

No. 18 of 2000.

*Free Trade Zones Act 2000.*

Certified by : 16.10.00

INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 2000.

*Free Trade Zones Act 2000.*

ARRANGEMENT OF SECTIONS.

PART I. - PRELIMINARY.

1. Compliance with Constitutional requirements.
2. Interpretation -
  - "Authority"
  - "authorized activity"
  - "authorized officer"
  - "commercial activity"
  - "Commissioner General"
  - "customs duty"
  - "customs officer"
  - "excise duty"
  - "free commercial zone"
  - "free industrial zone"
  - "free trade zone"
  - "goods"
  - "landowners' corporation"
  - "lease"
  - "licence"
  - "licensed activity"
  - "manufacture"
  - "permit"
  - "principal customs area"
  - "relevant Applicable Law"
  - "relevant Provincial Government"
  - "this Act"
  - "value".
  - "vessel".
3. Declaration of free trade zones, etc.,

**PART II. - ESTABLISHMENT OF FREE TRADE ZONE  
AUTHORITIES.**

4. Appointment of Authorities.
5. Status of Authorities.
6. Functions of Authorities.
7. Powers of Authorities.

**PART III. - REQUIREMENTS ON INCORPORATION OF  
AUTHORITIES.**

8. Equity entitlements.
9. Constitutions of Authorities.
10. Appointment of Directors of Authorities.

**PART IV. - PERMITTED ACTIVITIES WITHIN A FREE TRADE  
ZONE.**

*Division 1. - General.*

11. Exemption from duty of goods imported into or exported from a free trade zone.
12. Exclusion of goods from free status.
13. Authorized activities within a free trade zone.
14. Licensing of authorized activities within a free trade zone.
15. Goods deemed to be exported or imported.
16. Goods manufactured in a free industrial zone.
17. Goods permitted into a free industrial zone.
18. Goods permitted into a free commercial zone.
19. Contraventions of Part IV.

*Division 2. - Licencing etc., of licenced activities.*

20. Grant of licences.
21. Application for licence, etc.,
22. Licence.
23. Term of licence.
24. Renewal of licence.
25. Cancellation of licences.
26. Appeals.

## **PART V. - VESTING OF CERTAIN LAND.**

### *Division 1. - Declared free trade zones.*

27. Application of this Part.

### *Division 2. - Leases of land in free trade zones.*

28. Application of a *Land Act 1996*.
29. Minister may grant leases.
30. Persons not to occupy land without lease, etc.,
31. Notice of lands available for leasing.
32. Unadvertised lands not to be leased.
33. Period of leases.
34. Tenders.
35. Form of application for leases.
36. Consideration of applications.
37. Notification of acceptance etc.,
38. Rental.
39. Relaxation of covenants and conditions.
40. Variation of purposes.
41. Form of execution of leases.
42. Surrender of leases.
43. Transfer of leases.

### *Division 3. - Permits.*

44. Prohibition of certain activities without permit.
45. Permit to carry on certain activities.
46. Exercise of rights under permits.

## **PART VI. - FURTHER OBLIGATIONS OF AUTHORITIES.**

47. Authorities to provide facilities.
48. Exclusion of certain goods from a free trade zone.
49. Reports.
50. Directions by Minister.

**PART VII. - OFFENCES, PENALTIES, SEARCH, SEIZURE,  
ARREST AND PROVISIONS AS TO TRIALS AND  
PROCEEDINGS.**

51. Interpretation.  
    "authorized officer".
52. Powers of authorized officers.
53. Issue of search warrants.
54. Search without warrant.
55. Search of conveyances.
56. Examination of goods.
57. Search of persons.
58. Seizure of goods.
59. Return or disposal of movable property.
60. Powers of arrest.
61. Arrest without warrant.
62. Prosecution of offences.
63. Protection of informers.
64. Offences by bodies corporate, etc.,
65. Protection from liability.
66. Protection of an Authorized Officer etc., from liability.
67. Costs and damages.
68. Goods liable to forfeiture.
69. Forfeiture and disposal of goods seized.
70. Goods seized in respect of which there is no prosecution.
71. Goods seized may be delivered to owner.
72. General penalties.
73. Attempts and abetments.

**PART VIII. - MISCELLANEOUS.**

74. Compliance with other laws.
75. Taking of samples.
76. Appeals from decisions of the Commissioner General.
77. Regulations.

**SCHEDULES.**

INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 2000.

AN ACT

entitled

*Free Trade Zones Act 2000,*

Being an Act -

- (a) to establish the framework and mechanism for the creation, operation, administration and co-ordination of free trade zones in Papua New Guinea; and
- (b) to make provision for the creation and establishment of Authorities in respect of such free trade zones and for the conferral upon such Authorities of statutory powers and functions relating to the management, control and regulation of such free trade zones, and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

**PART I. - PRELIMINARY.**

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

(1) This Act, to the extent that it regulates or restricts a right or freedom conferred by Subdivision.III.3.C (*qualified rights*) of the *Constitution* namely -

- (a) freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (b) the right to freedom of expression conferred by Section 46 of the *Constitution*; and
- (c) the right to privacy conferred by Section 49 of the *Constitution*; and
- (d) the right of freedom of movement conferred by Section 52 of the *Constitution*,

is a law that is made for the purpose of giving effect to the public interest in public order and public welfare.

## *Free Trade Zones*

(2) For the purposes of Section 41(2) of the *Organic Law on Provincial Governments and Local-level Governments*, it is hereby declared that this Act relates to a matter of national interest.

### 2. INTERPRETATION.

In this Act, unless the contrary intention appears -

"Authority" means an Authority appointed under Section 4, and, in respect of a free trade zone, means the Authority established for that free trade zone;

"authorized activity" means an activity authorized under Section 13;

"authorized officer" has the meaning given to it in Section 51;

"commercial activity" includes trading, breaking bulk, grading, repacking, relabelling and transit;

"Commissioner General" means the Commissioner General of Internal Revenue;

"customs duty" means any duty imposed by or under the *Customs Act* (Chapter 101);

"customs officer" has the same meaning as "officer" under the *Customs Act* (Chapter 101);

"excise duty" means any duty imposed by or under the *Excise Act* (Chapter 105);

"free commercial zone" means an area declared under Section 3 to be a free commercial zone;

"free industrial zone" means an area declared under Section 3 to be a free industrial zone;

"free trade zone" means an area declared under Section 3 to be a free commercial zone or a free industrial zone;

"goods" includes animals, birds, fish, plants and all kinds of movable property;

"landowners' corporation" means a corporate body referred to in Section 8(1)(c);

"lease" means a lease granted under Section 29;

"licence" means a licence granted under Section 21;

"licensed activity" means an authorized activity specified under Section 14 as a licensed activity;

"manufacture" means the conversion by manual or mechanical means of organic or inorganic material into a new product by changing the size, shape, composition, nature or quality of such material and includes the

## *Free Trade Zones*

assembly of parts into a piece of machinery or other products, but does not include the installation of machinery or equipment for the purpose of construction, and the term "manufacturing activity" with its grammatical variations and cognate expression shall be construed accordingly and, in relation to such term, it shall include any activity as determined by the Commissioner General to be a manufacturing activity;

