**. Public authorities should provide a system of pre-arrival clearance to allow the crew of ships which call regularly at their ports to obtain advance approval for temporary shore leave. Where a ship has no adverse immigration record and is locally represented by a shipowner or a reputable agent of the shipowner, the public authorities should normally, after satisfactory consideration of such pre-arrival particulars as they may require, permit the ship to proceed directly to its berth and be subject to no further routine immigration formalities, unless otherwise required by the public authorities.

Section 4 - Stowaways

A. General Principles

4.1. **Standard**. The provisions in this section shall be applied in accordance with international protection principles as set out in international instruments, such as the UN Convention relating to the Status of Refugees of 28 July 1951 and the UN Protocol relating to the Status of Refugees of 31 January 1967, and relevant national legislation.

4.2. **Standard**. Public authorities, port authorities, shipowners and masters shall cooperate to the fullest extent possible in order to prevent stowaway incidents and to resolve stowaway cases expeditiously and secure that an early return or repatriation of the stowaway will take place. All appropriate measures shall be taken in order to avoid situations where stowaways must stay on board ships for an unreasonable amount of time.

B. Preventive measures

4.3. Ship/Port preventive measures

4.3.1. Port/terminal authorities

4.3.1.1. **Standard**. Contracting Governments shall ensure that the necessary infrastructure, and operational and security arrangements for the purpose of preventing persons attempting to stowaway on board ships from gaining access to port installations and to ships, are established in all their ports, taking into consideration when developing these arrangements the size of the port, and what type of cargo is shipped from the port. This should be done in close cooperation with relevant public authorities, shipowners and shoreside entities, with the aim of preventing stowaway occurrences in the individual port.

4.3.1.2. **Recommended Practice**. Operational arrangements and/or port facility security plans should at least be equivalent to those contained in the relevant text of section B/16 of the ISPS Code.

4.3.2. Shipowner/Master

4.3.2.1. **Standard**. Contracting Governments shall require that shipowners and masters, as well as other responsible persons have security arrangements in place which, as far as practicable, will prevent intending stowaways from getting aboard the ship, and, if this fails, as far as practicable, will detect them before the ship leaves port.

4.3.2.2. **Recommended Practice**. When calling at ports and during stay in ports, where there is risk of stowaway embarkation, operational arrangements and/or ship security plans should at least be equivalent to those contained in the relevant text of paragraph B/9 of the ISPS Code.

4.3.2.3. **Standard**. Contracting Governments shall require that ships entitled to fly their flag, except passenger ships, when departing from a port, where there is risk of stowaway embarkation, have undergone a thorough search in accordance with a specific plan or schedule, and with priorities given to places where stowaways might hide taking into account the specific ship type and its operations. Search methods which are likely to harm secreted stowaways shall not be used.

4.3.2.4. **Standard**. Contracting Governments shall require that fumigation or sealing of ships entitled to fly their flag may not be carried out until a search which is as thorough as practicable of the areas to be fumigated or sealed has taken place in order to ensure that no stowaways are present in those areas.

4.3.3. National Sanctions

4.3.3.1. **Standard**. Where appropriate, Contracting Governments shall incorporate into their national legislation legal grounds to allow prosecution of stowaways, attempted stowaways and any individual or company aiding a stowaway or an attempted stowaway with the intention to facilitate access to the port area, any ship, cargo or freight containers.

C. Treatment of the stowaway while on board

4.4. General principles – Humane treatment

4.4.1. **Standard**. Stowaways shall not be permitted to work on board the ship, except in emergency situations or in relation to the stowaway's accommodation and provisioning on board.

4.4.2. **Standard**. Contracting Governments shall require that masters operating ships entitled to fly their flag take appropriate measures to ensure the security, general health, welfare and safety of the stowaway while he/she is on board, including providing him/her with adequate provisioning, accommodation, proper medical attention and sanitary facilities.

4.5. Work on board

4.5.1. **Standard**. Stowaways shall not be permitted to work on board the ship, except in emergency situations or in relation to the stowaway's accommodation and provisioning on board.

4.6. Questioning and notification by the master

4.6.1. **Standard**. Contracting Governments shall require masters to take practicable steps to establish the identity, including nationality/citizenship of the stowaway and the port of embarkation of the stowaway, and to notify the existence of the stowaway along with relevant details to the public authorities of the first planned port of call. This information shall also be provided to the shipowner, public authorities at the port of embarkation, the flag State and, if necessary, subsequent ports of call.

4.6.2. **Recommended Practic**e. When gathering relevant details for notification, masters should use the form as specified in appendix 3.

4.6.3. **Standard**. Contracting Governments shall instruct masters operating ships entitled to fly their flag that when a stowaway declares himself/herself to be a refugee, this information shall be treated as confidential to the extent necessary for the security of the stowaway.

4.7. Notification to the International Maritime Organization

4.7.1. **Standard**. Public authorities shall report all stowaway incidents of which they become aware to the Secretary-General of the International Maritime Organization.

D. Deviation from the planned route

4.8. **Standard**. Public authorities shall urge all shipowners operating ships entitled to fly their flag to instruct their masters not to deviate from the planned voyage to seek the disembarkation of stowaways discovered on board the ship after it has left the territorial waters of the country where the stowaways embarked, unless:

permission to disembark the stowaway has been granted by the public authorities of the State to whose port the ship deviates; or

repatriation has been arranged elsewhere with sufficient documentation and permission for disembarkation; or

there are extenuating safety, security, health or compassionate reasons; or

attempts to disembark in other ports on the planned voyage have failed and deviation is necessary in order to avoid that the stowaway remain on board for a significant period of time.

E. Disembarkation and return of a stowaway

4.9. The State of the first port of call according to the voyage plan

4.9.1. **Standard**. Public authorities in the country of the ship's first scheduled port of call after discovery of a stowaway shall decide in accordance with national legislation whether the stowaway is admissible to that State and shall do their utmost to cooperate with the parties involved in resolving the issue.

4.9.2. **Standard**. Public authorities in the country of the ship's first scheduled port of call after discovery of a stowaway shall allow disembarkation of the stowaway, when the stowaway is in possession of valid travel documents for return, and the public authorities are satisfied that timely arrangements have been or will be made for repatriation and all the requisites for transit fulfilled.

4.9.3. **Standard**. Public authorities in the country of the ship's first scheduled port of call after discovery of a stowaway shall allow disembarkation of the stowaway when the public authorities are satisfied that they or the shipowner will obtain valid travel documents, make timely arrangements for repatriation of the stowaway, and fulfil all the requisites for transit. Public authorities shall, further, favourably consider allowing disembarkation of the stowaway, when it is impracticable for the stowaway to remain on the ship or other factors exist which would preclude the stowaway remaining on the ship. Such factors may include, but are not limited to, when:

a case is unresolved at the time of sailing of the ship; or

the presence on board of the stowaway would endanger the safe operation of the ship, the health of the crew or the stowaway.

4.10. **Subsequent ports of call**

4.9.1. Standard. When disembarkation of a stowaway has failed in the first scheduled port of call after discovery of the stowaway, public authorities of subsequent ports of call shall examine the stowaway as for disembarkation in accordance with Standards 4.9.1, 4.9.2 and 4.9.3.

4.11. **State of Nationality or Right of Residence**

4.11.1. **Standard**. Public authorities shall in accordance with international law accept the return of stowaways with full nationality/citizenship status or accept the return of stowaways who in accordance with their national legislation have a right of residence in their State.

4.11.2. **Standard**. Public authorities shall, when possible, assist in determining the identity and nationality/citizenship of stowaways claiming to be a national or having a right of residence in their State. Where possible, the local embassy, consulate or other diplomatic representation of the country of the stowaway's nationality will be required to assist in verifying the stowaway's nationality and providing emergency travel documentation.

4.12. **State of Embarkation**

4.12.1. **Standard**. When it has been established to their satisfaction that stowaways have embarked a ship in a port in their State, public authorities shall accept for examination such stowaways being returned from their point of disembarkation after having been found inadmissible there. The public authorities of the State of embarkation shall not return such stowaways to the country where they were earlier found to be inadmissible.

4.12.2. **Standard**. When it has been established to their satisfaction that attempted stowaways have embarked a ship in a port in their State, public authorities shall accept disembarkation of attempted stowaways, and of stowaways found on board the ship while it is still in their territorial waters or if applicable according to the national legislation of that State in the area of immigration jurisdiction of that State. No penalty or charge in respect of detention or removal costs shall be imposed on the shipowner.

4.12.3. **Standard**. When an attempted stowaway has not been disembarked at the port of embarkation, he/she is to be treated as a stowaway in accordance with the regulation of this section.

4.13. The flag State

4.13.1. **Standard**. The public authorities of the flag State of the ship shall assist and cooperate with the master/shipowner or the appropriate public authority at ports of call in:

identifying the stowaway and determining his/her nationality;

making representations to the relevant public authority to assist in the removal of the stowaway from the ship at the first available opportunity; and

making arrangements for the removal or repatriation of the stowaway.

4.14. Return of stowaways

4.14.1. **Recommended Practice**. When a stowaway has inadequate documents, public authorities should, whenever practicable and to an extent compatible with national legislation and security requirements, issue a covering letter with a photograph of the stowaway and any other important information or, alternatively, a suitable travel document accepted by the public authorities involved. The covering letter, authorizing the return of the stowaway either to his/her country of origin or to the point where the stowaway commenced his/her journey, as appropriate, by any means of transportation and specifying any other conditions imposed by the authorities, should be handed over to the operator affecting the removal of the stowaway. This letter will include information required by the authorities at transit points and/or the point of disembarkation.

4.14.2. **Recommended Practice**. Public authorities in the State where the stowaway has disembarked should contact the relevant public authorities at transit points during the return of a stowaway, in order to inform them of the status of the stowaway. In addition public authorities in countries of transit during the return of any stowaway should allow, subject to normal visa requirements and national security concerns, the transit through their ports and airports of

stowaways travelling under the removal instructions or directions of public authorities of the country of the port of disembarkation.

4.14.3. **Recommended Practice**. When a port State has refused disembarkation of a stowaway, that State should, without undue delay, notify the flag State of the ship carrying the stowaway of the reasons for refusing disembarkation.

4.15. Cost of return and maintenance of stowaways

4.15.1. **Recommended Practice**. The public authorities of the State where a stowaway has been disembarked should generally inform the shipowner on whose ship the stowaway was found, as far as practicable, of the level of cost of detention and return and any additional costs for the documentation of the stowaway, if the shipowner is to cover these costs. In addition, public authorities should cooperate with the shipowner to keep such costs to a minimum as far as practicable and according to national legislation, if they are to be covered by the shipowner.

4.15.2. **Recommended Practice**. The period during which shipowners are held liable to defray costs of maintenance of a stowaway by public authorities in the State where the stowaway has been disembarked should be kept to a minimum.

4.15.3. **Standard**. Public authorities shall, according to national legislation, consider mitigation of penalties against ships where the master of the ship has properly declared the existence of a stowaway to the appropriate authorities in the port of arrival, and has shown that all reasonable preventive measures had been taken to prevent stowaways gaining access to the ship.

4.15.4. **Recommended Practice**. Public authorities should, according to national legislation, consider mitigation of other charges that might otherwise be applicable, when shipowners have cooperated with the control authorities to the satisfaction of those authorities in measures designed to prevent the transportation of stowaways.

Section 5 - Arrival, stay and departure of cargo and other articles

This section contains the provisions concerning the formalities required by public authorities from the shipowner, his/her agent or the master of the ship.

A. General

5.1. **Recommended Practice**. Public authorities should, with the cooperation of shipowners, port authorities and port facilities and terminals, take appropriate measures to ensure

that port time may be kept to a minimum, should provide satisfactory port traffic flow arrangements, and should frequently review all procedures in connection with the arrival and departure of ships, including arrangements for embarkation and disembarkation, loading and unloading, servicing and the like and the security measures associated therewith. They should also make arrangements whereby cargo ships and their loads can be entered and cleared, in so far as may be practicable, at the ship working area.

5.2. **Recommended Practice**. Public authorities should, with the cooperation of shipowners, port authorities and port facilities and terminals, take appropriate measures to ensure that satisfactory port traffic flow arrangements are provided so that handling and clearance procedures for cargo will be smooth and uncomplicated. These arrangements should cover all phases from the time the ship arrives at the dock for unloading and public authority clearance, and also free zones, storage facilities, warehousing and onward movement of cargo if required. There should be convenient and direct access between the free zone, storage facilities and cargo warehouse and the public authority clearance area, which should be located close to the dock area with, whenever possible, easy access and transfer capabilities and infrastructure.

5.3. **Recommended Practice**. Public authorities should encourage owners and/or operators of marine cargo terminals to equip them with storage facilities for special cargo (e.g. valuable goods, perishable shipments, human remains, radioactive and other dangerous goods, as well as live animals), as appropriate; those areas of marine cargo terminals in which general and special cargo and postal items are stored prior to shipment by sea or importation should implement access control measures at least equivalent to those contained in the relevant text of paragraph B/16 of the ISPS Code.

5.3*bis*. **Recommended Practic**e. Public authorities should require only a minimum of data necessary for the identification of the cargo that is to be placed in storage prior to release or re-export or importation, and should, whenever available, use the information contained in the pre-arrival declaration for this purpose.

5.4. **Standard**. A Contracting Government which continues to require export, import and transhipment licences or permits for certain types of goods shall establish simple procedures whereby such licences or permits can be obtained and renewed rapidly.

5.5. **Recommended Practice**. When the nature of a consignment could attract the attention of different agencies authorized to carry out inspections, such as customs and veterinary or sanitary controllers, Contracting Governments should authorize either customs or one of the other agencies to carry out the required procedures or, where that is not feasible, take all necessary steps to ensure that such inspections are carried out simultaneously at one place and with a

minimum of delay and whenever possible carried out upon prior coordination with the party having custody of the consignment.

5.6. **Recommended Practice**. Public authorities should provide simplified procedures for the prompt clearance of private gift packages and trade samples not exceeding a certain value or quantity which should be set at as high a level as possible.

B. **Clearance of cargo**

5.7. **Standard**. Public authorities shall, subject to compliance with any national prohibitions or restrictions and any measures required for port security or the prevention of trafficking of narcotics, grant priority clearance to live animals, perishable goods and other consignments of an urgent nature.

5.7.1. **Recommended Practice**. In order to protect the quality of goods awaiting clearance, public authorities should, in collaboration with all the concerned parties, take all measures to permit practical, safe and reliable storage of goods at the port.

5.8. **Recommended Practice**. Contracting Governments should facilitate the temporary admission of specialized cargo-handling equipment arriving by ships and used on shore at ports of call for loading, unloading and handling cargo.

5.9. *Not in use.*

5.10. **Recommended Practice**. Public authorities should provide procedures for the clearance of cargo based on the relevant provisions of and associated guidelines to the *International Convention on the simplification and harmonization of Customs procedures* – the revised Kyoto Convention.

5.10.1. **Recommended Practice**. Public authorities should introduce simplified procedures for authorized persons allowing:

(a) release of the goods on the provision of the minimum information necessary to identify the goods, to accurately identify and assess risk as it relates to concerns such as health, safety and security, and permit the subsequent completion of the final goods declaration;

(b) clearance of the goods at the declarants premises or another place authorized by the relevant public authority; and

(c) submission of a single goods declaration for all imports or exports in a given period where goods are imported or exported frequently by the same person.

5.11. **Standard**. Public authorities shall limit physical interventions to the minimum necessary to ensure compliance with applicable law.

5.12. **Recommended Practice**. Public authorities should, on the basis of a valid request, conduct physical examinations of cargo, where necessary, at the point where it is loaded into its means of transport and while loading is in progress, either at the dockside or, in the case of unitized cargo, at the place where the freight container is packed and sealed.

5.13. **Standard**. Public authorities shall ensure that requirements for collection of statistics do not significantly reduce the efficiency of maritime trade.

5.14. **Recommended Practice**. Public authorities should use systems for the electronic exchange of information for the purposes of obtaining information in order to accelerate and simplify storage, clearance and re-export processes.

5.14.1. **Recommended Practice**. Public authorities should quickly terminate the transit procedure covering goods from another State awaiting loading.

C. **Freight containers and pallets**

5.15. **Standard**. Public authorities shall, in conformity with their respective regulations, permit the temporary admission of freight containers, pallets and freight container equipment and accessories that are affixed to the container or are being transported separately without payment of customs duties and other taxes and charges and shall facilitate their use in maritime traffic.

5.16. **Recommended Practice**. Public authorities should provide in their regulations, referred to in Standard 5.15, for the acceptance of a simple declaration to the effect that temporarily imported freight containers, pallets and freight container equipment and accessories will be re-exported within the time limit set by the State concerned. Such declaration may take the form of an oral declaration or any other act acceptable to the authorities.

5.17. **Standard**. Public authorities shall permit freight containers, pallets and freight container equipment and accessories entering the territory of a State under the provisions of Standard 5.15 to depart the limits of the port of arrival for clearance of imported cargo and/or loading of export cargo under simplified control procedures and with a minimum of documentation.

5.18. **Standard**. Contracting Governments shall permit the temporary admission of component parts of freight containers without payment of customs duties and other taxes and charges when these parts are needed for the repair of freight containers already admitted under the terms of Standard 5.15.

D. Cargo not discharged at the port of intended destination

5.19. **Standard**. Where any cargo listed on the Cargo Declaration is not discharged at the port of intended destination, public authorities shall permit amendment of the Cargo Declaration and shall not impose penalties if satisfied that the cargo was not in fact loaded on the ship, or, if loaded, was landed at another port.

5.20. **Standard**. When, by error or for another valid reason, any cargo is discharged at a port other than the port of intended destination, public authorities shall facilitate reloading or onward movement to its intended destination. This provision does not apply to prohibited or restricted cargo.

E. Limitation of shipowner's responsibilities

5.21. **Standard**. Public authorities shall not require a shipowner to place special information for use of such authorities on a transport document or a copy thereof, unless the shipowner is, or is acting for, the importer or exporter.

5.22. **Standard**. Public authorities shall not hold the shipowner responsible for the presentation or accuracy of documents which are required of the importer or exporter in connection with the clearance of cargo, unless the shipowner is, or is acting for, the importer or exporter.

5.23. **Standard**. The shipowner shall be obliged to provide the information regarding the entry or exit of goods known to the shipowner at the time of lodging such data and as set out in the transport document that evidences the bill of lading. Thus, the shipowner can base the lodgement on data provided by the shipper customer, unless the shipowner has reason to believe that the data provided is untrue.

5.24. **Recommended Practice**. Public authorities should implement regulations pursuant to which the person who initiates and contractually agrees with a party (e.g. a consolidator, a freight forwarder or a shipowner) for the carriage of a maritime cargo shipment to the territory of another State must provide complete and accurate cargo shipment information to that party.

Section 6 - Public health and quarantine, including sanitary measures for animals and plants

6.1. **Standard**. Public authorities of a State not Party to the International Health Regulations shall endeavour to apply the relevant provisions for these Regulations to international shipping.

6.2. **Recommended Practice**. Contracting Governments having certain interests in common owing to their health, geographical, social or economic conditions should conclude special arrangements pursuant to article 85 of the International Health Regulations when such arrangements will facilitate the application of those Regulations.

6.3. **Recommended Practice**. Where Sanitary Certificates or similar documents are required in respect of shipments of certain animals, plants or products thereof, such certificates and documents should be simple and widely publicized and Contracting Governments should cooperate with a view to standardizing such requirements.

6.4. **Recommended Practice**. Public authorities should authorize granting of pratique by electronic means to a ship when, on the basis of information received from it prior to its arrival, the health authority for the intended port of arrival is of the opinion that its arrival will not result in the introduction or spread of a quarantinable disease. Health authorities should as far as practicable be allowed to join a ship prior to entry of the ship into port.

6.4.1. **Standard**. Public authorities shall seek the cooperation of shipowners to ensure compliance with any requirement that illness on a ship is to be reported promptly by electronic means to health authorities for the port for which the ship is destined, in order to facilitate provision for the presence of any special medical personnel and equipment necessary for health procedures on arrival.

6.5. **Standard**. Public authorities shall make arrangements to enable all travel agencies and others concerned to make available to passengers, sufficiently in advance of departure, lists of the vaccinations required by the public authorities of the countries concerned, as well as vaccination certificate forms conforming to the International Health Regulations. Public authorities shall take all possible measures to have vaccinators use the International Certificates of Vaccination or Re-Vaccination in order to assure uniform acceptance.

6.6. **Recommended Practice**. Public authorities should provide facilities for the completion of International Certificates of Vaccination or Re-Vaccination as well as facilities for vaccination at as many ports as feasible.

6.7. **Standard**. Public authorities shall ensure that sanitary measures and health formalities are initiated forthwith, completed without delay, and applied without discrimination.

6.8. **Recommended Practice**. To ensure, inter alia, efficient maritime traffic, public authorities should maintain at as many ports as feasible adequate facilities for the administration of public health, animal and agricultural quarantine measures.

6.9. **Standard**. There shall be maintained readily available at as many ports in a State as feasible such medical facilities as may be reasonable and practicable for the emergency treatment of crews and passengers.

6.10. **Standard**. Except in the case of an emergency constituting a grave danger to public health, a ship which is not infected or suspected of being infected with a quarantinable disease shall not, on account of any other epidemic disease, be prevented by the health authorities for a port from discharging or loading cargo or stores or taking on fuel or water.

6.11. **Recommended Practice**. Shipments of animals, animal raw materials, crude animal products, animal foodstuffs and quarantinable plant products should be permitted in specified circumstances and when the certification requirements have been met at the time of discharge.

Section 7- Miscellaneous provisions

A. **Bonds and other forms of security**

7.1. **Recommended Practice**. Where public authorities require bonds or other forms of security from shipowners to cover liabilities under the customs, immigration, public health, agricultural quarantine or similar laws and regulations of a State, they should permit the use of a single comprehensive bond or other form of security wherever possible.

B. **Services at ports**

7.2. **Recommended Practice**. The normal services of public authorities at a port should be provided without charge during normal working hours. Public authorities should establish normal working hours for their services at ports consistent with the usual periods of substantial workload.

7.3. **Standard**. Contracting Governments shall adopt all practicable measures to organize the normal services of public authorities at ports in order to avoid unnecessary delay of ships after their arrival or when ready to depart and reduce the time for completion of formalities

to a minimum, provided that sufficient notice of estimated time of arrival or departure shall be given to the public authorities.

7.4. **Standard**. No charge shall be made by a health authority for any medical examination, or any supplementary examination, whether bacteriological or otherwise, carried out at any time of the day or night, if such examination is required to ascertain the health of the person examined, nor for visit to and inspection of a ship for quarantine purposes except inspection of a ship for the issue of a Ship Sanitation Control Certificate or Ship Sanitation Control Exemption Certificate, nor shall a charge be made for any vaccination of a person arriving by ship nor for a certificate thereof. However, where measures other than these are necessary in respect of a ship or its passengers or crew and charges are made for them by a health authority, such charges shall be made in accordance with a single tariff which shall be uniform to the territory concerned and they shall be levied without distinction as to the nationality, domicile or residence of any person concerned or as to the nationality, flag, registry or ownership of the ship.

7.5. **Recommended Practice**. When the services of public authorities are provided outside the regular working hours referred to in Recommended Practice 7.2, they should be provided on terms which shall be moderate and not exceed the actual cost of the services rendered.

7.6. **Standard**. Where the volume of traffic at a port warrants, public authorities shall ensure that services are provided for the accomplishment of the formalities in respect of cargo and baggage, regardless of value or type.

7.7. **Recommended Practice**. Contracting Governments should endeavour to make arrangements whereby one Government will permit another Government certain facilities before or during the voyage to examine ships, passengers, crew, baggage, cargo and documentation for customs, immigration, public health, plant and animal quarantine purposes when such action will facilitate clearance upon arrival in the latter State.

C. **Emergency assistance**

7.8. **Standard**. Public authorities shall facilitate the arrival and departure of ships engaged in

disaster relief work;

the rescue of persons in distress at sea in order to provide a place of safety for such persons;

the combating or prevention of marine pollution; or

other emergency operations designated to enhance maritime safety, the safety of life at sea, the safety of the population or the protection of the marine environment.

7.9. **Standard**. Public authorities shall, to the greatest extent possible, facilitate the entry and clearance of persons, cargo, material and equipment required to deal with situations described in Standard 7.8.

7.10. **Standard**. Public authorities shall grant prompt customs clearance of specialized equipment needed to implement security measures.

D. **National facilitation committees**

7.11. **Recommended Practice**. Each Contracting Government should consider establishing, in close cooperation with the maritime industry, a national maritime transport facilitation programme based on the facilitation requirements of this annex and ensure that the objective of its facilitation programme should be to adopt all practical measures to facilitate the movement of ships, cargo, crews, passengers, mail and stores, by removing unnecessary obstacles and delays.

7.12. **Recommended Practice**. Each Contracting Government should establish a national maritime transport facilitation Committee or a similar national coordinating body, for the encouragement of the adoption and implementation of facilitation measures, between governmental departments, agencies and other organizations concerned with, or responsible for, various aspects of international maritime traffic, as well as port authorities, port facilities and terminals and shipowners.

GENERAL DECLARATION
(IMO FAL Form 1)

☐ Arrival ☐ Departure

<table>
<tr><td colspan="3">1.1 Name and type of ship</td><td colspan="3">1.2 IMO number</td></tr>
<tr><td colspan="3">1.3 Call sign</td><td colspan="3">1.4 Voyage number</td></tr>
<tr><td colspan="3">2. Port of arrival/departure</td><td colspan="3">3. Date and time of arrival/departure</td></tr>
<tr><td>4. Flag State of ship</td><td colspan="2">5. Name of master</td><td colspan="3">6. Last port of call/Next port of call</td></tr>
<tr><td colspan="3">7. Certificate of registry (Port; date; number)</td><td colspan="3" rowspan="2">8. Name and contact details of ship's agent</td></tr>
<tr><td>9. Gross tonnage</td><td colspan="2">10. Net tonnage</td></tr>
<tr><td colspan="6">11. Brief particulars of voyage (previous and subsequent ports of call; underline where remaining cargo will be discharged)</td></tr>
<tr><td colspan="6">12. Brief description of the cargo</td></tr>
<tr><td>13. Number of crew</td><td colspan="2">14. Number of passengers</td><td colspan="3" rowspan="3">15. Remarks</td></tr>
<tr><td colspan="3">Attached documents
(indicate number of copies)</td></tr>
<tr><td colspan="2">16. Cargo Declaration</td><td>17. Ship's Stores Declaration</td></tr>
<tr><td colspan="2">18. Crew List</td><td>19. Passenger List</td><td colspan="3" rowspan="2">20. The ship's requirements in terms of waste and residue reception facilities</td></tr>
<tr><td colspan="2">21. Crew's Effects Declaration (only on arrival)</td><td>22. Maritime Declaration of Health (only on arrival)</td></tr>
<tr><td colspan="6">23. Date and signature by master, authorized agent or officer</td></tr>
</table>

For official use

CARGO DECLARATION
(IMO FAL Form 2)

☐ Arrival ☐ Departure

Page Number

	1.1 Name of ship		1.2 IMO number	
	1.3 Voyage number		2. Port where report is made	
	3. Flag State of ship		4. Name of master	
	5. Port of loading/Port of discharge			
B/L No.	6. Marks and Numbers	7. Number and kind of packages; description of goods or, if available, the HS Code	8. Gross Weight	9. Measurement
	10. Date and signature by master, authorized agent or officer			

SHIP'S STORES DECLARATION
(IMO FAL Form 3)

		☐ Arrival ☐ Departure	Page Number
1.1 Name of ship		1.2 IMO number	
1.3 Call sign		1.4 Voyage number	
2. Port of arrival/departure		3. Date of arrival/departure	
4. Flag State of ship		5. Last port of call/Next port of call	
6. Number of persons on board		7. Period of stay	
8. Name of article	9. Quantity	10. Location on board	11. Official use
12. Date and signature by master, authorized agent or officer			

CREW'S EFFECTS DECLARATION
(IMO FAL Form 4)

Page Number

1.1 Name of ship			1.2 IMO number		
1.3 Call sign			1.4 Voyage number		
2. Flag State of ship					
3. No.	4. Family name	5. Given names	6. Rank or rating	7. Effects ineligible for relief from customs duties and taxes or subject to prohibitions or restrictions	8. Signature
9. Date and signature by master, authorized agent or officer					

CREW LIST
(IMO FAL Form 5)

☐ Arrival ☐ Departure

Page Number

1.1 Name of ship		1.2 IMO number			1.3 Call sign		1.4 Voyage number	
2. Port of arrival/departure		3. Date of arrival/departure			4. Flag State of ship		5. Last port of call	
6. No.	7. Family name	8. Given names	9. Rank or rating	10. Nationality	11. Date of birth	12. Place of birth	13. Gender	
14. Nature of identity document								
15. Number of identity document								
16. Issuing State of identity document								
17. Expiry date of identity document								
18. Date and signature by master, authorized agent or officer								

PASSENGER LIST
(IMO FAL Form 6)

☐ Arrival ☐ Departure Page Number

1.1 Name of ship		1.2 IMO number			1.3 Call sign				
1.4 Voyage number	2. Port of arrival/departure			3. Date of arrival/departure			4. Flag State of ship		
5. Family name	6. Given names	7. Nationality	8. Date of birth	9. Place of birth	10. Gender	11. Type of identity or travel document	12. Serial number of identity or travel document	13. Issuing State of identity or travel document	
14. Expiry date of identity or travel document									
15. Port of embarkation									
16. Visa number if appropriate									
17. Port of disembarkation									
18. Transit passenger or not									
19. Date and signature by master, authorized agent or officer									

DANGEROUS GOODS MANIFEST

(IMO FAL Form 7)

(As required by SOLAS 74, chapter VII, regulations 4.2 and 7-2.2, MARPOL, Annex III, regulation 4.2 and chapter 5.4, paragraph 5.4.3.1 of the IMDG Code)

										Page Number
1.1 Name of ship		1.2 IMO number				1.3 Call sign				
1.4 Voyage number		2. Flag State of ship		3. Port of loading			4. Port of discharge			
5. Stowage Position	6. Reference Number	7. Marks & Numbers - Freight container Identification No(s) - Vehicle registration No(s).	8. UN Number	9. Proper Shipping Name\(Technical Specifications)		10. Class/ (Subsidiary Risk(s))	11. Packing Group		12. Additional Information/ Marine Pollutant/ Flash point/ etc.	
13. Number and kind of packages										
14. Mass (kg) or Volume (L)										
15.EmS										
16. Shipping Agent										
16.1 Place and date										
Signature of Agent										

THIRD SCHEDULE

(Sections 11(1)(b)(iii))

Pre-arrival Documents

Facilitation of International Maritime Traffic Act, 2021
(Act 2021-)

PART A

FORM 1

Advanced Notification Form for Waste Delivery to Port Reception Facilities

Notification of the Delivery of Waste to: _____
(Name of port or terminal)

The master of a ship should forward the information below to the designated authority at least 1 hour in advance of arrival or on departure of the previous port if the voyage is less than 24 hours from within the domestic space and 24 hours from outside the domestic space.
This form shall be retained on board the vessel along with the appropriate Oil RB, Cargo RB or Garbage RB.

DELIVERY FROM SHIPS (ANF)

1. SHIP PARTICULARS

1.1 Name of ship:	
1.2 IMO number:	
1.3 Gross tonnage:	
1.4 Type of ship:	☐ Oil tanker ☐ Chemical tanker ☐ Bulk carrier ☐ Container ☐ Other cargo ship ☐ Passenger ship ☐ Ro-ro ☐ Other (specify)
1.5 Owner or master:	
1.6 Distinctive number or letters:	
1.7 Flag State:	

Third Schedule - (Cont'd)

2. PORT AND VOYAGE PARTICULARS

2.1 Location/Terminal name and POC:	
2.2 Arrival Date and Time:	
2.3 Departure Date and Time:	
2.4 Last Port and Country:	
2.5 Next Port and Country (if known):	
2.6 Last Port where waste was delivered:	
2.7 Date of Last Delivery:	
2.8 Next Port of Delivery (if known):	
2.9 Person submitting this form is (if other than the master):	

3. TYPE AND AMOUNT OF WASTE FOR DISCHARGE TO FACILITY

MARPOL Annex I - Oil	**Quantity (m^3)**
Oily bilge water	
Oily residues (sludge)	
Oily tank washings	
Dirty ballast water	
Scale and sludge from tank cleaning	
Other (please specify)	
MARPOL Annex II - NLS	**Quantity (m^3)/Name[1]**
Category X substance	
Category Y substance	
Category Z substance	
OS - other substances	

[1] Indicate the proper shipping name of the NLS involved.

Third Schedule - (Cont'd)

MARPOL Annex IV - Sewage	**Quantity (m^3)**
MARPOL Annex V - Garbage	**Quantity (m^3)**
A. Plastics	
B. Food wastes	
C. Domestic waste (e.g. paper products, rags, glass, metal, bottles, crockery, etc.)	
D. Cooking oil	
E. Incinerator ashes	
F. Operational wastes	
G. Cargo residues[2]	
H. Animal carcass(es)	
I. Fishing gear	
MARPOL Annex VI - Air pollution	**Quantity (m^3)**
Ozone-depleting substances and equipment containing such substances	
Exhaust gas-cleaning residues	

[2] Indicate the proper shipping name of the dry cargo.

Third Schedule - (Cont'd)

Name of ship:	IMO number:

Please state below the approximate amount of waste and residues remaining on board and the percentage of maximum storage capacity. If delivering all waste on board at this port please strike through this table and tick the box below. If delivering some or no waste, please complete all columns.

I confirm that I am delivering all the waste held on board this vessel (as shown on page 1) at this port ☐

Type	Maximum dedicated storage capacity (m^3)	Amount of waste retained on board (m^3)	Port at which remaining waste will be delivered (if known)	Estimate amount of waste to be generated between notification and next port of call (m^3)
MARPOL Annex I - Oil				
Oily bilge water				
Oily residues (sludge)				
Oily tank washings				
Dirty ballast water				
Scale and sludge from tank cleaning				
Other (please specify)				
MARPOL Annex II - NLS[3]				
Category X substance				
Category Y substance				
Category Z substance				
OS - other substances				

[3] Indicate the proper shipping name of the NLS involved.

Third Schedule - (Cont'd)

Type	Maximum dedicated storage capacity (m^3)	Amount of waste retained on board (m^3)	Port at which remaining waste will be delivered (if known)	Estimate amount of waste to be generated between notification and next port of call (m^3)
MARPOL Annex IV - Sewage				
Sewage				
MARPOL Annex V - Garbage				
A. Plastics				
B. Food wastes				
C. Domestic waste (e.g. paper products, rags, glass, metal, bottles, crockery, etc.				
D. Cooking oil				
E. Incinerator ashes				
F. Operational wastes				
G. Cargo residues[4]				
H. Animal carcass(es)				
I. Fishing gear				

Name and Position

Signature

Date

Time

[4] Indicate the proper shipping name of the dry cargo.

Third Schedule - (Cont'd)

(Section 11(1)(b)(iv) and 25)

Facilitation of International Maritime Traffic Act, 2021
(Act 2021-)

FORM 2

List of Ports of Calls

☐ Arrival ☐ Departure

Name of Ship			Port of Arrival/Departure	Date of Arrival/Departure
Nationality of Vessel			Next Port	
No.	Name of Port	Country	Date of Arrival	Date of Departure
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				

Name of Master

Signature by Master, Authorized Agent or Officer

Ship's Stamp

Date

Third Schedule - (Cont'd)

(Section 11(1)(b)(v))

Facilitation of International Maritime Traffic Act, 2021

(Act 2021-)

FORM 3

Maritime Declaration of Health

To be completed and submitted to the competent authorities by the masters of ships arriving from foreign ports.

Submitted at the port of:_____

Date:_____

Name of ship or inland navigation vessel:_____

Registration/IMO No.:_____

Arriving from:_____

Sailing to:_____

(Nationality)/(Flag of vessel):_____

Master's name:_____

Gross tonnage (ship):_____

Tonnage (inland navigation vessel):_____

Valid Sanitation Control Exemption/Control Certificate carried on board? ☐ Yes ☐ No

Issued at:_____

Date:_____

Third Schedule - (Cont'd)

Re-inspection required? ☐ Yes ☐ No

Has ship/vessel visited an affected area identified by the World Health Organization? ☐ Yes ☐ No

Port and date of visit:_____

List ports of call from commencement of voyage with dates of departure, or within past thirty days, whichever is shorter:_____

On the request of the competent authority at the port of arrival, list crew members, passengers or other persons who have joined ship/vessel since international voyage began or within past thirty days, whichever is shorter, including all ports/countries visited in this period (add additional names to the attached schedule):

(1) Name:_____

joined from: (1)_____

(2)_____

(3)_____

(2) Name:_____

joined from: (1)_____

(2)_____

(3)_____

(3) Name:_____

joined from: (1)_____

(2)_____

(3)_____

Number of crew members on board:_____ Number of passengers on board:_____

Third Schedule - (Cont'd)

Health questions

(1) Has any person died on board during the voyage otherwise than as a result of accident? ☐ Yes ☐ No

If yes, state particulars in attached schedule. Total no. of deaths_____

(2) Is there on board or has there been during the international voyage any case of disease which you suspect to be of an infectious nature? ☐ Yes ☐ No

If yes, state particulars in attached schedule.

(3) Has the total number of ill passengers during the voyage been greater than normal/ expected? ☐ Yes ☐ No

How many ill persons?_____

(4) Is there any ill person on board now? ☐ Yes ☐ No

If yes, state particulars in attached schedule.

(5) Was a medical practitioner consulted? ☐ Yes ☐ No

If yes, state particulars of medical treatment or advice provided in attached schedule.

(6) Are you aware of any condition on board which may lead to infection or spread of disease? ☐ Yes ☐ No

If yes, state particulars in attached schedule.

(7) Has any sanitary measure (e.g. quarantine, isolation, disinfection or decontamination) been applied on board? ☐ Yes ☐ No

If yes, specify type, place and date:_____

_____

_____

Third Schedule - (Cont'd)

(8) Have any stowaways been found on board? ☐ Yes ☐ No

If yes, where did they join the ship? (if known)_____

(9) Is there a sick animal or pet on board? ☐ Yes ☐ No

Note: In the absence of a surgeon, the master should regard the following symptoms as grounds for suspecting the existence of a disease of an infectious nature:

(a) fever, persisting for several days or accompanied by:

(i) prostration;

(ii) decreased consciousness;

(iii) glandular swelling;

(iv) jaundice;

(v) cough or shortness of breath;

(vi) unusual bleeding; or

(vii) paralysis.

(b) with or without fever:

(i) any acute skin rash or eruption;

(ii) severe vomiting (other than sea sickness);

(iii) severe diarrhoea; or

(iv) recurrent convulsions.

I hereby declare that the particulars and answers to the questions given in this Declaration of Health (including the schedule) are true and correct to the best of my knowledge and belief.

_____ _____

Signature of Master *Countersignature Ship's Surgeon (if carried)*

_____

Date

Third Schedule - (Cont'd)

ATTACHMENT TO MARITIME DECLARATION OF HEALTH

Name	Class or rating	Age	Sex	Nationality	Port, date joined ship/vessel	Nature of illness	Date of onset of symptoms	Reported to a port medical officer?	Disposal of case [1]	Drugs, medicines, or other treatment given to patient	Comments

[1] State: (1) whether the person recovered, is still ill or died; and
(2) whether the person is still on board, was evacuated (including the name of the port or airport), or was buried at sea.

Third Schedule - (Cont'd)

(Section 11(1)(b)(vi))

Facilitation of International Maritime Traffic Act, 2021

(Act 2021-)

FORM 4

International Certificate of Vaccination or Prophylaxis

This is to certify that _____ (*name*), _____ (*sex*),

born on _____ (*date of birth*), national of _____ (*nationality*), as evidenced by national

identification document no., _____ whose signature follows _____ (*signature*)

has on the date indicated been vaccinated or received prophylaxis against:

_____ (*name of disease or condition*) in accordance with the International

Health Regulations.

Third Schedule - (Cont'd)

Vaccine or prophylaxis	Date	Signature and professional status of supervising clinician	Manufacturer and Batch No. of vaccine or prophylaxis	Certificate valid from _____ *(DD/MM/YYYY)* until _____ *(DD/MM/YYYY)*	Official stamp of administering centre
1.					
2.					
3.					
4.					

