

2019-06-04

OBJECTS AND REASONS

This Bill would amend the *Customs Act*, Cap. 66 to strengthen Barbados Anti-Money Laundering and Financing of Terrorism regime.

Arrangement of Sections

1. Short title
2. Amendment of section 2 of Cap. 66
3. Insertion of new section 4A into Cap. 66
4. Insertion of new sections 209A and 209B into Cap. 66
5. Repeal and replacement of section 242 of Cap. 66

BARBADOS

A Bill entitled

An Act to amend the *Customs Act*, Cap. 66.

ENACTED by the Parliament of Barbados as follows:

Short title

- 1.** This Act may be cited as the *Customs (Amendment) (No. 2) Act, 2019*.

Amendment of section 2 of Cap. 66

2. Section 2 of the Customs Act, Cap. 66 in this Act referred to as the principal Act is amended

(a) by inserting in alphabetical order, the following:

“ “bearer negotiable instruments” includes

- (a) monetary instruments in bearer form such as traveller’s cheques;
- (b) negotiable instruments (such as cheques, promissory notes and money orders) that are either in bearer form, endorsed without restriction, made out to a fictitious payee or otherwise in such form that title thereto passes upon delivery;
- (c) incomplete instruments (such as cheques, promissory notes and money orders) signed, but with the payee’s name omitted or with the date or other vital information missing;”;

(b) by deleting the definition of “goods” and substituting the following:

“ “goods” includes any tangible and personal property such as livestock, stores, baggage, documents in physical and electronic form, currency, mail, bearer negotiable instruments, packets imported by post, prohibited or restricted goods, aircraft and vessels.”.

Insertion of new section 4A into Cap. 66

3. The principal Act is amended by inserting immediately after section 4 the following new section:

“Confidentiality

4A.(1) Every person having an official duty under this Act or being employed in the administration of this Act shall regard as secret and confidential all documents and information relating

- (a) to the valuation or assessment of customs duties in respect of imported goods; or
- (b) to the mitigation of a penalty.

(2) A person exercising power under this Act or in relation to an assigned matter shall not communicate to any unauthorised person, either directly or indirectly, any information or document obtained

- (a) in the exercise of any power under this Act; or
- (b) in relation to an assigned matter.

(3) A person exercising power under this Act or in relation to an assigned matter who, having possession of or control over any information or document obtained as described in subsection (2),

- (a) communicates such information or anything contained in such document to an unauthorised person; or
- (b) permits an unauthorised person to have access to the document or information

is guilty of an offence and is liable on summary conviction to a fine of \$10 000.

(4) Nothing contained in subsection (3) prevents the disclosure of any document or information where that disclosure is authorised by the Comptroller in accordance with subsection (5).

(5) The Comptroller may disclose or authorise the disclosure of any information or document pursuant to any law, treaty, agreement or

arrangement concluded by the Crown for the purpose of administering any customs enactment.

(6) The information or document that may be disclosed pursuant to subsection (5) includes information about

- (a) the movement of any vessel, aircraft or vehicle and the passenger and crew lists in respect of that vessel, aircraft or vehicle;
- (b) past travel movements, general history and *modus operandi* of specified people;
- (c) currency and documents relating to relevant financial transactions including money laundering or other unlawful conduct or activities related to terrorism;
- (d) intelligence analysis, assessments and reports; and
- (e) the details of persons who are known or suspected to be involved in unlawful conduct.”.

Insertion of new sections 209A and 209B into Cap. 66

4. *The principal Act is amended by inserting immediately after section 209 the following new sections:*

“Retention of documents and goods obtained during a search

209A.(1) Where a proper officer carries out any lawful search, inspection, audit or examination under this Act, and has reasonable cause to suspect that documents or goods coming into his possession during the search, inspection, audit or examination

- (a) are evidence of the commission of an offence under this Act;

- (b) are intended to be used for the purpose of committing an offence under this Act;
- (c) are property obtained through unlawful conduct; or
- (d) are intended to be used for money laundering or other unlawful conduct or activities related to terrorism,

the officer may, subject to subsection (4), take possession of and retain the documents or goods.

(2) Where a proper officer takes possession of a document under subsection (1), he shall, at the request of the person otherwise entitled to the document, provide that person with a copy of the document certified under the seal of the Customs and Excise Department as a true copy.

(3) Notwithstanding any other law, a copy certified in accordance with subsection (2) is admissible in evidence in a court as if the copy were the original document.

(4) Where a proper officer takes possession of and retains documents or goods under this section

- (a) as a result of an offence being committed in respect of the documents or goods, the court may order, either at the hearing or on a subsequent application, that the documents or goods
 - (i) be delivered to the person appearing to the court to be entitled to them; or
 - (ii) be otherwise disposed of in such manner and under such conditions as the court thinks fit; and
- (b) the proper officer may at any time, unless an order has been made under paragraph (a)
 - (i) return the documents or goods to the person from whom they were taken; or

(ii) apply to a magistrate for an order as to their disposal, and on any such application the magistrate may issue an order that a court may issue under paragraph (a).

(5) Where proceedings for an offence relating to the documents or goods retained under this section are not brought within a period of 6 months after the date on which the proper officer took possession of the documents or goods, a person claiming to be entitled to the documents or goods may, after the expiration of that period, apply to a magistrate for an order that they be delivered to that person, and on any such application the magistrate may

(a) refuse to issue the order; or

(b) make an order that a court may make under subsection (4) (a).

Detention of goods

209B.(1) A customs officer may, without warrant, seize and detain goods where

(a) the goods are in Barbados and he is satisfied that they either

(i) are being or are intended to be, exported from Barbados; or

(ii) are being, or have been imported into Barbados;

(b) the goods came to his attention, or into his possession during a search, inspection, audit or examination under this Act or any Act that relates to the reporting of imports or exports of currency; and

(c) he has reasonable grounds to suspect that the goods were obtained in contravention of any law.

(2) Reasonable force may be used by a customs officer where it is necessary to seize and detain goods under this section.

- (3) Where the person from whom the goods have been seized and detained is identified but is not present when the seizure and detention occurs, the Comptroller shall notify that person of the detention and seizure and issue a receipt.
- (4) Goods detained under this section shall be taken to a place of security as directed by the customs officer.”.

Repeal and replacement of section 242 of Cap. 66

5. *Section 242 of the principal Act is deleted and the following substituted:*

“Comptroller may prescribe forms

- 242.(1)** Subject to this Act, the Comptroller may prescribe forms required to be used for the purposes of implementing any customs enactment and any forms so prescribed shall be published in the *Official Gazette* one month before the forms are required to be used.
- (2) Every importer and exporter shall use the appropriate forms.
 - (3) Every document submitted to the Comptroller or a proper officer for the purposes of any customs enactment shall be in such form and shall contain the particulars as may be prescribed by the Comptroller.
 - (4) Unless otherwise required by the Comptroller
 - (a) a document submitted under this section may be in electronic form; and
 - (b) the document referred to in paragraph (a) shall serve as a legal document.
 - (5) The *Electronic Transactions Act, 2014* (Act 2014-8) shall apply *mutatis mutandis*.”.

Read three times and passed the House of Assembly this
day of _____, 2019.

Speaker

Read three times and passed the Senate this _____ day of
, 2019.

President