"permit" means a permit issued under Section 45;

"principal customs area" means any part of Papua New Guinea other than a free trade zone;

"relevant Applicable Law" means -

- (a) the *Customs Act* (Chapter 101); or
- (b) the *Excise Act* (Chapter 105); or
- (c) the *Customs Tariff Act 1990*; or
- (d) the *Excise Tariff Act* (Chapter 102); or
- (e) the *Value Added Tax Act 1998*;

"relevant Provincial Government", in relation to -

- (a) a free trade zone - means the Provincial Government of the province in which the free trade zone is situated; and
- (b) in relation to an Authority - means the Provincial Government of the province in which the free trade zone, in respect of which the Authority was appointed, is situated;

"this Act" includes the regulations;

"value" in relation to imported goods, means the price which an importer would give for the goods in the open market if the goods were delivered to him at the place of payment of customs duty and if freight, insurance, commission and all other costs, charges and expenses (except any customs duty and wharf handling, storage, removal, mechanical equipment and other charges incurred in a free trade zone) incidental to the purchase and delivery at such place had been paid, and, for the purposes of the definition of the word "value", import means an import into a principal customs area from a free trade zone;

"vessel" includes an aircraft.

### **3. DECLARATION OF FREE TRADE ZONES, ETC.,**

(1) The Minister may declare any area of the Provinces specified in Schedule 3 to be -

- (a) a free commercial zone; or
- (b) a free industrial zone.



## *Free Trade Zones*

- (2) A declaration made under Subsection (1) shall -  
(a) define the limits of the free trade zone; and  
(b) be published in the National Gazette.
- (3) A -  
(a) free commercial zone declared under Subsection (1)(a); or  
(b) free industrial zone declared under Subsection (1)(b),  
constitutes a free trade zone.
- (4) The Minister may, from time to time as he considers necessary, by notice in the National Gazette, amend or revoke a declaration made under Subsection (1).

### **PART II. - ESTABLISHMENT OF FREE TRADE ZONE AUTHORITIES.**

#### **4. APPOINTMENT OF AUTHORITIES.**

(1) The Minister shall, after consultation with the Provincial Government of the relevant Province, in respect of a free trade zone declared under Section 3, by name, appoint, by notice in the National Gazette, a company incorporated, or to be incorporated, under the *Companies Act 1997*, to be the Authority for that free trade zone, for the purposes of this Act.

(2) The Departmental Head of the Department responsible for trade and industry matters shall cause to be incorporated under the *Companies Act 1997* the company to constitute the Authority under Subsection (1).

#### **5. STATUS OF AUTHORITIES.**

(1) An Authority appointed under Section 4 and having the status of a company under the *Companies Act 1997* -

- (a) is not the State and does not represent the State except by express agreement; and  
(b) is not exempt from any rate, tax, duty or other impost imposed by or under any law; and  
(c) cannot render the State liable for any debts, liabilities or obligations, unless this Act or any other law expressly so provides.

(2) Except as expressly provided in this Act, nothing in this Act shall prejudice the powers of an Authority to alter its constitution or to dispose of, or deal with, its assets or to carry on or discontinue any part of its business.

## *Free Trade Zones*

(3) All assets, rights or properties (including land) of a relevant Authority shall be owned by the Authority.

### **6. FUNCTIONS OF AUTHORITIES.**

(1) An Authority has, in respect of the free trade zone for which it is established, the following functions:-

- (a) the establishment and maintenance of the framework and mechanisms for the integration, co-ordination, planning, monitoring, management and regulation of the free trade zone;
- (b) the transformation of the free trade zone into a highly developed agro-financial centre providing efficient and effective services to commercial enterprises;
- (c) the promotion of the flow of investors, both foreign and local, into the free trade zone and the provision of linkages among industries in and around the free trade zone;
- (d) the stimulation and generation of capital within the free trade zone by providing an attractive climate conducive to the development of business enterprises and incentives for business activities;
- (e) the fostering and promotion of financial and industrial co-operation with other free trade zones in the country and between Papua New Guinea and other industrialized countries.

(2) An Authority has, in respect of the free trade zone for which it is established, such other functions as are prescribed under this Act.

### **7. POWERS OF AUTHORITIES.**

An Authority has, in respect of the free trade zone for which it is established, power to do all things necessary or convenient to be done for or in connection with the attainment and performance of its functions and such other powers as are specified under this Act and the *Companies Act 1997*.

## **PART III. - REQUIREMENTS ON INCORPORATION OF AUTHORITIES.**

### **8. EQUITY ENTITLEMENTS.**

(1) Subject to this section, the equity shares in the capital of an Authority incorporated in accordance with Section 4 shall be allocated in the following proportions:-

- (a) the relevant Provincial Government - not less than 50%; and

### *Free Trade Zones*

(b) subject to Subsection (2), a properly constituted representative corporate body representing the landowners of the area covered by the relevant free trade zone - not less than 20%, as the directors of the Authority shall determine.

(2) The State has the right (but not the obligation) to acquire participating interests not exceeding 30% shares in the Authority.

### **9. CONSTITUTIONS OF AUTHORITIES.**

(1) The constitution of an Authority shall be registered under the *Companies Act 1997* and shall -

- (a) impose restrictions on the issue, transfer and ownership of shares in the Authority so as to prevent a member, other than the State, from having interests in the shares of the Authority that represent 30% of the total nominal amount of the issued share capital of the Authority; and
- (b) confer the following powers on the directors of the Authority to enable the directors to enforce the restrictions referred to in Paragraph (a):-
  - (i) the power to remove or limit the right of a member to exercise voting rights attaching to that member's shares; and
  - (ii) the power to refuse to register a transfer of shares; and
- (c) require that the head office of the Authority shall always be located in Papua New Guinea.

(2) A resolution of an Authority that purports -

- (a) to amend the constitution of the Authority in such a manner so as to contravene Subsection (1); or
- (b) to ratify an act or omission that contravenes the requirements of Subsection (1),

shall have no effect.

### **10. APPOINTMENT OF DIRECTORS OF AUTHORITIES.**

(1) The constitution of an Authority shall be registered under the *Companies Act 1997* and provide for the Board of Directors of the Authority to be appointed by the Minister.

- (2) The Board of Directors of an Authority shall comprise -
- (a) the Chairman, who shall be a director; and
  - (b) the Managing Director; and
  - (c) not less than three members representing the State; and

### *Free Trade Zones*

- (d) not more than two members representing the relevant Provincial Government; and
- (e) not more than two members representing the relevant landowners' corporation.

(3) Each member of the Authority, other than the State, shall recommend to the Minister its nominees to the Board of Directors and the Minister may approve the appointment of such of those nominees as he considers most suitable unless the appointment is -

- (a) in breach of the provisions of the constitution of the Authority; or
- (b) in the opinion of the Minister, not in the best interest of the Authority.

