



**TURKS AND CAICOS ISLANDS**

**CHAPTER 6.01**  
**PORTS AUTHORITY ORDINANCE**

**Revised Edition**  
showing the law as at 31 August 2009

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Ordinance 1997.

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## CHAPTER 6.01

### PORTS AUTHORITY

*(Ordinance 15 of 2007)*

AN ORDINANCE TO ESTABLISH THE PORTS AUTHORITY OF THE TURKS AND CAICOS ISLANDS, FOR THE MANAGEMENT OF MARITIME AFFAIRS, AND FOR RELATED MATTERS.

#### Commencement

*[1 January 2008]*

#### PART I

##### PRELIMINARY

#### Short title

1. This Ordinance may be cited as the Ports Authority Ordinance.

#### Interpretation

2. In this Ordinance—

“berth” includes an anchorage, mooring, dock, jetty, wharf and every place within territorial waters where a vessel may be brought to rest and secured;

“crane” includes a derrick and every other load handling device of a like nature;

“day marker” means a buoy, beacon or other mark or sign of the sea other than a lighthouse;

“Director of Ports” means the person appointed to be Director of Ports under section 10;

“diving” means remaining below the surface of the sea with the assistance of underwater breathing apparatus;

“equipment”, in relation to a vessel, includes the tackle, apparel and furniture of the vessel;

“financial year” means the period of twelve months ending on the 31<sup>st</sup> of March in any year;

“goods” include livestock, minerals and merchandise of all descriptions, other than personal effects and provisions and stores for use on board a vessel;

“Government port” means a port so designated under section 19;

“master”, in relation to a vessel, means the person for the time being having charge or control of the vessel;

- “mile” means a nautical mile, being a distance of 6,080 feet;
- “Minister” means the Minister for the time being responsible for ports;
- “owner”, in relation to any goods, includes any consignor, consignee, shipper or agent for the sale or custody of the goods;
- “port” means a Government port and a port licensed under section 25;
- “port dues” means the dues or charges levied under section 23(1) and includes all debts due to the Ports Authority under this Ordinance;
- “Ports Authority” means the Ports Authority of the Turks and Caicos Islands established under section 3;
- “vessel” means a device, including a hovercraft, capable of being navigated in water by any means by a crew of one or more persons, but does not include an inflatable device unless such device is or is, designed to be, propelled by a power unit attached thereto.

## PART II

### THE PORTS AUTHORITY OF THE TURKS AND CAICOS ISLANDS

#### **Establishment, constitution and meetings of Ports Authority**

3. (1) There is hereby established a body corporate called the Ports Authority of the Turks and Caicos Islands which shall have perpetual succession and a common seal and may, in pursuance of its functions under this Ordinance, buy, lease, sell, hold, deal in and otherwise acquire and dispose of property of any nature, enter into contracts of any nature, raise loans, and sue and be sued in its corporate name.

(2) The Ports Authority shall consist of the Director of Ports, the Permanent Secretary responsible for finance or his nominee, the Permanent Secretary with responsibility for Ports, the Chief Engineer and the Collector of Customs, who shall be *ex officio* members, and the following members nominated by the Minister and appointed by the Governor—

- (a) a chairman;
- (b) a deputy chairman; and
- (c) not fewer than two or more than four other members, including a shipping agent,

who shall hold office for three years and be eligible for reappointment.

(3) There shall be paid from the moneys of the Ports Authority to each member who is not a public officer such remuneration and allowances as the Governor, after consultation with the Minister, may determine.

(4) The provisions of the Schedule shall have effect with respect to the proceedings of the Ports Authority.

(5) A member, other than one who is a public officer, may resign his office by giving notice in writing to the Governor but the resignation shall not take effect until the notice has been received.

(6) The Governor shall cause every appointment, removal, resignation and death of a member to be published in the *Gazette*.

(7) The Governor shall, after consultation with the Minister, appoint a public officer (not being a member) to be the secretary of the Ports Authority, who shall be present at all meetings of the Ports Authority and take minutes of the business transacted.

(8) The seal of the Ports Authority shall be authenticated by the Chairman in that behalf, and by the secretary, but all documents not required by law to be under seal may be signed by the chairman, any member authorised in that behalf, the Director of Ports or the secretary.

#### **Vacation of office**

4. An appointed member shall vacate his office—

- (a) upon termination of his appointment by the Governor made at the recommendation of the Minister on the grounds of the misbehaviour or physical or mental incapacity of the member;
- (b) if he becomes bankrupt or compounds with his creditors or makes any assignment of his remuneration for their benefit; or
- (c) if he absents himself, except with leave granted by the chairman of the Ports Authority, from three consecutive meetings of the Ports Authority.