This certificate is valid only if the vaccine or prophylaxis used has been approved by the World Health Organization.

This certificate must be signed in the hand of the clinician, who shall be a medical practitioner or other authorized health worker, supervising the administration of the vaccine or prophylaxis. The certificate must also bear the official stamp of the administering centre; however, this shall not be an accepted substitute for the signature.

Any amendment of this certificate, or erasure, or failure to complete any part of it, may render it invalid.

The validity of this certificate shall extend until the date indicated for the particular vaccination or prophylaxis. The certificate shall be fully completed in English or in French. The certificate may also be completed in another language on the same document, in addition to either English or French.

Third Schedule - (Cont'd)

(Section 11(1)(b)(vii))

Facilitation of International Maritime Traffic Act, 2021
(Act 2021-)

FORM 5

Yellow Fever Vaccination List

	Family Name	Given Name	Rank	Nationality	Date of Birth	Yellow Fever Vaccination Date	Expiry
1							
2							
3							
4							
5							
6							
7							
8							

Name of Master

Ship's Stamp

Third Schedule - (Cont'd)

(Section 11(1)(b)(viii))

Facilitation of International Maritime Traffic Act, 2021
(Act 2021-)

FORM 6

Standard Data Set of Security-Related Information

1 *Particulars of the ship and contact details*

1.1 IMO Number[1, 2]:_____

1.2 Name of ship[1, 2]:_____

_____

1.3 Port of registry[1, 2]:_____

_____

1.4 Flag State[1, 2]:_____

1.5 Type of ship[1]:_____

1.6 Call Sign:_____

1.7 Inmarsat call numbers[3]:_____

1.8 Gross Tonnage[1]:_____

1.9 Name of Company[1, 2]:_____

_____

Third Schedule - (Cont'd)

1.10 IMO Company identification number[2]: _____

1.11 Name and 24-hour contact details of the Company Security Officer[4]: _____

_____

2. *Port and port facility information*

2.1 Port of arrival and port facility where the ship is to berth, if known: _____

_____

2.2 Expected date and time of arrival of the ship in port *(paragraph B/4.39.3 of the ISPS Code):*

_____

2.3 Primary purpose of call: _____

_____

3. *Information required by SOLAS regulation XI-2/9.2.1*

3.1 The ship is provided *(SOLAS regulation 9.2.1.1)* with a valid:

- International Ship Security Certificate ☐ Yes ☐ No
- Interim International Ship Security Certificate ☐ Yes ☐ No

3.1.1 The certificate indicated in 3.1 has been issued by _____ *(Name of the Contracting*

_____ and which expires on *Government[1, 2] or the Recognized Security Organization[1, 2])*

_____. *(Date of expiry[1])*

3.1.2 If the ship is not provided with a valid International Ship Security Certificate or a valid Interim International Ship Security Certificate, explain why.

_____

_____

3.1.2.1 Does the ship have an approved ship security plan on board? ☐ Yes ☐ No

Third Schedule - (Cont'd)

3.2 Current security level *(SOLAS regulation XI-2/9.2.1.2)*: ☐

3.2.1 Location of the ship at the time the report is made *(paragraph B/4.39.2 of the ISPS Code)*:

3.3 List the last ten calls, in chronological order with the most recent call first, at port facilities at which the ship conducted ship/port interface[5] together with the security level at which the ship operated *(SOLAS regulation XI-2/9.2.1.3)*:

No.	Date		Port, Country, Port Facility and UNLOCODE[3]	Security level
	From[6]	To[6]		

3.3.1 Did the ship, during the period specified in 3.3, take any special or additional security measures, beyond those specified in the approved ship security plan?

☐ Yes ☐ No

Third Schedule - (Cont'd)

3.3.2 If the answer to 3.3.1 is YES, for each of such occasions please indicate the special or additional security measures which were taken by the ship *(SOLAS regulation XI-2/9.2.1.4)*:

No.	Date		Port, Country, Port Facility and UNLOCODE[3]	Special or additional security measures
	From[6]	To[6]		

Third Schedule - (Cont'd)

3.4 List the ship-to-ship activities[7], in chronological order with the most recent ship-to-ship activity first, which have been carried out during the period specified in 3.3:

☐ Not applicable

No.	Date		Location or Latitude and Longitude	Ship-to-ship activity
	From[6]	To[6]		

3.4.1 Have the ship security procedures, specified in the approved ship security plan, been maintained during each of the ship-to-ship activities specified in 3.4 *(SOLAS regulation XI-2/9.2.1.5)*? ☐ Yes ☐ No

Third Schedule - (Cont'd)

3.4.2 If the answer to 3.4.1 is NO, identify the ship-to-ship activities for which the ship security procedures were not maintained and indicate, for each, the security measures which were applied *in lieu*:

No.	Date		Security measures applied	Ship-to-ship activity
	From[6]	To[6]		

3.5 Provide a general description of cargo aboard the ship *(SOLAS regulation XI-2/9.2.1.6 and paragraph B/4.39.5 of the ISPS Code):*

3.5.1 Is the ship carrying any dangerous substances[8] as cargo? ☐ Yes ☐ No

3.5.2 If the answer to 3.5.1 is YES, provide details or attach a copy of the Dangerous Goods Manifest (IMO FAL Form 7).

Third Schedule - (Cont'd)

3.6 A copy of the ship's Crew List (IMO FAL Form 5) is attached *(SOLAS regulation XI-2/9.2.1.6 and paragraph B/4.39.4 of the ISPS Code)* ☐

3.7 A copy of the ship's Passenger List (IMO FAL Form 6) is attached *(SOLAS regulation XI-2/9.2.1.6 and paragraph B/4.39.6 of the ISPS Code)* ☐

4. ***Other security-related information***

4.1 Is there any security-related matter you wish to report? ☐ Yes ☐ No

4.1.1 If the answer to 4.1 is YES, provide details[9]:_____

_____

_____

5. ***Agent of the ship at the intended port of arrival***

5.1 Name and contact details (telephone number) of the agent of the ship at the intended port of arrival:_____

_____

6. ***Identification of the person providing the information***

6.1 Name:_____

6.2 Title or position[10]:_____

6.3 Signature:_____

This report is dated at_____ *(place)* on _____ *(time and date)*.

Third Schedule - (Cont'd)

EXPLANATORY NOTES

1. As appearing on the ship's International Ship Security Certificate or the ship's Interim International Ship Security Certificate.

2. If a copy of the ship's current Continuous Synopsis Record (CSR) is submitted there is no need to complete this entry.

3. If available.

4. Refer to paragraph 27 of the Guidance relating to the implementation of SOLAS chapter XI-2 and of the ISPS Code (MSC/Circ.1132).

5. *Ship/port interface* means the interactions that occur when a ship is directly and immediately affected by actions involving the movement of persons, goods or the provisions of port services to or from the ship (*SOLAS regulation XI-2/1.1.8*).

6. Provide the date.

7. *Ship-to-ship activity* means any activity not related to a port facility that involves the transfer of goods or persons from one ship to another (*SOLAS regulation XI-2/1.1.10*).

   Information would not normally be required to include records of transfers of pilots or of customs, immigration or security officials nor bunkering, lighting, loading of supplies and unloading of waste by ship within port facilities as these would normally fall within the auspices of the Port Facility Security Plan (PFSP) (*paragraph B/4.38 of the ISPS Code*).

   Ascertaining whether these activities fall within the PFSP should form part of the dialogue between the Ship Security Officer and the Port Facility Security Officer. It should be remembered that the physical boundaries of port facilities may not always coincide with the boundaries of the port or harbour authority.

Third Schedule - (Cont'd)

8. *Dangerous substances as cargo* means the carriage of substances, materials and articles covered by the IMDG Code and falling under the following classes of dangerous goods irrespective of whether these are carried in bulk or packaged form:

   - Class 1: Explosives
   - Class 2.1: Flammable gas
   - Class 2.3: Toxic gases
   - Class 3: Flammable liquids
   - Class 4.1: Flammable solids, self-reactive substances and desensitized explosives
   - Class 5.1: Oxidizing substances
   - Class 6.1: Toxic substances
   - Class 6.2: Infectious substances
   - Class 7: Radioactive material
   - Class 8: Corrosive substances

   This information may be extracted from the Dangerous Goods Manifest (IMO FAL Form 7) or the whole Dangerous Goods Manifest may be submitted.

9. Other security-related matters include but are not limited to the carriage of stowaways or any persons rescued at sea. When reporting stowaways please see the Guidelines on the allocation of responsibilities to seek the successful resolution of stowaway cases adopted by the Organization with resolution A.871(20). This resolution provides in the Appendix to the Annex a Stowaway details report which should be completed and forwarded to the extent that is practically possible. When reporting persons rescued at sea please see the guidance provided in paragraph B/4.38.3 of the ISPS Code.

10. Master, Ship Security Officer, Company Security Officer or Agent of the ship at the intended port of arrival.

Third Schedule - (Cont'd)

(Section 11(1)(b)(ix)

Facilitation of International Maritime Traffic Act, 2021
(Act 2021-)

FORM 7

Ship Sanitation Control Exemption Certificate/Ship Sanitation Control Certificate

Port of _____ Date: _____

This Certificate records the inspection and 1) exemption from control or 2) control measures applied

Name of ship or inland navigation vessel _____

_____

Flag _____ Registration/IMO No. _____

At the time of inspection the holds were unladen/laden with _____ tonnes of _____ cargo

Name and address of inspecting officer _____

_____

Third Schedule - (Cont'd)

Ship Sanitation Control Exemption Certificate

Areas, [systems, and services] inspected	Evidence found[1]	Sample results[2]	Documents reviewed
Galley			Medical log
Pantry			Ship's log
Stores			Other
Hold(s)/cargo			
Quarters:			
-crew			
- officers			
- passengers			
- deck			
Potable water			
Sewage			
Ballast tanks			
Solid and medical waste			
Standing water			
Engine room			
Medical facilities			
Other areas specified - see attached			
Note areas not applicable, by marking N/A			

No evidence found. Ship/vessel is exempted from control measures.

Name and designation of issuing officer | *Signature and seal* | *Date*

[1](a) Evidence of infection or contamination, including: vectors in all stages of growth; animal reservoirs for vectors; rodents or other species that could carry human disease, microbiological, chemical and other risks to human health; signs of inadequate sanitary measures.

(b) Information concerning any human cases (to be included in the Maritime Declaration of Health).

[2] Results from samples taken on board. Analysis to be provided to ship's master by most expedient means and, if re-inspection is required, to the next appropriate port of call coinciding with the re-inspection date specified in this certificate.

Sanitation Control Exemption Certificates and Sanitation Control Certificates are valid for a maximum of six months but the validity period may be extended by one month if inspection cannot be carried out at the port and there is no evidence of infection or contamination.

Third Schedule - (Cont'd)

Ship Sanitation Control Certificate

Control measures applied	Re-inspection date	Comments regarding conditions found

No evidence found. Ship/vessel is exempted from control measures.

Name and designation of issuing officer | *Signature and seal* | *Date*

[1](a) Evidence of infection or contamination, including: vectors in all stages of growth; animal reservoirs for vectors; rodents or other species that could carry human disease, microbiological, chemical and other risks to human health; signs of inadequate sanitary measures.

(b) Information concerning any human cases (to be included in the Maritime Declaration of Health).

[2]Results from samples taken on board. Analysis to be provided to ship's master by most expedient means and, if re-inspection is required, to the next appropriate port of call coinciding with the re-inspection date specified in this certificate.

Sanitation Control Exemption Certificates and Sanitation Control Certificates are valid for a maximum of six months but the validity period may be extended by one month if inspection cannot be carried out at the port and there is no evidence of infection or contamination.

Third Schedule - (Cont'd)

Attachment to Model Ship Sanitation Control Exemption Certificate/ Ship Sanitation Controal Certificate

Areas/facilities/ systems inspected[1]	Evidence found	Sample results	Documents reviewed	Control measures applied	Re-inspection date	Comments regarding conditions found
Food						
Source						
Storage						
Preparation						
Service						
Water						
Source						
Storage						
Distribution						
Waste						
Holding						
Treatment						
Disposal						
Swimming pools/spas						
Equipment						
Operation						
Medical facilities						
Equipment and medical devices						
Operation						
Medicines						
Other areas inspected						

[1] Indicate when the areas listed are not applicable by marking N/A.

Third Schedule - (Cont'd)

(Section 11(1)(b)(x))

Facilitation of International Maritime Traffic Act, 2021

(Act 2021-)

FORM 8

Dispatch-ID

LETTER BILL
Bulk mail

CN 32

☐ CN 44 trial note attached

Operators	Origin						Previous number
	Destination						
Origin OE and IMPC code		Destination OE and IMPC code	Category	Sub-class	Year	Dispatch No.	Date
Transportation							

1 Receptacle labels and types

Receptacle labels			Receptacle types	Bags	Trays	Others	Total
Number of labels	Red	Violet	Receptacles in mail				
Total weight			Receptacles to be returned				
			Empty receptacles being returned				

Third Schedule - (Cont'd)

2 Number of items and weight per format

Format	Number of receptacles	Weight	Number of items
P or S			
G			
E			
Mixed mail			

3 Identified items

	Number of receptacles containing	Number of inner packets containing	Number of special lists	Number of items subject to additional terminal dues	Number of items exempt from additional terminal dues	Total number of items
Registered items						
Insured items						
Tracked items						

4 Miscellaneous information

Number of CN 65 bills	Presence of COD: unregistered items ☐ registered items ☐

Dispatching office of exchange signature

Office of exchange of destination signature

Third Schedule - (Cont'd)

(Section 11(1)(b)(xi)

Facilitation of International Maritime Traffic Act, 2021
(Act 2021-)

FORM 9

Ship Particulars

1. Name of ship	2. Flag
3. IMO number	4. Type of Ship
5. Gross Tonnage	6. Net Tonnage
7. Year of Build	8. Builder
9. Deadweight	10. Lightship weight
11. Draught	12. Speed

Third Schedule - (Cont'd)

(Sections 11(1)(b), 15(1) and (2), 25(b), and 37(2))

Facilitation of International Maritime Traffic Act, 2021
(Act 2021-)

PART B

FORM 1

Advanced Passenger Information

A. Data relating to the voyage

1. **(Ship) Identification**

   IMO or registration number.

2. **Registration**

   Ship registration number.

3. **Country of Registration**

   Country where ship is registered.

4. **Agent or Owner**

   Name of agent for the ship or, where no agent, name of owner.

5. **Call Sign (if applicable)**

6. **Scheduled Departure Date**

   Date of scheduled departure of ship based on local time of departure from location.

Third Schedule - (Cont'd)

7. **Scheduled Departure Time**

   Time of scheduled departure of ship based on local time of departure from location.

8. **Scheduled Arrival Date**

   Date of scheduled arrival of ship based on local time of arrival at location.

9. **Scheduled Arrival Time**

   Time of scheduled arrival of ship based on local time of arrival at location.

10. **Last Place or Port of Call of Ship**

    Ship departed from this last place or port of call to go to a place or port of call.

11. **Place or Port of Initial Arrival of Ship**

    Place or port of call in the country of destination where the ship arrives from the last place or port of call of ship initial arrival.

12. **Subsequent Place or Port of Call Within the Country or Domestic Space**

13. **Number of Passengers on Board Ship**

    Total number of passengers on board ship.

14. **Number of Crew Members on Board Ship**

    Total number of crew on board ship.

Third Schedule - (Cont'd)

B. Data relating to each individual on board a ship

Core Data Elements of the Official Travel Documents

1. **Official Travel Document Number**

   Passport or other official travel document number.

2. **Issuing State or Organisation of the Official Travel Document**

   Name of the state or organisation responsible for the issuance of the official travel document.

3. **Official Travel Document Type**

   Indicator to identify type of official travel document.

4. **Expiration Date of Official Travel Document**

   Expiration date of the official travel document.

5. **Surname and Given Name(s)**

   Family name and given name(s) of the holder as they appear on the official travel document.

6. **Nationality**

   Nationality of the holder of the travel document.

7. **Date of Birth**

   Date of birth of the holder of the travel document.

8. **Gender**

   Gender of the holder of the travel document.

Third Schedule - (Cont'd)

9. **Place of Birth**

Please give City and Country of birth.

10. **Place or Port of Original Embarkation**

Place or port on that journey where traveller first boarded for foreign travel.

11. **Place or Port of Clearance**

Place or port where the traveller is cleared by the border control agencies.

12. **Place or Port of Onward Foreign Destination**

Foreign place or port where the traveller is transiting.

13. **Passenger Name Record (PNR) Data**

As available in the traveller's Passenger Name Record (PNR) in the carrier's Reservation System including all historical changes to the PNR listed. Must include:

(1) PNR record locator

(2) Date of reservation or issue of ticket

(3) Date(s) of intended travel

(4) Surname and Given Name(s)

(5) Address and contact information (telephone number, e-mail address)

(6) All forms of payment information, including billing address

(7) Complete travel itinerary for specific PNR

(8) Frequent flyer information

(9) Travel agency or travel agent

Third Schedule - (Cont'd)

(10) Travel status of passenger, including confirmations, check-in status, no show or go show information

(11) Split or divided PNR information

(12) General remarks (including all available information on unaccompanied minors under 18 years, such as name and gender of the minor, language(s) spoken, name and contact details of guardian on departure and relationship to the minor, name and contact details of guardian on arrival and relationship to the minor, departure and arrival agent)

(13) Ticketing field information, including ticket number, date of ticket issuance and one-way tickets, Automated Ticket Fare Quote fields

(14) Seat number and other seat information

(15) Code share information

(16) All baggage information

(17) Number and other names of travellers on PNR

(18) Any Advanced Passenger Information (API) data collected

(19) All historical changes to the PNR listed in numbers 1 to 18

Third Schedule - (Cont'd)

C. Additional Data

1. **Visa Number** (if applicable)

2. **Place of Issue of the visa**

   Place where visa was issued

3. **Date of Issue of the visa**

   Date when visa was issued

4. **Other Document Number used for Travel** (if applicable)

   The other document number used for travel when the official travel document is not required

5. **Other Document Number used for Travel** (if applicable)

   Type of other document used for travel (supporting travel document)

6. **Primary Residence**

   Country of primary residence

   (Country where passenger resides most of the year)

   Address

   (location identification such as: street name and number)

   City

   State/Province/Country

   Postal Code

Third Schedule - (Cont'd)

D. Data relating to the Reporting Party

Reporting Party Name

Reporting Party Telephone Number

Reporting Party Facsimile Number

Reporting Party Electronic Mail Address

Third Schedule - (Cont'd)

(Section 11(1)(b)(ii))

Facilitation of International Maritime Traffic Act, 2021
(Act 2021-)

FORM 2

Advanced Cargo Information

Electronic Manifest Management Asycuda

A. Maritime Cargo Data Messages

Cargo Manifest:

To be submitted by master or ship agent

Master Waybill:

To be submitted by master or ship agent

House Waybill:

To be submitted by Freight Forwarded or Representatives

Response Message:

To be handled by the filing party

Third Schedule - (Cont'd)

B. Cargo for Discharge in Barbados

Data relating to the Manifest

Data relating to the Manifest:

Voyage number

(A number assigned by local Shipping Agent for ships)

Date and Time of submission

Carrier

(Name of ship)

Scheduled Departure Date

(Date of departure of ship)

Scheduled Arrival Date

(Date of arrival of ship)

Scheduled Arrival Time

(Time of arrival of ship)

Place of Departure

(The last foreign port or place of call for ship)

Destination

(Port or place in the country of destination where the ship first reports)

Subsequent Place or Port of call within the country (Optional)

Third Schedule - (Cont'd)

Agent: Name

Authorised representative of the ship (where available)

Owner

(Name of owner of ship)

Transport: Mode

(The manner in which the goods are imported or exported)

Transport: Name

(Name of the importing or exporting ship)

Transport: Nationality

(Nationality of ship as determined by its port of registry)

Transport: Place (Optional)

(Port of registry)

Registration (Optional)

(International registration number including, in respect of ships, the International Maritime Organisation or Lloyd's registration number)

Master (Optional)

(Name of ship's captain)

Total: Bills

Total: Packages

Total: Containers

Third Schedule - (Cont'd)

Total: Gross (Optional)

Tonnage: Net

(Ship's registered tonnage)

Date of last discharge (Optional)

(Date ship last discharged cargo at any port)

C. Data relating to Container Management

Container: Number

(The BIC identification number of containers)

Container: Type

(Type of containers e.g. 20 feet, refrigerated)

Empty/Full Indicator

(Whether full container load or less than container load)

Seals

(The number of the security seal(s) affixed to the container door)

Marks

(Marks or numbers of the seal(s) affixed to the container door)

Sealing Party

(The authority that affixed the seal(s) to the containers)

Total Containers

Transport Document Reference Number

Third Schedule - (Cont'd)

D. Data relating to individual Bills of Lading

Manifest Line Number

(Number indicating the order of bills of lading on a manifest)

Transport Document Type

(Type of document issued by ship, bills of lading or waybills)

Transport Document Reference Number

Purpose of Shipment

(Whether for import, export, in transit or transhipment)

Unique Cargo Reference (Optional)

Place of loading

Place of discharge

Exporter

Exporter Address

Consignee

Notify

(Either the consignee or the name and phone number of the representative)

Total Containers

Packages: Kind

Packages: Marks and Numbers

Third Schedule - (Cont'd)

Quantity: Package

Quantity: Gross Mass

Volume: Cubic Measurement (cbm)

Description of Goods

(pursuant to applicable law)

Freight Indicator

(payment status, whether prepaid or payment on collection)

Amount and Currency

Values:

Customs (Optional)

Insurance (Optional)

Freight (Optional)

Additional Seals

Additional Information

Third Schedule - (Cont'd)

ADVANCED CARGO INFORMATION ELECTRONIC MANIFEST MANAGEMENT ASYCUDA CARGO MANIFEST DATA FIELDS

No.	DATA FIELDS	DESCRIPTION	MANDATORY
Tracking No.	**General Information**	**General details with respect to voyage and Ship**	**YES**
1	Office of departure or arrival	Code of the Customs Department filing of departure or arrival	YES
2	Voyage number	Voyage number which uniquely identifies the current journey of the means of transport	YES
3	Date of departure	Date when the ship leaves the place of departure	YES
4	Time of departure	Estimated time when the ship departs the place of departure	YES
5	Date of arrival	Estimated date when the ship arrives at the place of destination	YES
6	Time of arrival	Estimated time when the ship arrives at the place of destination	YES
7	Place of departure	Place (LOCODE) where current voyage begins on the ship	YES
8	Place of destination	Place (LOCODE) where current voyage ends on the ship	YES
9	Port of last call	The place of (LOCODE) where the ship last reported before docking at the place of arrival.	YES

Third Schedule - (Cont'd)

SHIPPING INFORMATION

No.	DATA FIELDS	DESCRIPTION	MANDATORY
Tracking No.	**General Information**	**General details with respect to voyage and Ship**	**YES**
10	Ship code	Ship code assigned to the party undertaking the transport of the goods	YES
11	Agent	Code of the agent in charge of the ship reporting during the stay in port	YES

TOTALS

No.	DATA FIELDS	DESCRIPTION	MANDATORY
Tracking No.	**General Information**	**General details with respect to voyage and Ship**	**YES**
12	Bills	Total number of waybills on manifest	YES
13	Packages	Total number of packages on manifest	YES
14	Vehicles	Total number of motor vehicles on manifest	YES
15	Containers	Total number of containers on manifest	YES
16	Gross Weight	Total gross weight contained in the manifest	YES

Third Schedule - (Cont'd)

TRANSPORT

No.	DATA FIELDS	DESCRIPTION	MANDATORY
Tracking No.	**General Information**	**General details with respect to voyage and Ship**	**YES**
17	Mode	Identifying the mode of transport	YES
18	Nationality	Flag or Nationality of means of transport	YES
19	Identity	Name of ship	YES
20	Registration	Registration number of ship	YES
21	Place	Port where the ship was registered	NO
22	Date	Date of discharge	NO
23	Master or Commander	Name of Master or Commander of the ship	YES

TONNAGE

No.	DATA FIELDS	DESCRIPTION	MANDATORY
Tracking No.	**General Information**	**General details with respect to voyage and Ship**	**YES**
24	Gross Tonnage	Net tonnage plus maximum allotted cargo weight per voyage	YES
25	Net Tonnage	Carrier's base weight	
26	Office of destination	Office of destination. Code of the Customs Department of destination in case of transit	Conditional or Optional

Third Schedule - (Cont'd)

CO-LOADER

No.	DATA FIELDS	DESCRIPTION	MANDATORY
Tracking No.	**General Information**	**General details with respect to voyage and Ship**	**YES**
27	Co-loader code	Carrier code of the party sharing the ship or aircraft when multiple parties involved	Conditional or Optional

WAYBILL SEGMENT: Bill of lading

No.	DATA FIELDS	DESCRIPTION	MANDATORY
Tracking No.	**General Information**	**General details with respect to voyage and Ship**	**YES**
28	Office Code	The Code of the Department	

General Information

No.	DATA FIELDS	DESCRIPTION	MANDATORY
Tracking No.	**General Information**	**General details with respect to voyage and Ship**	**YES**
29	Waybill reference number	This is the "Identifier" of the transport document. This is the reference assigned by the carrier or agent (e.g. bill of lading; it is unique in the manifest)	YES
30	Waybill type	Alphanumeric code for the type of transport document	YES

Third Schedule - (Cont'd)

General Information - (Concl'd)

No.	DATA FIELDS	DESCRIPTION	MANDATORY
Tracking No.	**General Information**	**General details with respect to voyage and Ship**	**YES**
31	Nature	Code of the document: export-22, import-23,transit-24,transhipment-28, FROB-26	YES
32	Waybill line	The 'line number' is a sequence number used to identify each item-bill of lading in the manifest	YES
33	Previous document	Reference of the previous document (master waybill) when consolidated cargo	Conditional or Optional
34	UCR	Unique consignment reference number	NO
35	Place of loading	Place (LOCODE) where the goods were orignally loaded on the ship	YES
36	Place of unloading	Place (LOCODE) where the goods will be ultimately unloaded or discharged from the ship	YES
37	FAS/Liner	Terms of condition for transported goods (accepted values F or L)	YES

Third Schedule - (Cont'd)

CARRIER

No.	DATA FIELDS	DESCRIPTION	MANDATORY
Tracking No.	**General Information**	**General details with respect to voyage and Ship**	**YES**
38	Carrier	Carrier code, name and address of the party undertaking the transport of the goods.	YES
39	Carrier Name	The name of the shipping line transporting cargo to and from Barbados	YES
40	Carrier Address	The address of the shipping line transporting cargo to and from Barbados	YES
41	Shipping agent	Code of the shipping agent in charge of the ship management during the stay in port	YES

EXPORTER OR SHIPPER

No.	DATA FIELDS	DESCRIPTION	MANDATORY
Tracking No.	**General Information**	**General details with respect to voyage and Ship**	**YES**
42	Exporter code	Exporter code	NO
43	Name of Exporter	Name of Exporter	YES
44	Address of Exporter	Address of Exporter	YES

Third Schedule - (Cont'd)

TRANSPORT

No.	DATA FIELDS	DESCRIPTION	MANDATORY
Tracking No.	**General Information**	**General details with respect to voyage and Ship**	**YES**
45	Place of loading on current transport	Place (LOCODE) where the goods were loaded on current transport (if there was a change of ship, it would be recorded here)	YES or Optional
46	Place of discharge from current transport	Place (LOCODE) where the goods will be discharged from current transport (if there was further transhipment to be done, it would be recorded here)	YES or Optional

NOTIFY

No.	DATA FIELDS	DESCRIPTION	MANDATORY
Tracking No.	**General Information**	**General details with respect to voyage and Ship**	**YES**
47	Notify code	Code of the notifying party	NO
48	Notify name	Name of the notifying party	YES
49	Notify address	Address of the notifying party	YES

Third Schedule - (Cont'd)

CONSIGNEE

No.	DATA FIELDS	DESCRIPTION	MANDATORY
Tracking No.	**General Information**	**General details with respect to voyage and Ship**	**YES**
50	Consignee	Consignee code (TIN)	NO or Optional
51	Consignee name	Name of the consignee	YES
52	Consignee address	Full address of the consignee	YES

GOOD DETAILS

No.	DATA FIELDS	DESCRIPTION	MANDATORY
Tracking No.	**General Information**	**General details with respect to voyage and Ship**	**YES**
53	Total containers	Total number of containers for this transport document	YES
54	Packages codes	Kind of packages (packaging type code)	YES
55	Marks and Ndr	Marks and numbers	YES
56	Manifested packages	Number of packages as indicated on the waybill	YES
57	Total vehicles	Total number of vehicles for this waybill	YES

Third Schedule - (Cont'd)

GOOD DETAILS - (Concl'd)

No.	DATA FIELDS	DESCRIPTION	MANDATORY
Tracking No.	**General Information**	**General details with respect to voyage and Ship**	**YES**
58	Manifested gross weight	Gross weight as indicated on the waybill. This field must be accurrately captured as the data are compared to the "Totals" information of the general segment.	YES
59	Volume (CBM)	Volume of the goods in cubic metres	NO or Mandatory
60	Description of goods	Commercial description of the goods from the waybill data (e.g. clothes, machines...)	YES
61	H.S. Code	Tariff code for goods	NO or Optional
62	UNDG	Dangerous goods code (UNDG)	Conditional
63	Place of Origin	Place where goods are loaded into container for shipment (free text area)	NO or Optional
64	Place of Destination	Place where goods will be unloaded from container (free text area)	NO or Optional
65	Location	Code of the place where the goods are located in a shed or container park	NO or Optional

Third Schedule - (Cont'd)

DECLARED VALUES AND SEAL DETAILS

No.	DATA FIELDS	DESCRIPTION	MANDATORY
Tracking No.	**General Information**	**General details with respect to voyage and Ship**	**YES**
66	Value or freight code	Value or freight code	YES
67	P/C	Prepaid or collect indicator for the value code	Conditional or Mandatory
68	Freight value amount	Amount of the value code	YES
69	Freight currency	Currency code for the value code	YES
70	Customs value	Customs value of goods	YES or Optional
71	Customs currency	Customs currency code	YES or Optional
72	Insurance value	Insurance cost of the goods	YES
73	Insurance currency	Insurance currency code	YES
74	Transport value	Overall freight cost	YES
75	Transport currency	Overall freight currency code	YES
76	Seal number of seals	Number of seals affixed on non-containerized cargo	Conditional or Optional
77	Marks of seals	Description marks or references number of seals	Conditional or Optional
78	Party	Code of the party having affixed the seals	Conditional or Optional
79	Information	Additional information when required	NO or Optional

Third Schedule - (Cont'd)

CONTAINER SEGMENT

No.	DATA FIELDS	DESCRIPTION	MANDATORY
Tracking No.	**General Information**	**General details with respect to voyage and Ship**	**YES**
80	Container Number	Container number(s) for container(s) relating to waybill	YES
81	Number of packages	Number of packages in container	YES
82	Container Type	Container size-type	YES
83	E/F	Empty or Full indicator	YES
84	Seal Number	Quantity of seals affixed and seal numbers (3 fields)	YES or Optional
85	Sealing Party	Party affixing the seals	YES or Optional
86	Empty Weight	Empty weight of container (KG)	YES or Optional
87	Goods Weight	Weight of goods in container(KG)	YES
88	Min. Temp. CE	Minimum temperature in celsius for refrigerated containers	Conditional or Optional
89	Max. Temp. CE	Maximum temperature in celsius for refrigerated containers	Conditional or Optional
90	Humidity	Temperature in celsius that the goods should be stored	Conditional or Optional
91	Dangerous Code	UNDG code for dangerous goods	Conditional or Optional

Third Schedule - (Cont'd)

CONTAINER SEGMENT - (Concl'd)

No.	DATA FIELDS	DESCRIPTION	MANDATORY
Tracking No.	**General Information**	**General details with respect to voyage and Ship**	**YES**
92	H.S. Code	Tariff Code for goods in container	No or Optional
93	Goods Description	Description of goods in container	YES
94	Container Disposition	(Cargo disposition, accepted values "CY. CFS and P. UNSTUFF). Required only when BL nature 23 and container is not empty	Conditional
95	Volume	Volume of cargo per container	YES
96	Container line code	Code identifying shipping container owner	YES

Third Schedule - (Cont'd)

VEHICLE SEGMENT

No.	DATA FIELDS	DESCRIPTION	MANDATORY
Tracking No.	**General Information**	**General details with respect to voyage and Ship**	**YES**
97	Chassis Number	Chassis number of vehicle	YES
98	Engine Number	Engine number of vehicle	YES or Optional
99	Engine Size	Engine (cc) or (kw)	YES
100	Odometer Reading	Mileage of vehicle	YES or Optional
101	Make or Brand	Make and brand of vehicle	YES
102	Year	Year of manufacture	YES
103	Colour	Colour of vehicle	YES or Optional
104	New or Used	If vehicle new or used	YES or Optional

Third Schedule - (Concl'd)

DATA SUBMISSION TIME FRAME

1. The information set out in the Advanced Cargo Information System Data Fields

(a) for incoming cargo by ship:

(i) containerized cargo: 24 hours before arrival at first port in the country of destination;

(ii) bulk or break bulk: 24 hours before arrival at first port in the country of destination;

(b) for outgoing cargo by ship:

(i) containerized cargo: 24 hours before loading at port of departure;

(ii) bulk or break bulk: 24 hours before departure to the first port in the country of destination.

FOURTH SCHEDULE

(Sections 11(1)(c), 34(1) and 36)

Documents relating to Stowaways

PART A

REVISED GUIDELINES ON THE PREVENTION OF ACCESS BY STOWAWAYS AND THE ALLOCATION OF RESPONSIBILITIES TO SEEK THE SUCCESSFUL RESOLUTION OF STOWAWAY CASES

THE FACILITATION COMMITTEE,

HAVING CONSIDERED the general purposes of the Convention on Facilitation of International Maritime Traffic, 1965, as amended (FAL Convention), and in particular article III thereof,

RECALLING the provisions of resolution A.1027(26) on *Application and revision of the Guidelines on the allocation of responsibilities to seek the successful resolution of stowaway cases* (resolution A.871(20)),

RECALLING ALSO that the International Convention Relating to Stowaways, which attempted to establish an internationally acceptable regime for dealing with stowaways, has not yet come into force,

RECALLING FURTHER that it adopted, in accordance with article VII(2)*(a)* of the FAL Convention, at its twenty-ninth session, on 10 January 2002, amendments to the Convention on Facilitation of International Maritime Traffic, 1965, as amended (resolution FAL.7(29)), which introduced a new section 4 on Stowaways in the annex to the FAL Convention, prescribing Standards and Recommended Practices on matters relating to stowaways (the FAL provisions on stowaways), which entered into force on 1 May 2003,

RECALLING IN ADDITION that, for the purposes of this resolution, a stowaway is defined as a person who is secreted on a ship or in cargo which is subsequently loaded on the ship, without the consent of the shipowner or the master or any other responsible person, and who is detected on board the ship after it has departed from a port, or in the cargo while unloading it in the port of arrival, and is reported as a stowaway by the master to the appropriate authorities,

Fourth Schedule - (Cont'd)

NOTING with concern the number of incidents involving stowaways, the consequent potential for disruption of maritime traffic, the impact such incidents may have on the safe operation of ships and the considerable risks faced by stowaways, including loss of life,

NOTING ALSO that several Member States which are also Contracting Governments to the FAL Convention:

(a) have notified the Secretary-General, in accordance with article VIII(1) of the FAL Convention (in relation to the Standards specified in section 4 of the annex to the FAL Convention) either that they find it impracticable to comply with the above-mentioned Standards or of differences between their own practices and those Standards; or

(b) have not yet notified the Secretary-General, in accordance with article VIII(3) of the FAL Convention, that they have brought their formalities, documentary requirements and procedures into accord in so far as practicable with the Recommended Practices specified in section 4 of the annex to the FAL Convention,

RECALLING that resolution A.1027(26) expressed conviction of the need to align, to the extent possible and desirable, the Guidelines with the FAL provisions on stowaways and to revise them in a manner that reflects developments in efforts undertaken to prevent stowaways, as well as to provide guidance and recommendations, taking into account the FAL provisions on stowaways, on measures which can be implemented by vessels to prevent cases involving stowaways,

TAKING INTO ACCOUNT that some stowaways may be asylum seekers and refugees, which should entitle them to such relevant procedures as those provided by international instruments and national legislation,

BEING AWARE that considerable difficulties continue to be encountered by masters and shipping companies, shipowners and ship operators when stowaways are to be disembarked from ships into the care of the appropriate authorities,

AGREEING that the existence of such guidance should in no way be regarded as condoning or encouraging the practice of stowing away and other illegal migration, and should not undermine efforts to combat the separate problems of alien smuggling or human trafficking,

Fourth Schedule - (Cont'd)

AGREEING ALSO that the provisions of this resolution should, in accordance with resolution A.1027(26), be considered as being of relevance only with respect to:

(a) Member States which are not Contracting Governments to the FAL Convention; and

(b) Member States which are Contracting Governments to the FAL Convention and which:

(i) have notified the Secretary-General, in accordance with article VIII(1) of the FAL Convention (in relation to the Standards specified in section 4 of the annex to the FAL Convention) either that they find it impracticable to comply with the aforementioned Standards or of differences between their own practices and those Standards; or

(ii) have not yet notified the Secretary-General, in accordance with article VIII(3) of the FAL Convention, that they have brought their formalities, documentary requirements and procedures into accord in so far as practicable with the Recommended Practices specified in section 4 of the annex to the FAL Convention,

BELIEVING that, at present, stowaway cases can best be resolved through close cooperation among all authorities and persons concerned,

BELIEVING ALSO that, in normal circumstances, through such cooperation, stowaways should, as soon as practicable, be removed from the ship concerned and returned to the country of nationality/citizenship or to the port of embarkation, or to any other country which would accept them,

RECOGNIZING that stowaway incidents should be dealt with humanely by all Parties involved, giving due consideration to the operational safety of the ship and its crew,

WHILST URGING national authorities, port authorities, shipowners and masters to take all reasonable precautions to prevent stowaways gaining access to vessels,

NOTING that the Maritime Safety Committee, at its eighty-eighth session, adopted the *Revised guidelines on the prevention of access by stowaways and the allocation of responsibilities to seek the successful resolution of stowaway cases* (resolution MSC.312(88)),

NOTING ALSO that, at its thirty-seventh session, it adopted the *Revised guidelines on the prevention of access by stowaways and the allocation of responsibilities to seek the successful resolution of stowaway cases* (resolution FAL.11(37)),

Fourth Schedule - (Cont'd)

RECALLING that, at its fortieth session, it adopted amendments to the annex to the FAL Convention (resolution FAL.12(40)), which included amendments to section 4 (Stowaways), AGREEING that these amendments should be reflected in the revised guidelines as adopted by resolution FAL.11(37),

NOTING that the Maritime Safety Committee, at its ninety-ninth session, adopted the Revised guidelines on the prevention of access by stowaways and the allocation of responsibilities to seek the successful resolution of stowaway cases (resolution MSC.448(99)),

1 ADOPTS the *Revised guidelines on the prevention of access by stowaways and the allocation of responsibilities to seek the successful resolution of stowaway cases*, set out in the annex to the present resolution;

2 URGES Governments to implement in their national policies and practices the amended procedures recommended in the annexed Guidelines;

3 ALSO URGES Governments to deal with stowaway cases in a spirit of cooperation with other parties concerned, on the basis of the allocation of responsibilities set out in the annexed Guidelines as from 1 July 2018;

4 INVITES shipping companies, shipowners and ship operators to take on the relevant responsibilities set out in the annexed Guidelines and to guide their masters and crews as to their respective responsibilities in stowaway cases;

5 INVITES Governments to develop, in cooperation with the industry, comprehensive strategies to improve access control and prevent intending stowaways from gaining access to ships;

6 RESOLVES to continue to monitor the effectiveness of the annexed Revised guidelines on the basis of information provided by Governments and the industry, to keep them under review and to take such further action, including the development of a relevant binding instrument, as may be considered necessary in light of the developments;

7 REVOKES resolution FAL.11(37) on *Revised guidelines on the prevention of access by stowaways and the allocation of responsibilities to seek the successful resolution of stowaway cases*;

8 REQUESTS the Assembly to endorse the action taken by the Maritime Safety Committee and the Facilitation Committee.

Fourth Schedule - (Cont'd)

REVISED GUIDELINES ON THE PREVENTION OF ACCESS BY STOWAWAYS AND THE ALLOCATION OF RESPONSIBILITIES TO SEEK THE SUCCESSFUL RESOLUTION OF STOWAWAY CASES

1 Introduction

1.1 Masters, shipowners, public authorities, port authorities and other stakeholders, including those providing security services ashore, have a responsibility to cooperate to the fullest extent possible in order:

.1 to prevent stowaway incidents; and

.2 to resolve stowaway cases expeditiously and secure that an early return or repatriation of the stowaway will take place; all appropriate measures should be taken in order to avoid situations where stowaways must stay on board ships for an unreasonable amount of time.

