

EXCISE TAX BILL, 2022

(Bill No. 31 of 2022)

OBJECTS AND REASONS

The object of this Bill is to repeal the Excise Tax Act, Cap. 264 and substitute it with a new law, which is more relevant to the current business environment in Seychelles.

The Bill seeks to provide for a modernised tax regime and to adopt best practices which will rectify deficiencies and shortcomings of the current law, and to provide for matters connected therewith and incidental thereto.

The proposed Bill, *inter alia*, provides for —

- (a) the registration of manufacturers and production centres;
- (b) the registration and regulation of duty-free shops;
- (c) the parameters for excise bonded warehouses and duty-free shops;
- (d) rebate, refund, remission, collection and recovery of excise tax;
- (e) procedures for seizure and forfeiture of goods;
- (f) dispute resolutions and provisions detailing the circumstances in which cases can be taken to the Revenue Tribunal;
- (g) evidence gathering, bookkeeping, warehousing irregularities, certain prohibitions and bribery and collusion;
- (h) power of the Commissioner General and officers to carry out necessary enforcement;
- (i) power of the Commissioner of Customs to make rules which would govern the operations of manufacturers and importers of excisable goods;
- (j) offences and accompanying penalties.

Dated this 21st day of November, 2022.

**NAADIR HASSAN
MINISTER OF FINANCE,
NATIONAL PLANNING AND TRADE**

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A BILL

FOR

AN ACT TO PROVIDE FOR THE IMPOSITION AND COLLECTION OF EXCISE TAX, TO REPEAL THE EXCISE TAX ACT, CAP 264, AND TO PROVIDE FOR OTHER RELATED MATTERS.

ENACTED by the President and the National Assembly.

Short title and application

1.(1) This Act may be cited as the Excise Tax Act, 2022.

(2) This Act applies to excisable goods imported into, or manufactured in Seychelles.

Interpretation

2.(1) In this Act, unless the context requires otherwise —

“alcohol” means any product of an alcoholic strength of more than 0.5% by volume;

“associate” has the same meaning as in section 3 of the Business Tax Act, 2009;

“bonded warehouse” means a customs controlled warehouse for the retention of imported goods until the applicable duty and taxes are paid.

“brewer” means a brewer of beer, and includes the proprietor, lessee or possessor of a brewery;

“C.I.F. value” has the meaning given under the Customs legislation;

“clearance for home use” means the customs procedure which provides that goods enter into free circulation upon payment of taxes, duties and levies chargeable and the accomplishment of all the necessary customs formalities;

“Commissioner” means the Commissioner of Customs appointed in terms of section 3 of the Customs Management Act, 2011;

“Commissioner General” means the Commissioner General of the Seychelles Revenue Commission, appointed in terms of section 4 (1) of the Seychelles Revenue Commission Act, 2009.

“Customs legislation” means the Customs Management Act, 2011 and its statutory instruments;

“Customs control” means —

- (a) the control of imported goods under the Customs legislation; and
- (b) the control of manufactured goods under this Act;

“Customs lock” or “Customs Seal” means any lock or seal affixed by an officer to any premises, other storage places or goods, for the protection of the revenue;

“distiller” means any person who conducts, works or carries on any distillery either by himself or through his agent or servant;

“distillery” means any place or premises where —

- (a) any process of fermentation for the production of wash is carried on;
- (b) any wash is kept or produced for the purpose of distillation;
- (c) any mash-tub, fermenting-tun, worm or still for the distillation of spirits is set up or used;
- (d) any process of distillation of spirits;
- (e) any process of rectification of spirits, either by re-distillation or filtration, or other process is carried on;
- (f) any spirits are manufactured or produced from any substance;
- (g) any still, rectifier or other apparatus, suitable for the manufacture of spirits, is in whole or in part manufactured, made or kept, and every office, workshop, warehouse, granary, fermenting-room, mash-house, still-room, rectifying-house, vault, cellar, shed, yard or other place owned or occupied by or on behalf of, or for the use of any distiller, or in which any part of his or her business as such is transacted, where any grain, matter, material or apparatus suitable for or adapted to the production of

spirits, or that is or is to be used in the production or rectification of spirits, is kept or stored, where any of the goods of the distillery are kept or stored or where any process of manufacture is carried on, shall be held to be included in and to form part of the distillery to which it is attached or appurtenant;

“dutiable goods” means goods of a class or description subject to any duties, taxes or levies of Customs or excise, whether or not the goods are chargeable with any duties, taxes or levies;

“duty-free shop” means a shop for the warehousing and sale of goods without payment of duty, tax and levy under this Act or any other law relating to customs and excise;

“entered” has the meaning given under the Customs legislation;

“entry” in relation to clearance of goods for importation, warehousing, removal from a warehouse or exportation, means the presentation in accordance with this Act of a correctly completed and signed declaration, and includes the recording of the required information on the Customs computer system, using procedures approved by the Commissioner, or using a computerized procedure approved by the Commissioner, together with other documents required by any provision of this Act;

“excisable goods” means goods, other than exempt goods prescribed and taxable under this Act;

“excisable value”, in relation to excisable goods, has the meaning determined under section 34;

“excise bonded warehouse” means a customs controlled warehouse for the retention of locally produced goods with intention for export, and to supply to aircrafts, vessels and class and classes of persons.

“excise tax” means the excise tax imposed under this Act, and includes any amount required to be brought to account under this Act as excise tax or otherwise deemed under this Act to be excise tax;

“excise tariff” means excise taxes imposed in terms of section 31;

“excise warehouse” means any place used for the deposit, keeping and securing of excisable goods of a registered manufacturer registered by the Commissioner under section 6(2) (e);

“excise warehouse keeper” means the person registered to operate an excise bonded warehouse

“exempt goods” means prescribed goods that is not taxable under this Act;

“export” means to take goods or cause goods to be taken out of Seychelles;

“exporter” means any person in Seychelles who takes goods or causes goods to be taken out of Seychelles, and includes any employee or agent of such person and the owner of such goods as are exported;

“factory cost” means the sum of all the costs, direct and indirect, incurred by the manufacturer in the manufacture, finishing and packing of goods —

- (a) before their removal from the registered production centre of the manufacturer; or
- (b) for use in the manufacture of other goods on the registered production centre of the manufacturer; and includes, where the goods are manufactured on behalf of another person from materials supplied by or on behalf of that person, the

cost of the materials supplied by or on behalf of that person and any other costs incurred in delivering those materials to the registered production centre of the manufacturer;

“Form” means document specified in the First Schedule to the Excise Tax (General) Regulations or any such form approved by the Commissioner;

“goods” means excisable goods as prescribed under this Act;

“import” has the meaning given under the Customs legislation;

“import duty” means a duty levied under the Customs legislation;

“importer” has the meaning given under the Customs legislation;

“large business” has the same meaning as under the First Schedule of the Revenue Administration Act, 2009;

“liability” means, when tax becomes payable by law, although the date of payment may be later;

“manufacture”, in relation to goods liable to excise tax includes the mixing, brewing, distilling or production of goods liable to excise tax;

“medium business” has the same meaning as under the First Schedule of the Revenue Administration Act, 2009;

“Minister” means the Minister responsible for finance and trade;

“officer” means every officer of excise who is employed or appointed to the survey of manufactures, operations or premises subject to excise, and every person employed for the purpose of the administration or enforcement of this Act;

“open stock” means any goods which have been released within Seychelles after the requirements of this Act have been satisfied;

“person” has the same meaning as defined under Revenue Administration Act, 2009;

“proper officer” means in respect of any unit, division or matter the officer designated by rule or regulation or by the Commissioner to be the proper officer at that unit, division or in that matter;

“receptacle” means all hollow containers used to hold and store goods;

“records” means all papers, books, registers, computer files, tapes, discs, films, videos, soundtracks, or any other device in which information is recorded or stored;

“registered manufacturer” means a person to whom a Certificate of Registration has been issued under section 6(6);

“registered production centre” means the premises on which a person is registered to produce excisable goods, and includes —

- (a) any excise warehouse deemed to be a part of the premises under section 6(2)(d); and
- (b) all adjoining premises connected with that production or with the business of the producer;

“regulations” means the regulations made under this Act;

“reviewable decision” means reviewable decision as defined under section 2 of the Revenue Administration Act, 2009;

“small business” has the same meaning as under the First Schedule of the Revenue Administration Act, 2009;

“still” means any apparatus used for carrying out the distillation of alcoholic goods and includes any part of a still;

“stores for consumption” means, goods intended for consumption by the passengers and the crew on board vessels or aircraft, whether or not sold;

“tobacco goods” means any product classified under Chapter 24 of the Harmonised Commodity Description and Coding System and goods defined under the Tobacco Control Act, 2009;

“vessel” means any ship, boat, watercrafts and the like.