#### **Functions of Ports Authority**

5. The functions of the Ports Authority are—

- (a) the general management and control of ports and the limits thereof;
- (b) the establishment and control of lighthouses and day markers;
- (c) the establishment and control of berths within ports;
- (d) the provision, maintenance and control of cranes, launches, lighters, rafts, trucks, capstans, winches, windlasses, bollards and other machinery, apparatus, tackle and gear used in ports and territorial waters for the securing, loading, unloading and maintenance of vessels;
- (e) the establishment, maintenance and control of transit sheds, offices and all other buildings in ports other than buildings under the control of the Collector of Customs, the Chief Immigration Officer or the Chief Medical Officer;
- (f) the general supervision of territorial waters and of vessels and wrecks located therein;

- (g) the loading and unloading of vessels within ports;
- (h) the enforcement of this Ordinance and of all laws of the United Kingdom relating to shipping that have application in the Islands;
- (i) the inspection of vessels for the purpose of checking and enforcing compliance with this Ordinance;
- (j) without prejudice to the provisions of any other law, to exercise overall control for the preservation of good order in the territorial and internal waters of the Turks and Caicos Islands, in any Government port and in the land and sea approaches to any Government port;
- (k) to regulate and control all matters related to merchant shipping or provided for under the Merchant Shipping Ordinance or any other related legislation;
- (l) without prejudice to the provisions of any environmental protection legislation to prevent and control pollution by oil or any other substances of any port or the approaches thereto;
- (m) to advise the Government on any matter relating to ports, merchant shipping, marine pollution prevention and control, and on any other matter relating to its functions and duties; and
- (n) such other functions as may be conferred upon it by or under this Ordinance or any other law.

### **Powers of Minister**

6. The Minister may, after consultation with the chairman of the Ports Authority, give the Ports Authority directions of a general character as to the policies to be followed in the exercise and performance of its functions in relation to matters appearing to him to concern the public interest, and the Ports Authority shall give general effect to any such direction.

### **Vesting of property**

7. There is vested in the Ports Authority—

- (a) the land with the buildings and works thereon used at the commencement of this Ordinance in connection with ports as the Governor may at any time direct; and
- (b) all plants, cargo handling equipment, mechanical and otherwise, and other equipment, all apparatus, instruments, vehicles, ships, crafts tools and other property of the Government used in connection with ports at the commencement of this Ordinance, which shall be recorded in an inventory prepared at the direction of the Minister and approved by the Ports Authority and entered as assets in the accounts of the Ports Authority.

### **Construction of laws, contracts, etc., relating to transferred assets**

8. Subject to the provisions of this Ordinance, all laws, rules, regulations, orders, judgments, decrees, awards, deeds, bonds, contracts, agreements, instruments, documents, warrants and other arrangements subsisting immediately before the date of the coming into force of this Ordinance affecting or relating to any of the properties or undertakings transferred to the Ports Authority by or under this Ordinance shall have full force and effect against or in favour of the Authority, and shall be enforceable fully and effectually, as if instead of the Government the Authority has been named therein or has been a party thereto, and otherwise in substitution of the Government.

### **Transitory provisions**

9. (1) Where anything has been commenced by or under the authority of the Government prior to the date of the coming into force of this Ordinance and such thing relates to any of the properties or undertakings or any right or liability transferred to the Authority by or under this Act, such thing may be carried on and completed by or as authorised by the Authority.

(2) Where immediately before the coming into force of this Ordinance, any legal proceedings are pending to which the Government is or is entitled to be a party, and such proceedings are related to any of the properties or undertakings, or any right or liability transferred by or under this Ordinance, the Authority shall, as from the date aforesaid, be substituted in such proceedings for the Government, or shall be made a party thereto in like manner as the Government could have become, and such proceedings shall not abate by reason of the substitution.

(3) Any such direction shall be published by the Ports Authority in the *Gazette*.

### **Director of Ports and Deputy Director**

10. (1) The Ports Authority shall, after consultation with the Governor and the Minister, appoint a person to be the Director of Ports on such terms and conditions as it shall fix in consultation with the Minister.

(2) The Director of Ports shall be the chief executive officer of the Ports Authority, with responsibility for implementing the decisions of the Ports Authority and managing its operations, and he shall have such other functions as are conferred upon him by this Ordinance or any other law.