(4) Where the Minister receives a recommendation under Subsection (3), he shall, within 21 days of the date of the recommendation, inform the Authority of his approval or refusal of the nominee, and the Minister shall be deemed to have given his approval if he has not, within the 21 days, notified the Authority of his approval or refusal of the nominee.

### **PART IV. - PERMITTED ACTIVITIES WITHIN A FREE TRADE ZONE.**

#### *Division 1. - General.*

#### **11. EXEMPTION FROM DUTY OF GOODS IMPORTED INTO OR EXPORTED FROM A FREE TRADE ZONE.**

(1) Subject to this Act, goods of any description, except those that are specifically prohibited by law, may be imported into, exported from, produced, manufactured, purchased, sold or otherwise manipulated in a free trade zone in accordance with this Act without payment of any customs or excise duty or other tax imposed under a relevant Applicable Law.

(2) For the purposes of Subsection (1), the Commissioner General may, from time to time, under his hand, issue directions as to the manner in which goods are to be dealt with in a free trade zone.

(3) Unless specifically exempted under a relevant Provincial or Local level Government law, this section does not apply to tax imposed on goods under a Provincial or Local level Government law.

## *Free Trade Zones*

### **12. EXCLUSION OF GOODS FROM FREE STATUS.**

(1) The Minister may, by notice in the National Gazette, declare any goods or a class of goods to be goods to which Section 11 shall not apply.

(2) Where a declaration is made under Subsection (1) in respect of any goods or a class of goods, the provisions of a relevant Applicable Law shall apply to such goods as if the free trade zone is a place within a principal customs area.

### **13. AUTHORIZED ACTIVITIES WITHIN A FREE TRADE ZONE.**

(1) Where the Minister makes a declaration under Section 3 which constitutes a free trade zone, he may, by the same notice or a subsequent notice, approve to be carried on as authorized activities in that free trade zone -

- (a) one or more of the activities specified in Schedule 1 in the case of a free commercial zone; or
- (b) one or more of the activities specified in Schedule 2 in the case of a free industrial zone.

(2) Authorized activities approved by the Minister under Subsection (1) in respect of a free trade zone shall only be undertaken as licensed activities in that free trade zone in accordance with this Act.

(3) The Minister may, from time to time, by notice in the National Gazette, add to, alter or amend Schedules 1 and 2.

(4) No commercial activity other than retail trade shall be carried on in a free industrial zone.

### **14. LICENCING OF AUTHORIZED ACTIVITIES WITHIN A FREE TRADE ZONE.**

(1) A person shall not deal with or otherwise dispose of any goods within a free trade zone unless such dealing with or disposal of goods is -

- (a) an authorized activity within that zone pursuant to Section 13; and
- (b) done in accordance with a licence, permit or other authority issued under this Act.

(2) Subject to this Act, the following activities are licensed activities for the purposes of this Act:-

- (a) import or export of goods into or from a free trade zone;
- (b) manufacture of goods within a free trade zone;

### *Free Trade Zones*

- (c) transmission of goods from a free trade zone for sale by wholesale to another free trade zone;
- (d) transmission of goods from a free trade zone for sale by wholesale to a principal customs area;
- (e) sale of goods by wholesale or retail within a free trade zone;
- (f) such other activities as are determined by the Minister, by notice in the National Gazette, to be licensed activities for the purposes of this section;
- (g) such other activities as are prescribed as licenced activities under this Act.

(3) Goods brought into a free trade zone for the purposes of a licenced activity may be stored in their original packages, broken up, repacked, assembled, graded, cleaned, mixed or otherwise manipulated.

(4) This section does not apply to goods or a class of goods the subject of a declaration under Section 12.

#### **15. GOODS DEEMED TO BE EXPORTED OR IMPORTED.**

Unless otherwise provided under this Act or under any other law -

- (a) goods which are taken out from a principal customs area and brought into a free trade zone are deemed to be exported from Papua New Guinea; and
- (b) goods which are brought out of a free trade zone and taken into a principal customs area are deemed to be imported into Papua New Guinea.

#### **16. GOODS MANUFACTURED IN A FREE INDUSTRIAL ZONE.**

(1) Subject to Subsections (2), goods manufactured in a free industrial zone -

- (a) shall not be taken out of that zone except -
  - (i) for export; or
  - (ii) for transmission to a free commercial zone or a principal customs area; and
- (b) shall not be used or consumed within that zone except -
  - (i) with the written approval of the Commissioner General; and
  - (ii) on the payment of appropriate customs and excise duties or other tax payable under a relevant Applicable Law as the Commissioner General shall determine.

(2) The Minister may, from time to time, by notice in the National Gazette, determine the quantities of manufactured goods or a class of goods a manufacturer may dispose of for the purposes of -

- (a) export under Subsection (1)(a)(i); and

### *Free Trade Zones*

- (b) transmission to a free commercial zone or a principal customs area under Subsection (1)(a)(ii); and
- (c) use or consumption within the free industrial zone under Subsection (1)(b),

within a calendar year of manufacture of such goods.

#### **17. GOODS PERMITTED INTO A FREE INDUSTRIAL ZONE.**

- (1) Subject to this Act, goods -
  - (a) of any description which are to be used directly for the manufacture of other goods; or
  - (b) of any description which are to be used directly in connection with retail trade; or
  - (c) manufactured in a principal customs area for purpose of export,may be brought into a free industrial zone.

(2) No other goods except those referred to in Subsection (1) shall be brought into a free industrial zone.

#### **18. GOODS PERMITTED INTO A FREE COMMERCIAL ZONE.**

(1) Subject to Subsection (2), goods of any description may be brought into a free commercial zone for the purposes of this Act.

(2) The Minister may, by notice in the National Gazette, prohibit any goods or a class of goods from being brought into a free commercial zone.

#### **19. CONTRAVENTIONS OF PART IV.**

(1) A person who imports into, exports from, produces, manufactures, purchases, sells or otherwise deals with goods in a free trade zone in contravention of this Part is guilty of an offence.

Penalty: (a) for the first offence -

- (i) a fine of not less than ten times the amount of the customs or excise duty or tax which is payable on the goods the subject of the offence or which would otherwise have been payable on the goods the subject of the offence if this Act had not applied to them or K5,000.00, whichever is the lesser amount; or
- (ii) imprisonment for a term not exceeding two years, or both; and

### *Free Trade Zones*

- (b) for the second or subsequent offence -
  - (i) a fine of not less than twenty times the customs or excise duty or tax which is payable on the goods the subject of the offence or which would otherwise have been payable on the goods the subject of the offence if this Act had not applied to them or K10,000.00, whichever is the lesser amount; or
  - (ii) imprisonment for a term not exceeding two years, or both.

(2) Where the value of the goods cannot be ascertained for the purposes of Subsection (1), the penalty imposed shall be a fine not exceeding K5,000.00 or imprisonment for a term not exceeding two years or both.

### *Division 2. - Licencing, etc., of licensed activities.*

#### **20. GRANT OF LICENCES.**

Subject to this Act, an Authority may grant a licence to a person in accordance with this Division in respect of a licensed activity to be carried on in the free trade zone for which that Authority is established.