1.2 However, no matter how effective port and ship security measures are, it is recognized that there will still be occasions when stowaways gain access to vessels, either secreted in the cargo or by surreptitious boarding.

1.3 The resolution of stowaway cases is difficult because of different national legislation in each of the several potentially involved States: the State of embarkation, the State of disembarkation, the flag State of the ship, the State of apparent, claimed or actual nationality/ citizenship or right of residence of the stowaway, and States of transit during repatriation.

2 Definitions

For the purpose of these Guidelines, the following meanings shall be attributed to the terms listed:

.1 *Attempted stowaway*. A person who is secreted on a ship, or in cargo which is subsequently loaded on the ship, without the consent of the shipowner or the master or any other responsible person, and who is detected on board the ship before it has departed from the port.

.2 *Port*. Any port, terminal, offshore terminal, ship and repair yard or roadstead which is normally used for the loading, unloading, repair and anchoring of ships, or any other place at which a ship can call.

Fourth Schedule - (Cont'd)

.3 *Public authorities*. The agencies or officials in a State responsible for the application and enforcement of the laws and regulations of that State which relate to any aspect of the present Guidelines.

.4 *Security measures*. Measures developed and implemented in accordance with international agreements to improve security on board ships and in port areas and facilities, and of goods moving in the international supply chain, to detect and prevent punlawful acts.[1]

.5 *Shipowner*. One who owns or operates a ship, whether a person, a corporation or other legal entity, and any person acting on behalf of the owner or operator.

.6 *Stowaway*. A person who is secreted on a ship, or in cargo which is subsequently loaded on the ship, without the consent of the shipowner or the master or any other responsible person and who is detected on board the ship after it has departed from a port, or in the cargo while unloading it in the port of arrival, and is reported as a stowaway by the master to the appropriate authorities.

3 Basic principles

On the basis of the experience thus far, the application of the following basic principles have been useful in preventing stowaway incidents and have been helpful in the speedy resolution of stowaway cases:

.1 Stowaway incidents should be dealt with in a manner consistent with humanitarian principles. Due consideration must always be given to the operational safety of the ship and to the safety and well-being of the stowaway.

.2 Public authorities, port authorities, shipowners and masters should cooperate to the fullest extent possible in order to prevent stowaway incidents.

---

[1] Reference is made to chapter XI-2 of the International Convention for the Safety of Life at Sea, 1974, as amended (1974 SOLAS Convention) and the International Ship and Port Facility Security Code, as amended (ISPS Code); and to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 (1988 SUA Convention) and its 2005 Protocol (2005 SUA Protocol).

Fourth Schedule - (Cont'd)

.3 Shipowners, masters, port authorities and public authorities should have adequate security arrangements in place which, as far as practicable, will prevent intending stowaways from getting aboard a ship or, if this fails, will detect them before the ship leaves port or, at the latest, before it arrives at the next port of call.

.4 Adequate, frequent and well-timed searches minimize the risk of having to deal with a stowaway case and may also save the life of a stowaway who may, for example, be hiding in a place which is subsequently sealed and/or chemically treated.

.5 Public authorities, port authorities, shipowners and masters should cooperate to the fullest extent possible in order to resolve stowaway cases expeditiously and secure that an early return or repatriation of the stowaway will take place. All appropriate measures should be taken in order to avoid situations where stowaways must stay on board ships for an unreasonable amount of time.

.6 Stowaways arriving at or entering a State without the required documents are, in general, illegal entrants. Decisions on dealing with such situations are the prerogative of the States where such arrival or entry occurs.

.7 Stowaway asylum seekers should be treated in accordance with international protection principles as set out in international instruments, such as the provisions of the United Nations Convention relating to the Status of Refugees of 28 July 1951 and of the United Nations Protocol relating to the Status of Refugees of 31 January 1967 and relevant national legislation.[2]

.8 Every effort should be made to avoid situations where a stowaway has to be detained on board a ship indefinitely. In this regard States should cooperate with the shipowner in arranging the disembarkation of a stowaway to an appropriate State.

.9 States should accept the return of stowaways who have full nationality/ citizenship status in that State, or have a right of residence in that State.

.10 Where the nationality or citizenship or right of residence cannot be established, the State of the original port of embarkation of a stowaway should accept the return of such a stowaway for examination pending final case disposition.

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[2] In addition, public authorities may wish to consider the non-binding conclusion of the UNHCR Executive Committee on Stowaway Asylum Seekers (1988, No. 53 (XXXIX)).

Fourth Schedule - (Cont'd)

4 Preventive measures

4.1 *Port/terminal authorities*

4.1.1 States and port and terminal owners, operators and authorities should ensure that the necessary infrastructure, and operational and security arrangements for the purpose of preventing persons attempting to stowaway on board ships from gaining access to port installations and to ships, are established in all their ports, taking into consideration when developing these arrangements the size of the port, and what type of cargo is shipped from the port. This should be done in close cooperation with relevant public authorities, shipowners and shore-side entities, with the aim of preventing stowaway occurrences in the individual port.

4.1.2 Operational arrangements and/or port facility security plans should at least be equivalent to those contained in the relevant text of section B/16 of the ISPS Code.[3]

4.2 *Shipowner/Master*

4.2.1 Shipowners and masters should ensure that adequate security arrangements are in place which, as far as practicable, will prevent intending stowaways from getting aboard the ship, and, if this fails, as far as practicable, will detect them before the ship leaves port or, at the latest, before it arrives at the next port of call.

4.2.2 When calling at ports and during stay in ports, where there is risk of stowaway embarkation, operational arrangements and/or ship security plans should at least be equivalent to those contained in the relevant text of paragraph B/9 of the ISPS Code.[4]

4.2.3 When departing from a port, where there is risk of stowaway embarkation, a ship should undergo a thorough search in accordance with a specific plan or schedule, and with priorities given to places where stowaways might hide taking into account the specific ship type and its operations. Search methods which are likely to harm secreted stowaways should not be used.

4.2.4 Fumigation or sealing should not be carried out until a thorough search of the areas to be fumigated or sealed has taken place in order to ensure that no stowaways are present in those areas.

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3 Recommended Practice 4.3.1.2 of the FAL Convention.

4 Recommended Practice 4.3.2.2 of the FAL Convention.

Fourth Schedule - (Cont'd)

5 Responsibilities in relation to the resolution of stowaway cases

5.1 *Questioning and notification by the master*

It is the responsibility of the master of the ship which finds any stowaways on board:

.1 to make every effort to determine immediately the port of embarkation of the stowaway;

.2 to take practical steps to establish the identity, including the nationality/ citizenship and the right of residence, of the stowaway;

.3 to prepare a statement containing all available information relevant to the stowaway for presentation to the appropriate authorities (for example, the public authorities at the port of embarkation, the flag State and, if necessary, subsequent ports of call) and the shipowner; in this respect the reporting form provided in the appendix should be used and completed as far as practicable;

.4 to notify the existence of a stowaway and any relevant details to the shipowner and appropriate authorities at the port of embarkation, the next port of call and the flag State, with the understanding that when a stowaway declares himself or herself to be a refugee, this information should be treated as confidential to the extent necessary for the security of the stowaway; to ensure confidentiality in these cases no information should be forwarded to authorities public or private in the country of origin or residence of the stowaway;

.5 not to depart from the planned voyage to seek the disembarkation of a stowaway discovered on board the ship after it has left the territorial waters of the State where the stowaways embarked, unless permission to disembark the stowaway has been granted by the public authorities of the State to whose port the ship deviates, or repatriation has been arranged elsewhere with sufficient documentation and permission given for disembarkation, or unless there are extenuating safety, security, health or compassionate reasons, or attempts to disembark in other ports on the planned voyage have failed and deviation is necessary in order to avoid that the stowaway remain on board for a significant period of time;

.6 to ensure that the stowaway is presented to the appropriate authorities at the next port of call in accordance with their requirements;

Fourth Schedule - (Cont'd)

.7 to take appropriate measures to ensure the security, general health, welfare and safety of the stowaway until disembarkation, including providing him or her with adequate provisioning, accommodation, proper medical attention and sanitary facilities;

.8 to ensure that stowaways are not permitted to work on board the ship, except in emergency situations or in relation to the stowaway's accommodation and provisioning on board; and

.9 to ensure that stowaways are treated humanely, consistent with the basic principles.

5.2 *The shipowner*

It is the responsibility of the shipowner of the ship on which stowaways are found:

.1 to ensure that the existence of, and any relevant information on, the stowaway has been notified to the appropriate authorities at the port of embarkation, the next port of call and the flag State;

.2 to comply with any removal directions made by the competent national authorities at the port of disembarkation; and

.3 to cover any applicable costs relating to the removal, detention, care and disembarkation of the stowaway in accordance with the legislation of the States which may be involved.

5.3 *The State of the first port of call according to the voyage plan*

It is the responsibility of the State of first port of call according to the voyage plan after the discovery of the stowaway:

.1 to accept the stowaway for examination in accordance with the national laws of that State and, where the competent national authority considers that it would facilitate matters, to allow the shipowner and the competent or appointed P&I Club correspondent to have access to the stowaway;

Fourth Schedule - (Cont'd)

.2 to favourably consider allowing disembarkation and provide, as necessary and in accordance with national law, secure accommodation which may be at the expense of the shipowner, where:

.1 a case is unresolved at the time of sailing of the ship; or

.2 the stowaway is in possession of valid documents for return and the public authorities are satisfied that timely arrangements have been or will be made for repatriation and all the requisites for transit fulfilled; or

.3 other factors make it impractical for the stowaway to remain on the ship; such factors may include but are not limited to cases where a stowaway's presence on board would endanger the safe and secure operation of the ship, the health of the crew or the stowaway;

.3 to make every effort to cooperate in the identification of the stowaway and the establishment of his or her nationality/citizenship or right of residence;

.4 to make every effort to cooperate in establishing the validity and authenticity of a stowaway's documents and, when a stowaway has inadequate documents, to whenever practicable and to an extent compatible with national legislation and security requirements issue a covering letter with a photograph of the stowaway and any other important information, or alternatively, a suitable travel document accepted by the public authorities involved; the covering letter authorizing the return of the stowaway either to his or her State of origin or to the point where the stowaway commenced his or her journey, as appropriate, by any means of transportation and specifying any other conditions imposed by the authorities, should be handed over to the operator effecting the removal of the stowaway; this letter will include information required by the authorities at transit points and/or the point of disembarkation;

.5 to give directions for the removal of the stowaway to the port of embarkation, State of nationality/citizenship or right of residence or to some other State to which lawful directions may be made, in cooperation with the shipowner;

.6 to inform the shipowner on whose ship the stowaway was found, as far as practicable, of the level of cost of detention and return and any additional costs for the documentation of the stowaway, if the shipowner is to cover these costs; in addition, public authorities should cooperate with the shipowner to

Fourth Schedule - (Cont'd)

keep such costs to a minimum, as far as practicable, and according to national legislation, if they are to be covered by the shipowner, as well as keeping to a minimum the period during which shipowners are held liable to defray costs of maintenance of a stowaway by public authorities;

.7 to consider mitigation of charges that might otherwise be applicable when shipowners have cooperated with the control authorities to the satisfaction of those authorities in measures designed to prevent the transportation of stowaways; or where the master has properly declared the existence of a stowaway to the appropriate authorities in the port of arrival, and has shown that all reasonable preventive measures had been taken to prevent stowaways gaining access to the ship;

.8 to issue, if necessary, in the event that the stowaway has no identification and/or travel documents, a document attesting to the circumstances of embarkation and arrival to facilitate the return of the stowaway either to his or her State of origin, to the State of the port of embarkation, or to any other State to which lawful directions can be made, by any means of transport;

.9 to provide the document to the transport operator effecting the removal of the stowaway;

.10. to take proper account of the interests of, and implications for, the shipowner when directing detention and setting removal directions, so far as is consistent with the maintenance of control, their duties or obligations to the stowaway under the law, and the cost to public funds;

.11 to report incidents of stowaways of which they become aware to the Organization;[5]

.12 to cooperate with the flag State of the ship in identifying the stowaway and their nationality/citizenship and right of residence, to assist in removal of the stowaway from the ship, and to make arrangements for removal or repatriation; and

.13 if disembarkation is refused, to notify the flag State of the ship the reasons for refusing disembarkation.

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[5] Refer to FAL.2/Circ.50/Rev.3 on *Information on stowaway incidents*, as may be amended.

Fourth Schedule - (Cont'd)

5.4 *Subsequent ports of call*

When the disembarkation of a stowaway has not been possible at the first port of call, it is the responsibility of the State of the subsequent port of call to follow the guidance provided in paragraph 5.3.

5.5 *State of embarkation*

It is the responsibility of the State of the original port of embarkation of the stowaway (i.e. the State where the stowaway first boarded the ship):

.1 to accept any returned stowaway having nationality/citizenship or right of residence;

.2 to accept a stowaway back for examination where the port of embarkation is identified to the satisfaction of the public authorities of the receiving State; the public authorities of the State of embarkation should not return such stowaways to the State where they were earlier found to be inadmissible;

.3 to apprehend and detain the attempted stowaway, where permitted by national legislation, if the attempted stowaway is discovered before sailing either on the ship or in cargo due to be loaded; to refer the attempted stowaway to local authorities for prosecution, and/or, where applicable, to the immigration authorities for examination and possible removal; no charge is to be imposed on the shipowner in respect of detention or removal costs, and no penalty is to be imposed;

.4 to apprehend and detain the stowaway, where permitted by national legislation, if the stowaway is discovered while the ship is still in the territorial waters of the State of the port of his or her embarkation, or in another port in the same State (not having called at a port in another State in the meantime); no charge is to be imposed on the shipowner in respect of detention or removal costs, and no penalty is to be imposed;

.5 to report incidents of stowaways or attempted stowaways of which they become aware to the Organization;[6] and

.6 to reassess the preventative arrangements and measures in place and to verify the implementation and effectiveness of any corrective actions.

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[6] Refer to FAL.2/Circ.50/Rev.3 on *Information on stowaway incidents*, as may be amended.

Fourth Schedule - (Cont'd)

5.6 *State of nationality or right of residence*

It is the responsibility of the apparent or claimed State of nationality/citizenship of the stowaway and/or of the apparent or claimed State of residence of the stowaway:

.1 to make every effort to assist in determining the identity and nationality/ citizenship or the rights of residence of the stowaway and to document the stowaway, accordingly once satisfied that he or she holds the nationality/ citizenship or the right of residence claimed; where possible, the local embassy, consulate or other diplomatic representation of the country of the stowaway's nationality will be required to assist in verifying the stowaway's nationality and providing emergency travel documentation;

.2 to accept the stowaway where nationality/citizenship or right of residence is established; and

.3 to report incidents of stowaways of which they become aware to the Organization.[7]

5.7 *The flag State*

It is the responsibility of the flag State of the ship:

.1 to be willing, if practicable, to assist the master/shipowner or the appropriate authority at the port of disembarkation in identifying the stowaway and determining his or her nationality/citizenship or right of residence;

.2 to be prepared to make representations to the relevant authority to assist in the removal of the stowaway from the ship at the first available opportunity;

.3 to be prepared to assist the master/shipowner or the authority at the port of disembarkation in making arrangements for the removal or repatriation of the stowaway; and

.4 to report incidents of stowaways of which they become aware to the Organization.

5.8 *States of transit during repatriation*

It is the responsibility of any States of transit during repatriation to allow, subject to normal visa requirements and national security concerns, the transit through their ports and airports of stowaways travelling under the removal instructions or directions of the State of the port of disembarkation.

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[7] Refer to FAL.2/Circ.50/Rev.3 on *Information on stowaway incidents*, as may be amended.

Fourth Schedule - (Cont'd)

Facilitation of International Maritime Traffic Act, 2021
(Act 2021-)

PART B

FORM OF STOWAWAY DETAILS REFERRED TO IN RECOMMENDED PRACTICE 4.6.2 OF THE CONVENTION ON FACILITATION OF INTERNATIONAL MARITIME TRAFFIC 1965, AS AMENDED

SHIP DETAILS Name of ship:_____ IMO number:_____ Flag:_____ Company:_____ Company address:_____	Date of birth:_____ Place of birth:_____ Claimed nationality:_____ Home address:_____ Country of domicile:_____ ID document type, e.g. passport no.:_____ ID card no. or Seaman's book no.:_____ If yes, When issued:_____ Where issued:_____
Agent in next port:_____ Agent address:_____	
IRCS:_____ Inmarsat number:_____	

Fourth Schedule - (Cont'd)

FORM OF STOWAWAY DETAILS REFERRED TO IN RECOMMENDED PRACTICE 4.6.2 OF THE CONVENTION ON FACILITATION OF INTERNATIONAL MARITIME TRAFFIC 1965, AS AMENDED - (Cont'd)

Port of registry:	Date of expiry:
Name of master:	Issued by:
STOWAWAY DETAILS	Photograph of the stowaway:
Date/time found on board:	Photograph if available
Place of boarding:[8]	
Country of boarding:	
Date/time of boarding:	
Intended final destination:	General physical description of the stowaway:
Stated reasons for boarding the ship:[9]	
Surname:	
Given name:	
Name by which known:	
Gender:	

[8] "Place of boarding" should include port, port facility number, berth and terminal information (FAL.7/Circ.1, related to the *Unified interpretation of appendix 3 to the FAL Convention*).

[9] If the stowaway declares himself or herself to be a refugee or an asylum seeker, this information shall be treated as confidential to the extent necessary to the security of the stowaway.

Fourth Schedule - (Cont'd)

FORM OF STOWAWAY DETAILS REFERRED TO IN RECOMMENDED PRACTICE 4.6.2 OF THE CONVENTION ON FACILITATION OF INTERNATIONAL MARITIME TRAFFIC 1965, AS AMENDED - (Cont'd)

First language:_____	Other languages:_____
Spoken:_____	Spoken:_____
Read:_____	Read:_____
Written:_____	Written:_____

Other details:

(1) Method of boarding, including other persons involved (e.g. crew, port workers, etc.), and whether the stowaway was secreted in cargo/container or hidden in the ship:

_____

_____

_____

_____

(2) Inventory of the stowaway's possessions:_____

_____

_____

_____

_____

Fourth Schedule - (Concl'd)

FORM OF STOWAWAY DETAILS REFERRED TO IN RECOMMENDED PRACTICE 4.6.2 OF THE CONVENTION ON FACILITATION OF INTERNATIONAL MARITIME TRAFFIC 1965, AS AMENDED - (Concl'd)

(3) Statement made by the stowaway: _____

_____

_____

_____

_____

(4) Care provided to the stowaway (first aid, clothing, food): _____

_____

_____

_____

_____

Date(s) of interview(s): _____

Stowaway's signature: _____ Master's signature: _____

Date: _____ Date: _____

FIFTH SCHEDULE

(Section 11(6))

List of officers to whom pre-arrival and pre-departure documents to be submitted

Facilitation of International Maritime Traffic Act, 2021
(Act 2021-)

Officer	Document
Chief Environmental Health Officer	Crew List
	Passenger List
	Advanced Notification Form for Waste Delivery
	List of Ports of Call
	Maritime Declaration of Health
	International Certification of Vaccination
	Yellow Fever Vaccination List
	Ship Sanitation Control Exemption Certificate
	Ship Sanitation Control Certificate

Fifth Schedule - (Concl'd)

Officer	Document
Chief Executive Officer, Barbados Port Inc.	Security-related information
	Stowaway documents
Chief Immigration Officer	Advanced Passenger Information
	List of Ports of Call
Chief Operations Officer, JRCC	Advanced Passenger Information
	Advanced Cargo Information
Comptroller of Customs	General Declaration
	Cargo Declaration/Ship Manifest
	Ship's Stores Declaration
	Crew's Effects Declaration
	Dangerous Good's Manifest
	Advanced Cargo Information

SIXTH SCHEDULE

(Sections 12(1) and (2), 14, 27, 28 and 29)

Certificates of Clearance on Pre-Arrival and Arrival

Facilitation of International Maritime Traffic Act, 2021
(Act 2021-)

PART A

FORM OF PROVISIONAL CERTIFICATE OF CLEARANCE ON PRE-ARRIVAL

Ship Name: _____

Type of Ship: _____

Gross Tonnage: _____

IMO Number: _____

Call Sign: _____

Port of Registry: _____

Date of Registry: _____

Passenger Amount (where Applicable): _____

Date and time of virtual arrival in Barbados: _____

Expected date and time of actual arrival in Barbados: _____

Issued by: _____

Date of issue: _____

Time of issue: _____

Sixth Schedule - (Cont'd)

This is to certify that the pre-arrival documents submitted through the Maritime Single Window, relating to _____, in accordance with section 11 of the
Name of Ship
Facilitation of International Maritime Traffic Act, 2021 (Act 2021-) have been examined and the information has been verified and is in order.

The _____ is granted Provisional Clearance to enter the
Name of Ship
Port of Bridgetown in accordance with section 12 of the *Facilitation of International Maritime Traffic Act, 2021* and shall be subject to on-board inspection on arrival at the Port.

Sixth Schedule - (Cont'd)

Facilitation of International Maritime Traffic Act, 2021
(Act 2021-)

PART B

FORM OF FINAL CERTIFICATE OF CLEARANCE ON ARRIVAL

Ship Name: _____

Type of Ship: _____

Gross Tonnage: _____

IMO Number: _____

Call Sign: _____

Port of Registry: _____

Date of Registry: _____

Passenger Amount (where Applicable): _____

Date and time of arrival in Barbados: _____

Date and time of actual arrival in Barbados: _____

Issued by: _____

Date of issue: _____

Time of issue: _____

Sixth Schedule - (Concl'd)

In accordance with section 12 of the *Facilitation of International Maritime Traffic Act, 2021* - the Ship _____ has been inspected and has satisfied the requirements of the *Immigration Act*, Cap. 190, *Customs Act*, Cap. 66 and *Health Services (Assignment of Public Inspectors to Private Businesses) Regulations, 1986* (S.I. 1986 No. 143).

Name of Ship

The Ship _____ is granted Final Clearance to enter the Port of Bridgetown.

Name of Ship

Issued by: _____

Date of Issue: _____

Time of Issue: _____

SEVENTH SCHEDULE

(Sections 16 and 17(1))

Form of Notice of Intended Departure

Facilitation of International Maritime Traffic Act, 2021
(Act 2021-)

FORM OF NOTICE OF INTENDED DEPARTURE

Port Authority (Marine Section)

Port of _____

Name of Ship: _____ Nationality: _____

Tons: Gross _____ Net: _____

Name of Master: _____ Number of Crew: _____

Arrived from: _____ Date: _____

Cargo imported: Bill of Lading _____ Packages: _____

Tons: _____

Number of Passengers Arrived: _____

Bound to: _____

Cargo imported: Bill of Lading _____ Packages: _____

Tons: _____

Deck Cargo Outwards: Tons _____ c. ft _____ Animals _____

Number of Mail bags shipped: _____

Number of Passengers embarked: _____

_____ 19 _____

_____

Owners/Agents.

EIGHTH SCHEDULE

(Sections 17(1) and 19)

Certificates of Clearance on Departure

Facilitation of International Maritime Traffic Act, 2021
(Act 2021-)

PART A

FORM OF PROVISIONAL CERTIFICATE OF CLEARANCE ON DEPARTURE

Ship Name: _____

Type of Ship: _____

Gross Tonnage: _____

IMO Number: _____

Call Sign: _____

Port of Registry: _____

Date of Registry: _____

Passenger Amount (where Applicable): _____

Date and time of virtual departure from Barbados: _____

Expected date and time of actual departure from Barbados: _____

Eighth Schedule - (Cont'd)

This is to certify that the pre-departure documents submitted through the Maritime Single Window in accordance with section 16 of the *Facilitation of International Maritime Traffic Act, 2021* have been examined and the information has been verified and is in order.

The _____ is granted Provisional Clearance to depart
Name of Ship

from the Port of Bridgetown in accordance with section 17 of the *Facilitation of International Maritime Traffic Act, 2021* and shall be subject to on-board inspection prior to departure from the Port.

_____
Signature

Issued by: _____

Date of Issue: _____

Time of Issue: _____

Stamp

Eighth Schedule - (Cont'd)

Facilitation of International Maritime Traffic Act, 2021
(Act 2021-)

PART B

FORM OF FINAL CERTIFICATE OF CLEARANCE ON DEPARTURE

Ship Name:_____

Type of Ship:_____

Gross Tonnage:_____

IMO Number:_____

Call Sign:_____

Port of Registry:_____

Date of Registry: _____

Passenger Amount (where Applicable):_____

Date and time of departure from Barbados:_____

Date and time of actual departure from Barbados:_____

Eighth Schedule - (Concl'd)

In accordance with section 19 of the F*acilitation of International Maritime Traffic Act, 2021* - the _____ has been inspected and has
Name of Ship
satisfied the requirements of the *Immigration Act*, Cap. 190, *Customs Act*, Cap. 66 and *Health Services (Assignment of Public Inspectors to Private Businesses) Regulations, 1986* (S.I. 1986 No. 143).

The _____ is granted Final Clearance to depart from
Name of Ship
the Port.

Issued by: _____

Date of Issue: _____

Time of Issue: _____

Stamp

NINTH SCHEDULE

(Sections 20 and 23(2))

List of officers to whom fines are to be paid for outstanding pre-arrival and pre-departure documents

Facilitation of International Maritime Traffic Act, 2021
(Act 2021-)

Officer	Document
Chief Environmental Health Officer	Crew List
	Passenger List
	Maritime Declaration of Health
	International Certification of Vaccination
	Yellow Fever Vaccination List
	Ship Sanitation Control Exemption Certificate
	Ship Sanitation Control Certificate

Ninth Schedule - (Concl'd)

Officer	Document
Chief Executive Officer, Barbados Port Inc.	Security-related information
	Stowaway documents
Chief Immigration Officer	List of Ports of Call
Comptroller of Customs	General Declaration
	Cargo Declaration/Ship Manifest
	Ship's Stores Declaration
	Crew's Effects Declaration
	Dangerous Good's Manifest
	Letter Bulk - Bulk mail

TENTH SCHEDULE

(Section 41)

CONSEQUENTIAL AMENDMENTS

Column 1 Enactment	Column 2 Amendments
Barbados Harbours Regulations, 1961 (L.N. 1961 No. 11)	1. Revoke regulations 12, 13, 17 and 35. 2. Delete regulation 22 and substitute the following: "**Master to deliver ship registry certificate** **22.** The master of a ship which has arrived in Barbados from a port outside of Barbados shall on entering a harbour produce the ship's registry certificate at the request of an authorised employee.". 3. Delete regulation 103 and substitute the following: "**Dangerous Goods Manifest** **103.** (1) The ship owner, ship agent or master of every ship having on board any dangerous goods shall submit a Dangerous Goods Manifest in accordance with section 11 of the *Facilitation International Maritime Traffic Act, 2021* (Act 2021-).

Tenth Schedule - (Cont'd)

CONSEQUENTIAL AMENDMENTS - *(Cont'd)*

Column 1 Enactment	Column 2 Amendments
Barbados Harbours Regulations, 1961 (L.N. 1961 No. 11) - *(Concl'd)*	(2) Where the ship owner, ship agent or master fails to submit a Dangerous Goods Manifest in accordance with subsection (1) and dangerous goods are landed in Barbados, the management may *(a)* order the dangerous goods to be placed on board the ship on which which they have arrived; *(b)* destroy the dangerous goods; or *(c)* otherwise deal with the dangerous goods as it considers necessary at the risk and expense of the ship on which they arrived.".
	4. Delete the *Second Schedule*.
Quarantine Act, Cap. 53	In section 12, delete the words "nine hundred and sixty dollars" wherever they appear and substitute the words "one hundred thousand dollars".
Quarantine (Maritime) Regulations, 1947 (S.I. 1947 No. 38)	1. In regulation 2, *(a)* in the definition "approved port" delete the words "deratisation certificate" and

Tenth Schedule - (Cont'd)

CONSEQUENTIAL AMENDMENTS - *(Cont'd)*

Column 1 Enactment	Column 2 Amendments
Quarantine (Maritime) Regulations, 1947 (S.I. 1947 No. 38) - *(Cont'd)*	"deratisation exemption certificate" and substitute the words "Ship Sanitation Control Exemption Certificate" and "Ship Sanitation Control Certificate" set out in *Schedule E*"; *(b)* delete the definition "deratisation certificate" and "deratisation exemption certificate"; *(c)* in the defintion "valid" delete the words "deratisation certificate or deratisation exemption certificate" and substitute the words "Ship Sanitation Control Exemption Certificate" or "Ship Sanitation Control Certificate" set out in *Schedule E.*". 2. Delete regulation 4 and substitute the following: "**Declaration of health** **4.** (1) The master of a ship approaching the Island from a foreign port shall submit a Maritime Declaration of Health set out in *Schedule A* through the Maritime Single Window.

Tenth Schedule - (Cont'd)

CONSEQUENTIAL AMENDMENTS - *(Cont'd)*

Column 1 Enactment	Column 2 Amendments
Quarantine (Maritime) Regulations, 1947 (S.I. 1947 No. 38) - *(Cont'd)*	(2) For the purposes of this section "Maritime Single Window" has the meaning assigned to it in the *Facilitation of International Maritime Traffic Act, 2021* (2021-).

3. Delete *Schedule A* and substitute the following:

Tenth Schedule - (Cont'd)

CONSEQUENTIAL AMENDMENTS - *(Cont'd)*

"SCHEDULE A

(Regulations 4 and 5)

Maritime Declaration of Health

To be completed and submitted to the competent authorities by the masters of ships arriving from foreign ports.

Submitted at the port of:_____

Date:_____

Name of ship or inland navigation vessel: _____

Registration/IMO No.:_____

Arriving from:_____

Sailing to:_____

(Nationality)/(Flag of vessel):_____

Master's name:_____

Gross tonnage (ship):_____

Tonnage (inland navigation vessel):_____

Valid Sanitation Control Exemption/Control Certificate carried on board? ☐ Yes ☐ No

Issued at:_____

Date:_____

Tenth Schedule - (Cont'd)

CONSEQUENTIAL AMENDMENTS - *(Cont'd)*

Re-inspection required? ☐ Yes ☐ No

Has ship/vessel visited an affected area identified by the World Health Organization? ☐ Yes ☐ No

Port and date of visit:_____

List ports of call from commencement of voyage with dates of departure, or within past 30 days, whichever is shorter:_____

On the request of the competent authority at the port of arrival, list crew members, passengers or other persons who have joined ship/vessel since international voyage began or within past 30 days, whichever is shorter, including all ports/countries visited in this period (add additional names to the attached schedule):

(1) Name:_____

joined from: (1)_____

(2)_____

(3)_____

(2) Name:_____

joined from: (1)_____

(2)_____

(3)_____

(3) Name:_____

joined from: (1)_____

(2)_____

(3)_____

Number of crew members on board:_____ Number of passengers on board:_____

Tenth Schedule - (Cont'd)

CONSEQUENTIAL AMENDMENTS - *(Cont'd)*

Health questions

(1) Has any person died on board during the voyage otherwise than as a result of accident? ☐ Yes ☐ No

If yes, state particulars in attached schedule. Total no. of deaths_____

(2) Is there on board or has there been during the international voyage any case of disease which you suspect to be of an infectious nature? ☐ Yes ☐ No

If yes, state particulars in attached schedule.

(3) Has the total number of ill passengers during the voyage been greater than normal/ expected? ☐ Yes ☐ No

How many ill persons?_____

(4) Is there any ill person on board now? ☐ Yes ☐ No

If yes, state particulars in attached schedule.

(5) Was a medical practitioner consulted? ☐ Yes ☐ No

If yes, state particulars of medical treatment or advice provided in attached schedule.

(6) Are you aware of any condition on board which may lead to infection or spread of disease? ☐ Yes ☐ No

If yes, state particulars in attached schedule.

(7) Has any sanitary measure (e.g. quarantine, isolation, disinfection or decontamination) been applied on board? ☐ Yes ☐ No

If yes, specify type, place and date:_____

_____

_____

Tenth Schedule - (Cont'd)

CONSEQUENTIAL AMENDMENTS - *(Cont'd)*

(8) Have any stowaways been found on board? ☐ Yes ☐ No

If yes, where did they join the ship? (if known)_____

(9) Is there a sick animal or pet on board? ☐ Yes ☐ No

Note: In the absence of a surgeon, the master should regard the following symptoms as grounds for suspecting the existence of a disease of an infectious nature:

(a) fever, persisting for several days or accompanied by:

(i) prostration;

(ii) decreased consciousness;

(iii) glandular swelling;

(iv) jaundice;

(v) cough or shortness of breath;

(vi) unusual bleeding; or

(vii) paralysis;

(b) with or without fever:

(i) any acute skin rash or eruption;

(ii) severe vomiting (other than sea sickness);

(iii) severe diarrhoea; or

(iv) recurrent convulsions.

I hereby declare that the particulars and answers to the questions given in this Declaration of Health (including the schedule) are true and correct to the best of my knowledge and belief.

_____ _____

Signature of Master *Countersignature Ship's Surgeon (if carried)*

_____

Date

Tenth Schedule - (*Cont'd*)

CONSEQUENTIAL AMENDMENTS - *(Cont'd)*

ATTACHMENT TO MARITIME DECLARATION OF HEALTH

Name	Class or rating	Age	Sex	Nationality	Port, date joined ship/vessel	Nature of illness	Date of onset of symptoms	Reported to a port medical officer?	Disposal of case [1]	Drugs, medicines, or other treatment given to patient	Comments

[1] State: (1) whether the person recovered, is still ill or died; and
(2) whether the person is still on board, was evacuated (including the name of the port or airport), or was buried at sea.".

Tenth Schedule - (Cont'd)

CONSEQUENTIAL AMENDMENTS - *(Cont'd)*

Column 1 Enactment	Column 2 Amendments
Quarantine (Maritime) Regulations, 1947 (S.I. 1947 No. 38) - *(Cont'd)*	4. In regulation 5, delete paragraph 4 and substitute the following: "(4) When a ship is granted radio pratique, the master shall immediately on arrival at a port of the Island, deliver or cause to be delivered to the environmental health officer the Maritime Declaration of Health set out in *Schedule A,* the ship's bill of health (if any) and the Ship Sanitation Control Exemption Certificate or the Ship Sanitation Control Certificate set out in Schedule out in *Schedule E*;". 5. In Part VI, delete the Part Heading "Deratisation of Ships" and substitute the Part Heading "Sanitizing of Ships".

Tenth Schedule - (Cont'd)

CONSEQUENTIAL AMENDMENTS - *(Cont'd)*

Column 1 Enactment	Column 2 Amendments
Quarantine (Maritime) Regulations, 1947 (S.I. 1947 No. 38) - *(Cont'd)*	6. In regulation 27, *(a)* in paragraph (1) delete the words "deratisation certificate or deratisation exemption certificate" and substitute the words "Ship Sanitation Control Exemption Certificate or "Ship Sanitation Control Certificate"; *(b)* in paragraph (2) delete the words "deratisation exemption certificate" and substitute the words "Ship Sanitation Control Exemption Certificate"; *(c)* in paragraph (4), delete the words "deratisation certificate or deratisation exemption certificate" and substitute the words "Ship Sanitation Control Exemption Certificate or Ship Sanitation Control Certificate"; and

Tenth Schedule - (Cont'd)

CONSEQUENTIAL AMENDMENTS - *(Concl'd)*

Column 1 Enactment	Column 2 Amendments
Quarantine (Maritime) Regulations, 1947 (S.I. 1947 No. 38) - *(Concl'd)*	7. In regulation 28, *(a)* delete the words "deratisation certificate or deratisation exemption certificate" appearing immediately after the word "valid" and substitute the words "Ship Sanitation Control Exemption Certificate or Ship Sanitation Control Certificate"; and *(b)* delete the words "deratisation certificate" appearing at the end of the regulation and substitute the words "Ship Sanitation Control Exemption Certificate or Ship Sanitation Control Certifcate". 8. In regulation 29, delete the words "Deratisation certificates and deratisation exemption certificates" and substitute the words "Ship Sanitation Control Exemption Certificates and Ship Sanitation Control Certificates". 9. In regulation 31, in paragraph (1) delete the words "valid deratisation certificates or valid deratisation exemption certificates" and substitute the words "valid Ship Sanitation Control Exemption certificates or valid Ship Sanitation Control Certificates". 10. Delete *Schedule E* and substitute the following:

Tenth Schedule - (Cont'd)

"SCHEDULE E

(Regulations 2, 27, 28, 29 and 31)

Ship Sanitation Control Exemption Certificate/Ship Sanitation Control Certificate

Port of _____ Date: _____

This Certificate records the inspection and (1) exemption from control or (2) control measures applied

Name of ship or inland navigation vessel _____

_____

Flag _____ Registration/IMO No. _____

At the time of inspection the holds were unladen/laden with _____ tonnes of _____ cargo

Name and address of inspecting officer _____

_____

Tenth Schedule - (Cont'd)

Ship Sanitation Control Exemption Certificate

Areas, [systems, and services] inspected	**Evidence found**[1]	**Sample results**[2]	**Documents reviewed**
Galley			Medical log
Pantry			Ship's log
Stores			Other
Hold(s)/cargo			
Quarters:			
- crew			
- officers			
- passengers			
- deck			
Potable water			
Sewage			
Ballast tanks			
Solid and medical waste			
Standing water			
Engine room			
Medical facilities			
Other areas specified - see attached			
Note areas not applicable, by marking N/A			

No evidence found. Ship/vessel is exempted from control measures.

Name and designation of issuing officer | *Signature and seal* | *Date*

[1](a) Evidence of infection or contamination, including: vectors in all stages of growth; animal reservoirs for vectors; rodents or other species that could carry human disease, microbiological, chemical and other risks to human health; signs of inadequate sanitary measures.

(b) Information concerning any human cases (to be included in the Maritime Declaration of Health).

[2] Results from samples taken on board. Analysis to be provided to ship's master by most expedient means and, if re-inspection is required, to the next appropriate port of call coinciding with the re-inspection date specified in this certificate.

Sanitation Control Exemption Certificates and Sanitation Control Certificates are valid for a maximum of 6 months but the validity period may be extended by one month if inspection cannot be carried out at the port and there is no evidence of infection or contamination.

Tenth Schedule - (Cont'd)

Ship Sanitation Control Certificate

Control measures applied	Re-inspection date	Comments regarding conditions found

No evidence found. Ship/vessel is exempted from control measures.

Name and designation of issuing officer | *Signature and seal* | *Date*

[1](a) Evidence of infection or contamination, including: vectors in all stages of growth; animal reservoirs for vectors; rodents or other species that could carry human disease, microbiological, chemical and other risks to human health; signs of inadequate sanitary measures.

(b) Information concerning any human cases (to be included in the Maritime Declaration of Health).

[2]Results from samples taken on board. Analysis to be provided to ship's master by most expedient means and, if re-inspection is required, to the next appropriate port of call coinciding with the re-inspection date specified in this certificate.

Sanitation Control Exemption Certificates and Sanitation Control Certificates are valid for a maximum of six months but the validity period may be extended by one month if inspection cannot be carried out at the port and there is no evidence of infection or contamination.

Tenth Schedule - (Concl'd)

Attachment to Model Ship Sanitation Control Exemption Certificate/ Ship Sanitation Controal Certificate

Areas/facilities/ systems inspected[1]	Evidence found	Sample results	Documents revieved	Control measures applied	Re-inspection date	Comments regarding conditions found
Food						
Source						
Storage						
Preparation						
Service						
Water						
Source						
Storage						
Distribution						
Waste						
Holding						
Treatment						
Disposal						
Swimming pools/spas						
Equipment						
Operation						
Medical facilities						
Equipment and medical devices						
Operation						
Medicines						
Other areas inspected						

[1] Indicate when the areas listed are not applicable by marking N/A.".

