

THE OFFICIAL GAZETTE **4TH MARCH, 2004**
LEGAL SUPPLEMENT - C

BILL No. 1 of 2004

Thursday 4th March, 2004

PARLIAMENT OFFICE,
Public Buildings,
Georgetown,
Guyana.

4th March, 2004

The following Bill which will be passed in the National Assembly is published for general information.

S. E. Isaacs,
Clerk of the National Assembly.



GUYANA

BILL No. 1 of 2004

**CUSTOMS DUTIES [(AMENDMENT)
(No. 2) ORDER 2003] VALIDATION BILL 2004**

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement.
2. Validation of Customs Duties (Amendment) (No. 2) Order 2003; indemnity.

A BILL
intituled

AN ACT to validate the Customs Duties (Amendment) (No. 2) Order 2003 (No. 29 of 2003) published in the Gazette on 1st September, 2003.

A. O. 2004

Enacted by the Parliament of Guyana:-

Short title and commencement.

1. This Act may be cited as the Customs Duties [(Amendment) (No. 2) Order 2003] Validation Act 2004 and shall be deemed to have come into operation on 1st September, 2003.

Validation of Customs Duties (Amendment) (No. 2) Order 2003. Indemnity.

2. (1) The Customs Duties (Amendment) (No. 2) Order 2003 (No. 20 of 2003) which was made on 1st September, 2003 under Section 8 of the Customs Act and published in the Gazette on 1st September, 2003 shall not be invalid, notwithstanding anything in Section 9(4) of the Customs Act, by reason only of the lodging of the Order otherwise than in accordance with the provisions of subsection (1) of Section 9 of the Customs Act or by any other reason; the said Order is hereby deemed to be lawfully and validly lodged.

No. 29 of 2003

Cap. 82:01

(2) The confirmation on 23rd October, 2003 by the National Assembly of the said Customs Duties Order hereby deemed to be lawfully and validly done.

(3) The said Customs Duties Order is hereby deemed to be properly, lawfully and validly made, published and confirmed by the National Assembly on 23rd October, 2003 and to be of full legal force and validity, notwithstanding anything in any law, and all acts and things done or omitted in good faith during the period commencing 1st September, 2003 and ending 9th February, 2004 by all persons and which would have been lawful if this Act had been in force shall be deemed to have been lawfully and validly done, and all persons are hereby discharged and indemnified against all other persons from all legal proceedings in respect of, or consequent on such acts.

(4) The Customs Duties (Amendment) (No. 2) Order 2003 (No. 29 of 2003) is hereby revoked with effect from 10th February, 2004.

EXPLANATORY MEMORANDUM

This Bill seeks to validate and make legally effective the Customs Duties (Amendment) (No. 2) Order 2003 (No. 29 of 2003). It validates all acts and things done from 1st September, 2003 to 9th February, 2004 and indemnifies all persons against all other persons from all legal proceedings in respect of or consequent on, such acts.

Doodnauth Singh
Attorney General and Minister of Legal Affairs.

**A Bill
Intituled**

AN ACT to provide for the establishment of the Public Procurement Commission Tribunal and for matters connected therewith and incidental thereto.

A.D. 2004

Enacted by the Parliament of Guyana. -

Short title

1. This Act may be cited as the Public Procurement Commission Tribunal Act 2004.

Establishment of the Public Procurement Commission Tribunal

2. There is hereby established a Tribunal to be known as the Public Procurement Commission Tribunal (hereinafter referred to as the Tribunal).

Composition of the Tribunal

3. (1) The Tribunal shall consist of the following members -
- (a) a chairperson to be appointed by the President who shall act in accordance with the advice of the Judicial Service Commission and shall be a person who -
- (i) holds or has held office of a Judge of the Court of Appeal, or
 - (ii) is qualified to be appointed as a Judge of the Court of Appeal or holds or has held the office of a Judge of the High Court; or
 - (iii) is qualified to be appointed as a Judge of the High Court; or
 - (iv) a fit and proper person with experience in procurement, legal, financial and administrative matters.

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(b) two members to be appointed by the President, who shall act in accordance with the advice of the Public Service Commission from among persons, qualified as having had experience of, and shown capacity in, procurement, legal, financial and administrative matters relating to Public Procurement.

(2) The members of the Tribunal shall be appointed by instrument in writing for a period of three years, and the membership as first constituted and every change in the said membership shall be published in the Gazette.

(3) Any member of the Tribunal may, at any time by notice in writing to the President, resign his office as member of the Tribunal.

