

No. 6 of 2010.

*Duty Free Shops (Licensing and Taxation)
Act, 2010.*

Saint Christopher
and Nevis

I assent,



CUTHBERT M SEBASTIAN
Governor-General

28th October 2010.

SAINT CHRISTOPHER AND NEVIS

No. 6 of 2010

ANACT to provide for the licensing of duty free shops, to facilitate the importation of certain goods duty-free, to impose and collect certain taxes and levies on such duty-free shops and duty-free goods and for related matters.

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BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the National Assembly of Saint Christopher and Nevis and by the authority of the same as follows:

Part I Preliminary

1. Short title and commencement.

This Act may be cited as the Duty-Free Shops (Licensing and Taxation) Act, 2010 and shall come into operation on such date as the Minister may, by Order, appoint.

2. Interpretation.

In this Act unless the context otherwise requires

“approved goods” means the goods specified in the First Schedule pursuant to sections 6 and 7;

“duty free zone” means any area specified in the Third Schedule pursuant to section 8;

“Class “A” duty free shop licence” means a duty free shop licence granted in accordance with section 6;

“Class “B” duty free shop licence” means a duty free shop licence granted in accordance with section 7;

“Commission” means the Duty Free Shops Commission established under section 4;

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“Comptroller” means the Comptroller of Customs appointed pursuant to the Customs (Control and Management) Act;

“Comptroller of Inland Revenue” mean the Comptroller of Inland Revenue appointed pursuant to the Tax Administration and Procedures Act, No. 12 of 2003;

“Customs (Control and Management) Act” means the Customs (Control and Management) Act Cap 20:04;

“duty free shop licensee” means a person holding a licence under this Act;

“licence” means a Class “A” duty free shop licence or a Class “B” duty free shop licence issued pursuant to section 6 or 7;

“licensed duty free shop” means any shop which is licensed under this Act;

“liquor” includes brandy, whisky, rum, gin, wines, liqueurs, beer, porter, cider and all potable spirituous alcoholic, malt and fermented liquors of any kind or sort whatsoever, but shall not include bay water and bay rum;

“Minister” means the Minister responsible for finance;

“tobacco” includes cigars, cigarettes and smokeless tobacco products;

“visitor” means a person who is in Saint Christopher and Nevis

- (a) on a visitor’s visa; or
- (b) in transit, from a place outside Saint Christopher and Nevis to some other place outside Saint Christopher and Nevis; or
- (c) on a visit primarily for recreational purposes,

except that in any case, or on any occasion where that person’s status as a visitor is being considered for the purposes of this Act, a person shall not be deemed to be a visitor if on that occasion his stay in Saint Christopher and Nevis exceeds six months, or during his stay, he works or performs any functions in Saint Christopher and Nevis for payment or reward.

3. Persons operating duty free shops prior to the commencement of this Act.

Any person who immediately before the date of commencement of this Act operated a shop which sold any of the goods specified in the First Schedule which were imported duty free shall

- (a) upon the date of the commencement of this Act be deemed to be duly licensed under this Act for a period of six months, or such other period not exceeding one year, as the Minister may approve; and
- (b) shall require a licence issued pursuant to section 6 or 7 in order to operate a duty free shop after the expiration of that period.

Part II
DUTY FREE SHOPS COMMISSION

4. Establishment of Commission.

(1) For the purposes of this Act, there is established a Commission to be known as the Duty Free Shops Commission.

(2) The provisions of the Fifth Schedule shall have effect with respect to the constitution, proceedings and other matters of the Commission.

Part III
Duty free shops

5. Duty free shop licence.

(1) A person shall not import any approved goods duty free or operate a duty free shop except

- (a) under the authority of ; or
- (b) otherwise in accordance with

the terms and conditions of a licence issued by the Minister pursuant to section 6 or 7.

(2) A license issued under this Act shall be either

- (a) a Class “A” duty free shop licence; or
- (b) a Class “B” duty free shop licence.

(3) Where a duty free shop licence is granted pursuant to this Act the Minister shall cause a notice to that effect to be published in the *Official Gazette*.

(4) The Minister may, after consultation with the Commission, prescribe a maximum number of duty free shop licences that may be granted within a specified period.