(2) The classifications and descriptions of goods prescribed under this Act shall be interpreted in accordance with the rules for interpretation set out in the General Rules for the Interpretation of the Customs Tariff based on the Harmonised Commodity Description and Coding System as domesticated under Section 40 of the Customs Management Act, 2011.

Fair market value

3.(1) The fair market value of excisable goods at the time of removal from Customs control shall be the consideration, excluding excise tax, that a manufacturer of the goods could reasonably expect to obtain for the goods in an open market sale, at wholesale, freely transacted between persons who are not associates.

(2) If the fair market value of excisable goods cannot be determined under subsection (1), the fair market value may be determined by the Commissioner.

(3) In determining the fair market value under subsection (2), the Commissioner shall have regard to information supplied to him or her by the manufacturer or any other information available to him or her and shall, as far as practicable in the light of such information, determine the fair market value as, the factory cost plus 25% of such cost or such percentage as may be prescribed in relation to any class of goods.

(4) A manufacturer of goods shall, within 30 days after the receipt of a request from the Commissioner or within such further period as the Commissioner may allow, submit to the Commissioner a declaration in such form as the Commissioner may require, giving an analysis of —

- (a) the factory cost; and
- (b) the amount by which the factory cost is exceeded by —
 - (i) the selling price, if any; and
 - (ii) the price, including the excise tax, if any, at which the manufacturer sells the goods in the ordinary course of trade to merchants in Seychelles.

(5) A declaration for the purposes of subsection (4) shall be prepared at the expense of the manufacturer by an accountant or auditor approved by the Commissioner and shall be signed by the manufacturer and the accountant or auditor who prepared it.

Instruments and tables for calculating quantities of goods liable to excise tax

4.(1) For the purpose of calculating the full quantity of goods liable to excise tax which have been produced on registered production centres, tables may be prescribed showing the quantity of such goods which shall be deemed to have been produced from a given quantity of material.

(2) Except as elsewhere provided in this Act, the Commissioner may by rule prescribe the instruments, meters, gauges, and other appliances and tables, formulae and other methods of calculation to be used in ascertaining the mass, quantity, strength, relative density, temperature, pressure or any other characteristics of any goods for the purpose of this Act.

PART II - REGISTRATION OF MANUFACTURERS AND APPROVAL OF REGISTERED PRODUCTION CENTRES

Prohibition of unauthorised manufacture of excisable goods

5. A person shall not manufacture excisable goods in Seychelles unless —

- (a) the person is registered under this Act for the purpose of manufacturing those goods; and
- (b) the excisable goods are manufactured within a registered production centre.

Registration of excise manufacturers

6.(1) A person intending to manufacture excisable goods shall apply to the Commissioner, in the prescribed form and manner, for registration as a manufacturer of excisable goods.

(2) The applicant under subsection (1) shall furnish such information as to —

- (a) the nature of the product liable to excise tax which the applicant proposes to manufacture;
- (b) the process of manufacture which the applicant proposes to adopt;
- (c) the production capacity of the registered production centre;
- (d) the premises at which the machinery and equipment with which the goods liable to excise tax are to be manufactured; and
- (e) the excise warehouse where all manufactured goods shall be stored before removal, which shall be part of the registered production centre.

(3) The Commissioner may refuse to issue a certificate of registration to any applicant unless the applicant has submitted to the Commissioner a list in the appropriate form describing in such detail as the Commissioner may require —

- (a) the machinery, equipment and receptacles capable of use in connection with the manufacture of goods liable to excise tax to be kept or installed in each room, building or other

place at the applicant's premises and the purpose for which the piece of machinery, equipment and receptacles is to be used additionally or alternatively; and

(b) the rooms, buildings and other places at the applicant's premises to be used in connection with the manufacture of goods liable to excise tax.

(4) The Commissioner shall register a person who has applied for registration under subsection (1) if —

(a) the Commissioner is satisfied that the person will carry on the business of manufacturing excisable goods and will comply with the obligations imposed under this Act on registered manufacturers;

(b) the applicant has satisfied the conditions under section 8 and entered into an excise manufacturer's bond, which shall remain in force while the manufacturer remains a registered manufacturer, with security in an amount determined by the Commissioner; and

(c) the applicant has paid the prescribed administration fee.

(5) The Commissioner may impose such terms, conditions, or restrictions as the Commissioner considers appropriate in relation to the registration of a person as a registered manufacturer for the purposes of this Act.

(6) The Commissioner shall issue each registered manufacturer with a Certificate of Registration in the approved form.

(7) Registration shall take effect from the date set out in the manufacturer's Certificate of Registration.

(8) A registered manufacturer shall notify the Commissioner in writing, of any intention to change the name and constitution of the manufacturer.

(9) A notification under subsection (8) shall be given to the Commissioner no later than 21 days before the event requiring notification occurs.

(10) The Commissioner may, on request of a manufacturer of goods liable to excise tax, amend the list submitted by the manufacturer in terms of subsection (3).

(11) A registration certificate issued in terms of this section shall, whenever issued, expire on 31st December of each year.

Authorisation to manufacture for experimental purposes

7.(1) Notwithstanding section 5, the Commissioner may authorise a person to manufacture goods for experimental purposes, provided that the goods shall not be put on sale or disposed for profit.

(2) No registration certificate shall be required in respect of the premises on which goods referred to in subsection (1) are manufactured and such goods shall not be liable to excise tax if they are disposed of in accordance with rules made by the Commissioner.

(3) The Commissioner may cancel the authorisation granted under subsection (1), if a person who is authorised by the Commissioner to manufacture goods in accordance with subsection (1) fails to comply with the rules made by the Commissioner under subsection (2).

Conditions of the excise manufacturer's bond

8.(1) In order to enter and remain into an excise manufacturer's bond, an applicant under section 6 shall —

- (a) not engage in any attempt by himself or herself or in collusion with others to defraud the country of any tax on any goods manufactured by him or her;
- (b) maintain correct and truthful records;

- (c) render true and complete returns, statements and inventories prescribed or required under this Act;
- (d) comply with all requirements of this Act with respect to the manufacturing of goods liable to excise tax;
- (e) comply with such other conditions as the Commissioner may require.

(2) No manufacturer shall carry on any business on premises registered in terms of section 6, other than the business for which the certificate was issued, unless he or she has obtained written permission to do so from the Commissioner.

(3) An officer may cause any excise warehouse to be locked with a customs lock or customs seal for so long as deemed fit, and no person shall during such period remove or break such lock or seal or enter such warehouse or remove any goods from there without the permission of the officer.

Cancellation of registration

9.(1) The Commissioner may cancel the registration of a manufacturer if the holder of the registration certificate contravenes or fails to comply with any of the conditions of the certificate.

- (2) A certificate of registration may be cancelled if —
- (a) the manufacturer is found in possession of uncustomed goods;
 - (b) the manufacturer engages in activities contrary to the provisions of this Act or other revenue laws;
 - (c) holder of the registration certificate is convicted of an offence under this Act or other revenue law;
 - (d) the activity for which he or she is registered becomes prohibited by this Act or any other enactment;

- (e) the registered production centre or any part thereof, the rooms, machinery or any receptacles have been altered without the approval of the Commissioner.

(3) A registered manufacturer who intends to cease manufacturing excisable goods shall, notify the Commissioner in writing, at least 7 days before such cessation of operations, stating —

- (a) the date on which the manufacturer intends to cease to manufacture excisable goods;
- (b) the date on which the manufacturer expects that no excisable goods will remain in the excise manufacturer's warehouse.

(4) If the Commissioner receives a notification under subsection (3), the Commissioner shall, by notice in writing, either suspend or cancel the registration of the manufacturer with effect from the first day on which there are no longer excisable goods in the registered production centre.

(5) A suspension or cancellation takes effect on the date specified by the Commissioner in the notice issued under subsection (4).

(6) Any obligation or liability under this Act of a registered manufacturer in respect of anything done or omitted to be done by that manufacturer while the manufacturer is a registered manufacturer, including the obligation to pay excise tax and to file excise tax returns, shall not be affected by the suspension or cancellation of the manufacturer's registration.

(7) A registered manufacturer who intends to sell and transfer a business of manufacturing excisable goods as a going concern shall notify the Commissioner, in writing of that fact, at least 30 days before the dates on which the assets are transferred.

