

## PART XX

## MISCELLANEOUS

**Joint and Several liability.**

**255.** (1) Where liability for an offence under this Act or any other customs enactment is incurred by two or more persons jointly—

- (a) each person is liable for the full amount of any fine or penalty prescribed; and
- (b) the persons committing the offence may be proceeded against jointly or severally.

(2) Where a corporate body fails to pay any duty required to be paid by or under this Act—

- (a) the corporate body commits an offence;
- (b) a director of the corporate body at the time the corporate body was required to pay the duty who is proved to have consented to or connived at the failure to pay the duty commits an offence.

(3) A corporate body and a director under subsection (2) are jointly and severally liable for the payment of the duty and any related penalties.

**Officials of unincorporated bodies.**

**256.** (1) In this section, “official”, in relation to an unincorporated body, means—

- (a) in the case of a partnership, a partner of the partnership;
- (b) in the case of 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 with the management and day-to-day operations of the joint venture; or
- (c) in the case of an unincorporated body other than a body referred to in paragraph (a) or (b)—
  - (i) a person who holds office as chairman, president, treasurer, secretary or any other similar office of that unincorporated body;
  - (ii) where there is no official of the body as referred to in subsection (i), a member of any committee which has management of the affairs of that unincorporated body; or
  - (iii) where there is no official or committee referred to in subparagraph (i) or (ii), a member of the unincorporated body.

(2) Where any liability or obligation is imposed by or under this Act or the Regulations on an unincorporated body, the unincorporated body and every official of the unincorporated body at the time such liability or obligation is imposed are jointly and severally liable and responsible to satisfy the liability or obligation.

(3) Notwithstanding subsection (2), an official of an unincorporated body is not liable under that subsection unless—

- (a) a certificate for the amount of the body’s liability referred to in subsection (2) has been registered in the High Court under this Act and execution for that amount has been returned unsatisfied, wholly or in part;

- (b) the body has commenced liquidation or dissolution proceedings or has been dissolved and a claim for the amount of the body's liability referred to in subsection (1) has been proved;
- (c) a receiving order has been made against the body under the Bankruptcy Act and a claim for the amount of the body's liability referred to in subsection (1) has been proved; or
- (d) the body has made an assignment under the Bankruptcy Act and a claim for the amount of the body's liability referred to in subsection (1) has been proved.

(4) A person who ceases to be an official of an unincorporated body is deemed, for the purposes of this Act, not to cease being an official of the body until the Comptroller receives notification in writing of the cessation.

(5) Where a document is served on an unincorporated body under this Act or Regulations made under this Act, the document is deemed to have also been served on the officials of the body.

#### **Executors and administrators.**

**257.** (1) For the purposes of this Act, where an individual dies—

- (a) the individual's estate is deemed to be the same person as the individual and is not deemed to be a trust;
- (b) subject to this section, the executor or administrator of the deceased individual is responsible to satisfy any liability or obligation imposed by this Act on the individual or his or her estate; and
- (c) subject to subsection (2), the estate and executor, or, as the case may be, the estate and administrator, of the deceased individual are jointly and severally liable for the payment of all amounts payable by the estate under this Act.

(2) The executor or administrator of the deceased individual is liable for the payment of such amounts which 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 State.

(3) When an individual dies, the Cabinet may waive, in writing, the requirement that the executor or administrator of the deceased individual pays the duty owed if the Cabinet considers it appropriate to waive payment of such duty.

#### **Trustees on bankruptcy.**

**258.** For the purposes of this Act, where a person is adjudged a bankrupt—

- (a) the person's estate is deemed not to be an estate or trust;
- (b) property held by the person immediately before he or she was adjudged a bankrupt is deemed not to pass to or be vested in the trustee in bankruptcy upon the receiving order being made or the assignment in bankruptcy being filed, but is deemed 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 is 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 such property was acquired by the person or the trustee;

- (d) where any liability or obligation is imposed by or under 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 obligation; and
- (e) subject to paragraphs (f) and (g), the trustee in bankruptcy, and not the person, is liable for the payment of all amounts which become payable by the person under this Act before the person is discharged from bankruptcy;
- (f) the trustee in bankruptcy is liable for the payment of amounts which became payable by the person before the person became a bankrupt only to the extent that the person's property in the possession of the trustee is available to satisfy such liability; and
- (g) the trustee in bankruptcy is not liable for the payment of any amount which—
  - (i) a receiver is liable to pay; or
  - (ii) 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.