#### **21. APPLICATION FOR LICENCE, ETC.,**

- (1) An application for a licence shall be -
  - (a) in the prescribed form; and
  - (b) lodged with the Authority; and
  - (c) accompanied by the prescribed fee, which shall be refunded where the application is refused.

(2) Where the Authority considers that there is insufficient information accompanying the application, it shall return the application to the applicant with details of the reasons for its return and the applicant may subsequently resubmit the application with such further information as is required.

(3) The Authority shall, as soon as practicable after the receipt of the application under this section, consider the application.

(4) In considering an application under this section, the Authority may request the applicant to provide such further and better information in relation to the application as it considers necessary.



## *Free Trade Zones*

(5) Where the Authority has considered an application under this section, it may in accordance with this Division -

- (a) grant the application and, on payment by the applicant of the prescribed licence fee, issue the licence to the applicant; or
- (b) refuse the application and notify the applicant forthwith giving the reasons for the refusal.

### **22. LICENCE.**

(1) A licence granted under Section 21 -

- (a) shall be in the prescribed form; and
- (b) may be in respect of one or more licensed activities; and
- (c) may contain such conditions as determined by the Authority and specified in the licence; and
- (d) is subject to the conditions specified in the licence; and
- (e) subject to Subsection (2), comes into force on the date specified in it or, where no date is specified, on the date on which it is granted; and
- (f) subject to this Act, is not transferable.

(2) Notwithstanding Subsection (1)(e), a licence shall not come into force unless the prescribed fee has been paid within 30 days of the date referred to in Subsection (1)(e) after which time, where the prescribed fee has not been paid, the licence shall be deemed to have been cancelled.

### **23. TERM OF LICENCE.**

A licence shall be granted for a term not exceeding 12 months.

### **24. RENEWAL OF LICENCE.**

(1) The holder of a licence may apply to the Authority for the renewal of the licence.

- (2) An application under Subsection (1) shall be -
- (a) in the prescribed form; and
  - (b) accompanied by the prescribed fee; and
  - (c) lodged with the Authority.

- (3) On the receipt of an application under this section, the Authority may -
- (a) grant the application and issue the renewal of licence; or
  - (b) refuse the application and notify the applicant forthwith giving the reasons for the refusal.

## *Free Trade Zones*

(4) Sections 22 and 23 apply to a renewal of a licence granted in accordance with Subsection (3).

### **25. CANCELLATION OF LICENCES.**

(1) Where the holder of a licence -  
(a) is convicted of an offence against this Act; or  
(b) has failed to comply with any of the conditions of the licence,  
the Authority may cancel the licence.

(2) Where it is proposed to cancel a licence under Subsection (1), the Authority shall serve on the holder of the licence a notice -  
(a) advising him of the intention to cancel the licence and the reasons for the intended cancellation; and  
(b) requiring him, within 14 days from the date of service of the notice, to make representations to the Authority as to why the licence should not be cancelled.

(3) On the request of the holder of a licence within 14 days of the date of service of the notice under Subsection (2), the Authority shall allow the person an opportunity to be heard.

(4) Where the holder of a licence does not, within the period referred to in Subsection (2)(b), make representations or submit a request to be heard under Subsection (3), the Authority may cancel the licence.

(5) The Authority shall consider any representations made under Subsection (2)(b) and, where appropriate, cancel the licence.

### **26. APPEALS.**

(1) A person -  
(a) whose application for a licence or renewal of a licence has been refused;  
or  
(b) whose licence has been cancelled,  
by an Authority may appeal to the Minister.

(2) An appeal under this section shall be -  
(a) made in writing; and  
(b) lodged with the Minister within 30 days of the refusal or cancellation, as the case may be; and

### *Free Trade Zones*

- (c) accompanied by the prescribed fee.
- (3) In the exercise of his power to determine an appeal, the Minister may -
- (a) dismiss the appeal;
  - (b) uphold the appeal and require the Authority to -
    - (i) grant the licence or renewal of the licence and to issue the licence or renewal of the licence in the case of an appeal against the refusal of an application for a licence or renewal of a licence; or
    - (ii) re-issue the licence for the unexpired term of the licence in the case of an appeal against the cancellation of a licence,
- and the Authority shall give effect to the Minister's decision.
- (4) The Minister's decision under this section is final.

## **PART V. - VESTING OF CERTAIN LAND.**

### *Division 1. - Declared free trade zones.*

#### **27. APPLICATION OF THIS PART..**

(1) This Part applies to land the subject of a declaration under Section 54A of the *Land Act 1996*.

(2) Unless otherwise specified in this Act, nothing in this Part derogates the application of the *Land Act 1996* or the power of the Minister responsible for land matters to grant to an Authority State Leases under that Act.

### *Division 2. - Leases of land in free trade zones.*

#### **28. APPLICATION OF LAND ACT 1996.**

Except as provided in this Act, the *Land Act 1996* does not apply to leases granted under this Division.

#### **29. MINISTER MAY GRANT LEASES.**

- (1) Subject to this Part, the Minister may, in respect of land or parts of land to which this Part applies -
- (a) grant leases or renewal of leases for the purposes in connection with a free trade zone subject -
    - (i) to such terms, conditions, provisions, restrictions, reservations and covenants; and

### *Free Trade Zones*

- (ii) to payment of such rent or other consideration, as the Minister determines; and
- (b) exercise in respect of such leases any power or remedy that is available to the State in respect of State Leases or licences granted under the *Land Act 1996*.

(2) A lease granted under Subsection (1) in respect of land leased by the customary owners to the State, a provision of which is inconsistent with the terms and conditions of the lease from the customary owners, is, to the extent of the inconsistency, void and of no effect.

(3) A lease granted under Subsection (1) for a purpose which is inconsistent with any law relating to physical planning or to the use, construction or occupation of buildings is, to the extent of the inconsistency, void and of no effect.

#### **30. PERSONS NOT TO OCCUPY LAND WITHOUT LEASE, ETC.,**

A person who occupies land within a free trade zone except under a lease or other authority granted to him under this Act is guilty of an offence.

#### **31. NOTICE OF LANDS AVAILABLE FOR LEASING.**

(1) The Minister may, from time to time, give notice in the National Gazette of lands available for leasing under this Division.

- (2) A notice under Subsection (1) -
  - (a) shall contain the following particulars:-
    - (i) the purpose of the lease;
    - (ii) the term of the lease;
    - (iii) the description of the lands the subject of the lease;
    - (iv) the reservations, restrictions, covenants, conditions and provisions of the lease;
    - (v) such other information as the Minister thinks fit or as the Minister directs; and
  - (b) may invite tenders or applications for the lease.

#### **32. UNADVERTISED LANDS NOT TO BE LEASED.**

(1) Subject to Subsection (2), a lease shall not be granted over lands that have not been the subject of a notice under Section 31.

- (2) Subsection (1) does not apply to a lease to be granted -
  - (a) for a period not exceeding three years; or

## *Free Trade Zones*

- (b) in pursuance of an option of renewal; or
- (c) in circumstances in which the Minister determines that legitimate reasons exist, taking into account the purposes of this Act, to exempt the land, the subject of the lease to be granted, from notification under Section 31.