Refusal of registration

10. The Commissioner may refuse an application for registration as an excise manufacturer and the applicant shall have the right of appeal against such refusal in terms of section 32 of the Customs Management Act.

Alterations, additions or rebuilding of registered production centre

11. A registered manufacturer shall obtain written approval of the Commissioner before undertaking any alterations, additions or rebuilding of the registered manufacturer's registered production centre.

Supervision by officers

12. A registered manufacturer of excisable goods is subject to supervision by officers for the protection of public revenues.

The power to issue directions

13.(1) The Commissioner may issue written directions to a registered manufacturer which shall set out in which designated area of the registered production center —

- (a) any process in the production is to be carried on;
- (b) the materials and other items used in the production are to be kept; and
- (c) excisable goods manufactured on the premises are to be kept.

(2) A registered manufacturer shall comply with the directions made under this section.

PART III - DUTY-FREE SHOPS

Application and registration of duty-free shops

14.(1) Subject to any regulations governing the maintenance and control of duty-free shops, the Minister may, by notice in the *Gazette* designate premises, buildings or structures to be used as duty-free shops.

(2) The Commissioner may determine the kind of goods to be placed in a duty-free shop.

(3) A person intending to register as a proprietor of a duty-free shop, shall apply to the Commissioner, in the prescribed form and manner.

(4) The applicant shall furnish information pertaining to —

- (a) the nature of the goods which the applicant proposes to sell;
- (b) the premises at which the duty-free shop is located;
- (c) the plan of such premises, building and structures; and
- (d) such other information as the Commissioner may require.

(5) The Commissioner shall register a person who has applied for registration under this Act if —

- (a) the Commissioner is satisfied that the person will comply with the obligations imposed under this Act on duty-free shops; and
- (b) the applicant has entered into a bond, with sufficient surety to the satisfaction of the Commissioner, for compliance with this Act;
- (c) the applicant has paid the prescribed administration fee.

(6) The Commissioner may at any time require that the form or amount of the security specified under subsection 5(b) shall be altered in such manner as he or she may determine.

(7) A registration certificate issued under this section shall be issued by the Commissioner and shall, whenever issued, expire on the 31st December of each year.

(8) (a) The proprietor shall —

- (i) keep a record of all goods delivered into and out of

the duty-free shop, and shall keep such record at all times available for examination by a proper officer;

- (ii) stack and arrange the goods in the duty-free shop, so as to permit reasonable access to and examination of every package at all times;
- (iii) maintain records and accounts relating to goods in such form and manner, as a proper officer shall require; and keep such records and accounts at all times available for examination by a proper officer.

(b) If the proprietor fails to comply with the conditions of his or her bond or fails to comply with the provisions of this Act, any rule or instructions made, or given by the Commissioner connected with the administration of this Act, the Commissioner may cancel his or her registration certificate or refuse its renewal.

(9) A registration certificate may be transferred from a duty-free shop to another duly approved duty-free shop, in the possession of the person to whom the registration certificate has been issued, but shall not be transferable from one person to another.

Selling of goods in duty-free shop

15.(1) A registered proprietor of a duty-free shop may import, warehouse and sell goods without payment of duty under such conditions as may be approved by the Commissioner.

(2) A registered proprietor of a duty-free shop may receive, warehouse and sell excisable goods manufactured in Seychelles from any excise warehouse without the payment of excise tax under such conditions as may be approved by the Commissioner.

(3) A registered proprietor of a duty-free shop may sell goods free of duty to such class or classes of persons and under such conditions as may be prescribed.

(4) An officer shall not allow the removal of any goods from a duty-free shop, except for sale in terms of subsection (3) or in such other circumstances as may be prescribed.

Removal of goods from duty-free shop

16. Goods received in a duty-free shop, shall not be taken or delivered from a duty-free shop, except in accordance with the regulations prescribed under this Act.

Bonded goods as stores for consumption for aircrafts or vessels

17.(1) An officer may release goods free of tax from any bonded warehouse or excise bonded warehouse in Seychelles in original packages as imported or locally manufactured, or as repackaged in a bonded warehouse or excise bonded warehouse, for shipment in accordance with the prescribed regulations, as stores for consumption for use on any aircraft or vessel which is bound for a voyage or journey outside Seychelles.

(2) An officer may refuse the removal of any warehoused goods declared to be for export as ships or aircrafts' stores for consumption or otherwise, if the removal is for any purpose other than that which has been declared.

Bonded goods sold from a duty-free shop

18.(1) The proprietor of a duty-free shop, may sell goods free of tax to such class or classes of persons and under such conditions as may be prescribed by regulations.

(2) An officer shall not allow the removal of any goods from a duty-free shop except for sale in terms of subsection (1) or in such other circumstances as may be prescribed by regulations.

Duty-free shop, may be locked by officer

19. An officer may cause any duty-free shop, to be locked with a customs lock and seal for so long as he or she deems fit, and no person shall

during such period remove or break such lock, seal or enter such duty-free shop, or remove any goods from there without the permission of the officer.

Taking stock and tax on deficiencies

20. An officer may at any time take stock of the goods in any duty-free shop.

Liability of tax on discrepancies in stock at date of entry for consumption

21.(1) A proprietor of a duty-free shop, who cannot account to the satisfaction of the Commissioner for any quantity of goods in a duty-free shop, shall be deemed to have removed those goods from customs control in the month in which the discrepancy arose.

(2) Tax paid on any discrepancies found in the stock of goods deposited in a duty-free shop in accordance with this Act shall be subject to the applicable rate of tax on the date the Bill of Entry is submitted.

Remittal of tax on certain duty-free goods, which are destroyed, etc.

22.(1) The Commissioner shall remit the tax payable on destroyed or lost goods, if the Commissioner is satisfied that —

- (a) the goods were destroyed or lost by accident without going into consumption whilst in a duty-free shop or whilst in transit to a duty-free shop; and
- (b) every reasonable effort was made and precaution taken to prevent their destruction or loss.

(2) The Commissioner shall remit the tax due on duty-free goods, which are —

- (a) destroyed by the owner or other person having control of the goods under the supervision of a proper officer; or
- (b) given up to the control of a proper officer in whole packages to avoid the payment of the tax.

PART IV - EXCISE BONDED WAREHOUSE

Application and registration of excise bonded warehouse

23.(1) A person who is established in Seychelles may apply to operate an excise bonded warehouse.

(2) Subject to any regulations governing the maintenance and control of an excise bonded warehouse, the Commissioner may designate premises, buildings or structures to be used as an excise bonded warehouse.

(3) The Commissioner may set rules when granting authorisation to operate an excise bonded warehouse.

(4) The Commissioner may determine the kind of goods to be placed in an excise bonded warehouse.

(5) A person intending to register as a proprietor of an excise bonded warehouse shall apply to the Commissioner in the prescribed form and manner.

(6) The applicant shall furnish information pertaining to —

- (a) the nature of the goods which the applicant proposes to sell;
- (b) the premises at which the excise bonded warehouse is located;
- (c) the plan of such premises, building and structures; and
- (d) such other information as the Commissioner may require.

(7) The Commissioner shall register a person who has applied for registration under this Act if —

- (a) the Commissioner is satisfied that the person will comply with the obligations imposed under this Act on an excise bonded warehouse; and

- (b) the applicant has entered into a bond, with sufficient surety to the satisfaction of the Commissioner, for compliance with this Act;
- (c) the applicant has paid the prescribed administration fee.

(8) The Commissioner may at any time require that the form or amount of the security specified under section 14 (5) (b) shall be altered in such manner as he or she may determine.

(9) A registration certificate issued under this section shall be issued by the Commissioner and shall, whenever issued, expire on the 31st December of each year.

(10) The excise warehouse keeper shall —

- (a) ensure that while the goods are in an excise bonded warehouse are not removed from Customs supervision or control;
- (b) comply with the particular rules specified in the authorisation;
- (c) fulfil the obligation that arise from the storage of goods covered by the warehousing procedure;
- (d) keep a record of all goods delivered into and out of the excise bonded warehouse, and shall keep such record at all times available for examination by a proper officer;
- (e) stack and arrange the goods in the excise bonded warehouse, so as to permit reasonable access to and examination of every package at all times;
- (f) maintain records and accounts relating to goods in such form and manner, as a proper officer shall require; and keep such records and accounts at all times available for examination by a proper officer;

- (g) Produce the goods whenever required and facilitate their examination by the proper officer.