**259.** (1) In this section—

“asset” includes any property; and

“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 corporate body; or
- (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 or her 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 assets of a person or to manage and care for the affairs and other assets of a person—

- (a) the receiver is 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;
- (b) any act performed by the receiver in relation to the person's assets over which the receiver has authority is deemed to have been performed by the receiver as agent on behalf of the person;
- (c) the receiver is deemed not to be a trustee of the estate of the person or any part of such estate;

- (d) where the assets of a person over which the receiver has authority do not represent the whole of the person's assets through the period during which the receiver acts as receiver of the person, the assets over which the receiver has authority is deemed to be separate from the other assets of the person as if such other assets were assets of a separate person;
- (e) 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 such liability or obligation;
- (f) subject to paragraph (g), the person and the receiver are jointly and severally liable for the payment of all amounts which became payable by the person under this Act before the receiver was appointed;
- (g) the receiver is liable for the payment of the amounts only to the extent of the person's assets under the control and management of the receiver after—
  - (i) satisfying the claims of creditors whose claims rank in priority to the claim of the State; and
  - (ii) paying any amounts which the receiver is required to pay to a trustee in bankruptcy of the person; and
- (h) the receiver, and not the person, is liable for the payment of any amounts which become payable by the person under this Act, during the period in which the receiver acts as receiver of the person, to the extent that such amounts can reasonably be considered to relate to the person's assets over which the receiver has authority.

### **Receipts.**

**260.** The Comptroller shall provide an official receipt, in written or electronic form, for any money collected by him.

### **Special containers and coverings.**

**261.** (1) Where, in the opinion of the Comptroller a container or covering in which goods are imported or exported—

- (a) is not the usual or proper container or covering for the goods; or
- (b) is designed for separate use, other than as a container or covering for the same or similar goods subsequent to importation or exportation,

such container or covering is, for all purposes of this Act and any other customs enactment, deemed to be separate and dutiable goods, except in cases where a contrary provision is made.

(2) Where any containers or coverings are deemed to be separate and dutiable goods under subsection (1), duty in respect of any such container or covering shall be imposed at the rate stated in the Common External Tariff for the containers.

### **Duties and drawbacks to be proportionate to quantity or value.**

**262.** The duties, rates, charges and drawback imposed and allowed according to—

- (a) any specified quantity or any specified value of any goods; or

- (b) any particular description of container or covering in which goods are imported or exported,

are deemed to apply in the same proportion to any greater or lesser quantity or value or any other description of container or covering.

#### **Mode of calculating weights and measures.**

**263.** The duties, rates, charges and drawback imposed and allowed under this Act and any other customs enactment—

- (a) shall be paid and received according to the weights and measures established by the Metrology Act, Cap. 23.33; and
- (b) may be paid in any currency being legal tender in Saint Christopher and Nevis.

#### **Actions against officers.**

**264.** No action, suit or other proceedings shall be brought or instituted personally against any customs officer or authorised person in respect of any act performed by him or her in the exercise of any power granted to or duty imposed on him or her by or under this Act and any other customs enactment.

#### **Goods in transit.**

**265.** The provisions of this Act and any other customs enactment, so far as such provisions are applicable and subject to any Regulations made under this Act regarding goods in transit, are deemed to apply to goods declared in transit to any destination beyond Saint Christopher and Nevis.

#### **Availability of information.**

**266.** The Comptroller shall endeavour to ensure that relevant information concerning the requirements, obligations and administration of this Act is available to members of the public.

#### **Power to make Regulations.**

**267.** (1) The Minister may make Regulations—

- (a) for the further, better or more convenient implementation of the provisions or purposes of this Act; and
- (b) prescribing fees, rents or charges to be paid in respect of any matter referred to in the Regulations.

(2) Without limiting the generality of subsection (1), the Minister may make Regulations—

- (a) prescribing fees or charges which are payable to the Customs Department to meet or assist in meeting costs and expenses incurred by that Department in granting a certificate of clearance;
- (b) prescribing the classes of goods which are or are not deemed to be stores for the use of passengers and crew or the service of vessels or aircraft about to depart from any customs place;
- (c) prescribing the conditions under which any stores referred to in paragraph (b)—