### **33. PERIOD OF LEASES.**

- (1) Subject to this section, a lease shall not be granted -
  - (a) where the lessee is required to carry out building works - for a period exceeding 40 years; or
  - (b) in any other case - for a period exceeding 10 years.

(2) For the purposes of this section the period of a lease is deemed to include any period for which it is renewable under an option of renewal.

### **34. TENDERS.**

Tenders for a lease under this Act shall be obtained and dealt with as prescribed.

### **35. FORM OF APPLICATION FOR LEASES.**

An application for a lease shall be -

- (a) in the prescribed form; and
- (b) accompanied by the prescribed fee; and
- (c) lodged with the Minister.

### **36. CONSIDERATION OF APPLICATIONS.**

(1) On the receipt of an application under Section 35, the Minister shall decide to whom the lease shall be granted.

(2) Where the Minister has made a decision under Subsection (1), he shall by written notice advise the successful applicant -

- (a) that his application has been accepted; and
- (b) of the terms, conditions, provisions, reservations, restrictions and covenants of the proposed lease; and
- (c) of the details of all fees or outstanding moneys and all other amounts payable in respect of the proposed lease; and
- (d) that a notice of acceptance of the terms, conditions, provisions, restrictions and covenants of the proposed lease must be sent by the successful applicant to the Minister within 28 days.

## *Free Trade Zones*

### **37. NOTIFICATION OF ACCEPTANCE, ETC.,**

(1) Where a successful applicant does not, within 28 days of receiving a notice under Section 36(2)(d) -

(a) send a notice of acceptance to the Minister; and

(b) pay all amounts specified in the notice,

he is deemed to have withdrawn his application.

(2) A successful applicant who, within 28 days of receiving a notice under Section 36(2)(d) -

(a) sends a notice of acceptance to the Minister; and

(b) pays all amounts specified in the notice,

is deemed to have executed the lease on the date on which the Minister executes the lease under Section 41.

### **38. RENTAL.**

Rental up to the 1 January next is payable when a notice of acceptance is sent under Section 37(2) and afterwards annually in advance on 1 January in each year.

### **39. RELAXATION OF COVENANTS AND CONDITIONS.**

The Minister may relax or modify or, with the consent of the lessee, vary a term, condition, provision, reservation, restriction or covenant of a lease.

### **40. VARIATION OF PURPOSES.**

On the application of a lessee, the Minister may, in his discretion, vary the purpose for which a lease was granted.

### **41. FORM AND EXECUTION OF LEASES.**

(1) A lease shall be in the prescribed form and shall be executed in triplicate, and after being executed by the Minister, the original and a duplicate shall be forwarded to the Registrar of Titles for registration.

(2) Upon the receipt of a lease under Subsection (1), the Registrar shall, in accordance with the *Land Registration Act* (Chapter 191), register it in the Register of State Leases as if it was a State Lease issued under the *Land Act 1996*.

(3) There is implied in a lease granted under this Division the reservations and conditions implied in a State Lease from the State under the *Land Act 1996*.

(4) The fees for the preparation of a lease are as prescribed.

## *Free Trade Zones*

### 42. SURRENDER OF LEASES.

A lease may, with the prior written consent of the Minister, be surrendered.

### 43. TRANSFER OF LEASES.

(1) Subject to this section, the Minister may approve the transfer of a lease from one person to another and such approval may be subjected to such conditions (if any) as the Minister determines.

(2) In addition to any other condition that the Minister may impose under Subsection (1), the Minister may require the transferee to lodge with him such security as the Minister thinks fit for the transferee's compliance with the conditions to which the lease is from time to time subject.

(3) The transfer of a lease shall have no effect until it is approved in accordance with this section.

(4) Where the Minister approves the transfer of a lease from a company to a company that is a related corporation within the meaning of the *Companies Act 1997*, he shall not impose any new conditions of the licence as a condition of that approval.

(5) A lessee who desires to transfer his lease to another person, or to himself and another person jointly, may lodge with the Minister an application for approval of the transfer of the lease.

- (6) An application under Subsection (5) shall be accompanied by -
- (a) an instrument of transfer of the lease duly executed by the transferor and the transferee; and
  - (b) a copy of that instrument of transfer; and
  - (c) the prescribed approval fee.

(7) Where the Minister approves an application under Subsection (5), the Minister shall endorse on the instrument of transfer and on the copy a memorandum of approval.

(8) Part V of the *Land Registration Act* (Chapter 191) applies to a transfer executed and approved by the Minister in accordance with this section.

*Free Trade Zones*

*Division 3. - Permits.*

**44. PROHIBITION ON CERTAIN ACTIVITIES WITHOUT PERMIT.**

- (1) Subject to Subsection (2), a person who, within a free trade zone, either personally or by his servant or agent, or as the servant or agent of another person -
- (a) delivers to a person leaving a vessel or vehicle from that free trade zone any goods purchased by that person outside the free trade zone for delivery within the free trade zone; or
  - (b) sells or supplies any goods or services other than as a licensed activity; or
  - (c) carries on, or solicits for, any business; or
  - (d) erects, displays or distributes, or communicates by sound, any advertisement or public notice,
- except in accordance with a permit issued under this Division, is guilty of an offence.

- (2) Subsection (1) does not apply to or in relation to -
- (a) the making or performance, by an operator of transport services, of contracts -
    - (i) for the carriage of goods; or
    - (ii) for the carriage by the operator between the free trade zone and the premises of the operator, of goods that have been, or are to be, carried by the operator; or
  - (b) the advertising, by an operator of transport services, of those services or other transport services; or
  - (c) the sale or supply to the owner or operator of transport services of goods or services required for the maintenance or operation of the vessel or vehicle or for use or consumption -
    - (i) aboard the vessel or vehicle; or
    - (ii) at the free trade zone by persons employed by him.

**45. PERMIT TO CARRY ON CERTAIN ACTIVITIES.**

(1) Subject to Subsection (2), the Authority may, by writing under its hand, grant to a person a permit to do, either personally or by his servants or agents, or both, any act or thing referred to in Section 44(1).

(2) A permit granted under this section shall, subject to Section 46, be granted for such period, on such terms and conditions and for such consideration as the Authority determines.



## *Free Trade Zones*

### **46. EXERCISE OF RIGHTS UNDER PERMITS.**

(1) The holder of a permit under this Division, and the servants and agents of such a permit holder may, subject to the terms and conditions of the permit, act in accordance with the permit without obtaining or having any other authority under this Act.

(2) The Authority may specify in the terms and conditions of a permit under this Act the days on which, and the times during which, the right may be exercised, and those rights may lawfully be exercised on those days and during those times as specified.

(3) A permit granted under this Division may contain such terms and conditions as the Authority thinks necessary for the purposes of preventing the sale or supply of goods or services in pursuance of the right under the permit to persons resorting to the free trade zone solely or principally for the purpose of purchasing or obtaining goods or services at times outside the days and hours of trading or business that would, but for the permit, be applicable under any other law.