6. Class ‘A’ duty free shop licence

(1) A Class “A” duty free shop licence shall entitle the licensee to

- (a) operate a licensed duty free shop in any duty free zone referred to in section 8;
- (b) import any approved goods specified in the First Schedule, free of the payment of customs service charge, import duty and excise duty; and
- (c) subject to section 16, sell such goods to visitors only.

(2) An application for a Class “A” duty free shop licence shall

- (a) be made in the prescribed form; and
- (b) be submitted to the Commission together with such other information as may be prescribed or as the Commission may request.

(3) The Commission shall

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- (a) consider the application
 - (b) make a recommendation as to whether the licence should be granted; and
 - (c) shall submit the application and its recommendation to the Minister.
- (4) The Minister shall consider the application and the recommendation of the Commission.
- (5) The Minister may, issue a Class “A” duty free shop licence in the prescribed form to the person upon the payment by the person to the Comptroller of the annual licence fee prescribed in the Fourth Schedule.
- (6) Where a Class “A” duty free shop licence is issued later than the 15th day of January of a year, the person making the application shall pay to the Comptroller the appropriate prorated amount of the annual licence fee referred to in subsection (5).
- (7) A Class “A” duty free shop licence issued pursuant to this section may be subject to such terms and conditions as may be prescribed.
- (8) A Class “A” duty free shop licensee shall ensure that at all times at least fifty percent of his employees are nationals of Saint Christopher and Nevis and where this is not the case, the licence may be suspended or revoked pursuant to section 11.
- (9) A Class “A” duty free shop licensee shall pay to the Comptroller of Inland Revenue a turnover tax, pursuant to section 16.
- (10) A Class “A” duty free shop licensee shall pay to the Comptroller a duty free shops levy pursuant to section 17.

7. Class “B” duty free shop licence

- (1) A Class “B” duty free shop licence shall be granted where the duty free shop offers liquor and tobacco for sale.
- (2) A Class “B” duty free shop licence shall entitle the licensee to
- (a) operate a licensed duty free shop in any duty free zone referred to in section 8;
 - (b) import liquor and tobacco free of the payment of customs service charge, import duty and excise duty; and
 - (c) sell such goods duty free to visitors only.
- (3) An application for a Class “B” duty free shop licence shall
- (a) be made in the prescribed form; and
 - (b) be submitted to the Commission together with such other information as may be prescribed or as the Commission may request.
- (4) The Commission shall

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- (a) consider the application
 - (b) make a recommendation as to whether the licence should be granted; and
 - (c) shall submit the application and its recommendation to the Minister.
- (5) The Minister shall consider the application and the recommendation of the Commission.
- (6) The Minister may, issue a Class “B” duty free shop licence in the prescribed form to the person upon the payment by the person to the Comptroller of the annual licence fee prescribed in the Fourth Schedule.
- (7) Where a Class “B” duty free shop licence is issued later than the 15th day of January of a year, the person making the application shall pay the Comptroller the appropriate prorated amount of the annual licence fee referred to in subsection (6).
- (8) A Class “B” duty free shop licence issued pursuant to this section may be subject to such terms and conditions as may be prescribed or as the Minister may stipulate, including
- (a) that the Class “B” duty free shop licensee shall make the necessary arrangements for delivery of liquor and tobacco to a visitor who purchased these goods from him at the relevant seaport or airport in time for the visitor’s departure;
 - (b) that the Class “B” duty free shop licensee shall request that a visitor provides a passport and ticket as proof that the items shall be exported.
- (9) A Class “B” duty free shop licensee shall pay to the Comptroller a duty free shop levy pursuant to section 17 and shall pay to the Comptroller of Inland Revenue a turnover tax pursuant to section 16.
- (10) A Class “B” duty free shop licensee shall ensure that at all times at least fifty percent of his employees are nationals of Saint Christopher and Nevis and where this is not the case, the licence may be suspended or revoked pursuant to section 11.

8. Duty free zones.

A licensed duty free shop may be operated only in a duty free zone as prescribed in the Third Schedule.

9. Licence not transferable.

(1) A licence issued pursuant to this Act to any person shall not be transferable to any other person.

(2) A licence issued pursuant to this Act to any person shall not be used for the benefit of any other person.