(4) The President on the advice of the Judicial Service Commission shall by notice in writing, remove from office any member of the Tribunal for inability to perform the functions of his office, whether arising from infirmity of mind and body, or for misbehavior or on the ground of any employment or interest which is incompatible with the functions of the Tribunal.

(5) A person shall be disqualified for appointment as a member of the Tribunal if he is a member of the Public Procurement Commission.

(6) There shall be paid to each member of the Tribunal such salary or remuneration and such allowances as the President may prescribe by order which shall be subject to affirmative resolution of the National Assembly.

Headquarters
of the
Tribunal

4. The headquarters of the Tribunal shall be at Georgetown, but the Tribunal may hold its sittings at any other place in Guyana.

Registrar and other
staff of the
Tribunal

5. (1) There shall be a registrar of the Tribunal who shall be appointed by the Public Service Commission.

(2) The registrar shall be the Chief Executive Officer of the Tribunal.

(3) The Minister shall provide the Tribunal with such other staff as it may require for the exercise of its functions.

Oath of office by
registrar and
members

Schedule

6. Every member of the Tribunal and the registrar shall before entering on the duties of his office take before the President an oath of office as set out in the Schedule.

Administration of
oaths by members
or registrar

7. Every member of the Tribunal and the registrar shall have power to administer oaths and take affidavits, and to take solemn affirmations or declarations in lieu of oaths.

Appeals to the
Tribunal

8. (1) An appeal shall lie to the Tribunal from any decision made by the Public Procurement Commission in the carrying out of its functions under article 212AA of the Constitution.

(2) An appeal under subsection (1) may be brought to the Tribunal by any person aggrieved by any decision referred to therein within a period of thirty days computed from -

- (a) the date of the receipt of the decision by him; or
- (b) the date on which he otherwise came to know of the decision, whichever date is earlier.

(3) Notwithstanding subsection (2), the bench of the Tribunal may entertain an appeal after the expiry of the aforesaid period of thirty days if it is satisfied that there was reasonable cause for the delay.

(4) No appeal shall lie from any decision referred to in subsection (1) made before the commencement of this Act.

(5) Every appeal shall be in such form, and accompanied by such documents and by such fees as the chairperson, after consultation with the other members of the Tribunal, may specify.

Parties to the appeal

9. (1) All persons likely to be directly affected by the outcome of the appeal shall be made parties to the appeal by the appellant; but no person shall without his consent be made a party to the appeal as appellant.

(2) The bench of the Tribunal may, at any stage of the proceedings in an appeal, either upon or without the application of any party and on such terms as appear to the bench to be just, order that the name of any party improperly joined be struck out and that the name of any person, who ought to have been joined or whose presence before the bench may be necessary in order to enable the bench effectually and completely to adjudicate upon and settle all questions involved in the appeal, be added as a party.

Notice of appeal to the respondent

10. (1) Every appeal shall, as soon as may be practicable after it is brought, be placed by the registrar before a bench of the Tribunal constituted as provided in section 11 (1) for preliminary hearing and notice of the date of such hearing shall be issued to the appellant by the registrar.

(2) If the bench of the tribunal after hearing the appellant is satisfied that -

- (a) the appeal is brought within the period specified in section 8(2) or, if after the expiry of that period there was reasonable cause

(b) the appellant has complied with the provisions of section 8(5) relating to the form of the appeal, production of documents and payments of fees, if any; and

(c) the appeal is not frivolous or vexatious,

it may order that notice be issued to the respondent or, if there are more respondents than one to all the respondents, that the appeal shall be heard, and in other cases it shall dismiss the appeal:

Provided that in a case where the bench of the Tribunal is satisfied of the matters referred to in paragraphs (a) and (c), but is of the opinion that the appellant has not complied with the provisions of section 8(5) relating to form of the appeal, production of the documents and payment of fees in bringing the appeal, the bench of the Tribunal may in the interests of justice, allow the appellant reasonable time to comply with the provisions of section 8(5) and shall dismiss the appeal under this proviso only if the appellant fails or refuses to cure the defect within the time so allowed.

Hearing of
appeal

11. (1) Every appeal shall be heard by the bench of the Tribunal consisting of -

(a) the chairperson; and

(b) the members referred to in section 3(1) (b)

(2) Notice of every hearing of the appeal, other than a hearing under section 10, and of the date on which the decision of the bench of the Tribunal is to be announced shall be given to all parties to the appeal.