(3) Subject to section 12, the Ports Authority may appoint a person to be the Deputy Director of Ports to assist the Director of Ports or and to act for him during any temporary absence or vacancy in the office of the Director of Ports, but any person so appointed shall not sit as a member at meetings of the Ports Authority.

### **Staff of Ports Authority**

11. (1) The Ports Authority may employ such officers and employees as it considers necessary for the administration of this Ordinance.

(2) The terms and conditions of officers and employees of the Ports Authority shall be fixed by the Ports Authority in consultation with the Minister.

### PART III

#### FINANCIAL PROVISIONS

#### **Revenue of the Ports Authority**

**12.** (1) The revenue of the Ports Authority shall consist of—

- (a) dues and charges received by virtue of this Ordinance;
- (b) amounts borrowed by the Ports Authority; and
- (c) miscellaneous receipts, including interest on and service of investments,

and such revenue shall within seven days of receipt be paid into a bank account approved by the Minister.

(2) The revenue of the Ports Authority shall be applied to—

- (a) the repayment of overdraft, if any, on current account;
- (b) any interest on loans;
- (c) any sinking fund on loan redemption;
- (d) the repair and maintenance of buildings, works and equipment and other recurrent expenses;
- (e) the reserve fund referred to in section 16;
- (f) the salaries, pensions and gratuities of the staff of the Ports Authority; and
- (g) such other expenditure as may be approved by the Minister responsible for finance.

(3) Any balance of account of up to \$100,000 in favour of the Ports Authority after meeting its expenditure under subsection (2) may be carried forward to the account of the following year, and any balance in excess of that sum shall be paid into the general revenue of the Islands.

(4) The Ports Authority shall, in consultation with the Minister, cause estimates of expenditure and revenue to be prepared and adopted each year in respect of the following financial year, and, when adopted, the Minister shall lay a copy of the estimates before the House of Assembly for its approval and publish them in the *Gazette*.

#### **Borrowing powers of the Ports Authority**

**13.** (1) Subject to subsection (2), the Ports Authority may borrow sums required by it for meeting any of its obligations or discharging any of its functions.

(2) The power of the Ports Authority to borrow shall be exercisable only with the approval of the Minister, as to the amount, as to the sources of the borrowing and as to the terms on which the borrowing may be effected.

(3) An approval given under subsection (2) may be either general or limited to a particular borrowing, and may be either unconditional or subject to conditions.

### **Guarantees for Ports Authority**

**14.** (1) With the approval of the House of Assembly, the Minister responsible for finance may guarantee, in such manner and on such conditions as he thinks fit, the payment of the principal and interest on any authorised borrowings of the Ports Authority.

(2) Where the Minister responsible for finance is satisfied that there has been default in the repayment of any principal moneys or interest guaranteed under the provisions of this section, he shall direct the repayment out of the general assets and revenue of the Islands of the amount in respect of which there has been such default.

### **Repayment of guarantees called up**

**15.** The Ports Authority shall pay into the Consolidated Fund, at such times and in such manner as the Minister may direct, such amounts as may be so directed in or towards repayment of any sums issued in fulfilment of any guarantee given under, section 14, and shall pay into the Consolidated Fund interest on what is outstanding for the time being in respect of such advances and of any sum so issued at such rate as the Minister may direct, and different rates of interest may be directed as respects different advances or sums and as respects interest for different periods.

### **Reserve fund**

**16.** (1) The Ports Authority shall maintain a reserve fund.

(2) The management of the reserve fund, the sums to be carried from time to time on its credit, and its application, shall be as the Ports Authority may determine:

Provided that no part of the reserve fund shall be applied otherwise than for the purposes of the Ports Authority.

(3) The Ports Authority may, with the approval of the Minister, invest its reserve fund at interest.

### **Balancing of revenue account**

**17.** (1) It is the duty of the Ports Authority so to exercise its functions as to secure that its revenues are sufficient to meet all sums properly chargeable to its revenue account, taking one year with another.

(2) If at the end of any financial year the revenues of the Ports Authority are insufficient to enable it to meet all sums properly chargeable to its revenue

account, and such insufficiency cannot be met from its reserve fund, the Minister responsible for finance may, subject to such conditions as he may fix, meet the whole or any part of the insufficiency out of moneys appropriated for the purpose by the House of Assembly, and such moneys shall be repaid out of the revenues of the Ports Authority as soon as possible.