10. Renewal of licence.

(1) A licence to operate a licensed duty free shop is valid from the date of first issue to the 31st December of that year and is renewable each year by the Minister, upon

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application in the prescribed manner to the Commission, on payment of the prescribed annual fee on or before the 15th day of January and upon the fulfillment of the following:

- (a) the payment of all required levies to the Comptroller; and
- (b) the payment of all required taxes to the Comptroller of Inland Revenue and production of proof of payment to the Commission.

(2) The renewal of a licence pursuant to subsection (1) shall be upon the recommendation of the Commission.

11. Revocation or suspension of licence.

The Minister may, after consultation with the Commission, suspend or revoke any licence to operate a duty free shop if the licensee

- (a) used fraud or deceit in his or her application;
- (b) fails to commence operations within a period of three months following the granting of the licence;
- (c) fails to comply with the conditions of the licence;
- (d) is in breach of any of the provisions of this Act which is applicable thereto; or
- (e) ceases to operate the licenced duty free shop in Saint Christopher and Nevis for a period in excess of ten months;
- (f) is conducting its affairs in a manner detrimental to the public interest or to the interest of its customers;
- (g) goes into liquidation or is wound up or otherwise dissolved; or
- (h) by reason of any other circumstances, is no longer a fit and proper person to hold a licence.

(2) Before revoking a licence under subsection (1), the Minister shall

- (a) give the licensee notice, in writing, of his intention to do so;
- (b) specify in the notice the grounds upon which he proposes to make the revocation;
- (c) request that the licensee submit to him within a specified period, being not less than thirty days, a statement of objections to the making of the revocation if the licensee objects;
- (d) give a licensee with an objection an opportunity to be heard; and
- (e) thereafter, advise the licensee of his final decision.

(3) Notice under subsection (2) shall be served at the licensee's last known address and shall be published in the *Gazette* and in a local newspaper.

(4) If any licensee is aggrieved by any decision made under subsection (1), that licensee may appeal to the High Court within fourteen days of such decision, setting out the grounds of such appeal.

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(5) Where a duty free shop licence has been revoked, the Minister shall, as soon as possible thereafter cause a notice of the revocation to be published in the *Gazette*.

(6) The Minister shall terminate a licence at the written request of the licensee.

12. Each place of business chargeable.

Where different duty free shops or other premises are kept in the name of one person or company, a separate licence shall be taken out in respect of each shop or other premises except that the opening of another shop, premises or place of reception at which sales are not effected shall not be taken to be chargeable premises under this section

13. Duty Free Shop licence for each class of goods.

A person shall obtain two separate licences where goods permitted to be sold under both a Class “A” license and Class “B” license, in accordance with sections 6, 7 and the First Schedule, shall be sold in one shop.

14. Receipt

A duty free shop shall issue a receipt in respect of all transactions in accordance with the Stamps Act.

15. Customs areas

(1) Pursuant to section 15 of the Customs (Control and Management) Act, a duty free shop which is not located at a customs port, approved wharf or customs airport may be approved as a customs area.

(2) Subject to subsection (1), where a duty free shop is an approved customs area that condition shall be stated in the duty free shop licence.

Part IV

Turnover tax and Duty Free Shop Levy

16. Turn over tax.

(1) A Class “A” or Class “B” duty free shop licensee shall pay to the Comptroller of Inland Revenue a turnover tax at the rate specified in the Second Schedule on the value of the sale of goods.

(2) A Class “A” or Class “B” duty free shop licensee shall pay the turnover tax to the Comptroller of Inland Revenue at the same time that he or she is required to lodge a tax return pursuant to subsection (4).

(3) A Class “A” or Class “B” duty free shop licensee shall within fifteen days after the end of each month, furnish to the Comptroller of Inland Revenue in such form and manner as may be prescribed or determined by the Comptroller of Inland Revenue, a return of all the sales of goods sold by him in respect of that month and the amount of turnover tax payable.

(4) In addition to the return required to be furnished pursuant to subsection (3), the Comptroller of Inland Revenue may by notice in writing require a Class “A” or Class “B”

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duty free shop licensee to deliver to him in the form and manner prescribed, a return of such information as the Comptroller of Inland Revenue may require.