## **PART VI. - FURTHER OBLIGATIONS OF AUTHORITIES.**

### **47. AUTHORITIES TO PROVIDE FACILITIES.**

(1) The Minister may require an Authority to provide and maintain in a free trade zone such facilities as he may consider necessary for the proper and efficient functioning of the zone.

(2) The Minister may give an Authority such directions as he may consider necessary for the proper functioning of a free trade zone and the Authority shall as far as practicable comply with such directions.

(3) An Authority shall provide adequate facilities for customs officers whose duties may require their presence within a free trade zone and the Authority shall permit customs offices to be established in a free trade zone -

- (a) to enable the Commissioner General to make such arrangements as he considers necessary to ensure the proper supervision of goods taken into and out from the free trade zone; and
- (b) for such purposes as may be considered necessary by the Minister for the better administration of this Act.

## *Free Trade Zones*

### **48. EXCLUSION OF CERTAIN GOODS FROM A FREE TRADE ZONE.**

(1) An Authority may, in its discretion, order the exclusion or removal from a free trade zone of any goods, or the discontinuance of any activity which, in the opinion of the Authority, is dangerous or prejudicial to the public interest, health or safety.

(2) An order by the Authority as to the removal or exclusion of any goods under Subsection (1) shall, notwithstanding an appeal to the Minister under Subsection (3), be complied with immediately but an order as to the discontinuance of any activity shall not take effect, where an appeal has been made to the Minister, until the determination of the appeal.

(3) A person aggrieved by an order made by the Authority under Subsection (1) may, within seven days of the date of the order, appeal to the Minister, and the Minister's decision on an appeal made under this subsection is final.

### **49. REPORTS.**

An Authority shall furnish to the Minister -

- (a) on or before 15 March in every year a report on the progress and performance of the Authority for the year ending 31 December previous; and
- (b) such other reports in relation to the functions of the Authority as are requested by the Minister.

### **50. DIRECTIONS BY MINISTER .**

(1) The Minister may, after consultation with an Authority or otherwise, give to the Authority such directions consistent with Government policies and not inconsistent with this Act as the Minister considers necessary as to the exercise and performance by the Authority of its powers and functions under this Act, and the Authority shall give effect to all such directions.

(2) An Authority shall furnish the Minister with such information relating to its activities under this Act as the Minister may from time to time require.

## **PART VII. - OFFENCES, PENALTIES, SEARCH, SEIZURE, ARREST AND PROVISIONS AS TO TRIALS AND PROCEEDINGS.**

### **51. INTERPRETATION.**

For the purposes of this Part, "authorized officer" means -

- (a) a customs officer appointed by the Commissioner General; or

## *Free Trade Zones*

(b) an officer of an Authority appointed by that Authority, for the purposes of this Act.

### **52. POWERS OF AUTHORIZED OFFICERS.**

(1) In addition to any other powers conferred under this Act, an authorized officer may, for the purposes of this Act -

- (a) stop, board, enter, search, stay on board or remain in any premises, vessel, vehicle or building which he reasonably believes has been used for purposes in contravention of this Act or a relevant Applicable Law and may inspect or retain any article or matter found therein which he has reason to believe is evidence of any offence against this Act or a relevant Applicable Law; and
- (b) require any person on or aboard any premises, vessel, vehicle or building to furnish any information, document or equipment in that person's possession or in that person's power or authority to give or produce which the authorized officer has reason to believe relates to an offence against this Act or a relevant Applicable Law; or
- (c) retain, extract or make copies of any document; or
- (d) arrest without a warrant in accordance with this Act any person the authorized officer has reason to believe has committed an offence under this Act or a relevant Applicable Law; and
- (e) carry out any prosecution in accordance with this Act for any offence under this Act.

(2) An authorized officer exercising a power conferred by this section or under this Act shall produce on demand duly authenticated documents showing -

- (a) his identity; and
- (b) that he is duly entitled to exercise the power.

(3) A person who obstructs, assaults, resists or fails to assist, without reasonable excuse, an authorized officer in the exercise of his powers and functions under this Act is guilty of an offence.

### **53. ISSUE OF SEARCH WARRANTS.**

Where it appears to a Magistrate that there is reasonable cause to believe that in any building or place in a free trade zone, there are concealed or deposited goods in respect of which an offence under this Act or under a relevant Applicable Law has been committed, the Magistrate may issue a warrant authorizing an authorized officer named therein and with or without assistance -

### *Free Trade Zones*

- (a) to enter such building or place and there to search for and seize any goods in respect of which there is reason to believe that the offence under this Act or under a relevant Applicable Law has been committed, and any book or document which may reasonably be believed to have a bearing on the case; and
- (b) to arrest any person or persons being in such building or place, in possession of any such goods found, or whom the authorized officer may reasonably suspect to have concealed or deposited such goods; and
- (c) to break open, if necessary, any door of such building or place and enter thereinto; and
- (d) to enter forcibly, if necessary, such building or place and every part thereof; and
- (e) to remove by force any obstruction to such entry, search, seizure or removal; and
- (f) to detain any person found in such place until it has been searched.

#### **54. SEARCH WITHOUT WARRANTS.**

Where it appears to an authorized officer -

- (a) that there is reasonable cause to believe that in any building or place in a free trade zone, there are concealed or deposited any goods in respect of which an offence under this Act or under a relevant Applicable Law has been committed; and
- (b) that there are reasonable grounds for believing that by reason of any delay in obtaining a search warrant, such goods or any book or document, which may reasonably be believed to have a bearing on the case, are likely to be removed,

the authorized officer may exercise in, upon and in respect of such building or place all the powers specified in Section 53 in as full and ample a manner as if he were authorized so to do by warrant issued under that section.

#### **55. SEARCH OF CONVEYANCES.**

(1) An authorized officer may stop and examine any vehicle in a free trade zone for the purpose of ascertaining whether the vehicle contains goods in contravention of this Act or a relevant Applicable Law and the person in control or in charge of such vehicle shall, where required so to do by the authorized officer, stop such vehicle and allow the authorized officer to examine the same or move the vehicle to another place for examination.

(2) The person in control or in charge of a vehicle stopped for examination under Subsection (1) shall, where so requested by the authorized officer, open all parts of the vehicle for examination by the authorized officer, and the person shall take all measures

### *Free Trade Zones*

necessary to enable such examination as the authorized officer considers necessary to be made.

#### **56. EXAMINATION OF GOODS.**

(1) An authorized officer may examine any goods which are being taken into or being removed from the free trade zone or intended to be taken into or removed from the free trade zone.

(2) For the purposes of an examination under Subsection (1), the authorized officer may -

- (a) direct the goods to be brought to a nominated place or office; and
- (b) open any package or receptacle for the purposes of such examination.

#### **57. SEARCH OF PERSONS.**

(1) A person -

- (a) landing or about to land or having recently landed in a free trade zone from a vessel; or
- (b) entering or having recently entered a free trade zone by road; or
- (c) leaving or about to leave a free trade zone in a vessel or by road,

shall, where so requested by an authorized officer, either permit his person, goods and baggage to be searched by the authorized officer, or together with such goods and baggage, accompany the authorized officer to a nominated place or office and there permit his person, goods and baggage to be searched by the authorized officer.