CUSTOMS ACT, 2021-34

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SCHEDULE

Customs Appeal Tribunal

BARBADOS

I assent
S. MASON
President of Barbados
27th December, 2021.

2021-34

An Act to reform the law on customs and repeal the *Customs Act*, Cap. 66.

[Commencement: by Proclamation]

ENACTED by the Parliament of Barbados as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Customs Act, 2021*.

Interpretation

2. In this Act,

"advance cargo information" means such information as may be prescribed to be provided to the Comptroller in advance in respect of goods to be transported to Barbados on board a vessel or an aircraft;

"advance passenger information" means such information as may be prescribed to be provided to the Comptroller in advance in respect of individuals, including crew, to be transported to Barbados on board a vessel or an aircraft;

"agent" means a person, including a licensed customs broker, who is authorized in writing by another person to perform any act on his behalf to fulfill any obligation under this Act;

"assessment" means a determination of the amount of duty and taxes owing on imported or exported goods, calculated in accordance with this Act, and of any applicable penalty;

"assigned matter" means a matter in relation to which the Comptroller is required, under any enactment, to perform a duty;

"audit" means a compliance measure undertaken by the Comptroller to ensure that all applicable obligations under this Act have been met;

"authorized" means authorized by the Comptroller;

"authorized economic operator" means a person who is accorded that status in accordance with Part XVI and the regulations made under this Act;

"authorized officer" means a person authorized by the Comptroller under section 5 to perform a function;

"bulk" means goods that are transported on board a vessel loose or in mass without containment or packaging;

"cargo" means all goods, mail and stores transported on board a vessel or an aircraft for consideration;

"CARICOM", "Caribbean Community" or "Community" means the Caribbean Community established by Article 2 of the Revised Treaty;

"clearance" means the authorization to remove imported goods or goods destined for export from a customs controlled area, licensed warehouse or duty free zone, which is issued by a customs officer at the completion of the formalities required by this Act;

"commander" means the captain of a ship or an aircraft;

"Comptroller" means the Comptroller of the Customs and Excise Department;

"container" means a receptacle that

(a) is intended for containing goods;

(b) is of permanent character and suitable for repeated use;

(c) is designed to carry goods by one or more modes of transport without intermediate reloading; and

(d) has an internal volume of one or more cubic meters;

"crew" means persons employed on board a vessel or an aircraft during a voyage or flight, whether or not they are on the crew list;

"customs broker" means a person who holds a licence issued by the Comptroller;

"customs controlled area" means a place designated as such by the Comptroller under Part V;

"Customs Department" means the Customs and Excise Department;

"customs direction" means a lawful request, order, command or instruction in any form by a customs officer to a person specifically, or to the public generally, to perform an obligation under this Act, or to refrain from a contravention of this Act;

"customs officer" includes the Comptroller, a Deputy Comptroller and an Assistant Comptroller;

"customs services" means services provided by customs officers under this Act;

"Customs Tariff" means the Common External Tariff established in accordance with the Revised Treaty forming part of the customs laws of Barbados;

"customs value" means the value of imported or exported goods calculated in accordance with this Act;

"data message" means a messaging standard for electronic communication;

"declarant" means a person who submits a declaration or a person in whose name the declaration is made;

"declaration" means a statement, report or account submitted in any form or manner to a customs officer to fulfill an obligation under this Act;

"document" includes

(a) any paper or other material on which there is writing, drawing or representation of any kind;

(b) any information recorded or stored by means of any tape recorder, computer or other device and any material subsequently derived from the information so recorded or stored;

(c) any information in digital or electronic format;

"drawback" means a refund, on exportation, of all or part of any customs duty paid on importation;

"drawback goods" means goods in respect of which a claim for drawback has been or is to be made;

"duty" means any tax, surtax or other amount imposed on imported goods or goods destined for export under the Customs Tariff but does not include a penalty assessed under this Act;

"entered", in relation to goods, means goods that have been properly accounted for to the satisfaction of the Comptroller;

"export" means to take, or cause goods to be taken, out of Barbados;

"exporter" means the owner or other person beneficially interested in exported goods;

"former Act" means the *Customs Act*, Cap. 66;

"goods" includes any tangible property including vessels, aircraft, animals, documents, currency and monetary instruments and mail;

"Government", in relation to any customs controlled area or transit shed, means a customs controlled area or transit shed vested in or occupied by the Government;

"Government warehouse" means a place provided by the Government for the deposit of unentered, unexamined, detained or seized goods or for goods required by this Act to be deposited therein for the security of the goods and for the duty due in respect of them;

"import" means to bring goods or cause goods to be brought into Barbados;

"importer" means the owner or other person beneficially interested in imported goods;

"in transit", in relation to imported goods, means the customs procedure under which the goods are transferred under customs control from a customs controlled area or licensed warehouse to another customs controlled area for export;

"licensed warehouse" means a warehouse which a person has been granted a licence to operate pursuant to section 46;

"Minister" means the Minister responsible for Finance;

"non-community goods" means goods which do not conform to the Community rules of origin;

"occupier" means a person who signs as principal any bond in respect of any building or place used as a warehouse for the deposit of goods that have not been cleared;

"passenger" means a person, other than a crew member, being transported on a vessel or an aircraft;

"passenger baggage" means goods carried on a vessel or an aircraft whether in the passenger's personal possession or not;

"port" means an airport or a seaport, and includes any place appointed by the Minister by notice, subject to any conditions or limitations specified in the notice, to be a port for the purposes of this Act;

"prohibited or restricted goods" means goods of a class or description of which the importation or exportation is prohibited or restricted under this Act;

"record" means any material on which information or data is recorded or stored which is capable of being read or understood by a person or a computer system or other device;

"Revised Treaty" means to the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy signed at Nassau, The Bahamas on 5th July, 2001;

"stores" means such classes of goods as are prescribed under section 35;

"System" in relation to automation, means the Customs Automated Control System referred to in section 16;

"territorial waters" has the meaning assigned to it by section 3 of the *Barbados Territorial Waters Act*, Cap. 386;

"transhipment" means the customs procedure under which goods are transferred under customs control from the importing vessel or aircraft to the exporting vessel or aircraft;

"trusted trader" means a person who is accorded that status in accordance with Part XVI and the regulations made under this Act;

"uncustomed goods" means goods that have been imported or exported without having been declared to, and cleared by, a customs officer.

PART II

ADMINISTRATION

Comptroller to administer the Act

3. The Comptroller is responsible for the general management and administration of this Act.

Duties and responsibilities of the Comptroller

4.(1) The Comptroller shall, for the proper and efficient management and administration of the Customs and Excise Department, and subject to the direction of the Minister

(a) establish and maintain administrative, financial, communicative and other systems necessary for the administration and management of this Act;

(b) implement such electronic and other systems as the Comptroller thinks fit for the modernization of customs services;

(c) arrange for the design and implementation of training and other programmes necessary for the guidance of persons to whom access to the electronic and other systems may be granted, or who are otherwise required under this Act to engage in customs procedures; and

(d) determine, and inform the public of, the level of training or certification required for the grant of licences or permits to access the electronic and other systems of the Customs and Excise Department.

(2) The Comptroller may, in the exercise of his functions, execute any document or agreement required under this Act to be entered into between the Comptroller and any other person.

Duties and responsibilities of customs officers

5.(1) A customs officer shall perform the duties assigned by or on behalf of the Comptroller and shall do so in accordance with

(a) instructions issued by the Comptroller, subject to any limitations;

(b) such procedures as the Comptroller determines; and

(c) the hierarchical or other system of customs management determined by the Comptroller to be appropriate whereby customs officers are entrusted with responsibilities according to rank or to any other specified basis.

(2) A customs officer may, subject to subsection (1), perform any enforcement function at any time and place and may, where performing an enforcement function

(a) be accompanied and assisted by one or more members of the Police Force or such other persons as may reasonably be required for the performance of the function; or

(b) use any aids, including any equipment or device, subject to compliance with any applicable law regarding the use of the aids.

(3) A person who assists a customs officer under subsection (2) shall, for the purpose of such assistance, be deemed to be a customs officer working under the supervision of the customs officer being assisted.

(4) The Comptroller may authorize a person who is not a customs officer to perform a function that may be performed by a customs officer under this Act,

(a) an authorized officer shall, for the purpose of performing the function, be deemed to be a customs officer; and

(b) the term "customs officer" shall be deemed to include an authorized officer.

(5) The authorization referred to in subsection (4) shall be in writing and shall specify

(a) the function that may be performed by the authorized officer; and

(b) the terms of the authorization, which shall be for such period, not exceeding 3 years, as the Comptroller determines.

(6) The Comptroller may

(a) renew an authorization referred to in subsection (4); or

(b) revoke the authorization

(i) for incapacity, neglect of duty or misconduct of the authorized officer;

(ii) where the authorized officer gives written notice to the Comptroller that he wishes to have the authorization revoked; or

(iii) where, in the opinion of the Comptroller, the authorization is no longer necessary.

(7) Where a person ceases to be authorized under this section, the person shall surrender to the Comptroller all articles and documents received in relation to the authorization.

(8) An act required or authorized by this Act to be performed by the Comptroller may be performed by any customs officer authorized by the Comptroller to perform such act.

(9) The Comptroller shall issue an identification card to every customs officer.

(10) Where a customs officer exercises any power under this Act, the officer shall, on request, produce the identification card for inspection.

Obligations of a customs officer

6.(1) A customs officer shall avoid acts

(a) that may give rise to a conflict between his private interest and his duties and responsibilities; and

(b) in which his private interests could improperly influence the performance of his duties,

under this Act.

(2) A customs officer shall, upon every anniversary, submit to the Comptroller, a declaration of interest in such form as the Comptroller determines, specifying whether he has any material, financial or other interest in, or stands to benefit materially from any business activity relating to

(a) the clearance of goods or other customs procedures;

(b) the import or export of goods; or

(c) the production, processing, sale, handling, storage, manufacturing or transport of goods,

(3) Notwithstanding subsection (2), a customs officer shall, as soon as practicable, in such form as the Comptroller determines, after he becomes aware of it, notify the Comptroller of any situation or circumstance which may give rise to a conflict of interest under subsection (1) or in relation to which he stands to benefit materially under subsection (2).

(4) A declaration of interest under subsection (2) and a notification under subsection (3) shall, in the case of the Comptroller, be submitted to the Chairman of the Protective Services Commission.

(5) Failure of a customs officer to comply with subsection (2) or (3) constitutes misconduct within the *Public Service Act*, Cap. 29.

(6) A customs officer who fails to comply with subsection (3) is guilty of an offence and is liable on summary conviction to a fine of $50 000 or to imprisonment for 12 months or to both, and any interest or benefit acquired as a result of the conflict of interest shall be forfeited.

Comptroller to keep registers, records and information

7. The Comptroller shall keep such registers, records and information as the Comptroller considers necessary for the administration of this Act.

Comptroller to provide information to the public

8. The Comptroller shall, through the Customs Department's website and any other medium he considers appropriate, provide the public with up-to-date information

(a) relating to the operations, procedures and policies of the Customs Department;

(b) relating to customs services;

(c) to give assistance and guidance to the public with respect to any obligations and requirements to be met under this Act; and

(d) for the general awareness of the public.

Cooperation and information sharing and other agreements

9.(1) The Comptroller may, with the approval of the Minister, and subject to any enactment relating to the sharing of information, enter into information sharing agreements and other written arrangements, including mutual assistance agreements, with other government agencies, relevant regional agencies and any foreign customs administration to promote cooperation and prevent the occurrence of customs and other cross-border offences including money laundering and terrorism and its financing.

(2) The Comptroller shall provide administrative assistance in customs matters to Member States in accordance with agreements between the parties.

(3) Without prejudice to the generality of subsection (1), for the purpose of minimizing risk and preventing fraud, the Customs Department and other government agencies may share information in relation to

(a) the entry, exit, transit, storage and end use of goods in circulation between Barbados and other countries;

(b) the presence and movement of non-community goods under the end use regime; and

(c) any other matter that may assist in the prevention and control of criminal activity.

Confidentiality

10.(1) The information contained in a customs declaration, supporting documents and any information obtained from an owner, importer or exporter or about an importer or exporter in the course of the collection of duty, audit, investigation or enforcement process is confidential information.

(2) Every person having an official duty under this Act or being employed in the administration of this Act shall regard as secret and confidential all documents and information relating to the valuation or assessment of customs duties in respect of imported goods or the mitigation of a penalty.

(3) A person who has in his possession or has control of any confidential information or any document that contains confidential information shall not disclose the information or anything contained in such document to any person.

(4) A person exercising power under this Act or in relation to an assigned matter shall not communicate to any unauthorized person either directly or indirectly, any information or document obtained

(a) in the exercise of any power under this Act; or

(b) in relation to an assigned matter.

(5) A person exercising power under this Act or in relation to an assigned matter who, having possession of, or control over any information or document obtained as described in subsection (4)

(a) communicates such information or anything contained in such document to an unauthorized person; or

(b) permits an unauthorized person to have access to the document or information

is guilty of an offence and is liable on summary conviction to a fine of $50 000 or to imprisonment for 12 months or to both.

(6) Nothing in subsection (5) prevents the disclosure of any document or information where that disclosure is authorized by the Comptroller in accordance with subsection (7).

(7) The Comptroller may disclose or authorize the disclosure of any document or information pursuant to any enactment or any treaty, agreement or arrangement concluded by the Government.

(8) The information that may be disclosed pursuant to subsection (7) includes information about

(a) the movement of vessels and aircraft, including passenger and crew lists;

(b) past travel history, general history and *modus operandi* of specified people;

(c) currency and documents relating to other relevant financial transactions, including money laundering;

(d) intelligence analysis, assessments and reports; and

(e) the details of persons who are known or suspected to be involved in illicit activities.

(9) Notwithstanding subsections (2) and (3), nothing in this section prevents the disclosure of confidential information or production of any document containing confidential information to

(a) any person for the purposes of this Act;

(b) the Barbados Revenue Authority in the course of and for the purpose of carrying out its official duties;

(c) a law enforcement agency for the purpose of carrying out its official duties;

(d) a court of competent jurisdiction, in proceedings regarding liability under this Act, or the responsibility of any person for tax violations or offences, or in a criminal or civil matter;

(e) the competent authority of a foreign country in accordance with a treaty or other agreement to which Barbados is a party;

(f) any other government authority of another country for the purpose of carrying out its official duties in accordance with an international agreement to which Barbados is a party; or

(g) any person with the consent of the owner, importer or exporter, as the case may be.

(10) A person who receives information under subsection (9) shall maintain the confidentiality of the information, except to the minimum extent necessary to achieve the purpose or objective for which disclosure is permitted.

(11) A person who discloses confidential information contrary to this section is guilty of an offence and is liable on summary conviction to a fine of $50 000 or to imprisonment for 12 months or to both.

Police powers of customs officers and assistance to be rendered by police

11. For the purposes of this Act

(a) all customs officers shall have the same powers, authorities and privileges as are given by law to members of the Police Force; and

(b) it shall be the duty of every member of the Police Force and of every Island Constable to assist in the enforcement of the law relating to any assigned matter.

Action against officer

12. No action, suit or other proceeding shall be brought or instituted personally against any officer in respect of any act performed by him in pursuance of any power granted to him or any duty imposed on him by this Act unless the act was not performed in good faith.

Request to extend hours beyond regular working hours

13.(1) A request by a person for customs services outside regular working hours shall be made in an electronic form or such other form as the Comptroller determines.

(2) The Comptroller may grant the request

(a) in accordance with such regulations as may be prescribed; and

(b) upon payment of the prescribed fee.

Provision of information by Comptroller upon request

14. Any person may request information concerning the application of this Act from the Comptroller in such manner as may be prescribed.

Provision of information to Comptroller

15.(1) Notwithstanding section 171, any person directly or indirectly involved in the completion of customs formalities or in customs controls shall, at the request of the Comptroller and within such period as may be specified, provide any required documents and information, in an appropriate form, and any assistance necessary for the completion of those formalities or controls.

(2) All persons required to provide information under this Act shall provide true, accurate and complete information and shall answer any question posed by a customs officer.

(3) The submission of a customs declaration or notification, a request for authorization or any other decision or the provision of any information in any form required by or given to the Comptroller, renders the person concerned responsible for

(a) the accuracy and completeness of the information given in the declaration, notification or application;

(b) the authenticity, accuracy and validity of any document supporting the declaration, notification or application;

(c) where applicable, compliance with all of the obligations relating to the placing of goods under the customs procedure concerned or to the conduct of the authorized operations.

(4) Where the declaration, notification or application submitted or information provided is submitted by a customs agent of the person concerned, the agent shall also be bound by the obligations set out in this section.

PART III

CUSTOMS AUTOMATED CONTROL SYSTEM

Customs Automated Control System

16. The electronic information declaration and clearing system known as the Customs Automated Control System shall be used for the transmission of all information required to be provided to the Comptroller for the purposes of this Act by persons and for the Comptroller to communicate with persons regarding their transmissions.

Automation of data processing

17.(1) Subject to this Act, all exchange of information between the Comptroller and persons obligated to provide information under this Act shall be made using electronic data-processing techniques and, where required, shall include the tax identification number of the person.

(2) The Minister may make regulations

(a) in relation to the operation of the system, including access to the system, the use of the system and the security of the system;

(b) to provide for the cases in which information may be communicated on paper or by means other than electronic means under this Act.

PART IV

RISK MANAGEMENT

Risk management system

18.(1) The Comptroller shall adopt and maintain a risk management system through such selectivity criteria as may be appropriate in order to

(a) evaluate the risks associated with any consignments and any other matter relating to customs control;

(b) develop necessary countermeasures;

(c) concentrate customs control and other relevant border controls on high-risk consignments; and

(d) expedite the clearance of low-risk consignments.

(2) The Comptroller shall

(a) base customs controls, other than random controls, primarily on risk analysis using electronic data processing techniques for the purpose of identifying and evaluating risks and developing necessary countermeasures, on the basis of criteria developed at the domestic, Community and international level;

(b) base customs controls on risk management principles; and

(c) limit customs controls to the minimum required to ensure compliance with this Act.

Risk management framework

19.(1) The Comptroller shall develop, maintain and employ a risk management framework, based upon analysis and the exchange of risk information with the Caribbean Community, and establish among other things, risk and evaluation criteria, control measures and priority areas for control.

(2) Controls based on the information and criteria referred to in subsection (1) shall be carried out without prejudice to other controls.

PART V

CUSTOMS CONTROLLED AREAS

Customs controlled areas

20.(1) The Comptroller may designate for such periods and subject to such conditions as the Comptroller considers appropriate, any place as a customs controlled area to be used for the entry, unloading, storage, removal and loading of goods and the report and clearance of vessels and aircraft.

(2) A person who contravenes a condition imposed by the Comptroller under section (1) is liable to pay an administrative penalty not exceeding $10 000.

Deeming area as customs controlled area

21. Where an act is required to be performed in a particular place within a customs controlled area, it shall be deemed to be performed in such a place where it is performed in a place authorized by the Comptroller for the purpose.

Access to customs controlled area

22.(1) An owner of a customs controlled area or a commander of a vessel or an aircraft within a customs controlled area shall, on demand by a customs officer, grant the customs officer immediate access to the customs controlled area or to the vessel or aircraft, as the case may be.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of $10 000 or to imprisonment for one year or to both.

(3) Without prejudice to any action which may be instituted under subsection (2), where a person referred to in subsection (1) fails or refuses to grant a customs officer immediate access to a customs controlled area or to a vessel or an aircraft

(a) the customs officer may cause the customs controlled area or the vessel or aircraft to be opened by such means as the customs officer considers reasonable in the circumstances; and

(b) the person who failed or refused to grant access is liable for any expenses or damage incurred or sustained as a result of the action taken by the customs officer under paragraph *(a)*.

Responsibility for goods in customs controlled area

23. Where goods are deposited in a customs controlled area

(a) the commander of the vessel or aircraft from which the goods were deposited; and

(b) the owner of the customs controlled area,

are jointly and severally responsible for the goods during the period of storage in the customs controlled area.

Permission to enter a customs controlled area

24.(1) The Comptroller shall require any person who enters a customs controlled area to wear an identification card in such form as the Comptroller determines.

(2) Except where a person is permitted to enter the customs controlled area under any other enactment, a person shall not enter a customs controlled area unless he

(a) obtains, by electronic means or otherwise, the permission of a customs officer;

(b) satisfies the customs officer that he is entering the customs controlled area in relation to the business for which the permission was given by the customs officer; and

(c) wears an official identification card issued by the Comptroller.

(3) A person who contravenes subsection (2) is liable to pay an administrative penalty not exceeding $10 000.

PART VI

PRE-ARRIVAL PROCESSING

Advance passenger and advance cargo information

25.(1) The commander of a vessel or an aircraft, whether laden or unladen, that is expected to arrive in Barbados, shall, prior to the arrival of the vessel or aircraft, and within such time and manner as may be prescribed, provide the Comptroller with advance passenger information and advance cargo information in electronic form.

(2) Subsection (1) shall apply subject to any law which makes provision for a single window system for Barbados.

(3) Advance passenger information and advance cargo information may be shared with other government agencies to conduct pre-arrival screening of persons and cargo.

Failure to provide advance information

26.(1) Where the commander of a vessel or an aircraft fails to submit advance passenger information or advance cargo information in accordance with section 25 the commander of the vessel or aircraft is liable to pay an administrative penalty not exceeding $200 000 and the vessel or aircraft may be detained or seized.

(2) A vessel or aircraft seized under subsection (1) may be released by the Comptroller on the lodgment of a bond in such amount as may be prescribed.

(3) The Comptroller shall release the bond lodged under subsection (2) upon receipt of the information and payment of the penalty.

PART VII

ARRIVAL REPORTING

Vessels and aircraft to arrive at customs controlled area

27.(1) The commander of a vessel or an aircraft transporting persons or goods from a place outside Barbados shall arrive in Barbados at a port.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of $100 000 or to imprisonment for 2 years or to both.

Vessels or aircraft arriving at place other than customs controlled area

28.(1) Nothing in section 27 applies to a vessel or an aircraft that anchors or lands at a place other than a port where the arrival is

(a) in compliance with any statutory or other requirement relating to navigation;

(b) compelled by accident, weather or other necessity; or

(c) authorized by the Comptroller.

(2) Where a vessel or an aircraft anchors or lands at a place other than a port, the commander

(a) shall immediately report the arrival of the vessel or aircraft to a customs officer or to a member of the Police Force;

(b) shall not, without the consent of a customs officer, permit any goods carried in the vessel or aircraft to be unloaded, or any of the crew or passengers to depart from its vicinity; and

(c) shall comply with any customs direction given in respect of any goods, crew or passengers transported in the vessel or aircraft.

(3) Subject to any authorization granted by the Comptroller, no member of the crew and no passenger on a vessel or an aircraft described in subsection (2) shall, without the consent of a customs officer,

(a) unload goods from the vessel or aircraft; or

(b) disembark from or board the vessel or aircraft,

and the crew and passengers shall comply with any customs directions given.

(4) A person who contravenes subsection (2) or (3) is guilty of an offence and is liable on summary conviction to a fine of $100 000 or to imprisonment for 2 years or to both.

(5) Notwithstanding subsection (2),

(a) the departure of passengers or members of the crew from the vicinity of the vessel or aircraft; or

(b) the removal of goods from the vessel or aircraft,

shall not constitute a contravention of this Act where the departure or removal is necessary for reasons of health, safety or the preservation of life or property.

Questions to be answered on arrival of vessel or aircraft

29.(1) The commander or owner of a vessel or an aircraft and any crew on board shall

(a) answer any questions posed by a customs officer relating to the vessel or aircraft, the goods on board, the crew, and the voyage or flight; and

(b) at the request of the customs officer, produce any books and other documents within the control of the commander, owner or crew member.

(2) Subsection (1) applies to a vessel or an aircraft that

(a) has arrived in Barbados from a place outside Barbados;

(b) is in Barbados, and is carrying

(i) international cargo, international crew or international passengers; and

(ii) domestic cargo;

(c) is in Barbados and which a customs officer has reasonable cause to suspect has been or is about to be involved in

(i) the commission of an offence under this Act; or

(ii) the importation or exportation of any dutiable, uncustomed, prohibited, restricted or forfeited goods.

(3) A person who

(a) refuses to answer any question put to him by a customs officer under subsection (1)*(a)*;

(b) knowingly gives a false answer to any question posed by a customs officer; or

(c) fails to comply with a request made under subsection (1)*(b)*,

is guilty of an offence and is liable on summary conviction to a fine of $100 000 or to imprisonment for 2 years or to both.

Request to stop vessel or aircraft

30.(1) The commander of a vessel or an aircraft arriving in Barbados shall, on being so directed by a customs officer,

(a) stop the vessel or aircraft for boarding; and

(b) ensure that the vessel or aircraft remains stationary until the customs officer directs that the vessel or aircraft may proceed.

(2) The commander shall, by all reasonable means, facilitate the boarding of the vessel or aircraft by the customs officer.

(3) The commander shall, if so directed by the customs officer, cause the vessel or aircraft to leave Barbados immediately or within such time as the customs officer directs.

(4) A person who contravenes this section is guilty of an offence and is liable on summary conviction to a fine of $250 000 or to imprisonment for 5 years or to both.

Report of arrival of vessel or aircraft

31. Where a vessel or an aircraft arrives at a port from a place outside Barbados

(a) carrying passengers from a place outside Barbados; or

(b) carrying goods from a place outside Barbados that have not yet been cleared on importation,

the commander of the vessel or aircraft or his agent shall, upon arrival, submit a declaration containing such information and in such form and manner as the Comptroller determines.

Disembarkation

32.(1) Subject to such exemptions as may be prescribed, a person who is on board a vessel or an aircraft that has arrived in Barbados shall comply with every customs direction concerning disembarkation.

(2) For the purposes of this section and section 33, a customs direction includes a direction given by the person in charge of the vessel or aircraft or by a crew member at the direction of a customs officer.

(3) A person who disembarks from a vessel or an aircraft that has arrived in Barbados shall, unless otherwise directed by a customs officer,

(a) proceed directly to the designated customs controlled area; and

(b) remain in the customs controlled area for such reasonable time as the customs officer may require for the purpose of enabling the customs officer to exercise any function under this Act in relation to the person.

(4) A person who contravenes this section is guilty of an offence and is liable on summary conviction to a fine of $5 000.

Baggage to be presented

33.(1) Subject to such exemptions as may be prescribed, a person who disembarks from a vessel or an aircraft that has arrived in Barbados from a place outside Barbados shall

(a) present his accompanying baggage to the customs officer for examination when required;

(b) comply with any customs direction relating to the movement of the baggage within the customs controlled area or from any vessel or aircraft to a customs controlled area; and

(c) answer any questions posed by the customs officer.

(2) A person moving or handling the baggage of a person referred to in subsection (1) shall comply with every customs direction relating to the movement of the baggage

(a) from any vessel or aircraft to a customs controlled area; and

(b) within the customs controlled area.

(3) A person who contravenes this section is guilty of an offence and is liable on summary conviction to a fine of $50 000 or to imprisonment for 12 months or to both.

Goods in transit

34.(1) This Act, insofar as it is applicable, and subject to any regulations made hereunder regarding goods in transit, shall be deemed to apply to goods declared in transit to a destination beyond Barbados.

(2) The Minister may by regulations prescribe a licensing procedure in relation to the import or export of goods in transit and may designate the authority from whom licences are to be obtained.

(3) The authority referred to in subsection (2) may, by instrument in writing, delegate to such public officers as the authority determines, the power to issue licences in respect of goods in transit.

Stores

35.(1) The Minister may by regulations prescribe as stores such classes of goods as may be appropriate for use on board a vessel or an aircraft.

(2) For the purposes of subsection (1), the following goods are considered to be stores:

(a) goods that are consumed in the operation and maintenance of the vessel or aircraft;

(b) goods that are consumed by a person on board the vessel or aircraft;

(c) fuel, spare parts and other articles or equipment, whether or not for immediate fitting; or

(d) souvenirs, gifts, edible supplies, wines, spirits, ales, beers, domestic or imported cigars or domestic, stamped manufactured tobacco or imported manufactured tobacco, that are sold on board the vessel or aircraft.

Sealing requirements

36.(1) Where a vessel or an aircraft arrives at a port in Barbados, the commander of the vessel or aircraft shall place alcohol, tobacco and other goods for sale on board the vessel or aircraft under lock or seal and shall keep them there while the vessel or aircraft is in the port except where otherwise authorized by a customs officer.

(2) Stores for use on board a vessel or an aircraft shall remain sealed when the goods are moved to the vessel or aircraft from a licensed warehouse or to a licensed warehouse from the vessel or aircraft.

Waiver of duties and taxes on goods for emergency use

37.(1) In this section, "emergency" means an urgent or critical situation of a temporary nature that

(a) is of such proportions or nature as to exceed the capacity of Barbados to deal with such situations;

(b) is caused by an actual or imminent

(i) fire, flood, drought, storm, earthquake or other natural phenomenon;

(ii) disease in human beings, animals or plants;

(iii) accident or pollution; or

(iv) act of sabotage or terrorism; and

(c) results or may result in

(i) danger to the lives, health or safety of individuals;

(ii) danger to property;

(iii) social disruption; or

(iv) a breakdown in the flow of essential goods, services or resources.

(2) Any duties and taxes payable on goods that are imported into Barbados for use in connection with an emergency are waived.

(3) Goods in respect of which a waiver is granted pursuant to subsection (2), except goods that are consumed or destroyed during the emergency, shall, where they are no longer required, be exported from Barbados.

Reporting of currency and monetary instruments

38.(1) A report shall be made to a customs officer with respect to the import or export of any currency or monetary instrument of a value equal to or greater than such amount as may be prescribed.

(2) Where the currency or monetary instrument is

(a) in the actual possession of a person arriving in or departing from Barbados, or forms part of his baggage where he and his baggage are being carried on board the same vessel or aircraft, the report shall be made by the person;

(b) imported into Barbados by courier or as mail, the report shall be made by the exporter of the currency or monetary instrument;

(c) exported from Barbados by courier or as mail, the report shall be made by the exporter of the currency or monetary instrument; and

(d) imported or exported in any other case, the report shall be made by the person on whose behalf the currency or monetary instrument is imported or exported.

(3) Where a person is arriving in or departing from Barbados with any currency or monetary instrument in respect of which a report is made, upon request by a customs officer, the currency or monetary instrument shall be presented to the officer, and any relevant vessel or aircraft or part of a vessel or an aircraft, or any baggage, shall be unloaded, and any package or container shall be opened or unpacked, for examination by the customs officer.

(4) Any currency or monetary instrument that, in contravention of this section, is not reported or is suspected on reasonable grounds by a customs officer to be proceeds or an instrumentality of crime may be seized and forfeited.

PART VIII

IMPORT PROCESSING

Goods subject to customs control

39.(1) All goods imported into Barbados

(a) shall be presented to a customs officer upon their arrival at a customs controlled area or any other place designated by the Comptroller for the purpose or in a duty free zone; and

(b) are subject to customs control until they are cleared by a customs officer.

(2) Goods that are removed from a customs controlled area or a licensed warehouse to another customs controlled area or licensed warehouse shall not be considered as removed or cleared for domestic use.

Submission of customs declaration

40.(1) Except as otherwise prescribed, all imported goods, including goods prescribed to be exempt from duty and tax under Part II of the *Customs Tariff*, shall be declared in such form and manner and within such time as the Comptroller determines.

(2) Where a customs declaration made under subsection (1) is inaccurate or incomplete, the declarant shall, as soon as the error is discovered, submit to the customs officer a full and accurate account of the goods.

(3) A person who submits a declaration may, in accordance with any conditions that the customs officer may impose

(a) inspect the goods; or

(b) draw samples from the goods.

(4) A person who enters goods under this section shall

(a) answer any question asked by a customs officer with respect to the goods; and

(b) on the request of the customs officer,

(i) present the goods to the officer;

(ii) remove any covering from the goods; and

(iii) open and unpack any package that the officer wishes to examine.

(5) A person who contravenes this section is liable to pay an administrative penalty not exceeding $10 000.

Oral declaration

41. The Comptroller may permit a customs declaration to be made orally where goods for private consumption below such value as may be prescribed are imported by post or courier.

Acceptance of customs declaration

42. The Comptroller shall cause a customs declaration which complies with the conditions prescribed in this Act to be accepted by the System provided that the goods to which the declaration refers have been presented to a custom officer or, at the discretion of the Comptroller, are made available for the purposes of customs control.

Amendment of customs declaration

43.(1) Subject to subsections (2) and (4), the Comptroller shall, upon a declarant's request, permit the declarant to amend one or more statements in his customs declaration after it has been accepted by the Comptroller.

(2) The Comptroller shall not permit a declarant to amend his declaration after the Comptroller has

(a) informed the declarant of the intention to conduct an examination of goods;

(b) identified inaccuracies in the declared particulars; or

(c) begun an audit or verification of the declared particulars.

(3) Notwithstanding subsection (2)*(c)*, the Comptroller may, upon a declarant's request, permit the declarant to amend his declaration after verification of the declaration has begun

(a) where the Comptroller considers it reasonable to do so; and

(b) under such conditions as may be prescribed.

(4) Notwithstanding subsections (1) and (3), a declarant shall not amend his declaration to cause the declaration to apply to goods other than those initially declared.

Simplified entry procedures

44. The Comptroller may, in such circumstances as may be prescribed and subject to maintaining appropriate customs controls, permit the use of specific, simplified entry procedures to expedite the clearance of goods and in particular, may

(a) provide for information required for the purpose of clearing an express shipment to be submitted and processed before the shipment arrives;

(b) allow a single, electronic submission of information, such as a simplified or provisional customs declaration, covering all goods contained in a shipment, subject to completion within a specified period;

(c) expedite the clearance of the shipment on the basis of minimum documentation or a single submission of information, where possible;

(d) provide for the shipment, under normal circumstances, to be cleared immediately after arrival, if the required documentation and information are submitted; and

(e) provide for inspection and clearance of goods outside the designated hours of business or away from the usual customs controlled areas and for the waiver of any fees payable for such inspection and clearance.

Provisional assessment by customs officer

45.(1) Where in the course of verification of a customs declaration, the Comptroller disputes the information provided on the declaration in respect of the classification, origin or value of the goods and the declarant does not agree with the assessment of the Comptroller, the Comptroller may direct that

(a) the assessment be treated as a provisional assessment; and

(b) the goods be provisionally cleared based on the payment of the amount of duty calculated by the importer and the provision of a deposit by the importer for an amount equal to any additional duty provisionally assessed.

(2) Where the Comptroller is unable to make a proper assessment of the value of goods to be entered due to the failure of the importer to produce satisfactory documentary evidence of the value of the goods, the Comptroller may direct that

(a) the goods be examined, and a provisional assessment made, of the value and of the duty payable; and

(b) the goods be provisionally cleared based on the payment of the amount of duty calculated by the importer and the provision of a deposit by the importer for an amount equal to any additional duty provisionally assessed.

(3) Where goods are pending final clearance pursuant to subsection (1) or (2), the Comptroller shall give notice in writing to the importer indicating

(a) the provisional assessment made;

(b) the basis for the assessment; and

(c) the documents or other information relating to the value of the goods that the importer is required to produce within 30 days of the provisional entry.

(4) The amount of duty that was provisionally assessed under subsection (1) or (2) shall be treated as the final assessment and the deposit paid shall be brought to account as revenue where

(a) the documents or other information required under subsection (3) have not been produced within the specified time; or

(b) the importer informs the Comptroller in writing before the expiration of the specified time that he is unable to produce any further documents or information,

unless the importer commences appeal proceedings within the required time period.

(5) The Comptroller shall notify the importer of a final assessment determined under subsection (4) within 2 weeks of the date of the assessment.

(6) Where the additional documents or other information required under subsection (3)*(c)* have been provided to the satisfaction of the Comptroller and the duty assessed by the Comptroller is more than, or less than, the provisional assessment made under subsection (1) or (2), the difference in duty shall either be refunded to, or paid by the importer, as the case may be, and any bond secured for the payment of duties or charges shall be cancelled.

PART IX

WAREHOUSING AND EXAMINATION OF GOODS

Approval of warehouses and licence to operate

46.(1) The Comptroller may appoint, for such period and subject to such conditions as the Comptroller may determine, any secure place as a warehouse to be used for the deposit of goods and the keeping and security of goods that are

(a) chargeable with customs duty;

(b) for exportation; or

(c) for use as stores.

(2) The Comptroller may, in accordance with such provisions as may be prescribed, issue a licence to a person to operate a private warehouse.

Removal of goods from customs controlled area

47.(1) Imported goods shall not be delivered or removed from a customs controlled area except

(a) with the permission of a customs officer after entry has been made in the approved form and manner to the satisfaction of the customs officer;

(b) pursuant to a permit or other authorization granted by the Comptroller in respect of the goods, subject to any conditions imposed by the Comptroller;

(c) by a customs officer in the performance of his duties; or

(d) as otherwise provided by this Act.

(2) Notwithstanding subsection (1)*(a)*, while goods remain subject to customs control, the Comptroller may revoke any notice of delivery given in respect of the goods.

(3) The Comptroller may, by notice in writing, vary or revoke any conditions under which a permit is granted under subsection (1).

(4) A person who is dissatisfied with a decision of the Comptroller under subsection (2) or (3) may, within 14 days after the date on which notice of the decision is given, request the Comptroller in writing, to reconsider the decision.

Removal of uncleared goods to warehouse

48.(1) Where, in the case of imported goods,

(a) clearance has not taken place

(i) within 7 days of importation by air;

(ii) within 14 days of importation by sea; or

(iii) within 30 days of importation for transhipment;

(b) the goods have been cleared, but they have not been unloaded from the importing vessel or aircraft by the expiration of the applicable period referred to in paragraph *(a)*,

the customs officer may, subject to subsection (2) and such other requirements as may be prescribed, cause the goods to be deposited in the Government warehouse.

(2) Goods shall be deposited in the Government warehouse except where they are

(a) of such type as may be prescribed; or

(b) in the opinion of the Comptroller, of a perishable nature, in which case the Comptroller may sell or otherwise dispose of them.

(3) The Comptroller shall, within 7 days of the decision to remove goods under subsection (1) or to sell or dispose of goods under subsection (2), notify the importer of the goods of the decision.

(4) Where a restriction is placed on the unloading of goods from a vessel or an aircraft by virtue of an enactment relating to the prevention of an epidemic or

infectious disease, the date of the removal of the restriction shall, in relation to the unloading of the goods, be deemed to be the date of importation.

Control of movement of uncleared goods

49.(1) The Minister may make regulations respecting the manner in which, and the conditions under which, goods subject to this section may be moved

(a) within a customs controlled area;

(b) between customs controlled areas; or

(c) between a customs controlled area and any other place.

(2) This section applies to

(a) goods chargeable with duty that has not been paid;

(b) goods on which a drawback has been paid; and

(c) any other goods that have not been cleared by the Comptroller.

(3) Regulations made under subsection (1) may require that goods referred to in subsection (2) be moved only

(a) by a person licensed by the Comptroller for the purpose; or

(b) by such means as may be approved by the Comptroller for the purpose.

(4) A licence or approval for the purposes of subsection (3) may be granted for such period and subject to such conditions and restrictions as the Comptroller thinks fit.

(5) The Comptroller may, at any time, for reasonable cause, revoke or vary the terms of the licence or approval granted under this section.

(6) The Comptroller shall not exercise the power conferred under subsection (5) without first giving the licensee an opportunity to be heard.

(7) A person who contravenes

(a) any regulations made under this section;

(b) a condition imposed pursuant to this section; or

(c) a term of any licence or approval granted,

is guilty of an offence and is liable on summary conviction to a fine of $100 000.

(8) Where a person is convicted of an offence under subsection (7), the licence of the person shall be revoked and the person shall be ineligible to hold another licence for a period of 2 years.

Certain goods not to be warehoused

50. The Minister may make regulations prescribing the classes or descriptions of goods that shall not be warehoused, unless they are constructively warehoused for short-term storage, and for the treatment of such goods.

Removal from warehouse

51.(1) Every good may be examined by a customs officer upon removal from a warehouse for entry for domestic use, for entry for use as stores or for export.