(5) The provisions of the Tax Administration and Procedures Act, No. 12 of 2003 shall apply to the turnover tax and any other tax payable to the Comptroller of Inland Revenue pursuant to the provisions of this Act.

17. Duty free shop levy.

A Class “A” duty free shop licensee and Class “B” duty free shop licensee shall pay to the Comptroller a duty free shop levy at the rate specified in the Second Schedule on the value inclusive of cost, insurance and freight of any approved goods that are imported.

**Part V
Retail Liquor**

18. Sale of retail liquor by a duty free shop.

(1) A Class “B” duty free shop licensee shall obtain the relevant license pursuant to the Liquor Licence Act, Cap 18.21 of the Revised Edition of Laws 2002.

(2) A Class “B” duty free shop licensee may only sell any liquor or tobacco imported pursuant to this Act, free of the payment of customs service charge, import duty and excise duty to a visitor and where such liquor or tobacco is sold to a person who is resident in Saint Christopher and Nevis, the licensee shall pay to the Comptroller, the applicable customs service charge, import duty and excise duty on the goods sold.

(3) Where a Class “B” duty free shop licensee sells any liquor or tobacco imported pursuant to this Act, free of the payment of customs service charge, import duty and excise duty to a person who is resident in Saint Christopher and Nevis, the licensee shall be liable to pay to the Comptroller, the applicable customs service charge, import duty and excise duty on the goods sold.

(4) A Class “B” duty free shop licensee who sells any liquor and tobacco to a person who is resident in Saint Christopher and Nevis pursuant to subsection (3) shall pay the applicable customs service charge, import duty and excise duty to the Comptroller at the same time that he or she is required to lodge a return pursuant to subsection (5).

(5) A Class “B” duty free shop licensee shall within fifteen days after the end of each month, furnish to the Comptroller in such form and manner as may be prescribed or determined by the Comptroller, a return of all the sales of liquor and tobacco sold by him in respect of that month, indicating

- (a) the sales made to residents; and
- (c) the amount of customs service charge, import duty and excise duty payable to the Comptroller in respect of any liquor or tobacco sold to residents.

(6) In addition to the return required to be furnished pursuant to subsection (5), the Comptroller may by notice in writing require a Class “B” duty free shop licensee to

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deliver to him in the form and manner prescribed or as may be demanded, a return of such information as the Comptroller may require.

(7) Any Class “B” duty free shop licensee who fails to file a return pursuant to subsections (5) and (6) within the time prescribed therein shall pay to the Comptroller a penalty of one hundred and fifty dollars for each day that the return is outstanding.

(8) The Comptroller may at any time extend in writing the time for filing a return under this Act and where the Comptroller so extends, the return shall be filed within the time so extended and the penalty under subsection (7) shall only be payable if the return is not filed within the time so extended.

Part VI
Miscellaneous

19. Powers of entry and inspection of premises and documents.

For the purpose of verifying the correctness of any information furnished by any person operating a licensed duty free shop or for the purpose of securing compliance with the provisions of this Act or any regulations made hereunder, the Comptroller may

- (a) enter any premises used by such person for the purpose of his or her business; and
- (b) inspect and take copies of any record of goods imported in Saint Christopher and Nevis and the record of sales as kept by the person in relation to duty free goods.

20. Offences.

Any person who

- (a) contravenes any provision of this Act or any regulation made thereunder; or
- (b) furnishes any false information to the appropriate authority,

commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

21. Regulations.

(1) The Minister may make Regulations for the purpose of giving effect to the provisions of this Act.

(2) Without prejudice to the generality of the subsection (1), the Minister may make Regulations for

- (a) any matters stated or required by this Act to be prescribed; and
- (b) any matters regulating the manner in which licensed duty free shops are to be operated.

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(3) Any Regulations made pursuant to this section shall be subject to negative resolution of the National Assembly.

22. Amendment of Schedules.

(1) The Minister may by Order amend any of the Schedules to this Act.

(2) Any amendment to any of the Schedules to this Act made pursuant to this section shall be subject to negative resolution of the National Assembly.