(3) A party to the appeal may, unless directed by the bench of the Tribunal for reasons to be recorded in writing to appear personally, appear either

personally or through any other person, duly authorised by him in that behalf, or an attorney-at-law.

(4) The bench of the Tribunal may, if it appears to be expedient in the interests of justice, postpone or adjourn the hearing of an appeal or application or other proceedings for such time and to such place, and upon such terms, if any, as it may think fit.

Absence of parties
at hearing

12. (1) If any of the parties to the appeal fails to appear when the appeal is called on for hearing by the bench of the Tribunal, the bench may proceed to hear the appeal in the absence of that party.

(2) Where an appeal has been heard by the bench of the Tribunal under subsection (1) in the absence of any party and any order has been made therein adverse to the party so absent, that party may apply, within thirty days of the making of the order, to the Tribunal to set aside the order and to re-hear the appeal and, the bench of the Tribunal may, if it thinks fit, and on such terms to costs or otherwise as it may deem just, direct the appeal to be re-heard.

(3) The provisions of subsections (1) and (2) shall apply to the hearing by the bench of the Tribunal of any interlocutory application.

Admission of
evidence by the
bench of the
Tribunal

13. (1) The bench of the Tribunal may, if it appears to the bench to be necessary for the determination of any matter in dispute in any appeal before it, allow the production of evidence or fresh evidence.

(2) The bench of the Tribunal may accept evidence by affidavit or otherwise.

Power of bench of the Tribunal to summon and examine witnesses

14. (1) The bench of the Tribunal shall have the power of the Judge of the High Court to summon witnesses, and to call for the production of books, plans and other documents, and to examine witnesses and parties concerned on oath.

(2) A summons for the attendance of a witness or other person, or for the production of documents, shall be in such form as may be specified by the Registrar and shall be signed by the Registrar and shall be served in the same manner as a notice.

Duty of witnesses summoned

15. Every person summoned to attend and give evidence, or to produce books, plans or other documents at any sitting of the bench of the Tribunal, shall be bound to obey the summons served upon him as fully in all respects as a witness is bound to obey a subpoena issued from the High Court, and shall be entitled to like expenses as if he had been summoned to attend the High Court on a civil trial and such expenses shall be paid by the party summoning the witness.

Penalty for contumacy or insult interruption of proceedings, etc

16. (1) Every person, referred to in section 15, refusing, omitting, without sufficient cause, to attend at the time and place mentioned in the summons served on him, and every such person attending but leaving a sitting of the bench of the Tribunal without the permission of the members of the bench or refusing without sufficient cause to answer, or answer fully and satisfactorily to the best of his knowledge and belief all questions put to him by or with concurrence of the bench or refusing or omitting without sufficient cause to produce any books, plans or other documents in his possession or under his control and mentioned or referred to in the summons served on him, and every person who shall, at any sitting of any bench of the Tribunal, wilfully insult any member or the registrar or wilfully interrupt the proceedings of the bench, shall be liable

on summary conviction to a fine of fifty thousand dollars and to imprisonment for six months.

(2) Any witness, who shall wilfully give false evidence in any proceedings before any bench of the Tribunal concerning the subject matter of the proceedings, shall be guilty of perjury and shall be liable to be prosecuted and punished accordingly.

Power of the bench of the Tribunal to call for the record of the proceedings relating to the decision appealed from

17. (1) The bench of the Tribunal may, if it appears to the bench to be necessary for the determination of any matter in dispute in any appeal before it, direct the Public Procurement Commission to produce the record of the proceedings of, or before, the Commission relating to the decision appealed from.

(2) A direction under subsection (1) shall be addressed to the Secretary of the Commission, and sections 15 and 16 shall apply to, and in relation to, any such direction as if it were a summons issued under section 14 to the Secretary and each of the members of the Commission.

Procedure of the Tribunal

18. Subject to the provisions of this Act, the Tribunal may regulate its own procedure, and make rules for that purpose.

Decisions of the bench of the Tribunal.

19. (1) The bench of the Tribunal shall announce its decision of any matter as soon as may be practicable after the hearing.

(2) Where all the members of the bench of the Tribunal agree on the decision on any matter before it, that decision shall be the decision of the bench, but where all the members of the bench do not agree on the decision, the decision of the majority of the members of the bench shall be the decision of the bench.

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(3) The decision of the bench of the Tribunal shall be in writing and signed by the members of the bench who agree to the decision, and shall state the reasons for the decision:

Provided that a member of the bench who does not agree with the decision of the bench may record and sign his dissent giving the reasons therefor and it shall be annexed to the decision.

