

ANTIGUA AND BARBUDA



PORT AUTHORITY (AMENDMENT) ACT, 2023

No. 1 of 2023

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[L.S.]



I Assent,

Rodney Williams,
Governor-General.

20th March, 2023.

ANTIGUA AND BARBUDA

PORT AUTHORITY (AMENDMENT) ACT 2023

No. 1 of 2023

AN ACT to amend the Port Authority Act, Cap. 333 to make provision for the better security of harbours and Ports throughout Antigua and Barbuda and for other incidental and connected matters thereto.

ENACTED by the Parliament of Antigua and Barbuda as follows:

1. Short title

This Act may be cited as the Port Authority (Amendment) Act, 2023.

2. Interpretation

In this Act –

“principal Act” means the Port Authority Act, Cap. 333.

3. Insertion of section 38A Provisions relating to seized, detained or abandoned vessels in harbour

The principal Act is amended by inserting immediately after section 38 of the principal Act the following new section –

“38A. Provisions relating to seized, detained or abandoned, vessels in harbour

(1) Where for any reason, a ship or other seagoing vessel has been seized, detained or abandoned in any Antigua and Barbuda harbour or near any Antigua and Barbuda harbour or tidal water, the Port Manager may—

- (a) take possession of the ship or other seagoing vessel; and
- (b) subject to subsections (4) and (5), sell the ship or other seagoing vessel by public auction or private treaty, provided the sale is not to a sanctioned individual or entity or a person suspected of being involved in criminal activity.

(2) The power conferred on the Port Manager by subsection (1) extends to the vessel, its tender, and every article or thing or collection of things being part of or forming a part of the equipment, cargo, stores or ballast of the ship or seagoing vessel.

(3) The proceeds of the sale of any ship or other seagoing vessel under this section—

- (a) may, after allowing for deductions of expenses relating to the maintenance of the ship while berthed in the harbour, and the expenses related to the removal, storage or sale of the vessel, be forfeited to the Government and be paid into the Consolidated Fund of Antigua and Barbuda;
- (b) in the case of a sanctioned vessel, shall be forfeited to the Consolidated Fund after allowing for the deductions of the expenses referenced at paragraph (a).

(4) Subject to subsection (5), the Port Manager shall not sell a vessel that has been seized, detained or abandoned—

- (a) until at least sixty (60) clear days' notice has been given to the owner or agent of the vessel of the intention to exercise the power conferred by subsection (1); or
- (b) ten (10) clear days notice of the intention to sell has been given to the owner or agent of the vessel in the case of a vessel which poses an imminent threat to the environment, to the safety and security of the harbour or other vessels in the harbour, or a risk to the socio-economic development of Antigua and Barbuda; and
- (c) any of the circumstances outlined in subsection (5) paragraphs (a) to (d) applies.

(5) The Port Manager shall, before exercising the power under subsection (1), satisfy himself that the ship or other seagoing vessel to be sold—

- (a) was seized or detained because the vessel is or is believed to be the proceeds or an instrumentality of crime;
- (b) was seized or detained because the beneficial owner of the vessel or the operator of the vessel is a person that is or is believed to be the subject of sanctions imposed by a country that is an ally or trading partner of Antigua and Barbuda;
- (c) was at the time of its seizure or detention, involved or believed to be involved in trade or a related activity with or on behalf of a sanctioned country or person; or
- (d) has been abandoned; and

- (e) the vessel, if left in its current state –
 - (i) will deteriorate or further deteriorate;
 - (ii) is or is likely to pose a threat to the safety or security of the vessel and other vessels in the harbour;
 - (iii) is causing or is likely to cause environmental damage in the harbour and its surrounding areas; or
 - (iv) is or is likely to pose a threat to human health and safety.

(6) The Port Manager may defer the sale of a ship or other seagoing vessel under this section, with conditions, for a period not exceeding 60 days, where the owner or agent of the vessel is able to provide evidence to the satisfaction of the Port Manager, prior to the expiration of the notice period in subsection (4), that–

- (a) steps have been initiated with the relevant authority or agency in the country that imposed the sanctions to remove the vessel or its owner from the sanctions list; or
- (b) an application has been made to a court of competent jurisdiction challenging the classification of the vessel as a vessel that is owned or operated by a sanctioned person or a vessel that is the proceeds or instrumentality of crime.

(7) The notice referred to in subsection (4) shall be published in the *Gazette* and at least one international newspaper known for reporting on maritime affairs.

(8) Except for salaries proven to be outstanding, no charge or lien against the vessel prior to its seizure or detention, nor any claim of interest in the vessel shall rank in priority to the claim of the Government of Antigua and Barbuda for the proceeds of the sale of any vessel sold pursuant to subsection (1).

(9) The Port Manager may cause a certificate to be issued to the purchaser of a vessel sold pursuant to this section that the vessel is sold free of any lien or encumbrances and the certificate so issued shall be sufficient to cause the vessel to be registered in the name of the purchaser.

(10) In this section –

“abandoned” refers to a situation in which a ship or other seagoing vessel that was seized or detained by any authority in Antigua and Barbuda, but which was subsequently released, has remained in or near any Antigua and Barbuda harbour or tidal water and –

- (a) is not being maintained by the owner or an agent for the owner; or
- (b) ownership of the vessel has been unclaimed for a period in excess of 90 days; or
- (c) has outstanding moorage fees and docking charges; or
- (d) is uninsured; or
- (e) is or is likely to become unseaworthy; or

(f) poses a threat to the environment, the health and safety of persons using the harbour and to the safety and security of other vessels in the harbour.

(11) The conditions referred to in subsection (6) include but are not limited to—

(a) payment to the Government of Antigua and Barbuda of a security deposit equal to 40% of the market value of the ship or other seagoing vessel;

(b) payment of all expenses associated with the maintenance or partial maintenance of

Passed the House of Representatives on
The 17th day of March, 2023.

Passed the Senate on the 20th day of
March, 2023.

Gerald Watt Q, C.,
Speaker

Alicia Williams-Grant,
President

Rosemarie Smith–Weston,
Clerk to the House of Representatives

Rosemarie Smith-Weston,
Clerk to the Senate