FIRST SCHEDULE

(Sections 6 and 7)

List of approved goods for duty free shops**Part I****Class “A” Licence**

1. Portable electronic devices including portable radios, compact disc (CD) players, cassette players, mp3 players, video games, digital cameras, video cameras but excluding cell phones.
2. Bags, cases, wallets, belts and similar accessories made from leather or a mixture of leather with other material, provided that the leather content should not be less than 50%.
3. Any Kipling, Tommy Bahama, Tori Richards, Nat Nast, Pineapple Moon, Quick Silver, Roxy Sportswear, Line Two, Weekend Traffic, Line Up for Sport, Traffic Jammies, Weekend Clothes Line, Pepe and LAND brand products.
4. Shoes of a minimum free on board (FOB) value of US \$50.00 (including brands that appear in paragraph 3).
5. Chinaware, stoneware and porcelain.
6. Clothing of Linen and Silk including accessories such as ties scarves, containing not less than 80% linen and/or silk.
7. Cologne, body fragrances, eau de toilette and perfumes of a minimum free on board (FOB) value of US \$5.00.
8. Fragrance items including hand milled soaps and lotions.
9. Skin care products. (gift packaged in boxes or bags).
10. Articles of Crystal.
11. Costume jewelry (gift packaged in boxes or bags) of a minimum free on board (FOB) value of US \$10.00.
12. Jewelry of precious metals including platinum, gold, silver, silver-plated and gold-plated, with or without gemstones or semi-precious stones (Class “A” Licence holder only).
13. Table linen including table cloths, napkins, runners of linen, cotton or mixture of both whose linen content must be at least 75%.

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14. Watches of a minimum free on board (FOB) value of US \$30.00.
15. Beach wear including swimsuit (male and female), beach wraps, beach towels, sandals, goggles, earplugs, swim caps.
16. Handcrafted items made of natural material: shell, bamboo, leaves, straw, sand, wood, pottery, clay, calabash.
17. Golf clubs, balls and gloves.
18. Souvenirs of Saint Christopher and Nevis.
19. T-Shirts, polo shirts, sleeveless-shirts, pants and skirts bearing the name Saint Christopher and Nevis.
20. Any national flags, banners, patches, stickers and maps of Saint Christopher and Nevis.
21. Sweaters and similar knit wear of a minimum free on board (FOB) value of US \$20.00.
22. Music compact discs (CDs) which are (a) produced in the Caribbean and (b) by or of Caribbean artists even if these may be recorded and manufactured elsewhere.
23. Items made from hand processed fabrics, hand embroidered, hand painted, screen printed, batik and tie dye and, tropical island style shirts which cannot be worn with a tie and not a t-shirt.
24. Pictures, postcards, wall hangings – batik, bearing Saint Christopher and Nevis and Caribbean scenes.
25. Store packaging material which must bear the name of the store and location in Saint Christopher and Nevis.

Part II**Class “B” Licence**

1. Liquor.
2. Tobacco.

SECOND SCHEDULE

(Sections 16 and 17)

Rate of Turnover Tax and Levy

1. A Class “A” or Class “B” duty free shop licensee shall pay to the Comptroller of Inland Revenue a turnover tax of four percent on the value of the sale of goods.
2. A Class “A” or Class “B” duty free shop licensee shall pay to the Comptroller a duty free shop levy at the rate of six per cent on the value inclusive of cost, insurance and freight of any approved goods that are imported.

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(Section 8)

Duty Free Zone

The duty free zones shall comprise of the following areas:

1. Basseterre;
2. Charlestown;
3. The Sands Complex;
4. Robert Llewellyn Bradshaw International Airport;
5. Vance Amory International Airport;
6. Romney Manor;
7. Brimstone Hill;
8. Frigate Bay;
9. The South East Peninsula;
10. White Gate Development Area.

FOURTH SCHEDULE

(Sections 6 and 7)

Licence Fees

Class of Licence	Annual Licence Fee
Class "A"	\$10 000 Eastern Caribbean Dollars
Class "B"	\$10 000 Eastern Caribbean Dollars

FIFTH SCHEDULE

(Section 4)

Commission**Appointment and membership.**

1. (1) The Commission shall consist of the following persons who shall be appointed by the Minister
 - (a) a senior officer in the Ministry of Finance, who shall be the chairperson;
 - (b) a senior officer in the Customs Department;
 - (c) a senior officer in the Inland Revenue Department;
 - (d) a senior officer in the Ministry of Tourism;
 - (e) any other officer from any Ministry, as the Minister thinks fit.
- (2) The Commission shall elect from among its members a Deputy Chairperson who shall, in the absence of the Chairperson, preside at meetings of the Commission.