(4) A party to the appeal shall, on application made therefor by him and payment of such fees, if any, as may be specified by the registrar be provided with a copy of the decision of the bench of the Tribunal on that appeal or any proceedings in that appeal.

(5) The Tribunal may take an order for the payment of costs to the successful party in relation to the whole of the proceedings before it, or any part thereof, including costs incurred in the summoning any attendance of necessary witnesses.

Appeals from
decisions of the
Tribunal.

Cap 3 01

20. An appeal to the Court of Appeal shall lie from any decision of the decisions of Tribunal, including an appeal on a point of law, and the Court of Appeal Act shall, with respect to the procedure to appeal, apply to such appeal.

Interlocutory
orders

21. (1) Where an appeal has been brought to the Tribunal, the bench of the Tribunal, may, on application made to it by the appellant and on being satisfied that the interests of justice so require -

- (a) stay the operation of the decision appealed from; or
- (b) make such other order as it considers appropriate in respect of the operation or enforcement of the decision appealed from, on such conditions, if any, as it deems fit.

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(2) An order under subsection (1) shall ordinarily be made after notice of the application for the order for the respondent or, if there are more respondents than one, to all the respondents, but if the bench of the Tribunal is satisfied that the delay likely to be caused by the time taken for the service of the notice on the respondent or the respondents may defeat the interests of justice, it may make any order referred to in subsection (1) without the issue of any such notice and thereafter issue notice of the application to the respondent or respondents:

Provided that a respondent may, on receipt of the notice or otherwise, appear and show cause against the order so made and after hearing the parties to the appeal, the bench of the Tribunal confirm, modify or cancel the order.

Form and manner of
service of notices.

22. Notices in this Act shall be in such form, and shall be served in such manner, as may be specified by the Registrar.

Decisions of the
Tribunal binding

23. A decision of the Tribunal on any appeal from decision of the Public Procurement Commission shall be binding on the Commission and all parties to the appeal unless the Tribunal grants a stay under section 21(1)(a) or the Court of Appeal allows the appeal.

Power to
make
regulations

24. The Minister may take regulations for carrying into effect the purposes of this Act and for such other matters or things as may be required or necessary to facilitate the efficient discharge of the functions of the Tribunal.

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SCHEDULE

Form of Oath

OATH OF OFFICE

I, _____ do hereby solemnly declare that I will bear true faith and allegiance to the People of Guyana, that I will faithfully execute the office of _____ without fear or favour, affection or ill-will and that in the execution of the functions of that office I will honour, uphold and preserve the Constitution of the Co-operative Republic of Guyana.

EXPLANATORY MEMORANDUM

This Bill seeks to give effect to Article 212EE of the Constitution which provides for Parliament to enact legislation to establish a Public Procurement Commission Tribunal and for such law to may make provision for the constitution of the Tribunal, its powers and procedure and matters relating to appeals from decisions of the Commission, including an appeal to the Court of Appeal. An appeal shall be to the Tribunal from any decision made by The Public Procurement Commission in the discharge of its functions under article 212AA of the Constitution.

Under clause 3 of this Bill the Commission shall have as its chairman a sitting or retired Judge of the Court of Appeal or a person qualified to be appointed as a Judge of the Court of Appeal or a Judge of the High Court or a fit and proper person with experience in Public Procurement. Every appeal shall be heard by the chairman and two members appointed by the President in accordance with advice of the Judicial Service Commission.

Clause 13 empowers the Tribunal to allow the production of evidence or fresh evidence.

Clause 14 gives the Tribunal the power of a Judge of the High Court to summon witnesses and every person summoned to attend and give evidence under clause 15 is bound to obey the summons as though it were subpoena issued from the High Court.

Clause 16 provides penalties for contumacy, for insulting the registrar or a member of the Tribunal or for interruption of proceedings of the Tribunal by anyone.

Under clause 18 the Tribunal may regulate its own procedure and may make rules for that purpose. Under clause 20 an appeal shall lie to the Court of Appeal from a decision of the Tribunal, including an appeal on a point of law.

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Under clause 23 a decision of the Tribunal on an appeal from the Public Procurement Commission shall be binding on the Commission unless there is a stay under clause 21(1)(a) or the Court of Appeal allows the appeal.

Clause 24 confers power on the Minister to make regulations for giving effect to the purposes of the Act.



**Reepu Daman Persaud,
Minister of Parliamentary Affairs.**