(2) The occupier of a warehouse is liable for the duty due where a discrepancy is discovered in the goods at the time of delivery for entry for domestic use, for entry for use as stores or for export or at any earlier time when a discrepancy is discovered.

(3) The duty due on any excess goods over the quantity declared on importation and the quantity found at the time of removal, together with any necessary expenses and charges incurred in respect of the goods, shall be paid to the Comptroller unless the excess is permitted by law.

(4) Where an excess quantity of goods is found on examination by the occupier of the warehouse, the excess shall be re-warehoused in the name of the owner of the goods in the same manner as on first importation.

Loss or deterioration of goods

52.(1) Where at the time goods are to be lawfully removed from a warehouse, all or part of the goods are found to be missing, notwithstanding any other fine

or liability to forfeiture incurred under this Act, the occupier of the warehouse shall, in addition to any restitution owed to the owner of the goods, pay to the Comptroller

(a) the duty that such goods would have borne if they had been entered for domestic use on the date of the discovery of the deficiency; or

(b) an amount that is, in the opinion of the Comptroller, the customs value of the goods, where the goods are not for domestic use.

(2) Where goods have been lawfully removed from one warehouse for transport to another warehouse or to a place other than a warehouse, and no duty has been paid in respect of them, and the goods fail to reach the other warehouse or the place then, notwithstanding any penalty or liability to forfeiture incurred under this Act, the transporter of the goods shall pay to the Comptroller

(a) the duty that the goods would have borne if they had been entered for domestic use on the date of their removal from the warehouse; or

(b) in the case of goods not eligible for domestic use, an amount that is, in the opinion of the Comptroller, the customs value of the goods.

(3) Where warehoused goods are damaged, destroyed or unlawfully removed by or with the assistance of a customs officer and the officer is convicted of an offence in relation to the damage, destruction or removal, then,

(a) except where the occupier of the warehouse or the owner of the goods was a party to the offence, the Comptroller shall pay compensation for any loss caused by the damage, destruction or removal; and

(b) notwithstanding any other provision of this Act

(i) no duty shall be payable on the goods by the occupier or the owner; and

(ii) any sum paid by way of duty before the conviction of the customs officer shall be repaid.

Goods not to be removed unless duties paid

53. Unless otherwise permitted by this Act, goods may not be removed from a warehouse

(a) until all duty chargeable on those goods and any charges in respect of the removal of those goods from the warehouse have been paid; and

(b) in the case of goods requiring entry and not yet entered, until the goods have been entered.

Opening warehouse or customs controlled area without permission

54. A person

(a) who opens a warehouse or customs controlled area; or

(b) gains access to goods within a warehouse or customs controlled area,

without the consent of a customs officer is guilty of an offence and is liable on summary conviction to a fine of $100 000 or to imprisonment for 2 years or to both.

PART X

CLEARANCE

Conditions for clearance

55. A customs officer shall cleared goods from customs control where satisfied that

(a) all duties and taxes have been accounted for the prescribed manner and either paid or secured by means of a bond or other arrangement;

(b) all other customs procedures have been duly observed and completed; and

(c) the requirements of any other applicable enactment have been complied with.

Clearance priority for certain goods

56. Perishable goods and live animals shall be cleared by a customs officer in the shortest possible time.

PART XI

CALCULATION OF CUSTOMS VALUE OF GOODS

Interpretation of Part XI

57.(1) For purposes of this Part,

"country of importation" means country or customs territory of importation;

"customs value of imported goods" means the value of goods for the purposes of levying ad valorem duties of customs on imported goods;

"goods of the same class or kind" means goods which fall within a group or range of goods produced by a particular industry or industry sector and includes identical or similar goods.

"identical goods" means goods which are the same in all respects, including physical characteristics, quality and reputation; and minor differences in appearance does not preclude goods otherwise conforming to the definition from being regarded as identical;

"produced" includes grown, manufactured and mined;

"similar goods" means goods which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable; and the quality of the goods, their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar;

(2) For the purposes of this Part,

(a) "identical goods" and "similar goods" do not include, as the case may be, goods which incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under section 60(1)*(b)*(iv) because such elements were undertaken in the country of importation;

(b) goods shall not be regarded as "identical goods" or "similar goods" unless they were produced in the same country as the goods being valued;

(c) goods produced by a different person shall be taken into account only where there are no identical goods or similar goods, as the case may be, produced by the same person as the goods being valued;

(d) persons shall be deemed to be related only where

(i) they are officers or directors of one another's businesses;

(ii) they are legally recognized partners in business;

(iii) they are employer and employee;

(iv) any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

(vi) both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or

(viii) they are members of the same family; and

(e) persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however

described, of the other shall be deemed to be related for the purposes of this Part where they fall within the criteria of this Part.

Declaration of customs value of imported goods

58.(1) A person shall, upon making an entry, specify the customs value of the imported goods.

(2) The customs value of imported goods shall be determined in accordance with this Part.

(3) The currency exchange rate in effect on the date of submission of the entry shall be applied in determining the customs value of the goods, unless otherwise prescribed.

Transaction value of imported goods

59.(1) The customs value of imported goods shall be the transaction value, that is, the price actually paid or payable for the goods when sold for export to Barbados, adjusted in accordance with section 60, provided that

(a) there are no restrictions on the disposition or use of the goods by the buyer other than restrictions that

(i) are imposed or required under any other law;

(ii) limit the geographical area in which the goods may be resold; or

(iii) do not substantially affect the value of the goods;

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with section 60; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that the transaction value is acceptable under subsections (2), (3), (4) and (5).

(2) In determining whether the transaction value is acceptable for the purposes of subsection (1)

(a) the fact that the buyer and the seller are related within the meaning of section 57(d) shall not in itself be grounds for regarding the transaction value as unacceptable; and

(b) the circumstances surrounding the sale shall be examined, and the transaction value accepted, provided that the relationship did not influence the price.

(3) For the purposes of subsection (2), in a sale between related persons, the transaction value shall be accepted, and the goods valued in accordance with subsection (1), where the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time:

(a) the transaction value in sales to unrelated buyers of identical or similar goods for export to Barbados;

(b) the customs value of identical or similar goods as determined under section 64;

(c) the customs value of identical or similar goods as determined under section 65;

(4) In applying the tests set out in subsection (3), due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in section 60 and costs incurred by the seller in sales in which the seller and the buyer are not related, that are not incurred by the seller in sales in which the seller and the buyer are related.

(5) The tests set out in subsection (3)*(b)* shall be used at the initiative of the importer and only for comparison purposes; and substitute values may not be established under subsection (3).

(6) Where, in the light of information provided by the importer or otherwise, the Comptroller has grounds for considering that the relationship between the buyer and the seller influenced the price, the Comptroller shall communicate the grounds to the importer and the importer shall be given an opportunity to be heard.

(7) Where the importer so requests, the Comptroller shall communicate the grounds in writing.

Additions to the price actually paid or payable

60.(1) In determining the customs value under section 59, there shall be added to the price actually paid or payable for the imported goods:

(a) the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:

(i) commissions and brokerage, except buying commissions;

(ii) the cost of containers which are treated as being one for customs purposes with the goods in question; and

(iii) the cost of packing, whether for labour or materials;

(b) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:

(i) materials, components, parts and similar items incorporated in the imported goods;

(ii) tools, dies, moulds and similar items used in the production of the imported goods;

(iii) materials consumed in the production of the imported goods;

(iv) engineering, development, artwork, design work, plans and sketches, undertaken elsewhere than in Barbados and necessary for the production of the imported goods;

(c) royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

(d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller;

(e) the cost of transport of the imported goods to the port or place of importation;

(f) loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation; and

(g) the cost of insurance.

(2) Additions to the price actually paid or payable shall be made under this section only on the basis of objective and quantifiable information.

(3) No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this section.

Transaction value of identical goods

61.(1) Where the customs value of the imported goods cannot be determined under section 59, the customs value shall be the transaction value of identical goods sold for export to Barbados and exported at or about the same time, and in a sale at the same commercial level and in substantially the same quantity, as the goods being valued.

(2) Where no such sale as described in subsection (1) is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of differences attributable to

commercial level or to quantity or both, shall be used, provided that such adjustments can be made based on demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

(3) Where the costs and charges referred to in section 60(1) are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the identical goods in question arising from differences in distances and modes of transport.

(3) Where, in applying this section, more than one transaction value of identical goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Transaction value of similar goods

62.(1) Where the customs value of the imported goods cannot be determined under sections 59 and 61, the customs value shall be the transaction value of similar goods sold for export to Barbados and exported at or about the same time, and in a sale at the same commercial level and in substantially the same quantity, as the goods being valued.

(2) Where no such sale as described in subsection (1) is found, the transaction value of similar goods sold at a different commercial level or in different quantities or both, adjusted to take account of differences attributable to commercial level or to quantity or both, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

(3) Where the costs and charges referred to in section 60(1) are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the similar goods in question arising from differences in distances and modes of transport.

(4) Where, in applying this section, more than one transaction value of similar goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Order or application of deductive value and computed value methods

63.(1) Where the customs value of the imported goods cannot be determined under sections 59, 61 and 62, the customs value shall be determined under section 64 or, where the customs value cannot be determined under that section, under section 65.

(2) Notwithstanding subsection (1), at the request of the importer, the order of application of section 64 and section 65 shall be reversed.

Deductive value

64.(1) Where the imported goods or identical or similar imported goods are sold in Barbados in the condition as imported, the customs value of the imported goods under this section shall be based on the unit price at which the imported goods or identical or similar imported goods are so sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the persons from whom they buy such goods, subject to deductions for the following:

(a) either

(i) the commission usually paid or agreed to be paid; or

(ii) the additions usually made for profit and general expenses,

in connection with sales in Barbados of imported goods of the same class or kind;

(b) the usual costs of transport and insurance and associated costs incurred within Barbados; and

(c) the customs duties and other taxes payable in Barbados by reason of the importation or sale of the goods.

(2) Where neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods being valued, the customs value shall, subject to subsection (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in Barbados in the condition as imported at the earliest date after the importation of the goods being valued but before the expiration of 90 days after such importation.

(3) Where neither the imported goods nor identical nor similar imported goods are sold in Barbados in the condition as imported, if the importer so requests, the customs value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in Barbados who are not related to the persons from whom they buy such goods, due allowance being made for the value added by such processing and the deductions provided for in subsection (1).

Computed value

65. The customs value of imported goods under this section shall be based on a computed value which shall consist of the sum of:

(a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;

(b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to Barbados; and

(c) the cost or value of all expenses referred to in section 60(1).

Residual method

66.(1) Where the customs value of the imported goods cannot be determined under section 59 to 65, the customs value shall be determined

(a) using reasonable means consistent with the principles and general provisions of this Act and of Article VII of General Agreement on Trade and Tariffs 1994; and

(b) on the basis of information available in Barbados.

(2) No customs value shall be determined under this section on the basis of

(a) the selling price in Barbados of goods produced in another country;

(b) a system which provides for the acceptance, for customs purposes, of the higher of two alternative values;

(c) the price of goods on the domestic market of the country of exportation;

(d) the cost of production other than computed values which have been determined for identical or similar goods in accordance with section 65;

(e) the price of the goods for export to a country other than Barbados;

(f) minimum customs values; or

(g) arbitrary or fictitious values.

(3) Where the importer so requests, the importer shall be informed in writing of the customs value determined under this section and the method used to determine such value.

Provisional customs value by importer

67.(1) An importer may include a provisional customs value in an entry for imported goods where the customs value of the imported goods would have been determined under the transaction value method but for the fact that at the time the entry was made, any adjustments that were required to be made could not

have been made because of a lack of sufficient information or under an approval given by the Comptroller in such circumstances as may be prescribed.

(2) A provisional customs value shall be a reasonable estimate of the customs value of the imported goods based on the information that is available to the importer at the time the entry is made.

(3) Until the final customs value is provided, the provisional customs value shall be treated as the customs value for the purposes of this Act.

(4) An approval subject to any terms, conditions or restrictions by the Comptroller may be required.

Reasons to doubt the truth or accuracy of particulars or documents

68.(1) Where a customs declaration is presented and the Comptroller has reason to doubt the truth or accuracy of the particulars or documents produced in support of the declaration, the Comptroller may require the importer to provide further explanation, including documents or other evidence, that the declared value represents the total amount actually paid or payable for the imported goods, adjusted in accordance with section 60.

(2) Where, after receiving further information, or in the absence of a response, the Comptroller still has reasonable doubt about the truth or accuracy of the declared value, the Comptroller may presume that the customs value of the imported goods cannot be determined under section 59.

(3) The Comptroller shall, before taking a final decision, communicate to the importer, in writing if requested, the grounds for doubting the truth or accuracy of the particulars or documents produced; and the importer shall be given an opportunity to be heard.

(4) Where a final decision is made, the Comptroller shall communicate to the importer in writing his decision and the grounds therefor.

Revised customs value

69. Where the Comptroller is satisfied that the customs value of imported goods in an entry is incorrect, the Comptroller may revise the customs value and

(a) the revised value shall be treated as the customs value for the purposes of this Act; and

(b) the Comptroller shall notify the importer of the revised value and the basis for the calculation, including the findings of fact, and of the reasons for the decision and of the rights of the importer to review and appeal against the decision.

Value of goods for export

70. The customs value of goods for export shall

(a) be the value of the goods at the point of exit; and

(b) be determined by adding to the exporter's ex-warehouse price of the goods, the cost of transport and all incidental expenses up to the time of export, not including export duties, taxes, fees and charges for which the exporter has been granted a waiver in such circumstances as may be prescribed.

PART XII

ORIGIN OF GOODS AND TARIFF CLASSIFICATION

Interpretation of Part XII

71. For the purposes of this Part,

"Community origin" has the meaning assigned to it in section 76;

"export duties" means any duties or charges with equivalent effect imposed on, or in connection with, the export of goods;

"Less Developed Country" means the Member States regarded as such in accordance with Article 4 of the Revised Treaty;

"materials" includes raw materials, intermediate products, parts and components used in the process of production, repair, renovation or improvement of goods;

"Member State" has the meaning assigned to it in the Revised Treaty;

"More Developed Country" means a Member State regarded as such in accordance with Article 4 of the Revised Treaty;

"remission" includes any exemption for materials brought into free ports and other places that have duty-free customs privileges.

Country of origin of goods

72.(1) For the purposes of this Act, the country of origin of goods is the country in which the goods were produced or manufactured, according to the criteria defined for the purpose of applying the customs tariff, quantitative restrictions, and other trade-related measures.

(2) The country of origin of goods shall be determined for the purpose of applying

(a) such customs tariff rates as may be prescribed;

(b) other non-tariff measures established under specific Community provisions on trade in goods; and

(c) other Community measures in respect of the origin of goods.

Rules of origin

73. For the purposes of this Act, "rules of origin" means the specific provisions applied to determine the origin of goods and include

(a) non-preferential rules of origin established by the Community, domestic law or international conventions of general application with the objective of attaining particular trade policy objectives;

(b) preferential rules of origin established by the Community or in accordance with trade agreements to facilitate community trade with certain countries or Member States in the same community space.

Proof of origin

74.(1) Where a country of origin has been declared in a customs declaration, the Comptroller may require the declarant to prove the origin of the goods.

(2) Documentary proof of origin may be required for the application of preferential customs duties, economic or commercial measures adopted unilaterally or in the framework of bilateral or multilateral agreements or pursuant to measures for public order or health.

(3) Where proof of origin of goods is provided, the Comptroller may, in the event of reasonable doubt, require the submission of additional evidence.

Country of consignment of goods

75. The country of consignment is the country from where the goods are dispatched directly to Barbados.

Determination of Community origin

76.(1) Goods shall be described as Community origin goods where the goods

(a) were wholly produced within the Community; or

(b) were produced within the Community wholly or partly from materials imported from a state other than a Member State or from materials of undetermined origin by a process that results in a substantial transformation characterized

(i) by the goods being classified in a tariff heading different from that in which any of those materials are classified; or

(ii) in the case of the goods set out in the list in Schedule 1 of the Revised Treaty, only by satisfying the conditions specified for the goods.

(2) Subject to subsection (3), Community origin goods exported from Barbados to another Member State for repair, renovation or improvement shall, on the return of the goods to Barbados, be treated as Community origin goods.

(3) Subsection (2) applies only where the goods are returned directly to Barbados and the value of materials imported from a state other than a Member State or of undetermined origin and used in the process of repair, renovation or improvement does not exceed, in the case of goods undergoing the process of repair, renovation or improvement in

(a) a More Developed Country, 65 per cent of the cost of repair, renovation or improvement;

(b) a Less Developed Country, 80 per cent of the cost of repair, renovation or improvement.

(4) Where an importer fails to furnish proof, to the satisfaction of the Comptroller, that goods are of Community origin, the determination of whether the goods are of Community origin may be made by the Comptroller without regard to any proof of statements made by the importer.

(5) The Comptroller shall, where he makes a determination under subsection (4), immediately inform in writing the competent authority which shall promptly inform the Council for Trade and Economic Development of any trading arrangements concluded and the Council for Trade and Economic Development may recommend to the Member States concerned, the adoption of alternative trading arrangements.

(6) Where a person furnishes or causes to be furnished any document that is untrue in a material particular in support of a claim in Barbados that goods are of Community origin and therefore eligible for preferential treatment the person is liable to pay an administrative penalty not exceeding $10 000 and the goods are liable to forfeiture.

Import duty on Community origin goods

77.(1) Subject to subsection (2), customs duty otherwise imposed on goods of any description shall not apply to goods produced in a Member State.

(2) Subsection (1) shall not

(a) prohibit the imposition of non-discriminatory internal charges of any type on any goods, including goods produced in a Member State; or

(b) apply to fees and similar charges commensurate with the cost of services rendered in relation to any goods including goods produced in a Member State.

(3) Where the Minister is satisfied that, pursuant to the Revised Treaty, a Member State has suspended the operation of the preferential treatment of Community origin goods in respect of any class of goods exported from Barbados to that Member State, the Minister may issue a notice in the *Official Gazette* to that effect and thereafter, notwithstanding subsection (1), any goods of that class exported from that Member State, where entered for use in Barbados, shall be liable to import duty.

Export duty on Community origin goods

78.(1) Export duty shall not apply to Community origin goods traded within the Community.

(2) Export duty applicable to goods exported to states other than Member States may be applied where goods are exported through a Member State, destined for export to a state other than a Member State.

(3) The Comptroller shall take any necessary action to prevent the evasion of the payment of export duty.

Drawback in relation to Community origin goods

79.(1) Notwithstanding section 78, Community origin goods that benefit from drawback where exported from another Member State may, upon

importation into Barbados, be treated as if the goods are not of Community origin for the purposes of this Part.

(2) Where, upon importation, goods are treated as Community origin goods and, after importation, drawback is allowed, then notwithstanding section 76, the full amount of duty that would have been chargeable if the goods had not been treated as Community origin goods becomes payable upon demand by the Comptroller.

Quantitative restrictions

80.(1) Nothing in Part XXII authorizes the application of any quantitative restriction on

(a) the importation of goods that are of Community origin; or

(b) exports to a Member State.

(2) Nothing in subsection (1) prohibits the taking of measures necessary to prevent evasion of any prohibition or restriction under Part XXII.

Common External Tariff

81.(1) The rules of origin set out in the Common External Tariff shall apply to goods that do not qualify for Community origin treatment.

(2) The Minister may, in keeping with the relevant determination of the Council for Trade and Economic Development, amend the Common External Tariff with respect to any item.

(3) The Comptroller shall be the competent authority for the administration of the Common External Tariff.

Goods to be described according to tariff classification

82. All imported and exported goods shall be classified and described to a customs officer in accordance with such tariff classifications as may be prescribed.

PART XIII

CUSTOMS DUTIES

Imposition of customs duties on imported goods

83. There shall be raised, levied, collected and paid to the Government, upon all goods imported into Barbados or taken out of bond for consumption in Barbados, the several rates of customs duties set out opposite to each item respectively in the column of the tariff applicable to the items in Part I of the *Customs Tariff*, subject to such conditions as may be prescribed.

Exemption from customs duties on imported goods

84. The articles enumerated in Part II of the *Customs Tariff* may be imported without payment of customs duties, subject to such conditions as may be prescribed.

Imposition of customs duties on exported goods

85. There may be raised, levied, collected and paid to the Government, upon all goods exported from Barbados, such export duties of customs as may be levied in the manner provided by section 86.

Minister may amend Parts I and II of the Customs Tariff etc.

86.(1) The Minister may by order subject to negative resolution

(a) amend Part I or Part II of the *Customs Tariff*;

(b) impose export duties of customs or revoke, reduce or increase export duties of customs;

(c) exempt any article from export duties of customs.

(2) An order made under subsection (1) may, in addition to the matters set out in that subsection, specify the terms or conditions subject to which any article to which the order relates may be imported or exported

(a) free of customs duties; or

(b) at the rates of customs duties provided in the order,

and different terms and conditions may be specified in relation to the same article where imported or exported, for different purposes.

(3) Where during any period specified in subsection (6), a person, in compliance with the terms or conditions, if any, specified in an order made under subsection (1), enters goods in respect of which the customs duty is

(a) revoked by the order, the person shall deposit with the customs officer a sum equal to the duty payable prior to the date of publication of the order; or

(b) reduced by the order, the person shall

(i) pay to the customs officer the reduced duty; and

(ii) deposit with the customs officer, the difference between the duty payable prior to the date of publication of the order and the reduced duty.

(4) A sum deposited in consequence of an amendment made by an order made under subsection (1) together with the customs duty, if any, paid shall be

(a) equal to the customs duty that would be payable if the order is annulled;

(b) brought to account by the customs officer as duties of customs;

(c) returned to the person who deposited it, where the period for annulment of the order expires and the order is not annulled.

(5) Where

(a) the customs duty paid in consequence of an amendment made by an order made under subsection (1) exceeds the customs duty that would be payable if the order is annulled; and

(b) the order is annulled,

the excess of the customs duty paid shall be repaid to the person by whom it was paid.

(6) The period referred to in subsection (3) is the period after the date of publication of the order and prior to

(a) the date of expiration of the period in which the order may be annulled; or

(b) the date of annulment of the order, where the order is annulled.

Exemption for de minimis goods

87. Goods having a customs value equal to or less than such amount as may be prescribed shall be exempt from the payment of duties and taxes under this Act.

Determination of amount of duty payable

88.(1) The amount of duty payable on goods shall be

(a) determined in accordance with this Act; and

(b) calculated at the rate in effect on the date of submission of the customs declaration in respect of the goods..

(2) Subject to this Act, duties shall be imposed on goods, and customs measures applied, in accordance with the results of an examination of the goods.

(3) Notwithstanding subsection (2),

(a) the Comptroller may accept a statement by a declarant as to the amount of duty payable; and

(b) where the Comptroller does not examine the goods, duties shall be imposed on the goods, and customs measures applied, in accordance with the information provided on the declaration.

Date for payment of duty

89.(1) Unless otherwise provided in this Act, the date for the payment of duty assessed in accordance with this Act is 5 working days after the date on which the written notice of the assessment or re-assessment is given by the Comptroller, unless otherwise determined by the Comptroller.

(2) Where all or part of any duty remains unpaid after the due date, interest shall be imposed at such rate as may be prescribed.

Customs debt at importation

90.(1) Unless otherwise provided in this Act, a customs debt at importation shall be incurred where goods liable to import duties are placed under a customs procedure.

(2) The customs debt shall be incurred on acceptance of the customs declaration, and the importer of the goods shall be the debtor.

Customs debt incurred at importation through non-compliance

91.(1) Where goods are liable to import duties, a customs debt at importation shall be incurred through non-compliance with

(a) any obligation under this Act or another enactment concerning

(i) the admission of the goods, their removal from customs control, or the movement, processing, storage, temporary admission or disposal of the goods; or

(ii) the end-use of the goods in Barbados; or

(b) a condition governing the placement of the goods under a customs procedure or the granting, by virtue of the end-use of the goods, of an exemption from duty or a reduced rate of duty.

(2) The time at which the customs debt is incurred shall be the moment when

(a) the obligation, the non-fulfillment of which gives rise to the customs debt, is not met or ceases to be met; or

(b) after a customs declaration is accepted for the placement of the goods under a customs procedure, it is established that a condition governing the placement of the goods under the procedure or the granting of an exemption from duty or a reduced rate of duty by virtue of the end-use of the goods, was not in fact fulfilled.

Customs debt at export

92.(1) A customs debt at exportation shall be incurred where goods liable to export duties are placed under the export procedure or the outward processing procedure.

(2) The customs debt shall be incurred on acceptance of the customs declaration, and the exporter of the goods shall be the debtor.

Customs debt at export incurred through non-compliance

93.(1) Where goods are liable to export duties, a customs debt at exportation shall be incurred through non-compliance with

(a) one of the obligations prescribed by or under this Act for the exit of the goods; or

(b) any condition under which the goods were allowed to leave Barbados with total or partial exemption from export duties.

(2) The time at which the customs debt is incurred shall be

(a) the moment at which the goods actually leave Barbados without a customs declaration;

(b) the moment at which the goods reach a destination other than that for which they were allowed to leave Barbados with total or partial exemption from export duties; or

(c) where the Comptroller is unable to determine the moment referred in paragraph *(b)*, the expiration of the time specified for the production of evidence that the conditions entitling the goods to such exemption have been fulfilled.

(3) In the case referred to in subsection (1)*(a)*, the debtor shall be any of the following:

(a) any person who was required to fulfil the obligation concerned;

(b) any person who was aware or should reasonably have been aware that the obligation concerned was not fulfilled and who acted on behalf of the person who was obligated to fulfil the obligation;

(c) any person who participated in the act which led to the non-fulfilment of the obligation and who was aware or should reasonably have been aware that a customs declaration had not been lodged but should have been lodged.

(4) In the case referred to in subsection (1)*(b)*, the debtor shall be any person who must satisfy the conditions which have allowed the goods to leave Barbados with total or partial exemption from export duties.

General provisions on customs debt at importation or export

94.(1) Where

(a) there are two or more importers or exporters, as the case may be, the customs debt is owed jointly and severally by all of the importers or exporters;

(b) there is an agent, the person on whose behalf the customs declaration is made shall also be a debtor;

(c) a customs declaration in respect of a procedure is drawn up on the basis of information which leads to all or part of the import duties or export duties not being collected, the person who provided the information required to draw up the declaration and who knew, or who ought

reasonably to have known, that such information was false shall also be a debtor.

(2) The right to recover duty as a debt due is not affected by the fact that

(a) the goods have ceased to be subject to customs control;

(b) a bond or other security has been given for the payment of the duty; or

(c) a final assessment of duty has not been made under this Act.

(3) The obligation to pay and the right to receive and recover duty under this Act shall be fulfilled before the commencement of an appeal or other legal proceedings.

(4) Except in such circumstances as may be prescribed, imported goods or exported goods shall not be delivered or removed on importation or exportation, as the case may be, unless the importer or exporter has paid the duties in respect of the goods.

(5) The Comptroller may detain subsequent shipments of imported goods of an importer who has not paid duty in respect of a previous shipment.

(6) All duties, taxes, fees and charges incurred shall be subject to the criteria for the determination, assessment, re-assessment, amendment, payment and collection prescribed by or under this Act.

Notification of a customs debt

95.(1) A debtor shall be notified of his customs debt.

(2) Where the amount of import or export duty payable is equal to the amount entered in the customs declaration, release of the goods by the Comptroller shall be equivalent to notifying the debtor of the customs debt.

(3) Where subsection (2) does not apply, the Comptroller shall notify the debtor of the customs debt where the Comptroller has assessed the duty payable on the goods.

PART XIV

REFUNDS, DRAWBACK AND ABATEMENT OF DUTY

Refunds

96.(1) Where an amount is paid as duty and such amount is found to be in excess of the duty due and payable, the Comptroller shall refund the excess, unless all or a portion of the refund is set off against other amounts owed to the Government.

(2) Where an appeal or any other proceeding results in a re-assessment in an amount less than the amount already paid in duties or given as security for payment, the excess duties paid shall be refunded to the appellant or the appellant shall be released from any security given for payment of the duties in excess of the amount properly payable.

(3) Where a refund referred to in subsection (1) or (2) is not paid within 6 months, interest shall apply at such rate as may be prescribed.

(4) Any obligation on the part of the Comptroller to refund duties under subsection (1) shall be suspended pending the outcome of any appeal filed by the Comptroller under this Act or any other enactment against the decision requiring that the duty be refunded.

Claims for drawback

97.(1) A claim for drawback shall

(a) be made in such form and manner as the Comptroller determines; and

(b) contain such particulars as the Comptroller directs.

(2) No drawback is payable unless

(a) the Comptroller is satisfied that all duty due on the goods in respect of which the claim is made has been paid and not otherwise drawn back;

(b) the person making the claim provides such information and produces such books of account and other documents relating to the goods, as the Comptroller requires; and

(c) the goods that are the subject of the claim have been exported.

(3) The Minister may by order prescribe any class or description of goods in respect of which no drawback may be claimed.

Drawback of duty on certain goods

98.(1) Subject to this subsection (2) to (4), a drawback of duty may be allowed on goods at such rate, and subject to such conditions, as may be prescribed.

(2) Where the Comptroller is satisfied that goods have been

(a) shipped for export;

(b) packed for export in a bulk cargo container in a customs controlled area and the container has been secured; or

(c) entered into an export warehouse and will be exported,

the Comptroller may, for the purposes of this section, treat the goods as having been exported.

(3) Where a drawback has been allowed on goods treated as exported, the goods shall not, without the permission of the Comptroller, be unshipped, relanded or unpacked before export.

(4) Where a drawback has been allowed or paid on goods treated as exported and the goods are unshipped, relanded or unpacked before export, the amount of drawback allowed in respect of the goods shall, immediately on their unshipment, relanding or unpacking, constitute a debt due to the Government and the debt shall immediately be payable by the owner of the goods at the time of their unshipment, relanding or unpacking.

(5) Where under this section drawback is allowed to any person, the Comptroller may, in his discretion apply the whole or any part of the amount allowed towards the payment of any duty that is owed by that person.

(6) Except as the Minister may by order prescribe, this section does not apply to duties imposed under the *Customs Duties (Dumping and Subsidies) Act*, Cap. 67.

Extent of drawback

99.(1) Subject to this section, where goods are entered for

(a) shipment for use as stores; or

(b) warehousing for subsequent exportation or shipment for use as stores,

drawback may be claimed in respect of any duty paid at the time of the original importation of the goods into Barbados.

(2) Unless otherwise prescribed, no drawback may be claimed in respect of goods

(a) of a customs value at the time of original importation of less than $200 or such other amount as may be prescribed;

(b) that were imported into Barbados more than 12 months before the date of the claim for drawback;

(c) not in the packages in which they were originally imported into Barbados, or in the case of bulk goods, where the bulk has been broken; or

(d) that have been tampered with or used.

(3) Where imported goods are

(a) shipped in error;

(b) defective; or

(c) unfit or unsafe for use,

drawback may be claimed if the goods are exported or destroyed under customs supervision.

Drawback on goods destroyed or damaged after shipment

100. Where the Comptroller is satisfied that after being shipped for exportation or for use as stores, goods have been

(a) destroyed by accident on board the exporting vessel or aircraft, drawback on the goods is payable as if they had been exported to their destination;

(b) materially damaged by accident on board the exporting vessel or aircraft, the goods may, with the consent of the Comptroller and in accordance with such conditions and restrictions as the Comptroller may impose, be brought back into Barbados and relanded or unloaded, and where re-entered for domestic use, are chargeable with the duty normally chargeable on the importation of the damaged goods.

Penalty in relation to drawback

101.(1) A person who

(a) obtains; or

(b) assists another person to obtain,

a drawback for which there is no lawful entitlement is liable to pay an administrative penalty not exceeding $10 000 or 3 times the value of the goods, whichever is greater, and the goods are liable to forfeiture.

(2) A person who, with intent to defraud

(a) obtains; or

(b) assists another person to obtain,

a drawback for which there is no lawful entitlement is liable to pay an administrative penalty not exceeding $20 000 or 3 times the value of the goods, whichever is greater, and the goods are liable to forfeiture.

PART XV

TEMPORARY IMPORTATIONS

Relief from duty on temporary importations

102.((1) Goods may be entered into Barbados without payment of customs duty where

(a) the Comptroller, in accordance with such regulations as may be prescribed, permits the importation of the goods for temporary use;

(b) goods that are permitted to be warehoused on importation into Barbados are warehoused;

(c) the Comptroller permits goods entered for transhipment or transit to be removed for that purpose; or

(d) goods previously entered for domestic use in Barbados are exported to another country and then are re-imported into Barbados and it is shown to the satisfaction of the Comptroller that

(i) no duty was chargeable on those goods on any previous importation into Barbados, or if any duty was chargeable, it has been paid;

(ii) no drawback has been paid or duty refunded on the exportation of the goods or any drawback paid or duty refunded has been repaid; and

(e) the goods have not undergone any process outside Barbados since their exportation.

(2) Where goods are exported for repairs and are re-imported, upon re-importation duty is payable only on the value of the repairs made abroad.

(3) Subject to such conditions as the Comptroller may impose, duty is not payable on goods temporarily imported in accordance with any treaty, agreement

or arrangement concluded between the Government and the government of another country.

(4) On receipt of any required security the Comptroller may release goods that are subject to this section from customs control without payment of customs duty.

(5) Subject to such regulations as may be prescribed, the person giving security under subsection (4) shall be released from the conditions of the security if within 3 months from the date of the entry of the goods, or within such longer period as the Comptroller may allow in any particular case, the Comptroller is satisfied that the goods have been

(a) exported;

(b) packed for export into a bulk cargo container in a customs controlled area and the container is secured to the satisfaction of the Comptroller;

(c) destroyed; or

(d) dealt with in such manner as the Comptroller may allow.

(6) Where, at the expiration of the period prescribed by subsection (5), the goods have not been dealt with in accordance with that subsection

(a) any sum secured by way of deposit of money shall be retained by the Government;

(b) any sum otherwise secured shall be paid to the Government by the importer within 2 weeks after the expiration of that period or such longer period as the Comptroller allows; and

(c) on such payment having been made, the security shall be released.

(7) Where under this Act goods are subject to a condition or restriction allowing them to be entered without payment of duty, and the condition or restriction is contravened, the duty becomes payable by the person who, but for that exemption, would have had to pay the duty, and the goods in respect of which the exemption was granted become liable to forfeiture.

(8) Goods allowed entry without payment of duty under this Act shall, upon a demand made by a customs officer, be produced or otherwise accounted for to the officer.

(9) A person who fails to produce or account for goods referred to in subsection (8) is liable to pay an administrative penalty not exceeding $10 000 or 3 times the value of the goods, whichever is greater.

(10) Where goods referred to in subsection (8) are subsequently found, they are liable to forfeiture.

PART XVI

AUTHORIZED ECONOMIC OPERATORS AND TRUSTED TRADERS

Status of authorized economic operator or trusted trader

103.(1) A person ordinarily resident in Barbados may apply to the Comptroller, in such form as the Comptroller determines, for conferment of the status of authorized economic operator or trusted trader, and the Comptroller may grant the application where the Comptroller is satisfied that the applicant meets the requirements set out in section 104.

(2) The Comptroller shall consult with such other authorities the Comptroller considers appropriate before granting a person the status of authorized economic operator or trusted trader.

(3) An authorized economic operator and trusted trader shall be entitled to such benefits and be subject to such responsibilities as are prescribed in regulations.

Requirements for status of authorized economic operator or trusted trader

104.(1) The requirements for the conferment of the status of authorized economic operator or trusted trader are that the person

(a) has a proven record of compliance with this Act or any laws on taxation;

(b) has a satisfactory system of managing commercial records and, where appropriate, transport records, that allows for appropriate customs control;

(c) has proven financial solvency;

(d) has the requisite standard of competence and professional qualifications directly related to the activity concerned;

(e) has appropriate security and safety standards; and

(f) satisfies such other criteria as may be prescribed.

(2) The criteria in subsection (1)*(e)* shall be considered as fulfilled by an applicant for the status of authorized economic operator where the applicant demonstrates that he maintains appropriate measures to ensure the safety and security of the international supply chain including in the areas of physical security and access controls, logistical processes and the handling of specific types of goods, personnel and business partners.

(3) An authorized economic operator or a trusted trader shall inform the Comptroller of any occurrence arising after the grant of the status that is likely to affect the maintenance of his status.

Cancellation of authorization

105.(1) The Comptroller shall monitor every authorized economic operator or trusted trader to ensure that he continues to satisfy the criteria specified in section 104.

(2) Where an authorized economic operator or a trusted trader ceases to meet the criteria, the Comptroller may suspend or revoke his status.

(3) The Comptroller shall, prior to issuing a determination to suspend or revoke the status of a person, give the person 10 days' notice in writing of the intention to suspend or revoke the status and the reasons therefor and an opportunity to be heard.

(4) Where the Comptroller suspends or revokes the status of a person, the Comptroller shall give the person notice in writing of the suspension or revocation and the reasons therefor.

Mutual recognition of authorized economic operator

106. The Comptroller may grant the benefits deriving from the status of authorized economic operator to persons established in

(a) the Member States; and

(b) countries or territories outside the Community on the basis of reciprocity, in accordance with any applicable agreements or in such circumstances as may be prescribed.

PART XVII

CUSTOMS BROKERS AND AGENTS

Authority to be produced

107.(1) Where a person makes an application to transact business on behalf of any other person, the customs officer may require the applicant to produce an authority, in writing, from the person on whose behalf the application is made, and in default of the production of such authority, the customs officer may refuse to transact business on behalf of the other person with the purported agent.

(2) A document required by this Act to be signed by a particular person, where signed by a person authorized on behalf of the person required to sign the same, shall be deemed for all purposes to be signed by the person required to sign the same.

(3) The Comptroller may, in his discretion, refuse to allow an application referred to in subsection (1), or revoke the acceptance of such an application.

Entities other than individuals

108.(1) A document produced under this Act by an entity other than an individual shall be signed by an individual authorized to do so by the governing body of that entity.

(2) Where the entity has elected or appointed officers, the president, vice president, secretary or treasurer shall be deemed to be authorized for the purposes of subsection (1) unless there is evidence to the contrary.

Gazetting of names of customs brokers

109.(1) The Comptroller shall cause to be published annually in the *Official Gazette* an alphabetical list of persons who are licensed customs brokers.

(2) For the purposes of subsection (1), "customs broker" means a person who is licensed to transact business with the Customs Department, including the submission of entries on behalf of other persons.

Transacting business on behalf of another without authority

110. A person who

(a) transacts business

(i) as an agent without the authority of the principal; or

(ii) as a customs broker without holding a valid licence issued by the Comptroller; or

(b) assists another person in the transaction of business as an agent pursuant to paragraph *(a)*(i) or as a customs broker pursuant to paragraph *(a)*(ii) in the transaction of business

is liable to pay an administrative penalty not exceeding $5 000 or 3 times the value of any goods involved, whichever is greater.

Vessel agents

111. Where

(a) under this Act a special procedure is prescribed with regard to a vessel; and

(b) the owner of the vessel is not resident or represented in Barbados,

the commander of the vessel shall appoint an agent in Barbados to perform any act to be performed by the owner of the vessel under this Act.

PART XVIII

ADVANCE RULINGS

Issue and scope of advance rulings

112.(1) The Comptroller may, where a person so requests, issue a written advance ruling, prior to the importation of a good, on the basis of the facts and circumstances presented in respect of the good.

(2) An advance ruling shall set out the treatment that the good will receive upon importation with regard to

(a) the tariff classification of the good;

(b) the origin of the good; and

(c) any other matter as may be prescribed.

(3) The Comptroller may decline to issue an advance ruling where the facts and circumstances forming the basis of the advance ruling are the subject of a post-clearance audit or an administrative, judicial or quasi-judicial review or appeal.

(4) Where the Comptroller declines to issue a ruling, the Comptroller shall notify in writing the person who requested the ruling of his decision.

Procedure for advance rulings

113.(1) In determining whether to issue, or in issuing an advance ruling, the Comptroller

(a) shall take into account the facts and circumstances provided by the person requesting the ruling in respect of the good;

(b) may require from the person, additional information or a sample of the good;

(c) shall issue the ruling as expeditiously as possible, and in no case later than 120 days after obtaining all necessary information from the person; and

(d) shall provide the person with the rationale and legal basis for the ruling.