(2) A person who is subject to a search requested under Subsection (1) -

- (a) where he requests that his person be searched in the presence of a senior authorized officer, shall not be searched except in the presence of and under the supervision of a senior authorized officer, and the person may be detained until the arrival of a senior authorized officer or taken into any nominated place or office where such senior authorized officer may be found; and
- (b) where the person is a female, shall not be searched except by a female authorized officer.

(3) For the purposes of Subsection (2), "senior authorized officer" means an authorized officer of a higher rank and having a supervisory control over the authorized officer carrying out the search.

#### **58. SEIZURE OF GOODS.**

(1) An authorized officer may, in a free trade zone, seize goods -

### *Free Trade Zone*

- (a) in respect of which there has been, or there is a reasonable cause to believe there has been an offence committed against this Act or a relevant Applicable Law or
- (b) in respect of which there has been or there is reasonable cause to believe there has been any contravention of any restriction or condition subject to which a licence, permit or authorization has been granted under this Act or a relevant Applicable Law,

together with any receptacle, baggage, package, vehicle, vessel (other than an aircraft engaged in international carriage) in which the goods are found or which is used in connection with such offence, and any book or document which may be reasonably believed to have a bearing on the case.

(2) All goods and any receptacle, baggage, package, vehicle or vessel seized under Subsection (1) shall, as soon as is practicable, be delivered, stored and kept in such manner as directed by the Commissioner General.

(3) Where any goods, receptacle, package, baggage, vehicle or vessel is seized under this Act, the authorized officer effecting the seizure shall forthwith give to the owner or his agents, if known, notice in writing giving the reasons for such seizure, either by delivering the notice to him personally or by post at his place of abode, if known.

(4) A notice under Subsection (3) shall not be required to be given where seizure is made on the person or in the presence of the offender or the owner or his agents, and, in the case of a vessel, in the presence of the master or pilot, as the case may be.

- (5) The provisions of this section relating to -
  - (a) the seizure of goods - shall apply to all the contents of any package or receptacle seized and to any article used to conceal the goods; and
  - (b) the seizure of any vessel - shall apply also to tackle, equipment and furnishings of such vessel; and
  - (c) the seizure of conveyances - shall apply to all equipment thereof.

#### **59. RETURN OR DISPOSAL OF MOVABLE PROPERTY.**

(1) Where any movable property is seized under this Act, an authorized officer may, at his discretion -

- (a) temporarily return the movable property to the owner or to the person from whose possession, custody or control it was seized, or to such person as the authorized officer may consider is entitled to the property, subject to such terms and conditions as may be imposed and, in any case, subject to sufficient security being furnished to the satisfaction of the

### *Free Trade Zones*

authorized officer that the movable property shall be surrendered to the authorized officer on demand and that the said terms and conditions, if any, shall be complied with; or

- (b) return the movable property to the owner or to the person from whose possession, custody or control it was seized, or to such person as the authorized officer may consider is entitled to the property, with liberty for the person to whom the movable property is so returned to dispose of the same, such return of the property being subject to sufficient security being furnished to the satisfaction of the authorized officer in an amount not less than an amount which, in the opinion of the authorized officer, represents -
  - (i) the open market value of the property; and
  - (ii) the customs duty payable in respect of the property; and
  - (iii) any tax payable in respect of the property under any law, to secure payment in the event of an order being made under Section 69(2)(a); or
- (c) sell or destroy the movable property, as appropriate in the circumstances, where it is a living creature or where, in the opinion of the authorized officer, it is of a perishable or dangerous nature or likely to speedily deteriorate in quality or value, and where it is so sold, to hold the proceeds of sale pending the result of any prosecution or claim and, in relation to such proceeds of sale, to abide by the outcome of such prosecution or claim.

(2) A person who -

- (a) fails to surrender on demand to an authorized officer the movable property temporarily returned to him under Subsection (1)(a); or
- (b) fails to comply with or contravenes any of the terms or conditions imposed under Subsection (1)(a) or (b),

is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding three years or both.

(3) The criminal liability of any person under Subsection (2) shall be in addition to any other liability that the person or any other person may incur under the terms and conditions relating to the return of the movable property under Subsection (1)(a).

(4) Subsection (2) shall not apply to a person who is the guarantor or surety of the person to whom the property is returned under Subsection (1)(a).

## *Free Trade Zones*

(5) The Minister may, from time to time, either generally or in any particular case or class of cases, give such direction to the Commissioner General and to a relevant Authority as he may consider necessary or expedient with regard to the exercise of the powers conferred on an authorized officer under Subsection (1).

### **60. POWERS OF ARREST.**

(1) An authorized officer may arrest in a free trade zone without warrant -

- (a) any person found committing or attempting to commit, or employing or aiding any person to commit, or abetting the commission of an offence against this Act or a relevant Applicable Law; or
- (b) any person whom he may reasonably suspect to have in his possession any goods liable to be seized under this Act or under a relevant Applicable Law; or
- (c) any person against whom a reasonable suspicion exists that he had committed an offence against this Act or a relevant Applicable Law,

and may, subject to Subsection (2), search, or cause to be searched, any person so arrested.

(2) The right to carry out a search under this Act upon a female person shall be exercised only by a female authorized officer.

### **61. ARREST WITHOUT WARRANT.**

(1) An authorized officer making an arrest without warrant shall, without unnecessary delay and, subject to this Act, cause the person arrested to appear before a Magistrate at the first available opportunity.

(2) A person arrested without a warrant shall not be detained in custody for a longer period than is reasonable in the circumstances but shall not be released before first appearing before a Magistrate except under specific authority of the Commissioner General.

### **62. PROSECUTION OF OFFENCES.**

Prosecution for offences against this Act may, with the consent of the Public Prosecutor -

- (a) be tried summarily; and
- (b) be conducted by an authorized officer specifically or general authorized in writing in that behalf by -



### *Free Trade Zones*

- (i) the Commissioner General in the case where the authorized officer is a customs officer; or
- (ii) an Authority in the case where the authorized officer is an officer of that Authority.

#### **63. PROTECTION OF INFORMERS.**

(1) Except as hereinafter provided, no witness in any civil or criminal proceedings conducted pursuant to this Act shall be obliged or permitted to disclose the name or address of an informer or the substance of the information received from the informer or to state any matter which might lead to the discovery of the informer.

(2) Where any book or document which is in evidence or liable to inspection in any civil or criminal proceedings contains any entry or passage in which an informer is named or described or which might lead to his discovery, the court shall cause all such entries or passages to be concealed from view or to be obliterated insofar only as may be necessary to protect the informer from discovery.

(3) Where, in the trial for any offence against this Act the court, after full enquiry into the case, believes that an informer wilfully made a material statement which he knew or believed to be false or did not believe to be true, or where in any other proceedings the court is of the opinion that justice cannot be fully done between the parties thereto without the discovery of the informer, the court may require the production of the original statement, if in writing, and permit enquiry and full disclosure of the informer.