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(3) Every member of the Commission appointed by the Minister shall be appointed by instrument in writing and published in the *Gazette*.

(4) The functions, powers, rights and obligations of the Commission shall not be affected by any vacancy in its membership.

Powers and functions.

2. (1) The Commission shall have such powers as are reasonably necessary for the carrying out of its functions or incidental to their proper discharge.

(2) The functions of the Commission are

- (a) to regulate the duty free shops sector;
- (b) to receive and investigate complaints;
- (c) to review applications for licences;
- (d) to make recommendations to the Minister in respect of the grant, refusal, renewal, revocation or suspension of duty free shop licences;
- (e) to make recommendations to the Minister in respect of the maximum number of duty free shop licences that should be granted within a specified period;
- (g) to advise and make recommendations to the Minister on matters related to duty free shops generally;.

(3) The Commission may, in connection with the carrying out of its functions,

- (a) consult and seek the advice of such persons or bodies whether inside or outside Saint Christopher and Nevis as it considers appropriate;
- (b) publish, in such manner as it considers appropriate, such information relating to its functions as it thinks fit;
- (c) make recommendations arising out of any information received, issue guidelines to duty free shops and advise the Minister.

Terms of appointment of Commissioners.

3. (1) A Commissioner shall hold and vacate office in accordance with the terms of his or her instrument of appointment.

(2) A Commissioner may at anytime resign his or her office by giving not less than one month's notice in writing to the Chairperson, except that in the case of the Chairperson he or she shall tender his or her resignation in writing to the Minister.

(3) If the Minister is satisfied that a Commissioner

- (a) has been absent from three consecutive meetings of the Commission without excuse or the permission of the Commission;
- (b) has become bankrupt;
- (c) is incapacitated by physical or mental illness; or

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(d) is unable or unfit to discharge the functions of a Commissioner, he or she may terminate the appointment of the Commissioner.

(4) There shall be paid to the Commissioners such remuneration as the Minister may determine.

Tenure and conditions of member of commission

4. (1) The tenure of office and other terms and conditions of office of the members of the Commission shall be set out in the instrument of appointment.

Disclosure of interest.

5. (1) Where a Commissioner has any direct or indirect personal interest in the outcome of the deliberations of the Commission in relation to any matter

- (a) he or she shall disclose the nature of his or her interest at a meeting of the Commission in person or by means of a written notice brought to the attention of the Commission;
- (b) the disclosure shall be recorded in the minutes of the Commission; and
- (c) he or she shall withdraw from any deliberations of the Commission in relation to that matter and not vote upon it.

(2) For the purposes of this paragraph, a general notice given by a Commissioner that he or she is a member or director of a particular organisation and is to be regarded as interested in any matter concerning that organisation is sufficient disclosure in relation to any such matter.

Procedure at meetings.

6. (1) The meetings of the Commission shall be held at such times and at such places as are from time to time agreed upon by the members of the Commission or as the Minister may direct.

(2) At a meeting of the Commission

- (a) a simple majority of the Commissioners shall form a quorum;
- (b) each Commissioner shall have one vote on each matter for deliberation; and
- (c) in the event of an equality in the votes the Chairperson of the meeting shall have a casting vote.

3 The Commission may determine its procedure and for that purpose may make rules of procedure, including rules relating to the convening of meetings and the conduct of business at meetings and may alter the rules.

Secretariat of Commission

7. The Commission shall be serviced by a secretariat from the Ministry of Finance.

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Transaction of business without meeting.

8. A decision is a valid decision of the Commission, even though it was not passed at a meeting of the Commission, if

- (a) it is signed or assented to by a majority of Commissioners; and
- (b) proper notice of the proposed decision was given to all Commissioners.

Minutes of Meetings.

9. The Commission shall keep proper minutes of its proceedings.

CURTIS A MARTIN
Speaker

Passed by the National Assembly this 26th day of October 2010.

JOSÉ LLOYD
Clerk of the National Assembly