### Accounts and audit

18. (1) The Ports Authority shall keep proper accounts of all its transactions to the satisfaction of the Minister responsible for finance and in a form according with the best commercial standards, and shall make these accounts up to the last day of each financial year, submitting the same with vouchers to the Chief Auditor to be audited, who shall report thereon to the Ports Authority and the Minister.

(2) The Chief Auditor shall be entitled at all reasonable times, on the directions of the Governor, to examine such accounts and vouchers.

(3) The Ports Authority shall within one month of receiving the Chief Auditor's report prepare a report of its activities during the period to which the Chief Auditor's report relates; and the Minister shall lay both such reports, together with the audited accounts, before the House of Assembly.

## PART IV

### DESIGNATION, CONTROL, USE AND LICENSING OF PORTS

#### Designation of Government ports

19. (1) The Governor may, by notice made on the recommendation of the Ports Authority and published in the *Gazette*, designate any land, vessel or floating structure and the approaches thereto as a Government port for the purposes of this Ordinance, whether or not such land comprises a dock, wharf, pier, quay or other place for the shipping and unshipping of goods and other articles.

(2) The notice shall indicate the location of a Government port, and define its limits by reference to a plan.

(3) The plans of all Government ports shall be kept at the office of the Director of Ports and—

(a) be made available by him for inspection at all reasonable times; and

(b) be evidence in all proceedings of the location and limits of the relevant Government port.

(4) The Director of Ports may mark off, by buoys or otherwise, the seaward limits of a Government port for the guidance of vessels.

### Regulations for the use and control of Government ports

**20.** On the recommendation of the Ports Authority, the Minister may make regulations providing for the use and control of Government ports and the powers of the Director of Ports and officers; and, in particular, may so make provision for—

- (a) the admission of vessels within a Government port;
- (b) the movement, mooring and anchorage of vessels within a Government port;
- (c) the maintenance of clear channels of navigation within a Government port and the mooring of fish-pots, buoys and other obstacles to navigation within a Government port;
- (d) the berthing of vessels at a Government port and the manner in which vessels shall come to, remain in and depart from a berth;
- (e) the shipping and unshipping, landing, warehousing, storing, depositing and removing of goods within a Government port;
- (f) the permitted ballast which may be taken on and discharged by vessels within a Government port or territorial waters;
- (g) the discharge of foul water, refuse or any other noxious or offensive substance from vessels within a Government port or territorial waters;
- (h) the conduct of the master and crew of a vessel within a Government port;
- (i) the use of lights and beacons within a Government port;
- (j) the closure of a Government port and the hours during which a Government port may be used for any purposes;
- (k) the employment of any person at a Government port and the duties and conduct of such persons;
- (l) the carrying, keeping and use of explosive or highly flammable or otherwise dangerous substances within a Government port;
- (m) the emission of noise and the emission into the atmosphere of any noxious or offensive substance from a vessel or vehicle within a Government port;
- (n) the use and keeping of any vehicle, crane or other equipment within a Government port;
- (o) fire precautions in ports and port areas;
- (p) garbage and sewage disposal in territorial waters;
- (q) rules of procedure in dealing with wrecks and salvage;
- (r) rules of navigation in territorial waters;

- (s) stevedores, ships' chandlers, clearing and forwarding agents and ship repairs within port areas; and
- (t) pilotage.

### Removal of goods and other articles from Government ports

21. (1) Subject to this section and without prejudice to section 32, where any goods (other than perishable goods) within a Government port are not removed therefrom within a period of fifteen days from the time of deposit, the Director of Ports shall cause a notice to be served on the owner or other person appearing to be entitled thereto, requiring him to remove them.

(2) Where—

- (a) the owner of the goods is not known and no person appears to be entitled thereto;
- (b) the notice cannot for any reason be served; or
- (c) there has been no compliance with the notice,

the Director of Ports may after the expiry of four weeks sell the goods by public auction: provided no less than seven days' notice of the holding of such sale is published in the *Gazette*, listing the goods and showing the time and place of the auction.

(3) Where the goods are perishable, the Director of Ports may deal with them at his discretion having regard to the possible entitlement of any person thereto.

(4) The proceeds of any sale under this section shall be applied by the Ports Authority as follows, and in the following order of payment—

- (a) to customs duty;
- (b) to the expenses of the sale;
- (c) to any port dues;
- (d) to freight and other allowable claims of which notice has been received by the Director of Ports;
- (e) to the owner, if traceable within twelve months;
- (f) to the funds of the Ports Authority.