(11) If the excise warehouse keeper fails to comply with the conditions of his or her bond or fails to comply with the provisions of this Act, any rule or instructions made, or given by the Commissioner connected with the administration of this Act, the Commissioner may cancel his or her registration certificate or refuse its renewal.

(12) A registration certificate may be transferred from an excise bonded warehouse to another duly approved excise bonded warehouse.

Alterations, additions or rebuilding of excise bonded warehouse

24. A registered excise warehouse keeper shall obtain written approval of the Commissioner before undertaking any alterations, additions or rebuilding of the excise bonded warehouse.

Removal of goods from excise bonded warehouse

25. Goods received in an excise bonded warehouse, shall not be taken or delivered from an excise bonded warehouse, except in accordance with the regulations prescribed under this Act.

Bonded goods sold from an excise bonded warehouse

26.(1) The excise warehouse keeper of an excise bonded warehouse, may sell goods to such class or classes of persons and under such conditions as may be prescribed by regulations.

(2) An officer shall not allow the removal of any goods from an excise bonded warehouse except for sale in terms of subsection (1) or in such other circumstances as may be prescribed by regulations.

Excise bonded warehouse, may be locked by officer

27. An officer may cause any excise bonded warehouse, to be locked with a customs lock and seal for so long as he or she deems fit, and no person shall during such period remove or break such lock, seal or enter

such excise bonded warehouse, or remove any goods from there without the permission of the officer.

Taking stock and tax on deficiencies

28. An officer may at any time take stock of the goods in any excise bonded warehouse.

Liability of tax on discrepancies in stock at date of entry for consumption

29.(1) An excise warehouse keeper of an excise bonded warehouse, who cannot account to the satisfaction of the Commissioner for any quantity of goods in an excise bonded warehouse, shall be deemed to have removed those goods from customs control in the month in which the discrepancy arose.

(2) Tax paid on any discrepancies found in the stock of goods deposited in an excise bonded warehouse in accordance with this Act shall be subject to the applicable rate of tax on the date the Bill of Entry is submitted.

Remittal of tax on certain excise bonded warehouse goods, which are destroyed, etc.

30.(1) The Commissioner shall remit the tax payable on destroyed or lost goods, if the Commissioner is satisfied that —

- (a) the goods were destroyed or lost by accident without going into consumption whilst in an excise bonded warehouse or whilst in transit to an excise bonded warehouse or for export; and
- (b) every reasonable effort was made and precaution taken to prevent their destruction or loss.

(2) The Commissioner shall remit the tax due on excise bonded warehouse goods, which are —

- (a) destroyed by the owner or other person having control of the goods under the supervision of a proper officer; or
- (b) given up to the control of a proper officer in whole packages to avoid the payment of the tax.

PART V - IMPOSITION OF EXCISE TAX

Imposition of excise tax

31.(1) Subject to the provisions of this Act, excise tax shall be imposed, at the rates prescribed under this Act, on —

- (a) excisable goods produced or manufactured in Seychelles;
- (b) excisable goods imported into Seychelles.

(2) Where an excise tax has been imposed on goods manufactured or produced in Seychelles, the manufacturer of such goods shall be liable for the payment of excise tax and such liability shall continue until the goods have been accounted for in terms of this Act.

(3) Where any goods referred to in subsection (2) have been manufactured or produced otherwise than in accordance with this Act, any person having the ownership or possession of, or a beneficial interest in the goods, at any time before the requirements of this Act have been fulfilled shall be liable for the payment of the excise tax.

(4) Liability of excise tax on imported goods lies with the importer of such excisable goods or any person having the ownership or possession of, or a beneficial interest in the goods, at any time before the requirements of this Act have been fulfilled and shall therefore be liable for the payment of the excise tax.

(5) An export of excisable goods shall not be subject to excise tax provided the goods have been entered for export under the Customs legislation.

(6) The excise tax payable under subsection (1) (a) shall be payable by the registered manufacturer to the Seychelles Revenue Commission at the time and in the manner specified in section 36 as read with section 38.

(7) The excise tax payable under subsection (1) (b) shall be payable by the importer at the time and in the manner specified in section 43.

Excisable goods deemed to have been imported

32. All goods declared or shown in the bill of lading, manifest, consignment note, waybill or other document as having been consigned to Seychelles shall be deemed to have been imported in accordance with the Customs legislation, unless it is proved to the satisfaction of the Commissioner that they were not imported.

Importer of excisable goods to comply with Customs legislation

33.(1) For the avoidance of doubt, the importer of excisable goods shall comply with the requirements of the Customs legislation.

(2) Subject to this Act, the importer of excisable goods shall pay the excise tax payable on those goods in the same manner in which import duty is payable and the excise tax shall be collected in the same manner in which import duty is collected.

Excisable value and quantity

34.(1) Where a prescribed rate of excise tax is payable by reference to an *ad valorem* rate of excisable goods, the excisable value shall be —

- (a) if the goods are imported, the sum of the transaction value of the goods, which is, the price actually paid or payable for the goods when sold for export to Seychelles, adjusted in terms of subsections (3) and (4), if —
 - (i) there are no restrictions as to the disposal or use of the goods by the buyer, other than restrictions which —
 - (A) are imposed or required by law;

- (B) limit the geographical area in which the goods may be resold; or
 - (C) do not substantially affect the value of the goods.
- (ii) the sale or price of the goods is not subject to any condition or consideration for which a value cannot be determined;
 - (iii) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in terms of subsection (3) and (4); and
 - (iv) subject to subsection (2), the buyer and the seller are not related.
- (b) if the goods are manufactured in Seychelles, the fair market value of the goods at the time of removal of the goods from customs control.
- (2) The fact that a buyer and a seller are related shall not in itself be a ground for not accepting the transaction value, where —
- (a) in the opinion of the Commissioner, such relationship did not influence the price actually paid or payable for the goods concerned; or
 - (b) the importer proves to the satisfaction of the Commissioner that the transaction value closely approximates to one of the following values —
 - (i) the transaction value of identical or similar goods sold at or about the same time as the goods to be valued at comparable commercial and quantity levels to buyers in Seychelles who are not related; or

- (ii) the value, of identical or similar goods imported into Seychelles at or about the same time as the goods to be valued.

(3) In determining the value for tax purposes of any imported goods in terms of subsection (1), the following shall be added to the price actually paid or payable for the goods to the extent that they are incurred by the buyer but are not included in the price actually paid or payable —

- (a) commission and brokerage except buying commission incurred in the actual purchase of the goods;
- (b) the cost of containers which are treated as being one for customs purposes with the goods in question; and
- (c) the cost of packing, whether for labour or materials.

(4) In determining the value for tax purposes of any imported goods in terms of this section, there shall be added to the price actually paid or payable for the goods —

- (a) the cost of transport and insurance from the place of manufacture to the place of export and all other charges and expenses incidental to placing the goods on board the means of transport by which the goods are removed from the country of exportation, if such cost is not included in the price actually paid or payable for the goods to be valued;
- (b) if the goods in question have to be exported to Seychelles through another country, freight, insurance and other charges from the country of supply to the country where the goods are placed on board the means of transport for direct transportation to Seychelles, if such cost is not included in the price actually paid or payable for the goods to be valued; and
- (c) the cost of freight and insurance from the place where the goods were placed on board the means of transport by

which they were removed to Seychelles to the place of importation in Seychelles, if such cost is not included in the price actually paid or payable for the goods to be valued.

- (5) If —
- (a) a specific rate of excise tax is prescribed under this Act;
 - (b) the goods are imported or removed from customs control in a container intended for sale with, or of a kind usually sold with, the goods in a sale by retail; and
 - (c) the container is marked, labelled, or commonly sold as containing, or commonly reputed to contain, a specific quantity of such goods,

the container is deemed to contain not less than that specific quantity for the purpose of determining the excise tax payable in respect of the goods.

Restricted Goods

35.(1) Except with the written permission of the Commissioner and under such conditions as the Commissioner may consider it necessary to impose, the manufacture, importation or distribution into Seychelles of stills and all apparatus or parts of apparatus capable of being used for the production or refining of alcohol is restricted.

- (2) No person shall keep or use a still unless he or she —
- (a) is registered to distill alcoholic beverages; or
 - (b) being a holder of a certificate issued under subsection (3) (b), keeps and uses the still in accordance with the conditions imposed by the Commissioner under subsection (3) (a).
- (3) The Commissioner —

- (a) may, in accordance with conditions that he or she may impose on a case to case basis, authorise the keeping or use of a still, for the purpose of —
 - (i) the manufacture of goods other than alcoholic beverages; or
 - (ii) the performance of laboratory work, analysis and experiments, including experiments in the manufacture of spirits, and the purification of alcohol for those purposes; and
- (b) shall issue a certificate of registration in respect of any still which he or she has authorised the keeping and use of under paragraph (a);
- (c) may cancel the certificate of registration issued in respect of any still, which is kept or used contrary to any conditions that may have been imposed by him or her under paragraph (a);
- (d) may remit the excise tax on alcoholic beverages produced by the holder of a certificate of registration when using a still for the purposes specified in subsection (2)(b).