(2) The Comptroller shall

(a) in issuing advance rulings, provide the same treatment, including the same interpretation and application of any relevant provisions, where the facts and circumstances are identical in all material respects; and

(b) make available to the public any information on advance rulings that may be significant for the purpose of consistent interpretation, application or treatment of persons, having regard to the need to protect commercially confidential information.

(3) An advance ruling shall take effect on the date that it is issued or on such later date as may be specified in the ruling and shall be valid for one year.

Modification or revocation of advance rulings

114.(1) The Comptroller may modify or revoke an advance ruling where

(a) there is a change in the law, facts or circumstances on which the ruling was based;

(b) the ruling was based on inaccurate or false information or on an error of fact; or

(c) it is necessary to do so to conform with a judicial decision.

(2) A modification or revocation of an advance ruling shall take effect on the date on which the modification or revocation is issued or, on such later date as may be specified in the ruling, and shall not be applied to the importation of a good that occurred prior to that date, unless the person to whom the ruling was issued

(a) misrepresented or omitted facts or circumstances material to the issuance of the ruling; or

(b) failed to act in accordance with the terms and conditions of the ruling.

(3) Where the Comptroller determines that an advance ruling was based on incorrect information but the person to whom the ruling was issued demonstrates that he used reasonable care and acted in good faith in presenting the facts and circumstances on which the ruling was based, the person shall not be liable to pay an administrative penalty.

(4) A person to whom an advance ruling is issued who misrepresents or omits facts or circumstances material to the issuance of the ruling or fails to act in accordance with the terms and conditions of the ruling is liable to pay an administrative penalty not exceeding $10 000.

PART XIX

EXPORT PROCESSING

Persons departing from Barbados to depart from a customs controlled area

115.(1) Every person shall depart Barbados from a port unless authorized otherwise by a customs officer.

(2) Every person preparing to board a vessel or an aircraft for departure from Barbados shall comply with every customs direction given with respect to embarkation and any accompanying baggage, which shall upon request be made available to a customs officer for examination.

(3) Any person who contravenes this section is guilty of an offence and is liable on summary conviction to a fine of $100 000 or to imprisonment for 2 years or to both.

Certificate of clearance

116.(1) The commander of a vessel or an aircraft about to depart Barbados shall

(a) submit to the customs officer within such time as may be prescribed, an outward report in such form as the Comptroller determines and containing such particulars verified by declarations as may be prescribed, and accompanied by such supporting documents as the customs officer may require;

(b) answer any questions asked and produce any document requested by a customs officer relating to the vessel or aircraft and its passengers, crew, cargo, stores and intended voyage or flight;

(c) submit to the customs officer an account of the cargo and ships' stores taken on or remaining on board the vessel or aircraft in Barbados; and

(d) comply with all requirements of this or any other Act concerning the vessel or aircraft and its passengers, crew, cargo, stores and intended voyage or flight.

(2) Where clearance is sought for a vessel or an aircraft that

(a) is in ballast;

(b) has on board only stores, passengers' baggage or empty containers upon which no freight or profit is earned the customs officer granting clearance shall clear the vessel or aircraft as in ballast.

(3) A commander of a vessel or an aircraft or his agent who

(a) fails to comply with subsection (1)*(a)*;

(b) refuses to answer any question put to him by the customs officer pursuant to subsection (1)*(b)* or gives a false answer to a question; or

(c) fails to produce any documents required by the customs officer; or

(d) submits an untrue, inaccurate or incomplete document,

is liable to pay an administrative penalty not exceeding $10 000.

Vessel or aircraft not to depart without clearance

117.(1) No vessel or aircraft shall depart Barbados unless a customs officer has issued a certificate of clearance to the commander of the vessel or aircraft.

(2) A commander of a vessel or an aircraft who departs Barbados without a certificate of clearance is guilty of an offence and is liable on summary conviction to a fine of $100 000 or to imprisonment for 2 years or to both; and the vessel or aircraft may be detained and seized.

Production of certificate of clearance

118. The commander of a vessel or an aircraft or his agent shall where requested by a customs officer produce the certificate of clearance for examination and answer any question posed by a customs officer.

Power to refuse or revoke clearance

119. Where a customs officer has reasonable grounds to suspect a contravention of this Act, the officer may refuse to issue, or may revoke a clearance certificate by giving written or oral notice to the commander of a vessel or an aircraft.

Goods for export subject to customs control

120.(1) Goods to be exported are subject to customs control

(a) where the goods are in a package to which a customs seal has been applied, from the time when a customs seal is first applied to the package until the exportation of the goods to a place outside Barbados whether or not any other paragraph of this subsection applies to the goods;

(b) where the goods are to be exported under drawback, from the time of the claim for drawback or the time the goods are brought to a customs controlled area for exportation, if earlier, until the exportation of the goods to a place outside Barbados; and

(c) where the goods are to be exported otherwise than under drawback, from the time the goods are brought to a customs controlled area for exportation, whether or not the goods are later transported from that area to any other location; and where the goods are transported to another location, during the transportation, until their exportation to a place outside Barbados.

(2) For the purposes of subsection (1), goods that are removed from one customs controlled area to another customs controlled area are not removed for domestic use.

PART XX

POST-CLEARANCE COMPLIANCE AND CONTROLS

Post-release controls

121.(1) Notwithstanding section 182, a customs officer may, after releasing goods, and in order to ascertain the accuracy of the particulars contained in a customs declaration, inspect any documents and information relating to operations in respect of the goods or to previous or subsequent commercial operations involving those goods.

(2) Inspections may be carried out at the premises of

(a) the holder of the goods or his agent;

(b) any other person directly or indirectly involved in the operations in a business capacity; or

(c) any other person in possession of relevant documents and information for business purposes.

Record keeping

122.(1) Subject to this Act, any person who imports goods or exports goods from Barbados or otherwise conducts business under this Act shall maintain records and shall render such records for examination and inspection by the Comptroller upon request.

(2) Section 177 shall apply in relation to the production and examination of records maintained pursuant to subsection (1).

PART XXI

POSTAL AND COURIER PROCESSING

Application of Act to goods imported and exported by post and courier

123.(1) This Act applies to the importation and exportation of goods by post and courier.

(2) Where goods imported by post or courier do not correspond with any customs declaration of the contents made in respect of them, the goods are liable to forfeiture.

Time of importation and exportation of goods by post or courier

124.(1) The time of importation of goods by post or courier shall be deemed to be where the goods are brought

(a) by sea, the time when the vessel carrying the goods comes within the territorial waters of Barbados; and

(b) by air, the time when the aircraft carrying the goods arrives in Barbados.

(2) The time of exportation of goods by post or courier shall be deemed to be the time when the goods are put on board the vessel or aircraft with the intention that they be exported in the vessel or aircraft at the time of leaving Barbados.

Production of postal packet declaration

125.(1) Any form of label affixed to a postal packet completed by the sender in respect of the goods contained therein, giving the description and value of the goods shall be deemed to be a declaration of its contents for the purposes of this Act.

(2) The Comptroller may, for the purposes of examination and assessment of duty on goods imported or exported by post or courier, require any officer

designated by the courier service provider or the Postmaster General, as the case may be, to verify the label affixed to a postal packet,

(a) at the port or place of arrival in Barbados; or

(b) at an examination station or such other port or place in Barbados, as the Comptroller directs.

(3) For the purposes of subsection (2), the officer so designated

(a) shall be deemed to be the agent of the importer or the exporter of the goods; and

(b) is authorized and empowered to open the postal packet for examination and assessment of duty.

Declaration respecting postal packets

126. Where a customs officer is of the opinion that the goods contained in a postal packet

(a) are imported for commercial or trade purposes; or

(b) are of a value that exceeds such value as may be prescribed,

the officer shall require the owner of the goods or his agent to complete a customs declaration in respect of the goods.

Goods contained in postal packet contrary to law

127.(1) An officer of the post office may detain any incoming postal packet which he suspects of containing any

(a) letter;

(b) printed matter;

(c) document; or

(d) other thing,

the carriage of which by post or courier is prohibited or restricted by law.

(2) Without prejudice to the exercise of any powers that an officer of the post office may exercise under any other enactment, the officer may deliver a postal packet referred to in subsection (1) to a customs officer who may open and examine the packet in the presence of the person to whom it is addressed.

(3) Notwithstanding subsection (2), a postal packet referred to in that subsection may be opened in the absence of the person to whom it is addressed**,** where, after 14 days' notice in writing from the customs officer, or such shorter time as the Comptroller determines, the person fails to attend.

(4) Where a customs officer finds in a postal packet any

(a) letter;

(b) printed matter;

(c) document; or

(d) other thing,

conveyed by post or imported contrary to any lawful prohibition or restriction, he may detain the packet and deal with the packet and its contents as goods imported contrary to this Act but where he finds no such goods, in the letters, printed matter, document or thing, he shall deliver the packet to the person to whom it is addressed or to the agent of the person, upon that person paying the postage or other sum, if any, chargeable thereon, or where he is absent, forward the packet by post to the person to whom it is to be delivered.

Unclaimed postal packets

128.(1) Where

(a) the addressee of any postal packet addressed to any place in Barbados neglects to claim the postal packet; and

(b) the postal packet is not delivered to an agent of the addressee or returned to the sender within such time as may be specified in any law governing the vessel or aircraft of postal packets by post,

the Postmaster General shall send the postal packet to the Comptroller for deposit in the Government warehouse.

(2) Where the addressee of a postal packet refuses to pay the duties payable under this Act in respect of the goods contained in the postal packet, the Postmaster General shall send the postal packet to the Comptroller for deposit in the Government warehouse.

(3) Where a postal packet is deposited in the Government warehouse, goods contained in the postal packet may be sold or otherwise dealt with, and any proceeds applied, as if they were goods which might be sold or otherwise dealt with under this Act.

Expedited services in respect of couriers

129.(1) The Comptroller shall

(a) establish a program to expedite the process for declaration and clearance of goods by such couriers as may be approved; and

(b) include in the program provision for

(i) documentation of imported goods on a consolidated cargo manifest to be presented prior to arrival of a shipment; and

(ii) exemption from the requirement to pay or secure duties and taxes, where appropriate.

(2) In this section "consolidated cargo manifest" means a combined declaration and clearance document that lists all the shipments for which an expedited declaration and expedited clearance is being requested.

PART XXII

PROHIBITED AND RESTRICTED GOODS

Prohibitions in respect of the protection of mark and indications of origin

130.(1) A non-community good, whether natural or manufactured, that bears on itself or its packing, manufacture or trademark, a name, a sign or any indication that is likely to make a person believe that it is of Community origin shall be prohibited from importation, warehousing and transit.

(2) A non-community good that does not comply with subsection (1) shall be prohibited from importation, warehousing and transit.

(3) In this section "packing" includes cases, packages, envelopes, bands or labels.

Prohibitions in respect of the protection of intellectual property

131. Goods presented under a counterfeit trademark, including when placed

(a) under a suspensive regime;

(b) in a free zone or any other special regime; or

(c) in depots or customs clearance areas

shall not be imported, exported or re-exported.

Prohibited and restricted imports

132.(1) The Minister may by order subject to negative resolution, after consultation with the Comptroller, prohibit or restrict the importation of goods into Barbados.

(2) A prohibition or restriction imposed by an order made under subsection (1) may

(a) be general or limited or absolute or conditional;

(b) be limited to the importation of goods from a specified place or by or from a specified person or class of persons.

Prohibited and restricted exports

133.(1) The Minister may by order subject to negative resolution, after consultation with the Comptroller, prohibit or restrict the export of goods from Barbados.

(2) A prohibition or restriction imposed by an order made under subsection (1) may

(a) be general or limited or absolute or conditional;

(b) be limited to the export of goods from a specified place or by or from a specified person or class of persons.

(3) Unless otherwise provided, an order made under subsection (1) applies to the shipment of goods for use as stores by vessels and aircraft.

Production of licence for restricted goods

134.(1) Where, under this Act or any other enactment the importation or exportation of goods of any class or description is restricted, unless imported or exported under the authority of a licence, the Comptroller may refuse to enter those goods or to clear them for export unless the importer or exporter produces the licence in respect of the goods.

(2) A person who

(a) imports or exports goods referred to in subsection (1) without the required licence; or

(b) fails to comply with a term or condition of the licence,

is liable to pay an administrative penalty not exceeding $10 000 and the goods are liable to forfeiture.

Prohibition or restriction of goods

135. The Minister may by order subject to negative resolution prohibit or restrict

(a) the exportation of any class or description of goods; and

(b) the importation or exportation of any class or description of goods to or from any specified place in Barbados.

Goods imported in transit, in transhipment or as stores

136.(1) Subject to subsection (2), goods imported in transit, in transhipment or as stores shall not be treated as prohibited or restricted goods.

(2) Subsection (1) does not apply where the goods referred to in that subsection are expressly prohibited or restricted from being imported in transit, in transhipment or as stores under this Act or any other enactment prohibiting or restricting the importation or exportation of goods.

(3) Goods imported in accordance with subsection (1) shall be exported within such time as the Comptroller determines.

Penalty for prohibited goods

137.(1) A person who

(a) imports into Barbados or unloads or lands in Barbados goods, the importation of which is prohibited under this Part;

(b) exports or transports with intent to export goods from Barbados, the exportation of which is prohibited under this Part;

(c) is knowingly concerned in any importation, exportation, transportation, unloading or landing of goods to which paragraph *(a)* or *(b)* applies;

(d) without lawful justification or excuse, removes from a customs controlled area goods that are imported in contravention of this Part;

(e) is knowingly concerned in or conspires in the removal of goods from a customs controlled area, the importation of which is prohibited under this Part,

is guilty of an offence and is liable on summary conviction to a fine of $200 000 or to imprisonment for 2 years or to both.

(2) It is not a defence in a prosecution for an offence under subsection (1)*(a)*, *(b)*, *(d)* or *(e)* that the defendant had no knowledge or no reasonable cause to believe that the goods in respect of which the offence was committed were prohibited imports or prohibited exports.

Duty of oil, gas and petroleum product import and export licensees to keep records

138. A holder of a licence to import or export oil, gas or any other petroleum product shall keep the following records and, upon request of a customs officer, make these records available for examination:

(a) the licence or permit number;

(b) the total quantity of oil, gas or other petroleum product imported or exported;

(c) the value or price of the oil, gas or other petroleum product imported or exported, expressed in Barbadian currency; and

(d) the name of the domestic seller of the imported oil, gas or other petroleum product, or the name of the customer of the exported oil, gas or other petroleum product.

PART XXIII

DUTY FREE ZONES

Definition of duty free zone

139. For the purposes of this Act, "duty free zone" means any part of the customs territory of Barbados where any goods introduced are generally regarded, insofar as import duties and taxes are concerned, as being outside the territory.

Establishment of duty free zones

140.(1) The Minister may appoint any place as a duty free zone.

(2) The Comptroller shall determine the area of the zone referred to in subsection (1) and its access and exit points.

(3) A duty free zone shall be enclosed and the area and access and exit points of the zone shall be under customs supervision.

(4) Any person, goods or means of transport entering or exiting a duty free zone may be subjected to customs control.

(5) The Comptroller may prohibit any person who does not provide the necessary assurance of compliance with this Act from carrying on an activity in a duty free zone.

Activities in duty free zone

141.(1) No person shall conduct an activity in a duty free zone unless the Comptroller is satisfied that the premises on which the activity is to be conducted are fit for the purpose.

(2) The Comptroller may prohibit or restrict activities in a duty free zone having regard to the nature of goods in question and the requirements for supervision, security and safety.

(3) The Comptroller may prohibit a person from engaging in an activity in a duty free zone activity where the person does not satisfy any prescribed requirements.

Placement of goods under regime

142.(1) Except as otherwise provided in this Act, goods brought into a duty free zone may only be exported or re-exported.

(2) Non-Community goods admitted to a duty free zone may be placed in the inland procedures for clearance.

(3) Goods admitted to a duty free zone and subsequently exported are entitled to relief from duties.

Duty free stores

143.(1) Subject to this Act, the Comptroller may issue to any qualified person, a licence to operate any place as a duty free store for the sale of goods free of duties and taxes to

(a) persons about to depart from Barbados; or

(b) persons purchasing the goods with foreign currency,

and such licence may specify any restriction as to the classes of goods that may be received therein or the circumstances in which the goods may be received.

(2) A licence issued under subsection (1) may be amended, suspended, renewed, cancelled or reinstated in such circumstances as may be prescribed.

Procedures required for duty free goods

144.(1) Duty free goods subject to conditions and other goods such as domestic merchandise and merchandise previously entered or withdrawn for consumption and brought into a duty free store may be warehoused in a duty free store, provided that

(a) the goods are physically segregated from one another;

(b) the goods are identified or marked to enable the Comptroller to distinguish the duty free goods from other merchandise; or

(c) the owner has an electronic inventory system capable of immediately distinguishing the duty free goods from other merchandise.

(2) Duty free goods subject to conditions for exportation at airport or seaport exit points may be sold and delivered only to

(a) purchasers who display valid tickets or, in the case of chartered or for-hire flights that have not issued tickets, other proof of impending departure from Barbados; and

(b) crew members who have been engaged for a flight or voyage departing directly from Barbados with no intermediate stops in Barbados.

(3) Duty free store proprietors

(a) shall maintain, at the duty free store or at another location approved by the comptroller, a current inventory separately for each storage area, crib and sales area containing conditionally duty free goods by warehouse entry, or by unique identifier where permitted by the Comptroller;

(b) shall assure that the Comptroller has access to the records, and that the records are stored in such a way as to keep transactions of multiple facilities separated; and the inventory must be reconcilable with the accounting and inventory records; and

(c) are subject to any other record-keeping requirements in this Act.

(4) The proprietor or operator of a duty free store shall, where a customs officer so requests, afford the officer free access to the duty free store or any premises or place under his control that is attached to or forms part of the duty free store, and open any package or container of goods therein or remove any covering therefrom.

Liability of operator

145.(1) An operator of a duty free store is liable to pay any duties or taxes levied under this Act in respect of goods that have been received in the duty free store and to satisfy any other obligation under this Act in respect of the goods unless the operator proves that the goods

(a) are still in the duty free store;

(b) have been destroyed while in the duty free store;

(c) have been taken as a sample or seized; or

(d) have been cleared.

(2) The rates of duties or taxes payable shall be the rates applicable to the goods at the time they were received in the duty free store.

(3) No goods shall be removed from a duty free store by any person other than a customs officer or another person under any other enactment, unless the goods have been cleared by a customs officer or under any enactment.

Regulations on duty free zones

146. The Minister may make regulations to give effect to this Part.

PART XXIV

SPECIFIC POWERS AND OBLIGATIONS OF CUSTOMS OFFICERS

Patrol and surveillance

147.(1) Subject to subsection (2), a customs officer may, for the purposes of the detection of offences under this Act, at any time and in such manner as the officer considers appropriate, patrol and pass freely through any place in Barbados, whether or not the place is private property, and may remain in any such place for the purpose of carrying out investigations or surveillance.

(2) This section does not authorize the customs officer referred to in subsection (1) to enter a dwelling-house without first obtaining the permission of the occupant.

(3) An officer proceeding as authorized under subsection (1), shall not be liable to any criminal or civil proceeding for so doing.

Power to land or moor

148. A customs officer in command or in charge of any vessel or aircraft engaged in the prevention of smuggling, may anchor, moor or berth that vessel, land that aircraft or haul the vessel ashore at any place in Barbados, and the customs officer shall not be liable to any criminal or civil proceedings for so doing.

Power to board a vessel

149.(1) At any time while a vessel is within the territorial waters of Barbados, a customs officer may require that vessel to stop and may board it, and remain on board and search any part of it.

(2) A customs officer on board any vessel referred to in subsection (1) may

(a) cause goods to be marked before they are unloaded from that vessel;

(b) examine and take account of goods in the course of their being unloaded;

(c) lock up, seal, mark or otherwise secure goods or their containers carried in that vessel;

(d) break open an area or container that is locked and to which no keys are provided;

(e) require any document or book that should be on board that vessel to be produced to him for examination; and

(f) require answers to the officer's questions relating to the vessel, its cargo, stores, baggage, crew, passengers, voyage or flight.

(3) Any person who

(a) prevents a customs officer from performing any act;

(b) refuses to

(i) produce any documents; or

(ii) to answer any questions under that subsection

is guilty of an offence and is liable on summary conviction to a fine of $100 000 or to imprisonment for 2 years or to both.

(4) Goods found concealed on board a vessel within the territorial waters of Barbados are liable to forfeiture.

(5) Where the commander of avessel refuses to stop or permit a customs officer to board when required to do so pursuant to subsection (1), the commander or his agent is guilty of an offence and is liable on summary conviction to a fine of $100 000 or to imprisonment for 3 years or to both.

(6) Where the crew of a vessel refuse to stop when required to do so pursuant to subsection (1), and a chase ensues and the identity of the commander of the vessel cannot be ascertained, every member of the crew of the vessel who is on board during the chase is guilty of an offence and is liable on summary conviction to a fine of $200 000 or to imprisonment for 2 years or to both.

(7) Where the commander of a vessel or any crew member of that vessel moves or causes to be moved any vessel whilst the customs officer is on board, without the permission of the customs officer that person is guilty of an offence and is liable on summary conviction to a fine of $100 000 or to imprisonment for 2 years or to both.

Power to station an officer on vessel or aircraft

150.(1) The Comptroller may station a customs officer on board a vessel or an aircraft at any time while it is in Barbados.

(2) The commander of a vessel or an aircraft on which a customs officer is stationed who neglects or refuses to provide

(a) proper and sufficient food and water, together with reasonable accommodation for the officer; and

(b) a means of safe access to and egress from the vessel or aircraft as required by the officer,

is guilty of an offence and is liable on summary conviction to a fine of $100 000 or to imprisonment for 2 years or to both.

Power to access and search customs controlled area

151.(1) Without prejudice to any other power contained in this Act, a customs officer shall have a right of access to and a power to search any vessel, aircraft or vehicle in any part of a customs controlled area, and any goods found in the customs controlled area.

(2) The power of search referred to in subsection (1) includes the power to break into or open any locked building, vehicle, place or container; and such action by a customs officer shall not result in any prosecution or action at law for so doing.

Searching of vessel or aircraft

152.(1) A customs officer may search a vessel or an aircraft

(a) that has arrived in Barbados;

(b) that is departing Barbados for a place outside Barbados;

(c) that is not a vessel or an aircraft to which paragraph *(a)* or *(b)* applies, if it is carrying any international cargo, while the vessel or aircraft remains within Barbados; or

(d) that is not a vessel or an aircraft to which paragraph *(a)*, *(b)* or *(c)* applies if it is within Barbados and that officer has reasonable cause to suspect

(i) is carrying dutiable uncustomed, prohibited, restricted or forfeited goods; or

(ii) has been, is being or is about to be involved in the commission of an offence under this Act.

(2) In pursuance of his duty under subsection (1), a customs officer may, using such force as is reasonable in the circumstances, enter every part of a vessel or an aircraft and open any package, locker or other place and examine all of the goods found in the vessel or aircraft.

(3) A person who prevents a customs officer from carrying out his duties under this section is guilty of an offence and is liable on summary conviction to a fine of $100 000 or to imprisonment for 2 years or to both.

Power to search premises

153.(1) Subject to section 196, where a customs officer has reasonable grounds to believe that an article or goods that are not in compliance with this Act are being kept at or concealed in any building or other place, the customs officer may, on the authorization of the Comptroller in writing

(a) enter the building or place at any time and search for, seize, detain or remove any article or goods that appear to him to be not in compliance with this Act;

(b) so far as is reasonably necessary for the purpose of entry, search, detention or removal, break open any door, window or container, and force and remove any other impediment or obstruction; and

(c) search for and remove any invoice, bill of lading, customs declaration, correspondence or other document relating to the importation and exportation of goods.

(2) Where in the case of entry, search, seizure, detention or removal, damage is caused, and the article or goods referred to in subsection (1) are not found, the owner of the damaged goods or the damaged building is entitled to recover from the Comptroller the cost of repairing the damage.

(3) A person who prevents an entry or search in accordance with this section is guilty of an offence and is liable on summary conviction to a fine of $100 000 or to imprisonment for 2 years or to both.

(4) Notwithstanding subsection (1), a customs officer shall not enter a private dwelling house except with the consent of the occupant or owner or pursuant to a warrant issued in accordance with this Act.

Power to search vehicles

154.(1) A customs officer who has reasonable grounds to believe that there are

(a) any dutiable, uncustomed, prohibited or forfeited goods in any vehicle that is within a customs controlled area; or

(b) any goods that have been unlawfully imported or are in the process of being unlawfully exported in a vehicle which is not within a customs controlled area,

may stop the vehicle and search it and may detain the vehicle for such period as may be reasonably necessary for that purpose.

(2) Notwithstanding any other power provided under this Act, where a customs officer has reasonable grounds to believe that a vehicle is carrying any article that is liable to forfeiture, he may stop and search that vehicle.

(3) Where the person in charge of a vehicle fails to stop or refuses to permit the vehicle to be searched in accordance with subsection (1) or (2), that person is guilty of an offence and is liable on summary conviction to a fine of $100 000 or to imprisonment for 2 years or to both and forfeiture of the goods.

Securing goods

155. For the purpose of performing any function or exercising any power that is required or authorized under this Act, a customs officer may, while boarding or searching any vessel or aircraft

(a) secure goods on board the vessel or aircraft by the appropriate means; or

(b) remove goods on board a vessel or an aircraft to a secure place.

Search warrants - uncustomed or prohibited goods

156.(1) Where an officer has reasonable cause to suspect that any uncustomed or prohibited goods or any books or documents relating to uncustomed or prohibited goods are harboured, kept or concealed in any house or other place in the Island, and it is made so to appear by information on oath before any magistrate or justice of the peace in the Island, it shall be lawful for the magistrate or justice of the peace by special warrant under his hand

(a) to authorize the officer to enter and search the house or other place by day or night; and

(b) to seize and carry away any uncustomed or prohibited goods or any books or documents relating to uncustomed or prohibited goods as may be found therein.

(2) It shall be lawful for the officer referred to in subsection (1), in case of resistance, to break open any door and remove any impediment or obstruction to such entry or seizure as aforesaid.

(3) A person who prevents an entry or search carried out in accordance with this section is guilty of an offence and is liable on summary conviction to a fine of $100 000 or to imprisonment for 2 years or to both.

(4) Notwithstanding subsection (1), an officer shall not enter a private dwelling house except with the consent of the occupant or owner or pursuant to a warrant issued in accordance with this Act.

Determination of search

157.(1) Before a person referred to in section 160 or in section 161 is searched he must be informed of the intended search and he may request to be taken with all reasonable dispatch before a superior officer on duty for a determination to be made of the need for the search.

(2) Where a person is detained under this Act to be searched and there is no suitable person to conduct the search available at the place where the search is to take place, the person detained may be taken to a prescribed place to be searched.

(3) Where a search of a person is to be conducted

(a) a female shall not be searched except by a female customs officer and a male shall not be searched except by a male customs officer; and

(b) a minor, whether male or female, shall not be searched except in the presence of his parent or guardian.

(4) A customs officer is not liable to prosecution in respect of a search made in accordance with this section.

(5) A body cavity search of a person shall be conducted by a medical practitioner who is of the same gender as the person who is to be searched.

(6) For the purposes of subsection (5)“body cavity search”means an inspection, probing or examination of a person’s anus or genitals.

Application of search provisions

158. Sections 159, 160 and 161 apply to

(a) a person on board a vessel or an aircraft that has arrived in or is departing from Barbados;

(b) a person in the process of disembarking from or embarking onto a vessel or an aircraft mentioned in paragraph *(a)*; or

(c) a person who, having entered Barbados at a customs place remains in that customs place.

Preliminary search of persons by use of aids

159.(1) A customs officer may conduct a preliminary search of a person to whom section 157 applies and may detain that person for the purpose of conducting a preliminary search.

(2) A preliminary search referred to in subsection (1) is a search that

(a) involves little or no physical contact between the person conducting the search and the person being searched; and

(b) is conducted by using any aid including

(i) a dog;

(ii) a chemical substance;

(iii) x-ray or imaging equipment; or

(iv) some other mechanical, electrical or electronic device or other similar aid, but not by any more invasive means.

Searching of person where reasonable cause to suspect goods are concealed

160.(1) A customs officer may search or cause a person to be searched where the customs officer has reasonable grounds to believe that the person

(a) has concealed on or about his person

(i) any dutiable, uncustomed, restricted or prohibited goods or goods that are liable to forfeiture;

(ii) evidence relating to any goods referred to in sub-paragraph (i) or

(iii) any article that is or might be evidence of a contravention of this Act; and

(b) either the person

(i) is in a customs controlled area;

(ii) has, within the preceding 24 hours arrived in Barbados at a place other than a custom place; or

(iii) is about to depart from Barbados from any place other than a customs place.

(2) A customs officer may use reasonable force where it is necessary to detain or search any person pursuant to subsection (1).

(3) A customs officer who searches a person pursuant to subsection (1) may require any person that the customs officer thinks necessary to assist him.

(4) A search of a person may be conducted whether or not that person has been the subject of a preliminary search under section 159.

Searching of person for dangerous items

161.(1) A customs officer may immediately detain and search a person where the officer has reasonable grounds to believe that

(a) the person has a dangerous item on or about his person; and

(b) the item poses a threat to the safety of the officer or any other person.

(2) A customs officer who undertakes a search under this section shall, within 3 working days of the search, give a written report to the Comptroller of the search, the circumstances in which it was conducted, and the matters that gave rise to the reasonable belief that the person had a dangerous item on or about his person.

(3) For the purposes of this section "dangerous item" means

(a) any firearm or ammunition as defined in the *Firearms Act*, Cap. 179; or

(b) any substance or device that could be used to endanger life or safety of any person.

Seizure of items found

162.(1) A customs officer may seize any article found when carrying out a search under section 160 that the officer has reasonable grounds to believe is an item referred to in that section.

(2) An officer may seize any article found on or about a person when carrying out a search under section 161 that the officer has reasonable grounds to believe is an item referred to in that section.

Questioning of persons in customs controlled area

163. A customs officer may question any person in a customs controlled area.

Firing on vessel

164.(1) A customs officer in charge of a properly identified vessel in the service of the Government shall, having hoisted or displayed the proper identification, within the territorial waters of Barbados, chase any vessel where the commander of the vessel

(a) fails to comply with signals or instructions given by the customs officer; or

(b) refuses to permit the vessel to be boarded by the customs officer,

and may, fire at or onto a vessel to compel the commander to bring the vessel to a stop.

(2) A customs officer may only fire at or onto a vessel where he is satisfied that

(a) the commander or person in charge of the vessel is aware of the signal to stop; and

(b) a warning shot has first been fired.

(3) Every officer or person acting on his direction shall be fully indemnified and discharged from every indictment, information, prosecution, penalty or other proceeding for acting under this section and from all of the consequences thereof.

(4) Subsection (3) does not apply where the person has not acted in good faith or acted without reasonable care.

Detention of vessel

165.(1) Where a customs officer has reasonable cause to believe that

(a) an offence under this Act has been or is being committed with the use of a vessel while it is in Barbados and the customs officer has reasonable cause to believe that there is on the vessel;

(b) a person who was carried into Barbados on it in contravention of the Act, the customs officer may direct the vessel;

(i) to proceed to the nearest customs controlled area or to any other place the officer considers appropriate; or

(ii) to remain where it is, and the officer may detain the vessel for any period of time and for any purpose reasonably necessary to carry out an investigation into the commission of the offence.

(2) Where the person in charge of a vessel without a certificate of insurance attempts or threatens to cause the vessel to depart from a place where the vessel has been directed to remain pursuant to subsection (1), the customs officer may, notwithstanding any other seizure power under this Act, seize and detain the vessel until a certificate of clearance has been obtained.

Power to examine and take account of goods

166.(1) Notwithstanding any other provision of this Act, a customs officer may examine any goods

(a) that have been imported;

(b) that are in a public or private warehouse;

(c) that have been loaded into or unloaded from any vessel or aircraft at any place in Barbados;

(d) that have been entered for exportation or for use as stores;

(e) that have been brought to any place in Barbados for exportation or for use as stores or for shipment for exportation or for use as stores; or

(f) in respect of which any claim for drawback, allowance, rebate, remission or repayment of duty has been made

and may for that purpose require any container to be opened or unstuffed.

(2) An examination of goods by a customs officer under subsection (1) shall be made at such time and place as the officer may direct.

(3) Where, under any other enactment, imported goods are also required to be examined by a person other than a customs officer, the customs officer shall, to the extent practicable, arrange for both examinations to be conducted simultaneously, at the same place, with a view to releasing the goods in a timely manner if all regulatory requirements are met.

(4) A declarant may be present or may be represented by another person at the examination of goods he declares.

(5) At any examination of goods, priority shall be given to live animals and perishable goods.

(6) Any transportation of goods to a place so directed under subsection (2) and any

(a) unloading;

(b) opening;

(c) unstuffing;

(d) weighing;

(e) restuffing;

(f) bulking;

(g) sorting;

(h) lotting;

(i) marking;

(j) numbering;

(k) loading;

(l) carrying; or

(m) landing

of the goods, and any treatment applied to the containers in which the goods are kept, for the purposes of and incidental to the examination by the customs officer, their removal for exportation or for use as stores or warehousing, shall be done, and any facilities or assistance required for the examination shall be provided, by or at the expense of the owner of the goods.

(7) Where

(a) imported goods that a customs officer has the power under this section to examine; or

(b) goods other than imported goods that a customs officer has directed to be brought to a place for the purposes of examination,

are, without the authority of the customs officer, removed from customs control before they have been examined, those goods shall be liable to forfeiture.

(8) For the purposes of this section, whenever goods are removed to a bonded area for examination

(a) the customs officer at the bonded area shall access a copy of the import entry for the goods free of duty;

(b) the goods shall be removed directly from the place of importation to the bonded area and if not sealed, the goods shall be accompanied by a customs officer; and

(c) the packages shall not be opened or otherwise dealt with except in the presence of or by the authority of the customs officer.

Examination of goods subject to customs control

167.(1) A customs officer may examine, weigh, analyse, test or cause to be examined, weighed, analysed or tested goods subject to the control of the Comptroller, and may, for that purpose, open or cause to be opened any packages in which the goods are contained or believed to be contained.

(2) All reasonable expenses incurred by the customs officer under subsection (1) are a debt due to the Government by the importer, exporter or the owner of the goods.

(3) The powers conferred by subsection (1) extend to the examination, weighing, analysing or testing of a suitcase, pallet, bulk cargo container or other package subject to customs control.

(4) The examination may include the physical or chemical testing of or the drilling into, or the dismantling of the goods.

(5) A customs officer shall, subject to section 196, be allowed free access to all lands, buildings and places and to all goods in or on any lands, buildings or places for the purpose of exercising powers under this section in respect of goods that are, or are believed to be subject to customs control.

Examination of goods no longer subject to customs control

168.(1) This section applies to goods that have ceased to be subject to customs control but that the Comptroller has reasonable grounds to suspect are

(a) goods in respect of which an offence under this Act has been committed; or

(b) goods that are liable to forfeiture under this Act.

(2) The Comptroller may require a person who has or whom the Comptroller believes has possession or control of goods described in subsection (1) to produce them for inspection by a customs officer.

(3) A customs officer may exercise all the powers provided under section 167 in respect of goods described in subsection (1).

(4) A customs officer may take and retain possession of goods produced under subsection (2) for the purposes of exercising the powers given by subsection (3) and may retain possession of the goods until the completion of the investigation into the grounds for suspecting that the goods are goods

(a) in respect of which an offence under this Act has been committed; or

(b) that are liable to forfeiture under this Act.

(5) A person who fails or refuses to produce or account for any goods when required to do so under this section is guilty of an offence and is liable on summary conviction to a fine of $50 000 or 3 times the value of the goods, whichever is greater.

Accounting for goods

169.(1) The Comptroller may by notice in writing, require the person who is authorized to operate a customs controlled area to

(a) account for goods that the Comptroller believes have been entered into the customs controlled area; and

(b) produce documents, books or records whether in electronic form or otherwise relating to the movement of goods into or out of the customs controlled area.

(2) A person who fails or refuses to comply with subsection (1) is liable to pay an administrative penalty not exceeding $100 000 or 3 times the value of the goods, whichever is greater.

Production of goods

170.(1) A customs officer may require the person who is authorized to operate a customs controlled area to produce to the officer goods that according to any record are within the area.

(2) A person who fails or refuses to produce or account for any goods when required to do so under this section is guilty of an offence and is liable to pay an administrative penalty not exceeding $100 000 or 3 times the value of the goods, whichever is greater.

Verification of entries

171.(1) The Comptroller may require from a person making an entry of goods

(a) proof by declaration or the production of documents; and

(b) any other declaration or documents otherwise required by this Act,

of the correctness of the entry, and may refuse to deliver the goods or to accept the entry before the proof is provided.

(2) Where the Comptroller is not satisfied

(a) that the entry made pursuant to subsection (1) in relation to any goods is correct; or

(b) with any other aspects of the importation or exportation of goods,

the Comptroller may detain the goods for a period that is reasonably necessary to enable the goods to be examined, and where necessary, cause an investigation to be made, whether in Barbados or elsewhere, into the importation or exportation of those goods or the Comptroller may require a deposit to cover the duty liability for the goods.

Power to take samples

172.(1) A customs officer may take and use samples of goods for such purpose as the Comptroller may deem necessary, and such samples shall be disposed of and accounted for in such manner as the Comptroller may direct.

(2) A sample taken in accordance with subsection (1) shall be as small as possible for the purpose for which it is taken.

(3) Any sample taken by a customs officer under subsection (1) shall, unless it is liable to forfeiture or where it is impractical to do so, be returned upon payment of such duty as may be payable in respect of it to the person who was at the time of the taking of the sample, the owner of it.

Power of arrest

173.(1) Subject to subsection (2) a customs officer or a member of the Police Force may arrest a person who has committed, or who the officer has reasonable grounds to believe has committed or is about to commit an offence under this Act.

(2) A person may not be arrested for an offence by virtue of subsection (1) more than 7 years after the commission of the offence.

(3) Where a customs officer arrests a person in accordance with this section, the customs officer shall, as soon as practicable, deliver the arrested person into the custody of a member of the Police Force.

Escape from officer

174. Where

(a) a person subject to arrest under section 173 escapes from a customs officer or a member of the Police Force attempting to arrest him; or

(b) a customs officer or a member of the Police Force is for any reason unable or fails to arrest the person

the person may afterwards be arrested and detained by a customs officer or at any place in Barbados within 7 years from the time the offence was committed, and dealt with as if he had been arrested at the time of committing the offence.

Power to pay rewards

175.(1) The Comptroller may, with the approval of the Governor General, reward or give an award to any person excluding a customs officer for any service in relation to an assigned matter that appears to him to merit such reward or award.

(2) Notwithstanding subsection (1), approval need not be obtained for a reward that does not exceed $1 000.

Power to require attendance

176.(1) Where under this Act, the commander of a vessel or an aircraft or his agent, is required to answer any question put to him by a customs officer, the customs officer may, at any time while the vessel or aircraft is within the territorial waters of Barbados, require the commander of the vessel or aircraft or his agent to appear before the customs officer for the purposes of this subsection.

(2) A person who fails to comply with subsection (1) is guilty of an offence and is liable on summary conviction to a fine of $10 000 or to imprisonment for 3 months or to both.

Power to require information and the production of evidence

177.(1) The Comptroller may, at any time within 7 years of the importation or exportation of any goods, require any person concerned in

(a) the importation, exportation or carriage coastwise; or

(b) the carriage, unloading, landing or loading of the goods,

to furnish to him in such form and manner as the Comptroller may require, any information relating to the goods, and to produce and permit a customs officer to inspect, take extracts from, make copies of or remove for a reasonable period,

any invoice, bill of lading or other book or document relating to the goods in that person's control or possession.

(2) The Comptroller may require evidence to be produced to his satisfaction in support of any information provided in respect of goods imported or exported or in respect of which drawback, allowance, rebate, remission or repayment of duty is claimed.

(3) A person who fails to comply with this section is liable to pay administrative penalty not exceeding $10 000.

Discretionary power to Comptroller in special circumstances

178. The Comptroller may permit the entry, unloading, removal and loading of goods, and the report and clearance of a vessel or an aircraft in such form and manner as he may direct to meet the exigencies of any case to which this Act cannot be conveniently applied.