(5) In respect of goods, vehicles, wrecks, equipment or other articles within a Government port that appear to the Director of Ports to be derelict and un-saleable, the Director of Ports may, subject to any regulation made under section 20, take such steps as he may deem necessary to remove them from the Government port.

### Damage to Government ports

22. (1) Subject to subsection (3), the owner of a vessel shall be liable to the Ports Authority for any damage caused by the vessel, or by any person employed by such owner, to a Government port or any vessel, vehicles, equipment or

works belonging to the Ports Authority; and the master of the vessel through whose wilful act or negligence any such damage is done shall also be liable to the Ports Authority for the damage.

(2) The Director of Ports may detain such vessel until sufficient security has been given for the amount of damage.

(3) Subsection (1) shall not apply so as to impose any liability on the owner or master of the vessel by which the damage was caused if the damage is attributable to any act or omission on the part of a person authorised under any regulations under section 20 to act as pilot, and whom the owner or master of the vessel was bound under those regulations to employ and put in charge of the vessel.

### Port dues

23. (1) On the recommendation of the Ports Authority, the Minister may make regulations providing for port dues, and in particular for the levy, payment and collection of—

- (a) dues in respect of the use and occupation of any berth at a Government port by any vessel;
- (b) dues in respect of any goods landed at or exported from a Government port;
- (c) charges in respect of the use of any vehicle, crane or other equipment at a Government port, whether or not such vehicle, crane or equipment belongs to the Ports Authority;
- (d) charges in respect of goods deposited at a Government port and left there after the prescribed time;
- (e) charges in respect of moorings put down within the approaches of a Government port;
- (f) charges in respect of any services or facilities prescribed by regulations, whether or not the same are provided by the Ports Authority; and
- (g) charges in respect of pilotage and demurrage,

and different rates of port dues may be levied in respect of different cases or classes of cases.

(2) Any port dues payable under subsection (1) shall be recoverable by the Ports Authority as a civil debt due to it.

(3) Where the weight of a vessel or the weight or quantity of any goods is required to be ascertained for the purpose of determining the amount of any port dues, such weight or quantity shall be ascertained in the prescribed manner.

(4) Where any difference arises between the Director of Ports and the master of any vessel, the owner of any goods or any other person, as to the weight of a vessel or the weight or quantity of any goods in respect of which port dues are payable, the Director of Ports may cause the vessel or goods to be

weighed or measured, and, if necessary, detain any vessel or goods until the vessel or goods have been weighed or measured.

(5) If the weight or quantity of goods weighed or measured at the instance of the Director of Ports—

- (a) is greater than that shown by the manifest, bill of lading, account or other statement delivered by the master of the vessel containing the goods or by the owner of the goods, an amount equal to the amount of the expenses of and incidental to the weighing and measuring of the goods shall be paid to the Director of Ports by the master of the vessel or owner of the goods and shall be recoverable by the Director of Ports from the master of the vessel or owner of the goods as a civil debt due to the Ports Authority;
- (b) is less than that so shown, the Director of Ports shall pay to the master of vessel or the owner of the goods an amount equal to the amount incurred by the master of the vessel or the owner of the goods as the result of the detention of the vessel or goods by the Director of Ports acting in exercise of those powers.

#### **Penalty for evading payment of dues**

24. A master of a vessel or owner of goods who evades or attempts to evade the payment of any port or cargo dues commits an offence and is liable on summary conviction to a penalty of three times the amount of those dues or \$10,000, whichever is the greater, or to a term of imprisonment of six months, or both.

#### **Prohibition against operating a private port except under licence**

25. (1) No person shall use—

- (a) any land, other than land in the possession of the Crown or a Government port; or
- (b) any vessel or any floating structure not belonging to the Government or the Ports Authority,

for the shipping or unshipping of goods or other articles, unless the person in possession of that land, vessel or floating structure is the holder of a valid licence granted under this section, and unless the use of that land, vessel or floating structure for that purpose is in accordance with that licence:

Provided that this section shall not apply to transshipment with the Turks and Caicos Islands in respect of goods which have already been cleared through a port.

(2) A licence under this section may be granted for such consideration, for such term and upon such conditions as the Minister, acting on the advice of the Ports Authority, may see fit on the grant of the licence or at any time thereafter; and any such conditions may be varied or revoked by the Minister acting on the advice of the Ports Authority.

(3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of up to \$10,000 or a term of imprisonment of up to two years, or both.

#### **Application of Part IV to licensed ports**

26. A licence granted under section 25 may be granted on condition that this Part and any regulations made under it shall apply to the land, vessel or floating structure to which the licence relates as if that land, vessel or floating structure were a Government port, subject to such modifications as may be specified in the licence.