PART VI - EXCISE TAX MANAGEMENT

Excise tax returns

36.(1) All manufactured goods shall be duly entered for warehousing within such time and subject to such conditions as the Commissioner may impose.

(2) A registered manufacturer or excise warehouse keeper shall file an excise tax return, in the prescribed form and manner, for each calendar month within 21 days after the end of the month, whether or not any excise tax is due for that month.

(3) A registered manufacturer or excise warehouse keeper shall when file the return, remit to the proper officer, the amount of tax payable in

respect of goods specified in the return as having been removed from the registered production centre or excise warehouse.

(4) Any person paying excise tax shall present to the proper officer a bill of entry in the prescribed form when making such payment.

(5) A registered manufacturer or excise warehouse keeper shall keep such records as may be prescribed in English, French or Creole.

(6) Any records, books, documents or data shall be preserved for a period of 7 years.

(7) A registered manufacturer shall issue tax invoices in accordance with section 98 (2) of the Revenue Administration Act, 2009.

(8) A registered manufacturer or excise warehouse keeper who fails to furnish a return as required under this Act is liable to an amount of additional tax as prescribed by section 42 of Revenue Administration Act.

Self-assessment of excise tax

37.(1) A registered manufacturer or excise warehouse keeper that files an excise tax return for a calendar month is treated as having made a self-assessment of the excise tax payable by the person for the month as specified in the return.

(2) The excise tax return filed by a registered manufacturer or excise warehouse keeper is treated as a notice of the self-assessment served by the Commissioner on the person on the date that the return was filed.

Payment of excise tax by registered manufacturers

38.(1) The excise tax payable by a registered manufacturer or an excise warehouse keeper under section 31(1) (a) for a calendar month shall be payable by the due date for furnishing the manufacturer's excise tax return for that month.

(2) Excisable goods which have been manufactured in Seychelles shall be liable to the rates of excise tax which are applicable to those goods

at the time when they are delivered from the place of manufacture for home use or are used or otherwise disposed of by the manufacturer.

(3) A registered manufacturer or excise warehouse keeper may not remove excisable goods from customs control, if by doing so would result in the amount of excise tax payable exceeding the amount of guarantee specified in section 6 (4) (b), unless —

- (a) the Commissioner, on application in writing by the manufacturer or excise warehouse keeper, gives permission for the removal;
- (b) the manufacturer or excise warehouse keeper, with the agreement of the Commissioner, increases the amount of the security given with the excise manufacturer's bond prior to removal; or
- (c) in any other case, the manufacturer or excise warehouse keeper pays the excise tax payable on the goods before the excisable goods are removed from customs control.

(4) If a registered manufacturer or an excise warehouse keeper pays excise tax to the Commissioner under subsection (3) (c), the manufacturer or excise warehouse keeper shall include the excise tax in the manufacturer's excise tax return for the month following the making of the payment, but is entitled to a credit for the amount paid.

(5) The payment of excise tax shall be covered by a summary declaration, in such form and manner approved by the Commissioner.

Entry for warehousing, home use or export

39.(1) An entry of excisable goods authorises the removal of those goods for —

- (a) home use, or
- (b) removal between excise manufacturers and excise bonded warehouse;

- (c) exportation from Seychelles;
- (d) removal to a duty-free shop;
- (e) removal of goods under a suspension of tax in terms of the Excise Tax (Exemptions) Regulations;
- (f) any other place approved by the Commissioner to receive and hold such goods.

(2) An entry of excisable goods shall —

- (a) be made in accordance with an approved form or in a manner approved by the Commissioner; and
- (b) contain such information as is required by the Commissioner.

(3) Where the intention is to export excisable goods, the exportation of those goods shall be dealt with under the Customs legislation.

Removal of excisable goods

40. Excisable goods shall be removed from a registered production centre or excise bonded warehouse only in packages or containers of such sizes, marked or labelled in such manner as the Commissioner approves in writing.

Deemed removal of excisable goods

41.(1) A registered manufacturer who is unable to account to the satisfaction of the Commissioner for any quantity of excisable goods manufactured or warehoused by the manufacturer shall be deemed to have removed those goods from customs control in the month in which the discrepancy arose.

(2) A registered manufacturer shall be required to notify the Commissioner of any discrepancies between the manufacturer's actual and

recorded inventory as soon as the manufacturer becomes aware of the discrepancy.

Permission to remove excisable goods without entry

42.(1) The Commissioner may give permission in writing to an excise manufacturer to remove excisable goods from an excise warehouse to another specified place, without an entry pursuant to section 39.

(2) The permission given under subsection (1) shall remain in force until it is revoked by the Commissioner.

(3) A person to whom permission has been given under subsection (1) shall, within 21 days after the end of each month, file with the Commissioner in relation to the goods specified in the permission —

- (a) an entry under section 39 for those goods; and
- (b) a return in the approved form —
 - (i) setting out the amount of excise tax payable by that person for that month in relation to those goods; and
 - (ii) containing such other information as the Commissioner requires.

(4) Permission under subsection (1) may be given subject to the condition that the person to whom the permission is given complies with such requirements as specified in the permission, being requirements that, in the opinion of the Commissioner are necessary for the protection of the revenue or for the purpose of ensuring compliance with this Act.

Payment of excise tax by importers

43.(1) Subject to this section —

- (a) excisable goods imported into Seychelles shall be liable to the rates of excise tax which are applicable to those goods at the time when they are entered for home use;

- (b) excise tax payable upon the importation of excisable goods into Seychelles shall be paid by the importer to the Seychelles Revenue Commission.
- (2) For the purposes of subsection (1) —
- (a) a passenger who imports baggage for which no entry is required shall be treated as having entered the baggage for use within Seychelles at the time the baggage is delivered to the passenger in Seychelles; and
 - (b) the addressee of goods imported by post or courier for which no entry is required shall be treated as having entered the goods for use within Seychelles at the time the goods are delivered to the addressee.

Temporary closure of business premises

44.(1) If the registered manufacturer fails to carry out any duty imposed upon him or her by this Act with respect to his or her premises or any buildings, appliances, stock-books, returns, payments, or the mode of conducting his or her business, the Commissioner, after having given 7 days' notice in writing requiring the omission to be rectified or the irregularities to be corrected, may, upon failure by the manufacturer to comply with the notice, close down part or the whole of the manufacturer's business and declare in writing that the registration certificate is suspended.

(2) Where a registration certificate is suspended under this Act, the manufacturer shall —

- (a) immediately cease to manufacture or remove goods; and
- (b) comply with such conditions as the Commissioner may impose.

(3) A suspension under subsection (1) shall continue until it is withdrawn by the Commissioner upon full compliance with this Act.

- (4) If the requirements of this Act are not complied with within a

period to be specified by the Commissioner, the registration certificate may be cancelled by him or her.

(5) The Commissioner may, at any time, enter any premises described in a notice issued under subsections (1) or (4) for the purposes of executing the order and may require a police officer to be present while the order is being executed.

Customs lock and seal on registered production centre

45.(1) The Commissioner may seal or lock an item of manufacturing plant, if the Commissioner has reasonable cause to believe that a registered manufacturer is not complying with this Act.

(2) The manufacturing plant may only be operated upon removal of the seal or lock by the Commissioner.

PART VII - REBATE, REFUND AND REMISSION OF EXCISE TAX

Claims for relief

46. When any claim is made for an exemption, drawback, rebate, refund or remission of any tax, fee or charge in accordance with this Act, the burden of proof shall lie upon the claimant to show that he or she is entitled to such exemption, drawback, rebate, refund or remission.

Relief for raw materials

47.(1) If the Commissioner is satisfied, on the basis of a certificate issued by a registered manufacturer in the prescribed form, that excisable goods, imported into Seychelles, are intended to be used by the registered manufacturer as raw materials for the manufacture of other excisable goods, the Commissioner may, in respect of such goods, grant a suspension of tax subject to the condition that —

- (a) tax on the final product is more than the tax payable at the time of importation;
- (b) the manufacturer has entered into a suspension of duty

bond or such other security as the Commissioner may in his discretion approve.