Duty to conduct administrative proceedings without delay

179. The Comptroller shall hear, determine and conduct all administrative proceedings and related matters under this Act

(a) without delay; and

(b) in accordance with the principles of natural justice.

Power to require security

180.(1) Notwithstanding any security requirement provided for by this Act, the Comptroller may, where he thinks fit, require any person to give security by bond or otherwise for the observance of any condition or restriction in connection with an assigned matter.

(2) The Comptroller may, pending the giving of the required security, refuse to accept an entry or to perform any other act in relation to the matter with respect to which the security is required.

(3) Security may be required by the Comptroller in relation

(a) to a particular transaction, transactions generally or to a class of transactions; and

(b) to a particular period and amount.

(4) Where the Comptroller is satisfied that the obligations for which any security given in accordance with this section have been fulfilled, the person who gave the security shall be released from the conditions of the security as soon as possible, subject to any provisions of this Act prohibiting the release of the security.

(5) Any bond taken on behalf of the Government may be cancelled at any time by order of the Comptroller and be valid in law and, upon breach of any of the conditions, may be sued and proceeded upon, and it shall not be necessary for the validity of such bonds that they be

(a) sealed or delivered in the presence of a witness;

(b) prepared by an attorney-at-law; or

(c) delivered as a specialty.

(6) Where the Comptroller is dissatisfied with the sufficiency of any security, he may require that a new security be put in place in addition to the existing security.

(7) Where a new security is not given, the Comptroller may refuse to accept an entry or to perform any other act in relation to any matter with respect to which the new security is required.

(8) A person who is dissatisfied with a decision of the Comptroller under this section may, within 7 days after the date on which notice of the decision is given, request in writing that the Comptroller reconsider the decision.

Power to require provision of facilities

181.(1) A person who is required under this Act to provide a secure place to be used for the examination of goods by a customs officer shall

(a) provide and maintain the equipment and facilities that are reasonably necessary to enable a customs officer to take account of or examine the goods and to conduct searches or perform any other duties the Comptroller may direct;

(b) provide the officer with any assistance necessary for the performance of the officer's duties and allow and give access to their accounting system.

(2) The Comptroller may withhold the services of his Department where the proper facilities are not available.

(3) The person referred to in subsection (1) shall provide and maintain any fitting required for the purpose of affixing any lock or seal that the customs officer may need to affix to the premises or to any part of the premises of that person or to any vessel or aircraft or apparatus kept on the premises.

(4) Any person referred to in this section who

(a) wilfully destroys or damages any fitting, lock or key provided for use with the lock, or any label or seal placed on such lock;

(b) improperly retains access to any place or article secured by a lock put in place by a customs officer; or

(c) has any fitting or article intended to be secured by means of a fitting constructed in a manner that defeats the intention of this section,

is guilty of an offence and is liable on summary conviction to a fine of $20 000 or to imprisonment for 6 months or to both.

Audit or examination of records

182.(1) Subject to section 196 a customs officer may, at all reasonable times

(a) enter any premises or place where records are kept pursuant to this Act; and

(b) audit or examine the records either in relation to a specific transaction or to assess the adequacy and integrity of the manual or electronic system by which such records are created and stored.

(2) A customs officer shall, pursuant to subsection (1), and subject to section 196, have full and free access to all lands, buildings and places and to all books, records and other documents, whether or not in electronic form and whether in the custody or under the control of a person licensed under this Act or an importer, exporter or other person, for the purpose of inspecting any books, records and other documents and any property, process or matter that the officer considers

(a) necessary or relevant for the purpose of collecting any duties due under this Act for the purpose of carrying out any function lawfully performed by a customs officer; or

(b) likely to provide any information otherwise required for the purpose of enforcing this Act.

(3) A customs officer referred to in subsection (1) or (2) may, without fee or reward, take extracts from, or make copies of, any books, records or other documents referred to in this section.

(4) A customs officer shall not enter any private dwelling house, land, building or place except with the consent of the owner or occupier or pursuant to a warrant issued in accordance with this Act.

Requirement to produce documents

183.(1) Where

(a) a customs officer has reasonable cause to believe that

(i) goods have been unlawfully imported, exported, undervalued, entered, removed or otherwise unlawfully dealt with by any person in contravention of this Act; or

(ii) any person intends to unlawfully import, export, manufacture, undervalue, enter, remove or otherwise deal with any goods; or

(b) goods have been seized under this Act,

the Comptroller may, by notice in writing require any person whom the customs officer believes to be or to have been the owner, importer or exporter of those goods, or the agent of the owner, importer or exporter of the goods or to have been involved in any way in the activities referred to in paragraph *(a)*, to produce and deliver to that customs officer, all books of account, invoice books, other books, records or documents whether or not in electronic form, in which any entry or memorandum appears or may be supposed to appear concerning the purchase, importation, exportation or manufacture cost, valuation of or payment for the goods within a period of 7 years preceding the date of the notice.

(2) In addition to the requirements of subsection (1), the Comptroller may require the owner, importer or exporter of those goods, or an agent of the owner, importer or exporter to

(a) allow the customs officer to make copies of or take extracts from any of the documents, books or records; and

(b) answer any question concerning those documents, books or records.

(3) A person who fails to comply with a request under this section is liable to pay an administrative penalty not exceeding $10 000.

Power to require copies of documents

184. Where a person is required to submit a report, entry or other form for the purposes of this Act, the Comptroller may require that person to submit as many copies of the report, entry or other form, as the Comptroller may deem necessary.

Further powers in relation to documents

185.(1) The Comptroller may, by written notice, require a person

(a) to produce for inspection to a specified officer documents or records that the Comptroller considers necessary or relevant to

(i) an investigation under this Act;

(ii) an audit under this Act;

(iii) the recovery of a debt due and payable to the Government; or

(b) to allow the specified officer to take extracts from, or make copies of documents or records of the kind referred to in paragraph *(a)*; or

(c) to appear before a specified officer and answer all questions put to the person concerning the goods, or transactions relating to those goods, that are the subject of the investigation or audit or that are relevant to the recovery of the debt referred to in paragraph *(a)*.

(2) A person who fails to comply with a request made under this section is liable to pay an administrative penalty not exceeding $10 000.

Copying of documents obtained during search

186.(1) Where a customs officer carries out a lawful search, inspection, audit or examination under this Act, and has reasonable cause to believe that documents coming into his possession during such search, inspection, audit or examination are evidence of the commission of an offence under this Act, the customs officer

may remove the documents for the purpose of making copies, including digital copies.

(2) Where documents have been removed in accordance with subsection (1), and the documents are copied on the instructions of the Comptroller, the documents shall be returned to the person entitled to possess them within 6 months of the date they were removed.

(3) A copy of any document certified under the seal of the Customs Department is admissible as evidence before any court or tribunal, as if the copy were the original.

Retention of documents and goods obtained during a search

187.(1) Where a customs officer carries out any lawful search, inspection, audit or examination under this Act, and has reasonable cause to suspect that any documents or goods coming into his possession during the search, inspection, audit or examination are

(a) evidence of the commission of an offence under this Act; or

(b) intended to be used for the purpose of committing an offence under this Act,

(c) property obtained through unlawful conduct; or

(d) intended to used for money laundering or other unlawful conduct or activities related to terrorism

the officer may, subject to subsection (4), take possession of and retain the documents or goods.

(2) Where a customs officer takes possession of a document under subsection (1), he shall, at the request of the person otherwise entitled to the document, provide that person with a copy of the document certified under the seal of the Customs Department as a true copy.

(3) Notwithstanding any other law, a copy certified in accordance with subsection (2) is admissible in evidence in a court or before a tribunal as if the copy were the original document.

(4) Where a customs officer takes possession of and retains documents or goods under this section

(a) as a result of an offence being committed in respect of the documents or goods, the court or tribunal may order, either at the hearing or on a subsequent application, that the document or goods

(i) be delivered to the person appearing to the court or tribunal to be entitled to them; or

(ii) be otherwise disposed of in such manner and under such conditions as the court or tribunal thinks fit; and

(b) the customs officer may at any time, unless an order has been made under paragraph *(a)*

(i) return the documents or goods to the person from whom they were taken; or

(ii) apply to the magistrate for an order as to their disposal, and on any such application the magistrate may issue an order that a court or tribunal may issue under paragraph *(a)*.

(5) Where proceedings for an offence relating to the goods or document retained under this section are not brought within a period of 6 months after the date on which the officer took possession of the document or goods, any person claiming to be entitled to the goods or document may, after the expiration of that period, apply to a magistrate for an order that they be delivered to that person, and on any such application the magistrate may

(a) refuse to issue the order; or

(b) make any order that a court or tribunal may make under subsection (4).

Detention of goods suspected to be illegally obtained

188.(1) A customs officer may, without warrant, seize and detain goods where

(a) the goods are in Barbados and he is satisfied that they

(i) are being or are intended to be, exported from Barbados; or

(ii) are being, or have been imported into Barbados;

(b) the goods came to his attention, or into his possession during a search, inspection, audit or examination under this Act or any Act that relates to the reporting of imports or exports of currency; and

(c) he has reasonable grounds to suspect that the goods were obtained in contravention of any law.

(2) Reasonable force may be used by a customs officer where it is necessary to seize or detain goods under this section.

(3) Where the person from whom goods have been seized and detained is identified, but is not present when the seizure and detention occurs, the Comptroller shall notify that person in writing of the detention and seizure and issue a receipt.

(4) Subject to section 189 goods detained under this section shall be taken to a place of security as directed by the customs officer or other authorized person and detained.

Return of detained goods

189.(1) Goods seized and detained under section 188 shall be returned to the person from whom they were seized as soon as practicable after

(a) the completion of all relevant investigations, where it is shown that the goods are not tainted property or uncustomed goods; or

(b) the expiration of the investigation period, whichever is sooner.

(2) Notwithstanding subsection (1), the Comptroller may continue to detain the goods referred to in that subsection until the relevant proceedings or requests, including any resulting applications are determined, where on or before the expiration of the investigation period

(a) an information is laid, in respect of an offence;

(b) a foreign country makes a request to the Attorney General under any provision or Agreement relating to mutual legal assistance.

(3) For the purposes of subsection (1), "investigation period" means, in relation to goods seized and detained under section 188

(a) the period of 6 months after the date on which the goods were seized and detained; and

(b) includes any extension of that period granted by the court.

Extension of 6 month period

190.(1) The 6 month period referred to in section 189(3)*(a)* may be extended by order of the court for a further period of up to 90 days where the application for the extension is made before the expiration of the original 6 month period and the court is satisfied

(a) on the balance of probabilities that there is reasonable cause to believe that the goods were obtained in contravention of any law, as referred to in section 188(1)*(c)*; and

(b) that it is necessary to grant the extension in order to complete the investigations in or outside Barbados.

(2) The application for an extension shall be made in writing and served on the person from whom the goods were seized where it is possible to identify and locate that person and the application shall include

(a) a description of the goods detained;

(b) the date on which the detention commenced;

(c) a statement of the facts supporting the reasonable grounds required under section 188;

(d) a statement of the reasons why the extension is necessary to allow the completion of investigations in or outside Barbados in relation to the goods.

(3) The person from whom the goods were seized is entitled to appear and be heard on the application and shall be notified at least 24 hours before the hearing of the application, of the time and place of that hearing.

Custody of certain detained goods

191.(1) Where a vessel, aircraft or animal is detained under section 188, a customs officer may leave that item in the custody of

(a) the person from whom the goods have been detained; or

(b) any other person authorized by the customs officer who consents to having such custody.

(2) A person who has the custody of goods under subsection (1) shall, until a final decision is made under section 189 as to whether or not the goods are to be returned, hold them in safe keeping without charge to the Government and in accordance with conditions imposed by the Comptroller.

(3) A person to whom subsection (2) applies shall

(a) make the goods available to the customs officer on request;

(b) not alter or dispose of the goods or remove them from Barbados, unless authorized to do so by the customs officer; and

(c) return the goods on demand to the custody of the Comptroller.

Search warrants

192.(1) A customs officer may make an application in writing on oath to a magistrate where he is satisfied that there is on the premises

(a) evidence of

(i) the commission of an offence under this Act; or

(ii) the unlawful exportation or importation of goods;

(b) any goods that is intended to be

(i) used for the purpose of committing an offence under this Act; or

(ii) unlawfully exported or imported; or

(c) anything that is liable to seizure under this Act,

and a magistrate may where he is so satisfied issue a search warrant.

(2) Before applying for a warrant, the customs officer referred to in subsection (1), shall make reasonable enquiries and shall disclose in the application, details of any other applications that the officer knows have been made within the previous 20 workings days in respect of the premises or goods specified, including the offence or offences alleged in any other application and the result of any other application or applications.

(3) A search warrant referred to in subsection (1) shall be directed

(a) to and executed by a designated customs officer; or

(b) to customs officers generally and executed by any customs officer or officers designated by the Comptroller.

Entry and search under warrant

193.(1) Subject to section 157 in executing a warrant, a customs officer or a member of the Police Force may, in addition to searching the premises specified in the warrant, search or detain a person who is at the place while the warrant is

being executed and who the officer believes is connected to the matter referred to in the warrant.

(2) A customs officer shall not detain a person pursuant to subsection (1) for more than 48 hours.

(3) In executing a warrant referred to in subsection (1), a customs officer or a member of the Police Force may seize any item found on the premises being searched or on the person being searched where the customs officer or member of the Police Force has reasonable cause to believe that the item referred to in the warrant or any other item found, is liable to seizure.

(4) A person called upon to assist in executing the warrant, has, for that purpose, the powers referred to in this section.

(5) A person who fails or refuses to comply with a search or detention pursuant to this section is guilty of an offence and is liable on summary conviction to a fine of $10 000or to imprisonment for 3 months or to both.

Execution of search warrant

194.(1) A customs officer executing a search warrant shall produce the warrant for inspection upon initial entry into the premises, and in response to any reasonable request thereafter**,** and when requested by or on behalf of the owner or occupier of the premises shall provide a copy of the warrant no later than 7 days after the request is made.

(2) The person executing the warrant shall inform the owner or occupier of the premises of the date and time of the execution of the warrant and the name of the officer in charge of the search

(a) by delivering to the owner or occupier of the premises a written notice containing the information;

(b) by leaving a notice in a prominent place

(i) at the premises; or

(ii) attached to the goods searched;

(c) by sending a notice to the owner or occupier of the premises by registered mail; or

(d) in such other manner as the court may direct in any particular case.

Use of aids by a customs officer

195.(1) In exercising any power under this Act to board a vessel or an aircraft, enter a building or search any premises, a customs officer or a member of the Police Force may bring with him and use as an aid in exercising those powers

(a) a dog;

(b) a chemical substance;

(c) an x-ray or other imaging equipment; or

(d) some other mechanical, electrical or electronic device or other similar aids.

(2) This section does not apply to a search carried out on residential premises except pursuant to a warrant issued under section 192.

Conditions applying to entry of buildings

196. Every provision of the Act that confers on a customs officer the power to enter any building requires the authority of a warrant and is subject to

(a) identification being produced by the customs officer on initial entry; and

(b) the authority for the entry and the purpose of the entry being clearly stated to the owner or person occupying the building, if present.

Detention of dangerous goods concerning an aircraft

197.(1) A customs officer may detain goods found in the course of exercising any power of search or examination concerning an aircraft where the officer has a reasonable cause to believe that the goods

(a) are dangerous goods that may not be lawfully carried on an aircraft; and

(b) are proposed to be carried by an operator of an aircraft.

(2) Where a customs officer detains goods under subsection (1) he shall as soon as practicable, deliver those goods into the custody of a member of the Police Force.

(3) Where goods have been delivered in accordance with subsection (2), responsibility for those goods passes from the Comptroller to the Commissioner of Police.

Protection of persons assisting customs officers

198.(1) A person assisting a customs officer in the execution of his duty under this Act, shall not be liable for the loss of or damage to any document, goods, vessel or aircraft caused by the action or inaction of that person lawfully exercising any power conferred under this Act.

(2) Subsection (1) does not apply where the person in question has not acted in good faith or has acted without reasonable care.

Witnessing of signatures

199. Where a document or declaration is required by this Act to be signed in the presence of the Comptroller or any particular officer and such document or declaration is signed in the presence of a witness whose signature is known to and who is approved by the Comptroller or the customs officer who receives the document or declaration, the document or declaration shall be as valid as if it had

been signed in the presence of the Comptroller or the customs officer in whose presence it is required to be signed.

Documents in foreign language

200. Where a document in a foreign language is presented to a customs officer carrying out his duty or exercising of any power under this Act, the officer shall require the person who presented the document to supply an English translation of the document prepared by a person approved by the Comptroller, at the expense of the person who presented the document.

PART XXV

ADMINISTRATIVE PENALTIES

Administrative penalties

201. A person who contravenes a provision of this Act or any regulations made under this Act in respect of which an administrative penalty is payable for the contravention, shall pay the administrative penalty to Comptroller.

Penalty notice

202.(1) A customs officer may issue an administrative penalty notice in such form as the Comptroller determines to a person described in section 201.

(2) An administrative penalty notice shall

(a) specify the nature of the act constituting the contravention and the penalty to be paid; and

(b) require the person to whom it is addressed to pay the penalty within 14 days of the date of the notice to the Comptroller.

(3) A person who is in receipt of an administrative penalty notice shall pay the amount of the penalty to the Comptroller and comply with any additional requirement contained in the notice on or before the date specified in the notice.

Procedure for challenging alleged contravention

203. Notwithstanding section 202(3), a person to whom an administrative penalty notice is addressed and who wishes to challenge the alleged contravention, may instead of paying the amount of the penalty, apply to the Comptroller for a reconsideration of the matter in accordance with section 247.

Penalty to constitute a debt to the Government

204. An administrative penalty may be recovered as a debt due to the Government.

PART XXVI

OFFENCES AND PUNISHMENT

Falsification of record in System

205. A person who falsifies or without the permission of the Comptroller, deletes, damages, alters or impairs any record, data message or information stored in or processed by the System or on any duplicate electronic storage medium respecting the System is guilty of an offence and is liable on summary conviction to a fine of $50 000 or to imprisonment for 12 months or to both.

Unauthorized use of the System

206.(1) A person shall not transmit to or receive information from the System or otherwise make use of the System unless that person is registered by the Comptroller as an authorized user of the System.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on conviction on indictment to a fine of $250 000 or to imprisonment for 5 years or to both.

Unauthorized modification of the System

207.(1) A person who unlawfully causes a modification of any programme or data held in the System and by so doing damages the System, is guilty of an offence and is liable on conviction on indictment to a fine of $250 000 or to imprisonment for 5 years or to both.

(2) Without prejudice to the fine imposed in respect of an offence committed under subsection (1), where damage is caused to the System as a result of an offence committed under subsection (1), the person convicted of the offence is liable to an additional fine of $250 000 or to imprisonment for 5 years or to both.

(3) For the purposes of this section

(a) it is immaterial that the modification referred to in subsection (1) is not directed at

(i) any particular programme or data;

(ii) a programme or data of any kind; or

(iii) a programme or data held in the System;

(b) it is immaterial whether an unauthorized modification is or is intended to be permanent or merely temporary;

(c) a modification of any programme or data held in the System takes place if by reason of the operation of any function of the System

(i) any programme or data held in the System is altered or erased;

(ii) any programme or data is added to or removed from any programme or data held in the System; or

(iii) any act occurs which impairs the normal operation of the System; and

(d) any act that contributes toward the causing of a modification referred to in paragraph *(c)* shall be regarded as causing the modification.

Unauthorized obstruction of the System

208.(1) A person who knowingly and without authority

(a) interferes with, interrupts or obstructs the lawful use of the System; or

(b) impedes, prevents access to or impairs the usefulness of any programme or data on the System

is guilty of an offence and is liable on conviction on indictment to a fine of $250 000 or to imprisonment for 5 years or to both.

(2) Without prejudice to the fine imposed in respect of an offence committed under subsection (1)**,** where damage is caused to the System as a result of an offence committed under subsection (1), the person convicted of the offence is liable to an additional fine of $250 000 or imprisonment for 5 years or to both.

Unauthorized interruption of the System

209. A person who unlawfully engages in conduct which causes the System to cease to function whether temporarily or permanently is guilty of an offence and is liable on conviction on indictment to a fine of $250 000 or to imprisonment for 5 years or to both.

Impersonating an officer

210.(1) A person who for the purpose of

(a) obtaining admission to any building, vessel, aircraft or any other place; or

(b) doing or procuring to be done, any act which he is not entitled to do or procure to be done of his own authority

falsely assumes the name, designation or character of the Comptroller, of a customs officer or of any person authorized by the Comptroller to discharge any duty relating to any assigned matter is guilty of an offence and in addition to any

other proceedings that may be taken against him is liable on summary conviction to a fine of $100 000 and to imprisonment for 2 years or to both.

(2) Where a person by words, conduct or demeanour holds himself out to be the Comptroller or a customs officer or wears or uses the uniform, name, designation or description of the Comptroller or customs officer, that person is guilty of an offence under subsection (1).

Offences against officers

211.(1) A person who fires upon

(a) a vessel in the service of the Customs Department; or

(b) a customs officer in the execution of his duties under this Act,

whether or not he causes physical damage or injury, is guilty of an offence and is liable on conviction on indictment to a fine of $250 000 or to imprisonment for 5 years or to both.

(2) A person who

(a) obstructs, hinders, molests or assaults a customs officer in the execution of his duties under this Act;

(b) does anything which impedes or is calculated to impede the carrying out of any search for anything liable to forfeiture under this Act, or the detention, seizure or removal of anything under this Act;

(c) rescues, damages or destroys anything liable to forfeiture or does anything calculated to prevent the procuring or giving of evidence as to whether or not anything is liable to forfeiture;

(d) interferes with any equipment, vessel, dog, communication system or other article used or intended for use by a customs officer;

(e) acts with the intention of impairing the effectiveness of any equipment, vessel, dog, communication system or other article used or intended for use by a customs officer;

(f) prevents the arrest of any person under this Act or rescues any person so detained,

is guilty of an offence and is liable on summary conviction to a fine of $100 000 or to imprisonment for 2 years or to both.

(3) Where an offence is committed under this section by a person who

(a) is armed with a weapon at the time of the offence; or

(b) behaves in a violent manner,

that person is guilty of an offence and is liable on conviction on indictment to imprisonment for 7 years.

(4) A person who uses abusive, offensive or threatening language to a customs officer in the execution of his duties under this Act is guilty of an offence and is liable on summary conviction to a fine of $5 000 or to imprisonment for one month or to both.

(5) A person who staves, breaks or destroys goods

(a) to prevent their detection or seizure by a customs officer or another person authorized to detain or seize the goods; or

(b) to evade the payment of duty,

is guilty of an offence and is liable on summary conviction to a fine of $100 000 or to imprisonment for 2 years or to both.

(6) A person who

(a) rescues any person apprehended for any offence punishable by a fine or imprisonment under this Act or prevents the apprehension of such a person; or

(b) obstructs a customs officer in going, remaining or returning from on board a vessel or an aircraft within Barbados in searching the vessel or aircraft, or in detaining or seizing any goods liable to forfeiture or in otherwise acting in the execution of his duties,

is guilty of an offence and is liable on summary conviction to a fine of $100 000 or to imprisonment for 2 years or to both.

Carrying away officers

212.(1) Where a vessel or an aircraft departs from Barbados carrying on board a customs officer without his consent, the commander of the vessel or aircraft or his agent is guilty of an offence and is liable on conviction on indictment to a fine of $300 000 or to imprisonment for 5 years or to both.

(2) In addition to any other liability imposed under subsection (1), the amount of any expense incurred by the Comptroller or the Government caused by the carrying away of the customs officer may be recovered from the agent or owner of the vessel or aircraft.

Interfering with customs vessels, aircraft

213. A person who unless for just and sufficient cause interferes in any way with any vessel, aircraft, vehicle, buoy, anchor, chain, rope or mark that is being used by a customs officer in the performance of his duty, is guilty of an offence and is liable on summary conviction to a fine of $100 000 or to imprisonment for 2 years or to both.

Signalling to smugglers

214.(1) In this section "prohibited signal" or "prohibited message" means a signal or message connected with the smuggling or intended smuggling of goods into or out of Barbados.

(2) A person who by any means sends a prohibited signal or transmits a prohibited message from any place in Barbados or from any vessel or aircraft to a person in another vessel or aircraft, is guilty of an offence and is liable on summary conviction to a fine of $100 000 or to imprisonment for 2 years or to both.

(3) The equipment or apparatus used for the sending of the signal or message referred to in subsection (2) is liable to forfeiture.

(4) Subsections (2) and (3) apply whether or not the person for whom the signal or message is intended is in a position to receive it or is actually engaged at the time in smuggling.

(5) For the purposes of this section, where a vessel or an aircraft to which a signal described in subsection (1) is sent

(a) changes its course;

(b) weighs anchor, if it was at anchor; or

(c) sends a signal in apparent response,

that vessel or aircraft, for the purposes of this section**,** shall be deemed to be engaged in smuggling, unless the contrary is proved.

(6) Where a customs officer or a member of the Police Force has reasonable grounds to believe that a prohibited signal or message is being or is about to be transmitted from any vessel, aircraft**,** building or other place in Barbados, he may without having obtained a warrant, board or enter the vessel, aircraft, building or place and take such steps as are reasonably necessary to prevent the sending of that signal or message.

Adapting vessel or aircraft for smuggling

215. Where a vessel or an aircraft arrives in Barbados or is in Barbados and has

(a) any part adapted for the purpose of concealing goods or persons; or

(b) any hole, pipe or device adapted for the purpose of concealing goods or persons,

the commander, owner or other person in charge of the vessel or aircraft are each guilty of an offence and are each liable on conviction on indictment to a fine of $200 000 or to imprisonment for 3 years or to both and the vessel or aircraft is liable to forfeiture.

Communicating with arriving vessels and aircraft

216. A person who, other than in an official capacity, communicates with a vessel or an aircraft that is arriving in Barbados before that vessel has been cleared by a customs officer is guilty of an offence and is liable on conviction on indictment to a fine of $100 000 or to imprisonment for 2 years or to both.

Offering smuggled goods for sale

217. Where a person offers goods for sale that have

(a) been imported without payment of duty; or

(b) been otherwise unlawfully imported

those goods, are liable to forfeiture and the person offering them for sale is guilty of an offence and is liable on summary conviction to a fine of $5 000 or 3 times the value of the goods, whichever is greater or to imprisonment for one month or to both.

Special penalty where offender is armed or disguised

218. A person who is concerned in the movement or carriage of goods and who

(a) performs any act contrary to the lawful importation or exportation of the goods; and

(b) is armed with an offensive weapon or is disguised in any way; or

(c) is armed with an offensive weapon or is disguised and is found in Barbados in possession of any goods that are liable to forfeiture under this Act,

is guilty of an offence and is liable on summary conviction to a fine of $100 000 or to 3 times the value of the goods, whichever is greater, or to imprisonment for 2 years or to both, and the goods are liable to forfeiture.

False declarations

219.(1) Any person who, in any matter relating to customs or under the control or management of the Comptroller

(a) makes and subscribes, or causes to be made and subscribed, any false declaration;

(b) makes or signs or causes to be made or signed, any declaration, certificate or other instrument required to be verified by signature only, the same being false in any particular;

(c) makes or signs any declaration made for the consideration of any officer on any application presented to him, the same being untrue in any particular;

(d) when required by or under this Act to answer questions put to him by any officer, answers any such questions falsely;

(e) counterfeits, falsifies, or wilfully uses when counterfeited or falsified, any document required by or under this Act or by or under the directions of any officer, or any instrument used in the transaction of any business or matter relating to customs;

(f) alters any document or instrument after the same has been officially issued;

(g) counterfeits the seal, signature, initials or other mark of or used by any officer for the verification of any such document or instrument, or for the security of goods or any other purpose in the conduct of business relating to customs or under the control or management of the Comptroller; or

(h) on any document or instrument required for the purposes of this Act, counterfeits or imitates the seal, signature, initials or other marks of or made use of by any other person whatsoever, whether with or without the consent of such person,

shall, on conviction on indictment, be liable to a fine of $150 000 or 3 times the value of the goods, whichever is greater, or to imprisonment for 2 years or to both.

(2) Where a false declaration is determined by the Comptroller to be a clerical error or mistake of fact, the person may submit a corrected entry and, in such a case, that person shall not be required to pay the penalty.

(3) Where by reason of an act described in subsection (1), the full amount of duty payable is not paid or any overpayment is made in respect of any drawback, allowance, rebate or repayment of duty, the amount of duty unpaid or the overpayment shall be payable immediately to the Comptroller and may be recovered accordingly.

Counterfeiting documents, seals, stamps, etc.

220.(1) A person who

(a) with respect to a document that is required under this Act or that is used in the transaction of any business relating to an assigned matter

(i) counterfeits or falsifies the document;

(ii) knowingly accepts, receives or uses any document so counterfeited or falsified; or

(iii) alters any document after it has been officially issued; or

(b) counterfeits any seal, stamp, signature, initials or other mark, of, or used by, a customs officer for the verification of a document, the security of goods or for any other purpose relating to an assigned matter,

is guilty of an offence and is liable on summary conviction to a fine of $100 000 or 5 times the value of the goods, whichever is greater, or to imprisonment for 12 months or to both, and the goods are liable to forfeiture.

(2) Any goods to which a document referred to in subsection (1) relate shall be liable to forfeiture.

False scales

221.(1) A person who is required under this Act to provide scales, and who provides scales that do not give a true reading is liable to pay an administrative penalty not exceeding $10 000.

(2) Where a person

(a) referred to in subsection (1); or

(b) by whom, or on whose behalf, an article is or is to be weighed, counted, gauged or measured,

for the purpose of taking account of the goods or the conduct of an examination by a customs officer, performs any act that may prevent or hinder the officer from taking a true account or making a proper examination, the person is liable to pay an administrative penalty not exceeding $10 000.

(3) In this section "scales" include weights, measures and weighing or measuring machines or instruments.

Fraudulent evasion

222.(1) A person who

(a) knowingly acquires possession of

(i) goods that have been unlawfully removed from a warehouse;

(ii) goods that are chargeable with any duty that has not been paid; or

(iii) goods with respect to the importation or exportation of which any prohibition or restriction is in force under any law; or

(b) is in any way concerned with smuggling, unloading, landing, carrying, removing, depositing, harbouring, keeping or concealing goods described in paragraph *(a)*,

is guilty of an offence and is liable on summary conviction to a fine of $100 000 or 5 times the value of the goods, whichever is greater, or to imprisonment for 2 years or to both.

(2) A person who evades the payment of any duty chargeable on imported goods is guilty of an offence and is liable on summary conviction to a fine of $100 000 or 3 times the value of the goods, whichever is greater, or to imprisonment for 2 years or to both.

(3) Goods referred to in subsections (1) and (2) are liable to forfeiture.

Vessels and vehicles

223.(1) Every person who**,**

(a) without lawful authority, acquires possession or control of an uncustomed vehicle or vessel;

(b) forges, alters or tampers with

(i) a vehicle's registration number, licence plate or other identification mark; or

(ii) the hull mark or other mark of a vessel with intent to conceal its true identity; or

(c) knowingly acquires possession of a vehicle or vessel referred to in paragraph *(a)* or *(b)*

is guilty of an offence and is liable on summary conviction to a fine of $100 000 or to 3 times the value of the goods, whichever is greater, or to imprisonment for 2 years or to both.

(2) The vehicle or vessel, referred to in subsection (1) is liable to forfeiture.

Removing locks, seals or marks

224.(1) Where under this Act, a lock, seal or mark is used to secure or identify any goods, place or container in which goods are kept, a person who, without the authority of a customs officer

(a) removes or tampers with the lock, seal or mark; or

(b) before the lock, seal or mark is lawfully removed, removes or adds any goods,

is guilty of an offence and is liable on summary conviction to a fine of $100 000 or to 3 times the value of the goods, whichever is greater, or to imprisonment for 2 years or to both.

(2) Goods referred to in subsection (1) are liable to forfeiture.

(3) For the purposes of subsection (1), goods in a vessel or an aircraft are deemed to be in the charge of the commander of the vessel or aircraft.

Intermeddling with goods found floating in the sea

225.(1) A person who is not a customs officer and who

(a) interferes with or picks up goods, including spirits, that are prohibited or restricted from being imported or exported, or are uncustomed goods and are found floating or sunk in the sea; and

(b) fails to report the goods to a customs officer**,**

is guilty of an offence and is liable on summary conviction to a fine of $100 000 or to imprisonment for 2 years or to both.

(2) Goods referred to in subsection (1) are liable to forfeiture.

Penalty in cases of forfeiture

226. Where a vessel, aircraft or goods become liable to forfeiture under this Act, the person who was concerned in the act or omission that causes the

vessel, aircraft or goods to become liable to forfeiture is guilty of an offence and is liable on conviction on indictment to a fine of $100 000 or 5 times the value of the vessel, aircraft or goods seized, whichever is greater.

Offences in relation to warehouses

227.(1) A person who does not have the authority of a customs officer and who without just cause

(a) opens a door or lock of a customs warehouse; or

(b) creates or obtains access to a customs warehouse or to goods in a customs warehouse,

is guilty of an offence and is liable on summary conviction to a fine of $100 000 or 3 times the value of the goods, whichever is greater or to imprisonment for 2 years or to both.

(2) Goods are liable to forfeiture where they have been

(a) entered for warehousing and are taken into a warehouse without the authority or direction of a customs officer;

(b) entered for warehousing and are removed without being warehoused;

(c) deposited in a customs warehouse and are unlawfully removed or are unlawfully loaded onto a vessel or an aircraft for removal or for exportation or for use as stores;

(d) entered for warehousing and are concealed either before or after they have been warehoused; or

(e) lawfully permitted to be removed from a customs warehouse without payment of duty for any purpose and are not delivered to the destination to which they should have been taken in accordance with that permission,

and such goods may be retained in the custody of the Police Force until the proceedings are completed or it is decided that no proceedings will be brought.

(3) Where the goods seized or detained may be required for use in connection with proceedings that may be brought under another enactment

(a) notice in writing of the seizure or detention and of the intention to retain the goods in question in the custody of the Police Force, together with full particulars of the goods shall be given to the Comptroller as soon as practicable; and

(b) a customs officer shall be permitted to examine the goods and take account of them while they remain in such custody.

(4) A person who commits an act referred to in subsection (2) is guilty of an offence and is liable on summary conviction to a fine of $100 000 or 3 times the value of the goods, whichever is greater or to imprisonment for 2 years or to both.

(5) A person who is guilty of an offence under subsection (3) and who

(a) defrauds the Government of any duty chargeable on the goods referred to in that subsection; or

(b) evades any prohibition or restriction in force with respect to any goods under this Act

is guilty of an offence and is liable on conviction on indictment to a fine of $100 000 or 3 times the value of the goods, whichever is greater, or to imprisonment for 2 years or to both.

General provisions as to offences

228.(1) Where an offence under any enactment relating to an assigned matter has been committed by a body corporate and is proved to have been committed with the consent or connivance of, or be attributable to neglect on the part of any

(a) director;

(b) manager;

(c) secretary;

(d) other similar officer of the body corporate; or

(e) person purporting to act in the capacity of a functionary mentioned in paragraph *(a)* to *(d)*,

that person as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) Where in any proceeding for an offence under this Act a question arises as to the duty or the rate chargeable on any goods and it is not possible to ascertain the relevant time, the duty or rate shall be determined as if the goods had been imported or exported without entry at the time when the proceeding was commenced.

General penalty

229. A person who is guilty of an offence for which no specific penalty is provided is liable on summary conviction to a fine of $100 000 or to imprisonment for 2 years or to both.

PART XXVII

FORFEITURE AND SALE OF GOODS

Forfeiture of goods

230.(1) Subject to subsection (3), and notwithstanding any other provision of this Act, goods shall be liable to forfeiture where the goods are

(a) unloaded at any port, unloaded from an aircraft, removed from their place of importation or from a customs controlled area without payment of the duties due;

(b) imported, landed or unloaded contrary to any prohibition or restriction in force with respect to the goods by virtue of any other enactment;

(c) prohibited or restricted goods by or under any enactment and are found, whether before or after unloading, to have been concealed in any manner on board a vessel or an aircraft;

(d) chargeable with duty and are found, whether before or after unloading, to have been concealed in any manner on board a vessel or an aircraft;

(e) imported or concealed in a container holding goods of a different description;

(f) found, whether before or after delivery, not to correspond with the customs declaration made in respect of the goods; or

(g) concealed or packed in any manner appearing to be intended to deceive a customs officer.

(2) Subsection (1)*(a)* does not apply where another enactment expressly provides otherwise.

(3) A person who

(a) imports goods or causes goods to be imported

(i) concealed in a container holding goods of a different description; or

(ii) packed in a manner appearing to be intended to deceive a customs officer; or

(b) directly or indirectly imports or causes to be imported or entered, goods found, whether before or after delivery, not to correspond with the entry made in respect of them,

is liable to pay an administrative penalty not exceeding $2 500 or 3 times the value of the goods, whichever is greater; and the goods are liable to forfeiture.

(4) A person who staves, breaks or destroys goods to prevent their detention or seizure by a customs officer or by another person authorized to detain or seize the goods is liable to pay an administrative penalty not exceeding $2 500 or 3 times the value of the goods, whichever is greater.

Detention, seizure of goods

231. Any goods that are liable to forfeiture under this Act may be detained or seized by a customs officer.

Special provisions as to forfeiture of large vessels

232.(1) Notwithstanding any other provision of this Act, a vessel of 250 or more tonnes burden shall not be liable to forfeiture unless the offence in respect of or in connection with which the forfeiture is sought

(a) was the primary purpose of the voyage during which the offence was committed; or

(b) was committed while the vessel was under chase after refusing to stop when ordered to do so.

(2) Where

(a) a vessel of 250 or more tonnes burden would, but for subsection (1), be liable to forfeiture for or in connection with an offence under this Act; and

(b) in the opinion of the Comptroller, a responsible officer, including the commander, a mate or engineer of the vessel carrying a passenger certificate, the purser or chief steward, is implicated by his own act or by neglect in the offence,

the Comptroller may impose an administrative penalty not exceeding $15 000 on the vessel and until the penalty is paid, the Comptroller may withhold clearance of the vessel.

(3) No claim shall be brought against the Comptroller for damages in respect of the payment of any deposit or the detention of any vessel under this section.

(4) The exemption from forfeiture of any vessel under this section shall not affect the liability to forfeiture of any goods carried on board.

Disposal of forfeited goods

233.(1) The Government has the property right to forfeited goods or to the proceeds of the sale of goods under section 236.

(2) Condemned goods may be

(a) sold by public auction; or

(b) used, destroyed or otherwise disposed of after their condemnation, as the Comptroller may direct.

Sale of certain seized goods

234.(1) The Comptroller may, before condemnation, sell or destroy any article which has been seized as being liable to forfeiture and is or constitutes

(a) a living creature;

(b) goods that are of a perishable nature; or

(c) goods that, in the opinion of the Comptroller,

(i) are likely to deteriorate or diminish in value during storage;

(ii) are desirable to sell immediately; or

(iii) are likely to create a health or safety risk if stored.

(2) The net proceeds of a sale referred to in subsection (1) are deemed to be substituted for the goods sold and this Part, insofar as it is applicable, extends and applies to those proceeds.

Sale of goods condemned as forfeited

235. Any goods condemned as forfeited in accordance with this Act or deemed to have been condemned as forfeited in accordance with this Act, shall, unless they are prohibited goods, be sold by public auction.

Sale of goods not condemned

236. Where goods that are not condemned or deemed to be condemned as forfeited are sold under this Act, the goods shall, unless they are of a perishable nature, be sold at a public auction.

Notice of seizure

237.(1) Where goods have been seized, the customs officer shall within 5 working days, give

(a) notice in writing of the seizure in such form as the Comptroller determines; and

(b) the rationale for the seizure,

to any person known or believed to have an interest in the goods or, where that person is overseas, to his agent in Barbados.

(2) Notwithstanding subsection (1), a seizure is not invalidated or rendered illegal by reason of any failure to give such notice where reasonable steps were taken to give the notice.