#### **Health and safety of persons at or about ports**

27. (1) The Minister may, on the recommendation of the Ports Authority, provide for—

- (a) securing the health, safety and welfare of persons at work in or about a port, whether as employed or self-employed persons;
- (b) protecting persons, other than persons at work, against risks to health or safety arising out of or in connection with the activities of persons at work in or about a port.

(2) On the recommendation of the Ports Authority and after consultation with the Minister responsible for health, the Minister may by regulations provide for the application to any port or vessel within a port of any of the provisions of the Public and Environmental Health Ordinance as if the port or vessel were a house or other premises and as if the master of the vessel were the occupier; and regulations under this section may apply any of those provisions subject to such modifications as the Minister thinks fit.

### PART V

#### CARRIAGE AND STORAGE OF GOODS BY PORTS AUTHORITY

#### **Interpretation in Part V**

28. For the purposes of this Part—

“Ports Authority” includes a person contracted by the Ports Authority to carry and store goods on its behalf, and “officer” shall be construed accordingly to include all officers of the Ports Authority and any employee of such person.

**Conditions of carriage and storage of goods by Ports Authority**

29. The Ports Authority may, subject to this Ordinance and any regulations made under it—

- (a) determine the conditions upon which goods shall be carried or stored in Government ports, and different conditions may be determined in different cases;
- (b) determine its charges for the carriage and storage of goods and for any other service or facility performed or provided by it.

**Liability for payment of carriage and storage charges**

30. The consignor of, or person tendering, any goods for carriage or storage by the Ports Authority, or the consignee of, or person receiving any goods which have been carried or stored by the Ports Authority, is liable in accordance the regulations made under this Ordinance for the charges for such carriage or storage and any other services performed or facility provided by the Ports Authority.

**Duty to deliver description of goods**

31. (1) The consignor of, or person tendering, any goods for carriage or storage by the Ports Authority, or the consignee of, or person receiving, any goods which have been carried or stored by the Ports Authority, shall deliver to any officer at his request the documents and information prescribed in the regulations made under this Ordinance to enable such officer to determine the charges payable in respect thereof.

(2) An officer may, for the purpose of verifying the documents and information delivered under subsection (1), require such consignor, person or consignee, as the case may be, to permit him to examine such goods.

(3) If such consignor, person or consignee fails to deliver the documents, an officer may refuse to accept the goods unless in respect thereof a charge not exceeding the highest payable for any class of goods is paid.

(4) If any document or information delivered under subsection (1) is found to be false in any material particular an officer may refuse to deliver such goods unless a charge not exceeding double the highest dues payable for any class of goods is paid.

**Officer's power to levy charges, etc.**

32. In respect of all goods in the custody of the Ports Authority an officer shall be entitled to levy such charges as may be determined in accordance with the regulations made under it and he may do all such reasonable acts and incur such reasonable expenses as are necessary for the proper custody and preservation of the goods, and the Ports Authority shall have a lien on the goods for such charges and any other expenses and shall be entitled to seize and detain the goods until such charges are fully paid.

### **Director of Ports may retain goods until freight, etc., is paid**

**33.** (1) Where the agent of a vessel, from which any goods have been landed at a Government port and accepted by the Ports Authority for carriage or storage or for delivery to the consignee, notifies the Director of Ports in writing that the freight or other charges payable to the agent of the vessel of the amount specified in the notice remain unpaid in respect of the goods, the Director of Ports may retain the goods and refuse delivery of them to the consignee or any other person until—

- (a) the payment of any dues and charges in respect of such vessel and the goods and customs duties thereon;
- (b) the production of a receipt for, or a release from, the payment of such amount signed, or purporting to be signed, by or on behalf of the agent; or
- (c) the payment of such amount by the person entitled to take delivery thereof.

(2) Where the Director of Ports causes to be delivered any goods in respect of which a notice has been given under subsection (1) to a person producing such receipt or release, or making such payment, as is referred to in subsection (1)(b) or (c), the Ports Authority shall be freed from all liability to any person in respect of the goods.

(3) Nothing in this section shall be construed as requiring any person to take into the custody of the Ports Authority any goods which would not otherwise be receivable by the Ports Authority under this Ordinance or as requiring the Director of Ports to enquire into the validity of any claim made for freight or any other sums made in any notice given by an agent under subsection (1).