(2) If the tax on the final excisable product is less than the tax payable at the time of importation, the Commissioner shall not grant a suspension of tax.

Relief for goods destroyed or lost by accident

48.(1) The owner of excisable goods may wish to remit tax under this section if the goods belonging to him or her have been destroyed or lost by accident without going into consumption whilst —

- (a) in an excise warehouse or on a registered production centre, registered under section 6 (3)(b);
- (b) in transit to a bonded warehouse;
- (c) in transit for export in bond; or
- (d) being removed from an excise warehouse as aircraft or ship's stores.

(2) If the owner of excisable goods pursuant to subsection (1) wishes the tax to be remitted he or she shall submit a voucher together with a written explanation of the circumstances in which the damage or loss came about to the proper officer for transmission to the Commissioner.

(3) After consideration of the voucher and explanation, submitted under subsection (2) and the report of any officer appointed to investigate the matter, the Commissioner shall remit the tax thereon by signing the voucher as authority for the goods to be written off, if he or she is satisfied that —

- (a) the goods have been destroyed or have been lost without going into consumption; and
- (b) every reasonable effort was made and precaution taken to prevent their destruction or loss.

Refund or remission of excise tax on defective goods

49.(1) Subject to this part, the Commissioner may grant a refund or remission of any excise tax paid or payable on goods manufactured in Seychelles which are found to be defective as a result of faulty manufacturing or production, provided that any application for such refund or remission shall be made in writing by the manufacturer and goods are returned unused within 6 months of the date of removal from registered production centre stating —

- (a) the purpose for which they are to be returned;
- (b) full details as to the nature, quantity, weight or volume of the goods;
- (c) the date on which they were produced or manufactured and the date on which they were removed from the registered production centre; and
- (d) the nature and cause of defect in the goods.

(2) There shall be no refund unless the goods are destroyed under the supervision of an officer according to terms and conditions set by the Commissioner.

Drawback of excise tax on exported excise paid stocks

50.(1) If a person who has imported excisable goods subsequently exports those goods or puts them on board a ship or aircraft for use as stores and the goods are in compliance with the conditions for payment of a drawback of duties under the Customs legislation, that person is entitled to a drawback as per the Customs legislation.

(2) An application for a drawback of the excise tax in circumstances to which subsection (1) applies shall be filed with the Commissioner in the prescribed form and manner.

(3) If the Commissioner is satisfied that a person who has made an

application under subsection (1) is entitled to a refund, the Commissioner shall pay the refund in accordance with the Revenue Administration Act, 2009.

PART VIII - COLLECTION AND RECOVERY OF EXCISE TAX

Refunds of excise tax overpaid

51.(1) Subject to this section, if a person has paid to the Commissioner any amount in excess of the amount of the excise tax prescribed under this Act, the Commissioner shall refund the amount paid in excess.

(2) Before a refund can be made, a person shall apply to the Commissioner in writing, detailing the grounds for refund.

(3) An application for a refund shall be made not more than 7 years after the date on which the excess was paid.

(4) This section shall be subject to section 20 (2) of the Revenue Administration Act, 2009.

Recovery of excise tax

52. Excise tax payable under this Act by any person is recoverable as a debt due to the Government in any court of competent jurisdiction by the Commissioner General or by the Attorney General suing on behalf of the Government.

Set off

53. If a person has failed to pay in whole or in part any amount of excise tax payable under this Act, the Commissioner may set off that unpaid tax against any other amount refundable or payable by the Government to that person by or under any other Act.

Post clearance amendment of declaration

54. Where excisable goods have been released on incorrect or incomplete information which is revealed in the revision of post clearance

examination, Customs shall take appropriate measures to recover any unpaid taxes and impose a fine if deemed necessary.

Appeal and Dispute settlement

55.(1) If any dispute arises as to the amount or rate of excise tax or as to the liability of goods to excise tax, the person responsible for the goods shall deposit with the Commissioner the amount of excise tax demanded by the Commissioner.

(2) If a deposit is made —

- (a) the person responsible for the goods is entitled to possession of the goods; and
- (b) the amount of the deposit is deemed to be the proper amount of the excise tax unless the contrary is determined in proceedings under subsection (3).

(3) A manufacturer or person who is dissatisfied with the decision of the Commissioner shall, appeal to the Commissioner General in accordance with section 32 of the Customs Management Act, 2009.

(4) Subject to subsection (3), the Commissioner General may upon review either uphold or vary the decision of the Commissioner.

(5) Any excess of the deposit over the proper excise tax as determined in the proceedings is to be refunded by the Commissioner to the manufacturer or person responsible for the goods.

Application for review of reviewable decision

56. A person dissatisfied with a reviewable decision of the Commissioner General may make an application to the Revenue Tribunal in accordance with section 72 of the Revenue Administration Act, 2009 for review of the decision.

Evidence in certain circumstances

57.(1) In any prosecution on account of the non-payment of tax on goods liable to excise tax, and in any proceedings for the recovery of tax on

such goods, instituted against a person, any statement in any record kept by or on behalf of such person to the effect that such goods of a particular quantity or strength have been manufactured or held in stock by the person at any time, shall be admissible as evidence of the fact that he or she had at that time manufactured or held in stock goods liable to excise tax of that quantity or strength.

(2) If in any such prosecution or proceedings such person claims that he or she has disposed of or used any goods liable to excise tax in such manner as not to be subject to excise tax, the burden of proving that such goods have been so disposed of or used shall be upon that person.

Sellers of excisable goods to produce proof

58.(1) Any person being in possession or control of imported excisable goods or goods which are liable to excise tax under this Act, and any person who offers for sale, exports or attempts to export such goods or has such goods entered in his or her books or mentioned in his or her document or record shall, when requested by an officer to do so, produce proof as to the place where entry of the excisable goods was made and any tax due thereon was paid and the date of entry and the marks and numbers of the packages concerned, which marks and numbers shall correspond with the documents produced in proof of entry or the payment of tax.

(2) If the person under subsection (1) did not pay the tax or make entry of the goods, such person shall produce evidence that will enable the officer to locate and question the person who made such payment and entry in respect of the goods.

(3) Any person failing to produce the proof or evidence required under this section shall be liable for the unpaid excise tax, and shall pay the tax to the Commissioner within the time specified by the Commissioner.

PART IX - SEIZURE AND FORFEITURE

Seizure and consequent procedures

59.(1) An officer may seize —

- (a) excisable goods that are, or that an officer has reasonable cause to believe are, produced, or partly produced, by a person who is not a registered manufacturer;
- (b) all goods that are, or that an officer has reasonable cause to believe are, used, or capable of being used, in the production of excisable goods and that are found on premises not being a registered production centre;
- (c) all excisable goods subject to the control of Customs that are taken possession of, moved, altered or interfered with, except as authorised by or in accordance with this Act;
- (d) all packages in which seized goods are contained.

(2) Whenever articles are seized in terms of this section, the officer so seizing shall give the person from whom the articles have been seized a notice of seizure.

(3) All seized goods shall be moved to such place as the Commissioner directs.

Substitution of other goods for goods actually liable to seizure

60. Where any excisable goods subject to excise tax, become liable to seizure in terms of this Act, whether or not excise tax has been paid thereon, an officer may, instead of seizing those goods, seize from the stock of the person from whom those goods would have been seized —

- (a) in the case of, spirits, the equivalent quantity as absolute alcohol, of other spirits which are subject to excise tax;
- (b) in the case of goods other than spirits, the equivalent quantity of other like goods liable to excise tax.

Persons to make representations to the Commissioner

61.(1) Any person who has been served with a notice of seizure may appeal against the decision within 7 days from the date the notice is served on him or her.

(2) Any person appealing under subsection (1) shall lodge an application of appeal to the Commissioner.

(3) The Commissioner may within 30 days of receiving the appeal —

(a) conditionally or unconditionally order any or all of the goods to be restored from seizure; or

(b) declare any or all items to be forfeited to the Government.

(4) Notwithstanding subsection (1), if any of the goods seized are perishable, the Commissioner may sell them immediately after seizure.

(5) The proceeds of sale shall be paid to the Seychelles Revenue Commission subject to the deduction of any expenses incurred in the sale.

Power of the Commissioner to sell or dispose of goods

62. The Commissioner may sell or dispose of any goods declared forfeited under section 61 (3)(b) unless the person from whom the goods were seized or the owner, gives written notice to the Commissioner of his or her intention to take proceedings against the Commissioner for the recovery of the goods.