Delivery of goods seized on deposit of value

238.(1) Where goods have been seized and are liable to forfeiture, unless the goods are prohibited goods, the Comptroller may, before their condemnation, deliver the goods to the owner or other person from whom they were seized, where the owner or person deposits with the Comptroller

(a) a cash sum equal to the value of the goods; and

(b) any duty to which the goods may be liable as determined by the Comptroller.

(2) The money deposited pursuant to subsection (1) shall be substituted for the goods seized and this Part, so far as it is applicable, applies to the money accordingly.

Application for order disallowing seizure

239. A person who claims an interest in goods that have been seized and are liable to forfeiture may, within 40 working days after the date on which a notice is given to the person under section 237, or within such further time as the court may allow, apply to the court for an order

(a) disallowing the seizure, on the grounds that there is no reasonable cause for the seizure;

(b) directing that the goods be returned to the applicant; and

(c) directing that the Government pay the applicant a sum as compensation for

(i) any depreciation in the value of the goods resulting from the seizure or detention; and

(ii) any transportation and storage costs,

as the court thinks fit.

Court may disallow seizure

240.(1) Where an application is made under section 239, the court may dismiss the application or issue an order

(a) disallowing the seizure in whole or in part; and

(b) directing that the goods be returned to the applicant; and

(c) directing that the Government pay the applicant a sum as compensation for

(i) any depreciation in the value of the goods resulting from the seizure or detention; and

(ii) any transportation and storage costs,

and the order may be issued on such terms and conditions as the court may determine.

(2) Where the court issues an order dismissing an application under subsection (1), the order issued is for condemnation of the goods to the Government.

(3) No order disallowing the seizure of goods shall be issued where the court is of the opinion that all or some of goods are required to be produced in evidence

(a) in any proceedings pending under this Act or another enactment; or

(b) where there are proceedings pending that may result in condemnation of the goods.

(4) No order for the payment of compensation shall be made except

(a) in respect of goods that, in the opinion of the court, were seized or detained without reasonable cause; and

(b) to the extent that the court disallows the seizure.

(5) Where the court issues an order for the payment of an amount as compensation to any person under this section, the amount so awarded is recoverable by the person as a debt due from the Government.

Application for order disallowing seizure where notice is not received

241.(1) Except where the goods have already been condemned to the Government, a person who claims an interest in goods seized as being liable to forfeiture under this Act who did not receive notice under section 237 may, within one month after the date on which the goods were seized, apply to the court for an order

(a) of a kind specified in section 239 where the goods seized have not been sold, destroyed or otherwise disposed of; or

(b) that compensation be paid by the Government for the whole or part of any loss suffered by the person where the goods seized have been sold, destroyed or otherwise disposed of.

(2) The court may

(a) dismiss an application made under subsection (1); or

(b) issue an order

(i) of a kind specified in section 240 where the goods seized have not been sold, destroyed or otherwise disposed of; or

(ii) that compensation of such amount as the court determines be paid by the Government for the whole or part of any loss suffered by the applicant where the goods seized have been sold, destroyed or otherwise disposed of.

(3) No order for the payment of compensation referred to in subsection (2) shall be issued except in respect of goods that, in the opinion of the court, were seized or detained without reasonable cause, and except to the extent that the court disallows the seizure.

(4) Where the court issues an order dismissing the application under subsection (1), that order is deemed to be an order for condemnation of the goods to the Government unless the goods have already been condemned under section 242.

(5) Without limiting subsection (2), the court may dismiss an application under subsection (1) that is not made as soon as reasonably practicable after the applicant became aware of the seizure of the goods.

Condemnation if no appeal against seizure

242. Where no application is made under section 240 within the time specified in that section, the goods shall be condemned to the Government as if such an application had been made and dismissed.

Condemnation if application discontinued

243. Where an application under section 239 or section 241 is not completed, the goods shall be condemned to the Government as if the application had been dismissed.

Condemnation of seized goods on conviction

244.(1) Subject to subsection (2), where this Act provides that on the commission of an offence goods are liable to forfeiture, the conviction of a person for the offence has effect as a condemnation without suit or judgment, of any goods that have been seized in accordance with this Act and

(a) in respect of which the offence was committed; or

(b) which were otherwise liable to forfeiture.

(2) Where the court imposes a sentence on a person on the conviction of the person for an offence referred to in subsection (1), the court may order the restoration of the goods forfeited to the person from whom the goods were seized, and where such an order is issued, the conviction does not have effect as a condemnation of the goods.

(3) Where the court issues an order pursuant to subsection (2), the court may impose such conditions as it thinks fit.

(4) Subsection (2) does not apply where the goods have, before the conviction, been sold by public auction or restored to the person from whom they were seized or otherwise disposed of by the Comptroller under any other provision of this Act.

Disposal of forfeited goods

245.(1) Forfeited goods and the proceeds of sale of those goods are the property of the Government.

(2) Condemned goods may be sold by public auction, used, destroyed or otherwise disposed of after their condemnation as the Comptroller may direct.

Application of forfeiture provisions

246. The provisions of this Act with respect to the forfeiture of goods extend and apply to any vessel or other article forfeited under this Act, except where this Act provides otherwise.

PART XXVIII

ADMINISTRATIVE PROCEEDINGS BY THE COMPTROLLER

Application for reconsideration

247.(1) Where a person to whom this subsection applies

(a) is not satisfied with a decision of the Comptroller, that person may, within 14 days of the date of that decision, apply to the Comptroller for a reconsideration of the decision; or

(b) is aggrieved by the failure of the Comptroller to make a decision, that person may, within 30 days of the date of the application, apply to the Comptroller for consideration of the application.

(2) Subsection (1) applies to

(a) the importer or exporter of goods;

(b) a person expressly permitted under this Act to apply to the Comptroller for a reconsideration;

(c) a person who has made an application for permission or licence in respect of any benefit or matter under this Act;

(d) a person who is aggrieved by the manner in which any right or interest in any manner has been dealt with by any person under this Act;

(e) the agent or a person referred to in paragraph *(a)* or *(c)*;

(f) a person in relation to an administrative penalty notice issued in accordance with section 203.

(3) An application for reconsideration of a decision through administrative proceedings made under subsection (1) shall be made in such form as the Comptroller determines and shall state the grounds on which the application is based and contain any documentation or other information relied upon in support of the request for reconsideration.

Powers of the Comptroller in administrative proceedings

248. Where a matter is dealt with administratively by the Comptroller, the Comptroller may

(a) stay the proceedings for condemnation of anything forfeited under this Act;

(b) restore anything seized under this Act, subject to conditions, if any;

(c) impose, reinstate or revoke penalties or fines, as the case may be, in respect of a contravention dealt with administratively under this Act;

(d) seize goods;

(e) mitigate or remit any fine or penalty imposed or restore anything seized under this Act; or

(f) in relation to any duty, assessment or claim, confirm the original assessment or decision or substitute a new assessment or decision for the original assessment or decision, resulting in an increase, a decrease or a confirmation of the amount of duty determined to be due.

Consideration of application by the Comptroller

249.(1) The Comptroller shall consider an application made under section 247 as soon after its receipt as may be practicable and, after taking into account any further submissions of the person making the application endeavour to make

a decision as soon as may be practicable but not later than under 45 days of the filing of the application for reconsideration.

(2) The Comptroller shall keep a minute book in which shall be recorded the proceedings of an administrative matter considered under this section.

(3) This section shall not affect any right conferred by any other law to claim goods in case of a service or to commence legal proceedings at any time prior to the payment of a fine or penalty.

PART XXIX

APPEALS

Establishment of Customs Appeal Tribunal

250.(1) There is established a Customs Appeal Tribunal which shall hear appeals from decisions of the Comptroller made pursuant to section 260.

(2) The *Schedule* shall have effect as to the constitution and procedure of the Tribunal and otherwise in relation thereto.

(3) The Tribunal shall have a separate existence apart from its members.

Appeals to the Tribunal

251.(1) A person who is aggrieved by a decision of the Comptroller made pursuant to section 247 or section 248 may, within 14 days of receipt of the decision, appeal to the Tribunal.

(2) Every hearing and determination by the Tribunal shall be in accordance with the principles of natural justice.

Hearing

252.(1) Subject to section 253, where the Tribunal considers that an appeal is ready to be heard, the Tribunal shall fix a date, time and place for hearing the

appeal and shall notify the appellant and the Comptroller of the date, time and place of the appeal.

(2) A notice to the appellant under subsection (1) shall

(a) in addition to the matters referred to in subsection (1), inform the appellant of the provisions of subsections (5) and (6); and

(b) be served on the appellant by personal service or by post in accordance with this Act.

(3) At the hearing of an appeal before the Tribunal the appellant and the Comptroller may provide evidence and shall be given an opportunity to be heard either in person or by a person authorized by the appellant or the Comptroller to appear on his behalf, without regard to whether that person is an attorney-at-law or a layman.

(4) Where the appellant or the Comptroller or both, fail to appear before the Tribunal at the time and place appointed without notice or reasonable excuse, the Tribunal may upon proof of service of the notice of the hearing, proceed to determine the appeal.

(5) Subject to subsection (6), the hearing of an appeal before the Tribunal shall be in public.

(6) The Tribunal may hold a hearing or any part of a hearing in private where the Tribunal is of the opinion that it is proper to do so, having regard to the interests of any party and to the public interest.

(7) The Tribunal may order that any part of any evidence given or the name of any witness not be published and the order may be subject to such conditions as the Tribunal thinks fit.

Tribunal may decide appeal without oral hearing if both parties consent

253.(1) Notwithstanding section 252, the Tribunal may, where both parties consent**,** decide an appeal without holding a hearing.

(2) Where the Tribunal, at any time during its consideration of an appeal in accordance with subsection (1), decides that an oral hearing should be held, the Tribunal shall fix a date, time and place for the hearing of the appeal in accordance with section 252.

Tribunal's powers and immunity

254. For the purpose of a hearing and deciding any appeal before it, the Tribunal shall have

(a) all the powers, duties, functions and discretions of the Comptroller in making its decision; and

(b) all the powers of the High Court in the exercise of its civil jurisdiction, in respect of citing parties and conducting and maintaining order at the hearing of the Tribunal.

Evidence

255.(1) The Tribunal may receive as evidence any statement, document, information or matter that, in the opinion of the Tribunal, may assist the Tribunal to deal with the proceedings.

(2) The Tribunal may take evidence on oath.

(3) The Tribunal may permit a person appearing as a witness before it**,** to give evidence by tendering a written statement and verifying it by oath.

Powers of investigation

256.(1) For the purpose of hearing and deciding a matter on appeal the Tribunal or any person authorized by the Tribunal in writing to do so may

(a) inspect and examine any papers, documents, records or articles;

(b) require any person to produce for examination any papers, documents, records or articles in that person's possession or under that person's control and to allow copies of or extracts from any such papers, documents or records to be made; and

(c) require any person to furnish, in a form approved by or acceptable to the Tribunal, any information or particulars that may be required by it.

(2) The Tribunal may require that any written information or particulars or any copies or extracts furnished under this section be verified by statutory declaration or otherwise.

(3) For the purpose of dealing with the matters before it the Tribunal may, of its own motion or on application, make an order that

(a) any information or particulars produced to it; or

(b) a copy of the whole or any part of any paper, document or record, furnished or produced to it,

be supplied to any person appearing before the Tribunal, and in the order impose such terms and conditions as it thinks fit in respect of the production of and use that is to be made of the information.

(4) Every person shall have the same privileges and immunities in relation to the

(a) giving of information to the Tribunal;

(b) answering of questions put by the Tribunal; and

(c) production of papers, documents, records and articles

to the Tribunal as witnesses have in courts of law.

Power to summons witnesses

257.(1) The Tribunal may of its own motion or on an application, issue a summons requiring any person

(a) to attend at the time and place specified in the summons; and

(b) to give evidence and to produce any papers, documents, records or articles in that person's possession or under that person's control that are relevant to the matters before the Tribunal.

(2) The summons shall be

(a) in such form as the Tribunal determines; and

(b) signed by the Chairman of the Tribunal.

(3) The summons shall be served by

(a) delivering it to the person summoned at least 24 hours before his attendance is required; or

(b) sending it by registered post addressed to the person summoned at that person's usual place of residence or business at least 10 days before the date on which the attendance of the person is required.

(4) Where the summons is delivered by registered post it shall be deemed for the purposes of subsection (3)*(b)* to have been served at the time when the letter would be delivered in the ordinary course of post.

Protection of persons appearing before the Tribunal

258. Every witness giving evidence and every counsel, agent or other person appearing before the Tribunal shall have the same privileges and immunities as witnesses and counsel in a court.

Grounds of appeal and burden of proof

259.(1) Subject to subsection (2), the appellant is limited to the grounds stated in the appellant's notice of appeal and the burden of proof is on the appellant.

(2) The Tribunal may, either on the application of the appellant or of its own motion, amend the grounds stated in the notice of appeal.

PART XXX

COURT PROCEEDINGS

Appeal to the High Court

260.(1) An appeal lies to the High Court in respect of any disputed matter under this Act where all proceedings before the Comptroller and the Tribunal have been exhausted.

(2) Subject to the powers of the Director of Public Prosecutions and to subsection (3), proceedings for an offence

(a) under this Act; or

(b) for condemnation,

shall not be commenced except by order of the Comptroller in writing and in the name of customs officer concerned in the matter.

(3) Notwithstanding any right of appeal, the decision of the High Court on any customs dispute shall be final.

Place where cause of action deemed to arise

261. Every cause of action under this Act shall be deemed to have arisen either in the place in which it actually arose, if it arose at sea, or in any place on land where the person prosecuted is found or may be brought.

Place of trial

262. Proceedings in respect of an offence committed under this Act may be commenced

(a) in any court having jurisdiction in the place

(i) where the offence was committed;

(ii) where the person charged with the offence resides or is found; or

(iii) in the case of a body corporate charged with the offence, where that body corporate has its registered or principal office; or

(b) where anything was detained, seized or found in connection with the offence, in any court having jurisdiction in the place where the thing was detained, seized, found or condemned as forfeited.

Time limit on proceedings

263. Unless otherwise provided in this Act and notwithstanding any other enactment, proceedings for an offence may be commenced at any time within 7 years after the date of the commission of the offence.

Limitation as to pleading

264. The fact that any customs duties have been secured by bond or otherwise shall not be pleaded or made use of in answer to or in stay of any civil proceedings under this Act.

Officer may prosecute

265.(1) Any customs officer or other person authorized by the Comptroller although not an attorney-at-law, may prosecute and conduct any information or other proceedings under this Act in respect of any offence or penalty.

(2) Where any proceedings under this Act are brought in the name of the Comptroller, an officer or the Commissioner of Police, no such proceedings shall be dismissed by reason only of the failure of the Comptroller or officer or Commissioner of Police to appear in person or by counsel, provided that the proceedings, where brought in the name of the Comptroller or an officer, are conducted by an officer authorized in that behalf by the Comptroller and, where brought in the name of the Commissioner of Police, are conducted by a constable for the time being present in court.

Incidental provisions as to legal proceedings for offences

266.(1) In proceedings for an offence under this Act, a court in which the matter is considered may mitigate any penalty as it sees fit.

(2) It is not a defence in any proceeding for an offence or for the condemnation of an article as being forfeited under this Act, that security has been given by bond or otherwise for the payment of any duty or compliance with any condition.

Onus of proof on defendant in certain cases

267. In any prosecution under this Act the onus is on the defendant to prove that

(a) the duties assessed have been paid; and

(b) the goods were lawfully

(i) loaded into or unloaded from any vessel or aircraft;

(ii) transferred from a vessel or an aircraft to another vessel or aircraft; and

(iii) imported or exported.

Averment in proceedings

268.(1) The averment that

(a) the Comptroller has elected that a particular penalty should be sued for or recovered;

(b) goods thrown overboard, staved or destroyed were so dealt with to prevent or avoid their seizure;

(c) a person is or was appointed or authorized by the Comptroller to discharge or was engaged by the order or with the concurrence of the Comptroller in the discharge of any duty;

(d) a person is or was the Minister, the Comptroller or a customs officer;

(e) an offence was committed or an act was performed within the limits of a customs controlled area or within the territorial waters of Barbados;

(f) the Comptroller is or is not satisfied as to the matter as to which he is required under this Act to be satisfied; or

(g) the proceedings were instituted by an order of the Comptroller,

is sufficient evidence of the matter in question, until the contrary is proved.

(2) Where in proceedings brought by or against the Comptroller, the Attorney-General, a customs officer or against any other person in respect of anything purporting to have been done in pursuance of a power or duty conferred or imposed on him under this Act, a question arises as to the place from which goods have been brought or as to whether or not

(a) duty has been paid or secured in respect of the goods;

(b) the goods are of the description or nature alleged in the information, writ or other process;

(c) the goods were lawfully brought to any place for the purpose of being loaded into a vessel or an aircraft or were exported; or

(d) the goods are or were subject to any prohibition or restriction on their importation or exportation,

the burden of proof lies on the other party to the proceedings.

Evidence of officers

269. Where at any trial a question arises as to whether a person is a customs officer, his own evidence shall be deemed sufficient and any customs officer shall be deemed a competent witness.

Proof of certain documents

270.(1) A document purporting to be signed by the Minister, the Comptroller or by a person with their authority, shall until the contrary is proved, be deemed to have been so signed, and the matters contained in that document may, in

proceedings under this Act, be proved by the production of that document or any document purporting to be a copy of that document.

(2) Where a book or other document is required to be kept under this Act, the production of the book or other document or a copy of it certified as a true copy by a customs officer in proceedings under this Act is*prima facie* evidence of the matters stated in it.

(3) In any proceedings under this Act, the production of a certificate purporting to be signed by the competent authority shall be sufficient evidence of all matters stated in the certificate, unless the contrary is proved.

Presumption of authenticity of documents

271. All documents purporting to be sealed with a seal of the Customs Department, including a digital seal, are in all courts and tribunals, and in all proceedings under this Act, deemed to have been sealed with due authority, unless the contrary is proved.

Valuation of goods for penalty or fine

272.(1) Where a penalty or fine for a contravention of this Act is an amount that is to be determined by the value of goods, such value shall be determined in accordance with Part X.

(2) A certificate signed by the customs officer attesting to the value of the goods shall be accepted by the Court as *prima facie* evidence of the value of the goods.

Certificate of condemnation

273. Condemnation of goods by a court under this Act may be proved in any court, or before the Tribunal, by the production of a certificate of condemnation purporting to be signed by the officer of the court.

PART XXXI

GENERAL

Recovery of debt etc.

274.(1) Any duty, tax, fee, penalty or other amount owing or payable under this Act is a debt due the Government from and after the time such amount should have been paid and is recoverable in civil proceedings before a magistrate's court, notwithstanding that the amount exceeds the normal limit on the jurisdiction of the magistrate's court.

(2) The Minister may prescribe the rate of interest to be paid on any amount owing or payable under this Act.

Unpaid tax certificate

275.(1) Where an amount payable or remittable under this Act by a person, has not been paid or remitted as required by this Act, the Comptroller may certify, in a certificate called an "unpaid tax certificate", that the amount is an amount payable by that person under this Act.

(2) An unpaid tax certificate may be filed by the Comptroller in the Magistrate's Court for District "A" and shall be registered and after the expiry of 14 days after it is filed and registered has the same force and effect as a judgment in favour of the Government against the person for the amount specified in the certificate, plus the reasonable costs and charges attendant upon the registration of the certificate; and all proceedings may be taken upon the certificate, and it may be enforced, as if it were a judgment of the court.

Certificate of Comptroller

276. In any proceedings in which the Comptroller issues a certificate indicating that a person has paid or has not paid the charges or duties in respect of goods, the certificate shall, in the absence of evidence to the contrary, be conclusive of the facts stated in the certificate.

Garnishment

277.(1) Where the Comptroller knows or suspects that a person, in this section referred to as the "third party", is indebted to or is liable to make a payment to a person who is liable to pay or remit an amount under this Act, the Comptroller may, deliver to the third party a demand for payment stating the name of that person and the amount payable or remittable by that person, and requiring the third party to make the payment forthwith if the payment is then due and owing and, if the payment from the third party to that person is not then due and owing, as it becomes due and owing.

(2) Where the Comptroller delivers a demand to a third party under subsection (1), the third party shall pay to the Comptroller, on account of that person's liability under this Act, moneys otherwise payable by the third party to that person as interest, rent, dividends, annuity, salary, wages, or other payment until that person's liability under this Act is satisfied or such amount as is due from the third party to the person whichever is sooner.

(3) Where the Comptroller delivers a demand to a third party under subsection (1), the third party shall pay to the Comptroller, on account of the liability under this Act of a person who is an officer or an employee of the third party, moneys otherwise payable by the third party to that person as salary, wages or other remuneration, and the third party shall continue to do so until the amount due to that person is satisfied or until the amount demanded by the Comptroller is satisfied, whichever is lesser.

(4) A receipt issued by the Comptroller for moneys paid as required under this section is a good and sufficient discharge of the third party's original liability to a person to the extent of the payment.

(5) A third party who fails to comply with a requirement under subsection (1), (2) or (3) is liable to pay to the comptroller an amount equal to the amount that the third party was required to pay to the Comptroller under subsection (1).

(6) Where an amount that would otherwise have been payable by a third party to a person is paid by the third party to the Comptroller pursuant to a letter served

on the person under subsection (1) or pursuant to an assessment of an amount payable by the third party under subsection (5), the person shall be deemed for all purposes to have paid the amount to the Comptroller on behalf of that person.

(7) The application of this section is subject to the *Protection of Wages Act*, Cap. 351.

Notice for immediate payment

278.(1) Where the Comptroller suspects that a person is about to leave Barbados or in any other circumstances considers it appropriate for the protection of the revenue to do so, the Comptroller may, before the day otherwise fixed for payment, deliver to that person a notice for immediate payment stating the amount that the Comptroller believes that person is liable to pay as taxes or penalties under this Act or would be liable to pay if the time for payment had arrived; and that person shall forthwith pay the amount specified in the notice for immediate payment.

(2) Where a person who has received a notice for immediate payment fails, within 24 hours after the notice was served on him under subsection (1), to pay forthwith the amount specified in the notice, the Comptroller may certify the amount in an unpaid tax certificate and require its registration in the Magistrate's Court for District "A" and section 275(2) thereupon applies with such adaptations or modifications as the circumstances require.

Joint and several liability

279.(1) Where liability for any offence under this Act is incurred by 2 or more persons jointly, each person is liable for the full amount of any fine or penalty and may be proceeded against jointly or severally.

(2) In any proceeding for an offence under this Act, any court by whom the matter is considered may mitigate any fine or penalty as it sees fit.

(3) In any proceedings for an offence or for the condemnation of anything as being forfeited under this Act, the fact that security has been given by bond or

otherwise for the payment of any duty or for compliance with any condition in respect of the non-payment of which or non-compliance with which the proceedings are instituted shall not be a defence.

Directors or managers of corporations

280.(1) Where a corporation fails to pay the duty required to be paid by this Act, the directors or manager of the corporation at the time the corporation was required to pay the duty are jointly and severally liable, together with the corporation, to pay the duty and any penalties relating thereto.

(2) A director or manager of a corporation is not liable under subsection (1) unless

(a) a certificate for the amount of the corporation's liability referred to in that subsection has been registered and execution for that amount has been returned unsatisfied in whole or in part;

(b) the corporation has commenced liquidation or dissolution proceedings or has been dissolved and a claim for the amount of the corporation's liability referred to in subsection (1) has been proved; or

(c) the corporation has made an assignment or a receiving order has been made against it under the *Bankruptcy and Insolvency Act*, Cap. 303 and a claim for the amount of the corporation's liability referred to in subsection (1) has been proved.

(3) A director or manager of a corporation is not liable for a failure to pay duty under subsection (1) where the director or manager exercised the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

(4) A director or manager of a corporation shall not be assessed for an amount payable by him under this section more than 7 years after the duty becomes due and payable.

Officials of unincorporated bodies

281.(1) Where any liability or obligation is imposed by or under this Act or by any regulations made under this Act on an unincorporated body, the body and each of the persons who are officials of the body at the time the liability or obligation is imposed are jointly and severally liable and responsible to satisfy the liability or obligation.

(2) For the purposes of this section "official" of an unincorporated body means in the case of

(a) a partnership, a partner of the partnership other than a limited partner within the meaning of the *Limited Partnership Act*, Cap. 312;

(b) a joint venture, a participant in the joint venture, other than a participant who contributes to the capital of the joint venture but who is not otherwise concerned in the management and daily operations of the joint venture;

(c) a trust, a trustee of the trust;

(d) an unincorporated body other than a body referred to in paragraph *(a)*, *(b)* or *(c)*

(i) a person who holds office as chairman, president, treasurer or secretary of the body or any similar office;

(ii) where there is no such official of the body referred to in subparagraph (i), a member of any committee that has management of the affairs of the body; or

(iii) where there is no such official referred to in subparagraph (i) or (ii) or committee referred to in sub-paragraph (ii), a member of the body.

Executors and administrators

282.(1) For the purposes of this Act, where an individual dies

(a) the individual's estate shall be deemed to be the same person as the individual and not to be a trust;

(b) where any liability or obligation is imposed by this Act on the individual or his estate, the executors or administrators are subject to this section, responsible to satisfy the obligation; and

(c) the estate and the executors or administrators are jointly and severally liable for the payment of all amounts that are payable by the estate under this Act, except that the executors or administrators are liable for the payment of amounts that became payable before the individual died only to the extent of the assets of the estate after satisfying the claims of creditors whose claims rank in priority to the claim of the Government.

(2) When an individual has died the Comptroller may, where it is considered appropriate to do so, waive in writing the requirement that the individual's executor or administrator pays the duty owed.

Trustees in bankruptcy

283. For the purposes of this Act, where a person is adjudged a bankrupt,

(a) the person's estate shall be deemed not to be an estate or trust;

(b) the property held by the person immediately before he was adjudged a bankrupt shall be deemed not to pass to and be vested in the trustee in bankruptcy upon the receiving order being made or the assignment in bankruptcy being filed but to remain vested in the person;

(c) the property held by the trustee in bankruptcy for the person on the day the person is discharged from bankruptcy shall be deemed not to pass to the person on the order of discharge being granted but to have been

held by and vested in the person continuously since the day it was acquired by the person or the trustee;

(d) where any liability or obligation is imposed by this Act on the person in relation to assets to which the bankruptcy relates, the trustee in bankruptcy is, subject to this section, responsible to satisfy the liability or obligations; and

(e) the trustee in bankruptcy, and not the person, is liable for the payment of all amounts that become payable by the person under this Act before the person is discharged from bankruptcy, except that

(i) the trustee is liable for the payment of amounts that became payable by the person before the person became a bankrupt only to the extent of the person's property in the possession of the trustee that is available to satisfy the liability; and

(ii) the trustee is not liable for the payment of any amount which a receiver, within the meaning of section 284, is liable to pay or any amount that relates to activities which the person engages in, on or after the day the person is adjudged a bankrupt and to which the bankruptcy does not relate.

Receivers

284.(1) In this section,

"asset" includes any property;

"receiver" includes

(a) a person who is appointed to manage or operate an asset of another person under the authority of a court order, an Act or a bond, debenture or other debt security;

(b) a liquidator appointed to liquidate the assets or wind up the affairs of a corporation;

(c) a committee, guardian or curator who has authority to manage and care for the affairs and other assets of an individual who is incapable of managing his own affairs and assets.

(2) For the purposes of this Act, where a receiver is vested with authority to manage, operate, liquidate, or wind up any assets of a person or to manage and care for the affairs and other assets of a person,

(a) the receiver shall be deemed to be an agent of the person in the course or furtherance of any of the person's activities over which the receiver has authority and any act performed by the receiver in relation to the person's assets over which the receiver has authority shall be deemed to have been performed by the receiver as agent on behalf of the person;

(b) the receiver shall be deemed not to be trustee of the estate of the person or any part thereof;

(c) where the assets of a person over which the receiver has authority are not all of the person's assets, throughout the period during which the receiver acts as receiver of the person, the assets over which the receiver has authority shall be deemed to be separate from the other assets of the person as if they were assets of a separate person;

(d) where any liability or obligation is imposed by this Act on the person in relation to assets over which the receiver has authority the receiver is subject to this section, responsible to satisfy the obligation;

(e) the person and the receiver are jointly and severally liable for the payment of all amounts that become payable by the person under this Act before the receiver was appointed, except that the receiver's is liable for the payment of those amounts only to the extent of the person's assets under the control and management of the receiver after satisfying the claims of the Government and those claims that rank in priority to the claim of the Government and after paying any amounts that the receiver is required to pay to a trustee in bankruptcy of the person;

(f) the receiver, and not the person, is liable for the payment of all amounts that become payable by the person under this Act during the period which the receiver acts as receiver of the person to the extent that the amounts can reasonably be considered to relate to that person's assets over which the receiver has authority;

(g) the Comptroller may, where a refund for a taxable period is payable to the person, apply the refund payable against any outstanding tax, penalty, interest or other amount payable under this Act by the person and pay the balance, if any, to the receiver on behalf of the person.

Receipts

285. The Comptroller shall provide an official receipt in writing for any money collected by him.

Requirements for security by bond

286.(1) The Comptroller may determine the requirements for providing security by bond to secure any obligation under this Act or any regulations made under this Act.

(2) The Comptroller may issue such guidelines as he thinks necessary in relation to the requirements under subsection (1).

Duties and drawback to be proportionate to quantity or value

287. All duties, rates, charges and drawbacks imposed and allowed according to any specified quantity or any specified value or any particular description of container shall be deemed to apply in the same proportion to any greater or less quantity or value or any other description of container.

Mode of calculating weights and measures

288. All duties, rates, charges and drawbacks imposed and allowed under this Act shall be paid and received according to the weights and measures

established by the *Weights and Measures Act*, Cap. 331, and, shall be paid and received in any currency being legal tender in Barbados.

Non-application of Cap. 114 to sales under this Act

289. The *District Auctioneers Act*, Cap. 114 shall not apply to sales under this Act when conducted by a customs officer authorized under this Act.

PART XXXII

MISCELLANEOUS

Regulations

290.(1) The Minister may make regulations

(a) setting the hours and places of customs services;

(b) prescribing the procedures for the reporting and processing of advance passenger information and advance cargo information;

(c) relating to risk management policies and procedures;

(d) prescribing the fees and charges to be paid under this Act including for customs services;

(e) providing for the sharing of information regarding imports and exports for purpose of

(i) safeguarding public health and safety;

(ii) enforcing the relevant sanitary and phytosanitary measures regarding plants;

(iii) enforcing standards and technical regulation; and

(iv) trade facilitation and business

(f) for the warehousing of goods and the operation of warehouses;

(g) relating to transit sheds and examination stations;

(h) providing for circumstances in which entry on the face of customs declaration with respect to the description, value or classification of goods may be corrected after submission and the procedures for so doing;

(i) relating to coasting trade;

(j) relating to postal and courier processes;

(k) relating to authorized economic operators, trusted traders, customs brokers and agents;

(l) prescribing any matter required to be prescribed under this Act; and

(m) generally for the proper administration of this Act.

(2) Regulations made under this section are subject to negative resolution.

(3) Regulations made under this Act may provide that a person who breaches or contravenes any regulation is liable to pay an administrative penalty not exceeding $10 000.

Amendment of Schedule

291. The Minister may by order subject to negative resolution amend the *Schedule*.

Comptroller to determine forms

292. Subject to this Act, the Comptroller may determine the forms to be used for the purposes of this Act and in particular, may provide electronic forms.

Power to make guidelines

293.(1) The Comptroller may make guidelines in relation to any matter for the purposes of this Act.

(2) Where guidelines are made under subsection (1) or subsequently amended, the guidelines shall be published in the *Official Gazette*.

Non application of Act to the Defence Force

294. This Act does not apply to

(a) any vessel or aircraft when used for the purposes of the Barbados Defence Force; or

(b) the importation or exportation by or on behalf of the Barbados Defence Force of arms, ammunition, vessels, vehicles, aircraft, uniforms and other military stores certified as such by the Prime Minister or a member of the Defence Board authorized in writing by the Prime Minister.

Minister may grant exemptions

295. The Minister may by order waive, exempt or remit any duty, charge or fee payable under this Act.

Exemption for government agencies

296. The Minister may by order exempt any government department or agency from any requirement in this Act or any regulations made under this Act.

Non-application of Act to fishing

297. This Act does not apply to fishermen plying their trade.

Payment into Consolidated Fund

298. All amounts collected under this Act shall, as soon as practicable, be paid by the Comptroller into the Consolidated Fund.

Transitional

299. Where at the commencement of this Act, any proceedings under the former Act, relating to appeals or otherwise, are in the process of being heard, the proceedings shall continue to be heard and determined under the former Act.

Savings

300.(1) The following shall continue in force as if made under this Act in so far as it is not inconsistent with this Act, until revoked:

(a) any statutory instrument made under the former Act;

(b) the Customs Tariff,

in force at the commencement of this Act.

(2) Any licence, authorization, permit, directive or ruling issued under the former Act shall continue in force until it expires or is sooner revoked.

(3) All ports, warehouses, airports, wharves and boarding stations approved as such under the former Act, shall continue to be ports, warehouses, airports, wharves and boarding stations and all duly appointed wharves and airports shall be deemed to be approved places of loading and unloading until the appointment of them is revoked or varied under this Act.

Repeal

301. The *Customs Act*, Cap. 66 is repealed.

Commencement

302. This Act shall come into operation on a date to be fixed by proclamation.

SCHEDULE

(Section 250)

Customs Appeal Tribunal

Appointment of members

1.(1) The Minister shall by instrument in writing, subject to sub-paragraph (2), appoint as members of the Tribunal, such number of persons, being not less than 5, who appear to the Minister to be qualified and experienced in law, tax, accounts, public administration or such other area as, in the opinion of the Minister, is required for the discharge of the functions of the Tribunal.

(2) The Minister shall appoint as Chairman of the Tribunal a member who has been a judge as is described in section 7(1)*(b)* or *(c)* of the *Supreme Court of Judicature Act, Cap. 117A.*

(3) Notwithstanding sub-paragraph (2), where the Minister is satisfied that there is no suitable person who has been such a judge as is mentioned in that sub-paragraph available and willing to be appointed, the Minister shall appoint as Chairman a person who is qualified for appointment as a judge pursuant to section 7(1)*(a)* of the *Supreme Court of Judicature Act*, Cap. 117A but who is not in active practice in Barbados as an attorney-at-Law.

(4) A member shall

(a) hold office for a term not exceeding 3 years; and

(b) be eligible for reappointment.

Resignation

2.(1) The Chairman may resign his office by instrument in writing addressed to the Minister.

(2) A member, other than the Chairman, may resign his office by instrument in writing addressed to the Chairman, who shall forthwith forward the instrument to the Minister.

(3) A resignation takes effect from the date on which the Minister receives the instrument.

Temporary Leave of absence

3. The Minister may, in writing, grant leave of absence to a member.

Temporary appointment

4. Where a member is, or likely to be, unable to perform the functions of his office for more than 30 days, whether as a result of absence from Barbados, illness or other cause, the Minister may appoint a person to act in the place of the member.

Revocation of appointment

5. The Minister shall revoke the appointment of a member who

(a) fails to carry out any of his functions under this Act;

(b) becomes of unsound mind or becomes permanently unable to perform his functions by reason of ill health;

(c) is convicted of an offence involving fraud or dishonesty or, in the case of any other offence, is sentenced to a term of imprisonment;

(d) is guilty of serious misconduct in relation to his functions;

(e) is bankrupt or compounds with or suspends payment to his creditors; or

(f) fails to declare his interest in a matter before the Tribunal.

Vacancies

6.(1) A vacancy in the membership of the Tribunal arises on

(a) the death or resignation of a member;

(b) the revocation of the appointment of a member; or

(c) the absence of a member from 4 consecutive meetings of the Tribunal without the approval of the Minister.

(2) A person who is appointed to fill a vacancy referred to in sub-paragraph (1) shall hold office for the unexpired portion of the term of the former member concerned.

Disqualification

7. A person who

(a) is a member of Parliament;

(b) other than a person specified in paragraph 1*(b)*(ii) or (iii), *i*s a public officer within the meaning of the *Public Service Act*, Cap. 29;

(c) were he a member, would have to be removed from office pursuant to paragraph 6, is not eligible to be a member.

Gazetting of appointments

8. The appointment, resignation, death or removal from office of a director shall be notified in the *Official Gazette.*

Institution of appeal

9.(1) An appeal to the Tribunal shall be instituted by filing with the Tribunal, within such time as may be stipulated in the relevant enactment, a notice of appeal together with such copies thereof as the Tribunal may require, and such notice shall state the precise grounds of appeal.

(2) The Chairman of the Tribunal shall set the place, date and time for the hearing of the appeal and shall notify the parties of the place, date and time at least 7 days before the date set for the hearing.

Procedure on appeal

10.(1) An appeal shall be heard and determined by the Chairman and not less than 2 members selected by the Chairman, and the Chairman and the members so selected shall have all the powers of the Tribunal in relation to the appeal.

(2) The appeal shall be held in camera and

(a) the parties may appear in person or may be represented by an attorney-at-law or an agent; and

(b) the onus of proof is on the appellant.

(3) An appeal may be heard in the absence of a party who has been given reasonable notice in writing to attend.

(4) In determining the appeal, the Tribunal may review the whole case in respect of law and fact, and the exercise of any discretion, and shall determine the case in accordance with its own judgment.

(5) In the case of a difference of opinion among the members sitting together, the opinion of the majority shall prevail, and in case of an equality of numbers, the opinion of the Chairman shall prevail.

(6) Notwithstanding sub-paragraph (5), where the question to be determined is one of law, account shall not be taken of the opinion of a member who is not an attorney-at-law

Powers of Tribunal

11.(1) The Tribunal

(a) may issue subpeonas, make orders and give directions to such persons and in such manner as it thinks fit for the purpose of summoning witnesses, requiring the disclosure of documents, and for the purpose

of requiring parties or witnesses to answer questions, and for the purpose of conducting its proceedings in a proper and orderly manner;

(b) may, where it determines it to be necessary in any particular case, consult any person having experience in any relevant field to assist it in dealing with a matter; and

(c) shall, with respect to the attendance and examination of witnesses, the production and inspection of documents and all other matters necessary for the exercise of its jurisdiction, have all such powers as are vested in a magistrate's court in an action before that court.

(2) In hearing and determination of any matter before it, the Tribunal may act without regard to the technicalities and legal form and shall not be bound to follow the rules of evidence stipulated in the *Evidence Act*, Cap. 121; but the Tribunal may inform itself on any matter in such manner as it thinks just and may take into account opinion evidence and such facts as it considers relevant and material, but in any such case, the parties to the proceedings shall be given the opportunity, if they so desire, of adducing evidence.

(3) Subject to this *Schedule*, the Tribunal may regulate its own procedure and may make rules for the purpose.

Decisions of Tribunal

12.(1) The decision of the Tribunal shall be in writing and shall include reasons for the decision, a statement of its findings on material questions of fact and a reference to the evidence or other material on which the findings are based.

(2) The Tribunal shall ensure that the decision is served on each party to the proceedings.

CONSTITUTION (AMENDMENT) (NO. 3) ACT, 2021-35

Arrangement of Sections

1. Short title

2. Amendment of section 79 of the Constitution

BARBADOS

I assent
S. MASON
President of Barbados
23rd December, 2021.

2021-35

An Act to alter the *Constitution of Barbados*.

[Commencement: 29th December, 2021]

ENACTED by the Parliament of Barbados in accordance with the provisions of section 49 of the *Constitution* as follows:

Short title

1. This Act may be cited as the *Constitution (Amendment) (No. 3) Act, 2021*.

Amendment of section 79 of the Constitution

2. ***Section 79 of the Constitution is amended***

(a) ***in subsection (2),***

(i) ***in paragraph (b), by deleting the word "and" appearing at the end of the paragraph;***

(ii) ***in paragraph (c), by deleting the full-stop appearing at the end of the paragraph and substituting the words "; and"; and***

(iii) ***by inserting after paragraph (c), the following:***

"*(d)* to enter into an agreement, in such circumstances and on such terms and conditions as may be prescribed by or under any law, with such person as may be so prescribed, in lieu of instituting and undertaking any such criminal proceedings against the person, provided that the High Court considers the agreement to be in the interest of justice."; and

(b) ***in subsection (3), by deleting the words "(b) and (c)" and substituting the words "****(b), (c)* and *(d)****".***

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