#### **64. OFFENCES BY BODIES CORPORATE, ETC.,**

(1) Where an offence against this Act has been committed by a company, firm, society or other body of persons, any person who, at the time of the commission of the offence was a director, manager, secretary or other similar officer of the company, society or other body of persons, a partner or manager of the firm, or such other person purporting to act in such capacity or such person having charge or control of the company, firm, society or other body of persons is deemed to be guilty of that offence, unless he proves that the offence was committed without his consent or connivance and that he has exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the relevant circumstances.

## *Free Trade Zones*

(2) Where a person would be liable under this Act to any punishment, penalty or forfeiture for any act, omission, neglect or default, he shall be liable to the same punishment, penalty or forfeiture for every such act, omission, neglect or default of any servant or agent, or servant of such agent provided that such act, omission, neglect or default was committed by such servant in the course of his employment or by such agent when acting on behalf of such person.

### **65. PROTECTION FROM LIABILITY.**

The State or a relevant Authority is not liable to make good any loss sustained in respect of any goods by fire, theft or any other cause while such goods are in the lawful custody or control of an authorized officer unless such loss is caused by the wilful neglect or default of an authorized officer or of a person employed by the State or the Authority.

### **66. PROTECTION OF AN AUTHORIZED OFFICER ETC., FROM LIABILITY.**

An authorized officer or other person employed by the State in connection with customs is not liable to make good any loss sustained in respect of any goods by fire, theft, damage or other cause while such goods are in the lawful custody or control of such officer or such other person employed by the State unless such loss is caused by his wilful neglect or default.

### **67. COSTS AND DAMAGES.**

A person shall not, in any proceedings before any court in respect of the seizure of any goods seized in exercise or the purported exercise of any power conferred by this Act, be entitled to the cost of such proceedings or to any damages or other relief except an order for the return of such goods or the payment of their value unless such seizure was made without reasonable or probable cause.

### **68. GOODS LIABLE TO FORFEITURE.**

All goods seized under this Act shall be liable to forfeiture.

### **69. FORFEITURE AND DISPOSAL OF GOODS SEIZED.**

(1) An order for the forfeiture or for the release of anything liable to forfeiture under this Act shall be made by the court before which the prosecution with regard thereto has been held, and an order for the forfeiture of goods shall be made where it is proved to the satisfaction of the court that an offence against this Act or a relevant Applicable Law has been committed and that the goods were the subject matter of, or were used in the commission of, the offence notwithstanding that no person may have been convicted of such offence.

### *Free Trade Zones*

- (2) The court shall order the forfeiture of, -
- (a) in the case of goods returned under Section 59(1)(b) and subsequently disposed of by the owner or by the person to whom it was returned, the amount secured under that section; and
  - (b) in the case of goods sold under to Section 59(1)(c), the amount realised by such sale,

where it is proved to the satisfaction of the court that an offence against this Act or a relevant Applicable Law has been committed and that the movable property in respect of which the amount was secured or realised by sale, as the case may be, was the subject matter of, or was used in the commission of, the offence notwithstanding that no person may have been convicted of such offence.

(3) All things forfeited shall be delivered to an authorized officer and shall be disposed of as the Commissioner General shall direct.

#### **70. GOODS SEIZED IN RESPECT OF WHICH THERE IS NO PROSECUTION.**

(1) Where there is no prosecution in respect of any goods seized under this Act, the goods shall be taken and deemed to be forfeited at the expiration of one calendar month from the date of seizure unless a claim is made in accordance with this section.

(2) A person asserting that he is the owner of goods seized under this Act and that they are not liable to forfeiture may personally or by his agent give written notice to the Commissioner General that he claims the goods.

(3) On receipt of a notice under Subsection (2), the Commissioner General may direct that the goods claimed be released or may direct an authorized officer to refer the matter to a Magistrate by information in the prescribed form.

(4) On receipt of an information under Subsection (3), the Magistrate shall issue a summons requiring the person asserting that he is the owner of the goods and the person from whom they were seized to appear before him, and upon their appearance or default to appear, due service of such summons being proved, the Magistrate shall proceed to examine the matter and, on proof that an offence against this Act or a relevant Applicable Law has been committed and that the goods were the subject matter, or used in the commission, of such offence, shall order the same to be forfeited, or may, in the absence of such proof, order their release.

## *Free Trade Zones*

### **71. GOODS SEIZED MAY BE DELIVERED TO OWNER.**

(1) The Minister may, upon application made to him in writing through the Commissioner General, order any goods seized under this Act, whether forfeited or taken and deemed to be forfeited, to be delivered to the owner or other person entitled thereto, upon such terms and conditions as the Minister shall determine.

(2) An application under Subsection (1) shall be made before the expiration of one calendar month from the date of forfeiture of the goods or from the date on which the goods shall be taken and deemed to be forfeited, as the case may be.

### **72. GENERAL PENALTIES.**

Where, under this Act, no penalty is provided for an offence under this Act, the penalty shall be a fine not exceeding K5,000.00 or imprisonment for a term not exceeding two years or both.

### **73. ATTEMPTS AND ABETMENTS.**

A person who -

(a) attempts to commit an offence; or

(b) abets the commission of an offence,

against this Act, is guilty of that offence.

## **PART VIII. - MISCELLANEOUS.**

### **74. COMPLIANCE WITH OTHER LAWS.**

Except as provided under this Act, a lease, licence, permit or other authority granted or to be granted under this Act does not exempt a person or corporation from complying with any other laws.

### **75. TAKING OF SAMPLES.**

(1) An authorized officer may, in a free trade zone, at any time, take samples of any goods to ascertain whether they are goods of a description liable to any customs duty or to ascertain the customs duty on such goods on entry into the principal customs area or for such other purpose as the authorized officer may deem necessary, and such samples may be disposed of in such manner as the Commissioner General shall direct.

(2) No payment shall be made for any sample taken under Subsection (1) but the authorized officer shall give a receipt for any sample so taken.

*Free Trade Zones*

**76. APPEALS FROM DECISIONS OF THE COMMISSIONER GENERAL.**

Where, under this Act, the decision on any matter rests with the Commissioner General, then unless it is specifically provided that such decision is at the absolute discretion of the Commissioner General, any person aggrieved by such decision may appeal to the Minister responsible for finance matters whose decision on an appeal is final.

**77. REGULATIONS.**

The Head of State, acting on advice, may make regulations not inconsistent with this Act, prescribing all matters that are required to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, including, without prejudice to the foregoing generality, the imposition of fees and the imposition of penalties for offences against the Regulations.

**SCHEDULE 1.**

S.13(1)(a)

Authorized activities in a free commercial zone

Commercial activities (other than trading)

Trading

**SCHEDULE 2.**

S.13(1)(b)

Authorized activities in a free industrial zone

Manufacturing

Retail trade

*Free Trade Zones*

**SCHEDULE 3.**

S.3

Gulf Province  
Bougainville Province  
West Sepik Province  
Western Province

I hereby certify that the above is a fair print of the *Free Trade Zones Act 2000* which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Free Trade Zones Act 2000* was made by the National Parliament on 26 July 2000 by an absolute majority in accordance with the *Constitution*.

Speaker of the National Parliament.