Power of the Commissioner General to compound offences

63.(1) The Commissioner General may, where he or she is satisfied that any person has committed an offence under this Act in respect of which a fine is provided or in respect of which anything is liable to forfeiture, compound the offence and may order such manufacturer to pay a sum of money, not exceeding the amount of the fine to which the manufacturer would have been liable if he or she had been prosecuted and convicted for the offence, as the Commissioner General may deem fit, and the Commissioner General may order anything liable to forfeiture in connection with the offence to be declared forfeited to the Government.

(2) The Commissioner General shall not exercise his or her powers under subsection (1) unless the manufacturer admits in a prescribed form

that he or she has committed the offence and requests the Commissioner General to deal with such offence under this section.

(3) Where the Commissioner General makes any order under this section —

- (a) the order shall be put into writing and shall have attached to it the request of the manufacturer to the Commissioner General to deal with the matter under this section;
- (b) the order shall specify the offence which the manufacturer committed and the penalty imposed by the Commissioner General;
- (c) a copy of the order shall be given to the manufacturer if he or she so requests;
- (d) the manufacturer shall not be liable to any further prosecution in respect of the offence;
- (e) where the terms of the compounded settlement are breached by the offender, the Commissioner General may institute legal proceedings against the offender in terms of the Act.

Access to registered production centres

64. Where there are reasonable grounds to believe that it is necessary to do so for the protection of the revenue and the proper administration of this Act, a proper officer appointed for the purposes of this section or an officer authorised by such a proper officer may —

- (a) without prior notice, at any time enter any registered production centre, distillery, brewery or bonded warehouse, for the purpose of search, examination and enquiry as he or she considers necessary, and may seal, mark or otherwise secure any package there found, and

may take possession of any document, record or other relevant thing for as long as may be necessary for the purpose of any examination, investigation, trial or inquiry; and

- (b) while the officer is on such premises or at any other time, require from any person the production then and there, or at a time and place to be fixed by the officer, of any book, document, record, thing or printout or information stored in any information retrieval system which is required under this Act to be kept or exhibited, or which is or has been on such premises or in the possession, custody or control of any such person or his or her employee; and
- (c) at any time and at any place require from any person who has the possession, custody or control of any such book, record, printout, document or thing under paragraph (b), the production thereof then and there, or at a time and place to be fixed by the officer; and
- (d) examine and make extracts from and copies of such books, records, printout or document under paragraph (b) and may require from any person an explanation of any entry therein and may seize such books, records, printout, documents or things as in his or her opinion may contain evidence of an offence under this Act;

Power to enter and search with warrant

65.(1) An officer may make a declaration on oath before a magistrate, if he or she has reasonable grounds to believe that there is on any premises, vehicle, vessels or aircraft —

- (a) any excisable goods on which excise tax has not been paid; or
 - (b) any records relating to such goods.
- (2) The magistrate may issue a warrant authorising the officer to —

- (a) enter and search the premises, vehicle, vessels or aircraft at any time and using reasonable force as may be necessary; and
- (b) seize and remove any excisable goods or records found on the premises, vehicle, vessels or aircraft.

(3) An officer in possession of a warrant under subsection (2) shall require a police officer to assist him or her in the execution of the warrant.

Taking of samples

66.(1) An officer may at any time and without payment take samples of any goods for examination or for ascertaining the excise tax payable thereon or for such other purpose as the Commissioner may consider necessary.

(2) The samples shall be dealt with and accounted for in such manner as the Commissioner may direct, provided that any sample so taken shall whenever possible be returned to the owner of the goods.

Examining goods and plant

67.(1) Any officer may —

- (a) open packages and examine, weigh, mark and seal any excisable goods subject to the control of customs; and
- (b) lock up, seal, mark or fasten any plant at a registered production centre.

(2) The expenses of the examination of the goods including the cost of their removal to the place of examination is to be borne by the owner.

PART X - OFFENCES AND PENALTIES

Failure to enable the Commissioner to determine fair market value

68. Any person who fails to provide a declaration to the Commissioner in accordance with section 3(4) commits an offence and shall

be liable on conviction to a fine of level 4 on the standard scale or imprisonment for a term not exceeding 3 months, or both.

Unauthorised manufacture of excisable goods

69. Any person who contravenes section 5 by —

- (a) manufacturing excisable goods in Seychelles without being registered; or
- (b) manufacturing excisable goods in premises that are not a registered production centre,

commits an offence and on conviction shall be liable to a fine not less than level 4 up to level 7 of the Standard Scale or to imprisonment for a term not exceeding 1 year, or both.

Unauthorised storage or installation of machinery, equipment or receptacles

70.(1) A registered manufacturer commits an offence if without the permission of a proper officer —

- (a) machinery, equipment or receptacles capable of use in connection with the manufacture of goods liable to excise tax which are not described in a list submitted in accordance with section 6(3) (a) or a list amended in accordance with section 6(10) are brought into, kept or installed in the registered premises in respect of which the list was submitted; or
- (b) machinery, equipment or receptacles described in a list such as is referred to in paragraph (a) are —
 - (i) kept or installed in a room, building or other place on the registered production centre in respect of which the list was submitted which, according to the list, is not a room, building or other place where they are to be kept or installed; or

(ii) used for any purpose other than the purpose described in the list; or

(c) goods liable to excise tax are manufactured in a room, building or other place at the registered production centre in respect of which a list such as is referred to in paragraph (a) was submitted which, according to the list, is not a room, building or other place to be used for that purpose.

(2) A registered manufacturer who commits an offence under subsection (1) shall be liable on conviction to a fine of level 5 on the standard scale or to imprisonment for a term not exceeding 1 year, or both.

Unauthorised sale or disposal of goods manufactured for experimental purpose

71. Any person authorised by the Commissioner to manufacture goods for experimental purposes in accordance with section 7, who sells or disposes of such goods otherwise than in accordance with the rules made by the Commissioner commits an offence and shall be liable on conviction to a fine not less than level 4 but not exceeding level 7 of the Standard Scale or imprisonment for a term not exceeding 1 year, or both.

Interference with a registered production centre or excise bonded warehouse

72. Any person who without the permission of the Commissioner interferes with: a registered production centre or excise bonded warehouse in contravention with section 11 and section 24, commits an offence and shall be liable on conviction to —

(a) in the case of an individual, a fine of level 3 on the standard scale or imprisonment for a term not exceeding 1 year, or to both; and

(b) in the case of a body corporate, a fine of level 4 on the standard scale.

Failure to enable officers to discharge their duties

73. A registered manufacturer or excise warehouse keeper who fails to provide appropriate facilities and assistance in accordance with Section 85 under this Act, to enable officers to exercise their powers under this Act, commits an offence and shall be liable on conviction to —

- (a) in the case of an individual, a fine of level 5 on the standard scale or imprisonment for a term not exceeding 1 year, or to both; or
- (b) in the case of a body corporate, a fine of level 6 on the standard scale.

Unauthorised removal of goods from duty-free shops and an excise warehouse

74. Any person who —

- (a) takes or delivers goods from a duty-free shop in contravention of section 16; and
- (b) takes or delivers goods from an excise warehouse in contravention of section 25,

commits an offence and shall be liable on conviction to a fine of level 5 on the standard scale or imprisonment for a term not exceeding 6 months or both.

Unauthorised importation, distribution or use of restricted goods

75. Any person who contravenes section 35 (1) or fails to comply with any condition set by the Commissioner in accordance with section 35 (3)(a) commits an offence and shall be liable on conviction to a fine of level 5 on the standard scale or imprisonment for a term not exceeding 1 year or both.

Unauthorised removal of excisable goods from production centres

76.(1) A person commits an offence, if that person —

- (a) removes, causes or permits excisable goods to be removed from a registered production centre in contravention of section 39;
- (b) removes excisable goods from a registered production centre in contravention of section 40.

(2) A person who commits an offence under subsection (1) shall be liable on conviction to a fine of level 5 on the standard scale or imprisonment for a term not exceeding 1 year, or both.

Non-compliance to permission to remove excisable goods without entry

77.(1) A person to whom permission has been granted under section 42(1), commits an offence, if that person —

- (a) fails to comply with a requirement specified in the permission; or
- (b) contravenes section 42(3).

(2) A person who commits an offence under subsection (1) shall be liable on conviction to a fine of level 5 on the standard scale or imprisonment for a term not exceeding 1 year, or both.

Unauthorised use of imported goods

78. A manufacturer commits an offence if the goods imported in accordance with section 47 are used in contravention of the manufacturer's certificate issued at importation, and shall be liable on conviction to a fine of level 5 on the standard scale or to imprisonment for a term not exceeding 6 months and all irregularly manufactured goods shall be liable to forfeiture.