## PART VI

### MISCELLANEOUS

#### **Masters to comply with Ordinance**

**34.** Every master and owner of a vessel present in the jurisdiction shall comply with this Ordinance and any regulations made under it, and with the directions of the Director of Ports as to navigation and berthing, and shall pay such dues and charges as may be prescribed for their classes of vessels.

#### **Detention and sale of vessels and goods for unpaid dues and charges**

**35.** (1) The Ports Authority has a lien on every vessel and its equipment and on any goods for the recovery of port dues.

(2) The Director of Ports may—

- (a) enter, take control of and detain any vessel and its equipment; and
- (b) take control of and detain any goods,

on which the Ports Authority has a lien.

(3) Where following the detention of any goods the port dues concerned remain unpaid for seven days after the day on which the detention was made, the Director of Ports may, without prejudice to any other remedy, sell the goods detained, and apply the proceeds of the sale as follows, and in the following order of payment—

- (a) to customs duty, if any;
- (b) to the expenses of the sale;
- (c) to the port dues concerned;
- (d) to freight and other allowable claims of which the Director of Ports has received notice;
- (e) to the owner, if traceable within 12 months; and
- (f) to the funds of the Ports Authority.

(4) Where the detention is of any vessel and its equipment and the port dues concerned remain unpaid for seven days after the day on which the detention was made, the Director of Ports may, without prejudice to any other remedy, cause the whole or part of the vessel and its equipment to be appraised by two or more appraisers selected by him and then sold; and the proceeds shall be applied in the same manner and order as provided in subsection (3).

(5) If any dispute arises concerning the amount of port dues payable occasioned by any detention under this section, the Director of Ports may detain the vessel, equipment or goods concerned until the amount of such dues is determined by the Magistrate on application made to him for that purpose by either party; and in so determining the Magistrate shall award such costs to be paid by either of the parties to the other of them as he thinks fit.

### **Ports Authority not a bailee**

**36.** The Ports Authority is not, with respect to property entrusted to its care, a bailee for reward and has no liability for loss or damage occasioned to the property unless such loss or damage is due to the wilful neglect or default of the Ports Authority or its agents.

### **Liability of members, officers and employees of, and limitation of claims against Ports Authority**

**37.** (1) No member, officer or employee of the Ports Authority shall be personally liable for any act or default of the Ports Authority done or omitted to be done in good faith in the course of the operations of the Ports Authority.

(2) No claim against the Ports Authority shall be effective unless made in writing to the Authority within three months of the arising of the claim or of the

damage coming to the notice of the person interested therein or having a duty to inform such person thereof.

### **Duty of masters to supply information**

**38.** Every master of an arriving vessel shall produce to the Director of Ports at his request—

- (a) the vessel's register;
- (b) the vessel's papers, including cargo manifest;
- (c) a list of births and deaths, if any, which have occurred during the voyage;
- (d) a list of stowaways, if any; and
- (e) such other information as the Director of Ports may reasonably require.

### **Offences and penalties**

**39.** (1) Any person who maliciously (the proof of absence of malice being upon the person charged)—

- (a) sets adrift or attempts to set adrift any vessel which is berthed or lying on the foreshore;
- (b) interferes or attempts to interfere with any lighthouse or day marker;
- (c) does damage to any vessel;
- (d) makes or attempts to make any signal to any vessel which if acted upon would involve injury or the risk of injury to any person or property; or
- (e) introduces any noxious or explosive matter into or over territorial waters or upon the foreshore,

commits an offence and is liable on summary conviction to a fine of up to \$5,000 or a term of imprisonment of up to five years, or both.

(2) Any person who—

- (a) obstructs or resists any officer of the Ports Authority acting in the course of his duty;
- (b) impersonates any officer;
- (c) not being authorised in that behalf, enters upon any part of any port from which the public is excluded;
- (d) dumps any litter in territorial waters;
- (e) not being authorised by the Ports Authority in that behalf, introduces or discharges any waste matter or effluent into territorial waters;

- (f) navigates any vessel in such a manner as to cause damage or risk of damage to any person or property;
- (g) loiters in any Government port with intent to commit an offence, proof of absence of such intent being upon the person charged;
- (h) fails to comply with the lawful directions of the Director of Ports with respect to any cargo;
- (i) contravenes any provision of this Ordinance or of any regulations for which no penalty is elsewhere in this Ordinance provided;
- (j) fails to comply with the lawful directions of the Director of Ports with respect to any vessel; or
- (k) by any means gives or attempts to give any false information upon any matter concerning this Ordinance,

commits an offence and is liable on summary conviction to a fine of up to \$1,000 a term of imprisonment of up to six months, or both.