- (i) may be shipped free of duty or under drawback of duty; and
- (ii) are subject to duty, and the form and manner in which such stores shall be entered;
- (d) prescribing when an entry is deemed to have been made for the purposes of this Act;
- (e) prescribing the conditions under which an entry is deemed to have been passed for the purposes of this Act;
- (f) prescribing goods or classes of goods which shall be deemed to have been entered under section 39 or 51;
- (g) exempting specified goods or goods of a specified class from the requirements of section 39 or 51, subject to such conditions as may be prescribed;
- (h) modifying or excepting the application of any customs enactment to postal packets;
- (i) securing, in the case of postal packets, the observance of any customs enactment;
- (j) enabling the officers of the post office to perform for the purpose of any customs enactment and otherwise any or all of the duties of the importer;
- (k) prescribing the procedure to be followed by—
  - (i) any vessel or aircraft arriving at a customs place;
  - (ii) any vessel or aircraft intending to leave a customs port or a customs airport for a destination outside Saint Christopher and Nevis;
  - (iii) coasting vessels on their arrival at or departure from any customs port;
  - (iv) coasting aircraft on their arrival at or departure from any customs airport; and
  - (v) penalties for contravention of any customs enactment or Regulations made under this section;
- (l) for carrying into effect any arrangement with the Government or postal administration;
- (m) prescribing the descriptions of postal packets which may or may not contain goods or other articles of any description, and the conditions under which the postal packets may contain such goods or articles;
- (n) regulating the storage, putting alongside, making waterborne for loading of goods intended for export or for use as stores;
- (o) regulating the loading, unloading or making waterborne for loading of goods carried, or to be carried, by way of coasting trade;
- (p) for the control of the depositing, marking, keeping, securing and treatment of goods in and the removal of goods from warehouses;
- (q) respecting the imposition of fines in amounts not exceeding ten thousand dollars for contravention of any regulation, or direction given or requirement made under any regulation;

- (r) for the forfeiture of any goods involved in any contravention referred to in paragraph (q);
  - (s) with respect to the discipline and good conduct of Customs Officers;
  - (t) with respect to control deliveries.
- (3) For greater clarity, regulations made under subsection (2)(p) may provide for—
- (a) the registration and maintenance of warehouses;
  - (b) the payment of licence fees;
  - (c) the entering into and maintaining—
    - (i) of bonds for the security of duty chargeable on warehoused goods; or
    - (ii) of contracts of insurance for warehoused goods;
  - (d) the proper conduct and management of warehouses, including the imposition of conditions and restrictions subject to which goods may be—
    - (i) carried to or from, deposited in, kept in or removed from a warehouse; or
    - (ii) made available to their owners for prescribed purposes;
  - (e) the attendance of customs officers at warehouses;
  - (f) the production to, and making available for inspection by, customs officers of warehoused goods;
  - (g) the provision of facilities to customs officers;
  - (h) the records to be kept by occupiers of warehouses;
  - (i) the minimum quantities or descriptions of goods which may be deposited in or removed from a warehouse at any one time;
  - (j) operations to be carried out on warehoused goods, including the taking of samples;
  - (k) the removal of goods from warehouses without payment of duty, subject to such conditions and restrictions as may be determined by or under the Regulations; or
  - (l) the destruction or abandonment of goods to the Comptroller without payment of duty, in such circumstances and subject to such conditions and restrictions as may be determined by the Regulations.
- (4) Regulations made under this Act shall be subject to negative resolution of the House of Assembly.

**Existing ports, warehouses, etc.**

**268.** On the commencement of this Act—

- (a) all duly approved ports, warehouses, airports, wharves and boarding stations, in operation on the day immediately before the commencement of this Act, shall continue to be ports, warehouses, airports, wharves and boarding stations; and

- (b) all duly appointed wharves and airports, in operation on the day immediately before the commencement of this Act, shall be deemed to be approved places of loading and unloading until the appointment of such wharves or airports is revoked or varied under this Act.

**Savings and transitional provisions.**

**269.** (1) Notwithstanding the repeal of the Customs (Control and Management) Act—

- (a) any proclamation, rule, regulation, by-law, Orders or warrant made or issued under the Customs (Control and Management) Act shall, if in force on the day immediately before the commencement of this Act, continue in force in so far as such proclamation, rule, regulation, by-law, Order or warrant is not inconsistent with the provisions of this Act until revoked by regulations made under this Act;
- (b) any requirement performed, notice, decision, determination, direction or approval given, application made or thing done under the Customs (Control and Management) Act shall—
  - (i) if in force on the day immediately before the commencement of this Act, continue in force; and
  - (ii) so far as it could have been performed, made, issued, given or done under this Act have effect as if performed, made, issued, given or done under the corresponding provisions of this Act; and
- (c) any certificate issued or made under the Customs (Control and Management) Act shall, if in force on the day immediately before the commencement of this Act, continue in force until the expiry of such certificate.

(2) Notwithstanding the repeal of the Customs (Control and Management) Act, the Appeal Commissioners appointed under it are to continue in office only for the purpose of hearing and determining any appeal pending before them.

(3) Notwithstanding subsection (2), an appeal pending before the Appeals Commissioners immediately before the date of commencement of this Act may be transferred to the Commission if the parties to the appeal consent.

(4) Where—

- (a) in any enactment; or
- (b) in any proclamation, rule, regulation, by-law, Order, form or document made under the Customs (Control and Management) Act,

a reference is made to any customs enactment or to the Customs (Control and Management) Act, the reference shall be read as if it were made to this Act.

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