Bribery and collusion

79.(1) An officer commits an offence, if that officer —

- (a) directly or indirectly asks for or takes, in connection with any of his or her duties under this Act, any payment or other reward, not being a payment or reward that he or she is lawfully entitled to claim or receive; or
 - (b) enters into or acquiescence in any agreement to do, abstain from doing, permit, conceal or connive at any act or thing whereby the Government is or may be defrauded or which is otherwise unlawful, being an act or thing relating to the administration of this Act.
- (2) A person commits an offence if that person —
- (a) directly or indirectly offers or gives to any officer any payment or other reward whatsoever, whether pecuniary or otherwise; or
 - (b) proposes or enters into any agreement with any officer; in order to induce him or her to do, abstain from doing, permit, conceal or connive at any act, omission or thing, whereby the Government is or may be defrauded or which is otherwise unlawful, being an act, omission or thing relating to the administration of this Act, or otherwise to take any course contrary to his or her duty.
- (3) Any officer or person who commits an offence under subsections (1) or (2) shall be liable on conviction to —
- (a) a fine of level 5 on the standard scale or three times the value of the payment or reward concerned, whichever is the greater; or
 - (b) imprisonment for a term not exceeding 2 years or to both.
- (4) Where an officer or a person is convicted of an offence under subsection (1) or (2), the court may order the forfeiture of any payment or reward that forms part of the offence to the Government.

Interference with seals and fastenings

80.(1) A person commits an offence if that person, without the authority of an officer, opens, alters, breaks or erases a fastening, lock, mark, or seal, placed by an officer upon any goods or upon any plant in a registered production centre.

(2) A person who commits an offence under subsection (1) shall be liable on conviction to a fine of level 5 on the standard scale or imprisonment for a term not exceeding 1 year or both.

Warehousing irregularities

81.(1) The owner of excisable goods, or the proprietor or occupier of the warehouse, or the person responsible for the handling of the excisable goods, commits an offence, if any excisable goods entered for warehousing —

- (a) are not carried into and deposited in the warehouse;
- (b) after deposit in the warehouse, are taken out of the warehouse without entry and clearance;
- (c) having been entered and cleared for exportation, are not duly exported.

(2) Notwithstanding subsection (1), any person specified therein, who proves that all reasonable precautions were taken to prevent the act that constituted the offence shall not be guilty of that offence.

(3) Any person who commits an offence under this section, shall be liable on conviction to a fine of level 5 on the standard scale or to imprisonment for a term not exceeding 2 years or both.

(4) Any goods that is the subject of an offence under subsection (1) shall be liable to forfeiture.

Failure to keep and produce books, records or other documents and data

82.(1) A manufacturer or excise warehouse keeper of goods liable to excise tax commits an offence if he or she contravenes section 36 (3) or —

- (a) fails to produce such record when required by an officer to do so;
- (b) fails to make in such record any entry required to be made therein or fraudulently makes any entry in such record;
- (c) erases or obliterates any entry in such record;
- (d) mutilates or tears therefrom any leaf or page;
- (e) by his or her own accord or through the agency or with the assistance of any other person, destroys, conceals or makes away with such record;
- (f) refuses to allow an officer at any time to inspect such record or obstructs or hinders him or her in such inspection;
- (g) neglects or refuses to furnish any return specified in section 20 within the time specified for the furnishing of such return;
- (h) submits a false return; or
- (i) neglects or refuses to give such further information as to his or her operations in the manufacture of goods liable to excise tax, or the disposal thereof, as an officer may require.

(2) A manufacturer or excise warehouse keeper who commits an offence under subsection (1) shall be liable on conviction to a fine of —

- (a) level 1 on the standard scale for small businesses;
- (b) level 3 on the standard scale for medium business; and
- (c) level 4 on the standard scale for large business.

Penalty for certain acts

- 83.(1)** A person commits an offence if he or she —
- (a) fails to notify the Commissioner as required by section 6(9), 9(3) or 9(7);
 - (b) enters premises that is subject to an order under section 44(2) without the permission of the Commissioner;
 - (c) operates an item of manufacturing plant without the permission of the Commissioner in contravention of section 45;
 - (d) supplies the means or materials for or assists in establishing or repairing, maintaining or working any still, the keeping and using of which has not been authorised in terms of this Act, knowing at the time when he or she so supplies or assists that it was such a still;
 - (e) has upon his or her premises or in his or her custody or control, or purchases, sells or otherwise disposes of any goods liable to excise tax which have been manufactured in breach of this Act, unless such person proves that he was unaware that such goods were so manufactured;
 - (f) is found without lawful excuse in any place where the illegal manufacture of goods liable to excise tax is being carried out;
 - (g) without lawful authority, imports any goods liable to excise tax after they have been exported from Seychelles;
 - (h) not being a person registered to manufacture goods liable to excise tax, has, without lawful authority, in his or her possession, custody or control any manufactured or partly manufactured goods liable to excise tax upon which such excise tax has not been paid;

- (i) falsely holds himself or herself out to be an excise officer;
- (j) fraudulently claims a refund, rebate, remission or drawback to which he or she is not entitled;
- (k) makes improper use of any registration document issued under this Act or any other law relating to customs or excise; or
- (l) damages, destroys or disposes of any goods in order to prevent the seizure thereof by an officer or any other person authorised to seize them.

(2) A person who commits an offence under subsection (1) shall be liable on conviction to a fine of level 5 on the standard scale or to imprisonment for a term not exceeding 2 years, or both.

PART XI - FINAL PROVISIONS

Regulations

84.(1) The Minister may make regulations —

- (a) prescribing any matter required to be prescribed for the purposes of this Act; and
- (b) for the proper and efficient administration of this Act.

(2) Without limiting the general effect of subsection (1), regulations made under that subsection may provide for —

- (a) imposition of excise tax rates, excise levy and sugar tax rates;
- (b) the registration of excise manufacturers, including the prescribed fees applicable upon the issuance or renewal of a registration certificate in accordance with this Act;
- (c) the registration of production centres;

- (d) the movement of goods and goods into and out of the registered production centres;
 - (e) the operations to be performed in registered production centres;
 - (f) the keeping of records, books and other documents, the making of returns and the giving of information by manufacturers of goods liable to excise tax;
 - (g) the registration and operations of duty-free shops;
 - (h) the granting of rebates, refunds, remissions and suspensions of excise tax;
 - (i) the granting of reduction or concession on the rate of taxes payable on any of the goods prescribed under this Act;
 - (j) the granting of exemption from payment of taxes payable on any excisable goods;
 - (k) the minimum value of taxes payable, below which taxes will not be collected;
 - (l) a minimum value of taxes paid in excess, below which taxes will not be refunded.
- (3) Regulations made under subsections (1) and (2) may —
- (a) contain provisions of a saving or transitional nature consequent upon the making of this Act; or
 - (b) prescribe penalties for the contravention of the regulations.

Rules

85. The Commissioner may make rules not inconsistent with this Act or any other enactment in respect of any matter where this Act provides that such matter is to be dealt with in accordance with rules made by the Commissioner.

PART XI - REPEAL, SAVINGS AND TRANSITIONAL

Repeal

86. The Excise Tax Act, 2009 (Cap. 264) is hereby repealed.

Savings and Transitional

87.(1) The schedules and regulations made, excise rates, certificates and directions issued under the repealed Act shall continue in force until they are amended or repealed under this Act.

(2) An existing manufacturer may continue to produce excisable goods for one month or such longer period as the Commissioner allows for a particular producer as if the existing producer were a registered manufacturer and the goods were being produced at a registered production centre.

(3) An existing manufacturer shall apply for a registration certificate issued under section 6 of the Act.

(4) Upon the commencement of this Act, any appointments made under a provision of the repealed Act shall continue to apply as if made under this Act.

(5) The repeal of the Act shall not affect —

- (a) proceedings commenced in any Court before the commencement of this Act;
- (b) any information submitted by any officer in respect of an alleged offence committed before the commencement of this Act;
- (c) any right or proceedings related to a refund, remission, concession, rebate, exemption or drawback of tax under any statutory instruments made under the repealed Act before the commencement of this Act;

- (d) any right to recover money under any statutory instruments made under the repealed Act whether paid before or after the commencement of this Act;
- (e) the condemnation of any goods in accordance with the repealed Act.

(6) A person who, immediately before the commencement of this Act, was an officer appointed in accordance with the repealed Act shall be deemed to be an officer appointed by the Commissioner General.