(3) Where an offence proved to have been committed against this section involves damage to the property of the Ports Authority, the court may order the convicted person to pay the Ports Authority the cost thereof and such order may be enforced in the same manner as the judgement of a civil court.

### **Offences by body corporate**

**40.** (1) Where an offence under this Ordinance committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to, any neglect on the part of, a director, manager, secretary or employee of the body corporate or any person purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and liable to be proceeded against and punished accordingly.

(2) For the purpose of this section a person shall be deemed to be a director of a body corporate if he is a person in accordance with whose directions or instructions the directors of the body corporate or any of them act.

### **Loan to enable the Ports Authority to commence**

**41.** The Governor shall lend the Ports Authority such sum as the Minister responsible for finance may certify is required to enable the Ports Authority to commence functioning, to be repaid by the Ports Authority at such times and by such methods as the Minister responsible for Finance may determine.

### **Secondment of public officers**

**42.** (1) The Governor, in the exercise of his discretion and subject to such conditions as he may impose, may approve the secondment of any public officer to serve with the Ports Authority for a period not exceeding two years from the commencement of this Ordinance.

(2) Subject to the conditions of his secondment, a public officer shall, at the expiry of his period of secondment, have the option to be employed as an

officer of the Ports Authority, and the Ports Authority shall have the option to employ him.

### **Savings**

**43.** (1) All subsidiary legislation made under the repealed Docks Ordinance<sup>1</sup>, and in force immediately prior to the commencement of this Ordinance shall, so far as is not inconsistent with the provisions of this Ordinance, continue in force as if made under this Ordinance.

(2) The repealed Harbours Ordinance,<sup>2</sup> shall remain in effect until replaced by the Regulations made under this Ordinance.

(3) Any licence issued under the repealed Docks Ordinance and the repealed Harbours Ordinance, and in force at the commencement of this Ordinance, shall continue in force as if issued under this Ordinance, and the provisions of this Ordinance shall apply accordingly.

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## **SCHEDULE**

*(Section 3(4))*

### **PROCEEDINGS OF THE PORTS AUTHORITY**

#### **Validity of proceedings of the Ports Authority**

1. The validity of any proceedings of the Ports Authority shall not be affected by any vacancy in its membership or by any defect in the appointment of a member.

#### **Temporary appointments**

2. The Minister, after consultation with the Governor, may appoint a person to be a temporary member to act for a member who for any reason is temporarily incapable of performing the duties of his office, and such temporary member shall, for the duration of his appointment, be deemed to be a member.

#### **Ordinary and special meetings**

3. The Ports Authority shall meet at least 12 times in every calendar year. The chairman shall call meetings on his own initiative, or within seven days of the receipt by him of a requisition for that purpose addressed to him by any three members.

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<sup>1</sup> Cap 57, 1998 Revised Edition (*now repealed*).

<sup>2</sup> Cap 55, 1998 Revised Edition (*now repealed*).

**Procedure at meetings**

4. At every meeting of the Ports Authority—
- (a) the chairman or, in the chairman's absence, the deputy chairman, shall preside;
  - (b) three members shall form a quorum; and
  - (c) decisions of the Ports Authority shall be arrived at by a majority vote, the member presiding having a casting vote in the event of a tie.

**Committees of Ports Authority**

5. (1) To assist it in any matter, the Ports Authority may appoint one or more committees consisting of such persons, whether members of the Ports Authority or not, as the Ports Authority thinks fit, but any such committee shall include at least one member of the Ports Authority.

(2) This Schedule and section 3(3) of this Ordinance shall apply with necessary modifications to a committee and a member of a committee as they apply to the Ports Authority and a member of the Ports Authority.

**Attendance of invited persons at meetings**

6. The Ports Authority may invite one or more persons to attend any of its meetings for the purpose of advising or assisting it, but no such person may vote at its meetings.

**Personal interest**

7. If a member or other person present at a meeting of the Ports Authority is directly or indirectly interested in any contract or proposed contract or other matter he shall disclose the fact of his interest and shall absent himself during, and shall not partake in the consideration of or voting on such contract or other matter.

**Minutes**

8. The Ports Authority shall cause minutes to be kept of every meeting. The minutes shall be confirmed by the Ports Authority and signed by the chairman.

**Procedure generally**

9. Subject to this Ordinance, the Ports Authority shall otherwise have power in all respects to regulate its own procedure, including the manner in which matters subject to the determination of the Ports Authority are determined by it.