



BERMUDA

AMERICA'S CUP ACT 2015

2015 : 1

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WHEREAS the 35th America's Cup international yachting race will be held in Bermuda;

AND WHEREAS it is anticipated that hosting the 35th America's Cup will have significant economic and reputational benefits for Bermuda;

AND WHEREAS it is in the national interest to support the event by providing relief from certain taxes and fees, and by providing certain other modifications of legislative requirements which would otherwise apply, with a view to facilitating and assisting in the conduct of the 35th America's Cup in Bermuda;

AND WHEREAS it is expedient to provide brand protection to the 35th America's Cup;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

PART 1  
PRELIMINARY

Citation

1 This Act may be cited as the America's Cup Act 2015.

Interpretation

2 In this Act, unless the context otherwise requires—

- “35th America's Cup” means the Bermuda Events;
- “ACBDA” means ACBDA Limited, a company incorporated in Bermuda on 24 December 2014;
- “ACEA” means the America's Cup Event Authority LLC, and any of its affiliates (within the meaning of section 86(3) of the Companies Act 1981) which are directly involved in the Bermuda Events;
- “America's Cup concession order” has the meaning given in section 14(1);
- “America's Cup work permit” means a work permit issued for the purposes of any of the Bermuda Events;
- “Bermuda Events” means the 35th America's Cup events to be staged in Bermuda in 2015 - 2017, including—
  - (a) the America's Cup World Series event;
  - (b) the Youth America's Cup;
  - (c) the America's Cup Challenger Playoffs;
  - (d) the 35th America's Cup Match;
  - (e) the America's Cup Concert Series;
  - (f) the America's Cup Superyacht Regatta; and
  - (g) such other events as agreed between ACEA and the Government of Bermuda;
- “Bermudian labour” means Bermudians, spouses of Bermudians, holders of a permanent resident's certificate under the Bermuda Immigration and Protection Act 1956, and such other persons who are permitted to be engaged in gainful occupation in Bermuda other than by virtue of an America's Cup work permit;
- “designated commercial partner” means any person—
  - (a) to whom ACEA or a Team grants from time to time any advertising, promotional or marketing rights in relation to any of the Bermuda Events; and

- (b) who is officially authorized in writing as such by ACEA or the Team (as the case may be) as such a commercial partner for the purposes of this Act or a specific section of this Act, and any such authorization shall be copied to ACBDA;

"Dockyard" means the area outlined in red on the plan in Schedule 3;

"Economic Development Committee" means the sub-committee of Cabinet by that name;

"event period" means the period from 28 February 2015 to 31 October 2017;

"Minister" means the Minister responsible for the America's Cup;

"Regatta Officials" means the Regatta Director, the Measurement Committee, the Umpires, the Arbitration Panel and any other officials presiding over the Bermuda Events who are appointed by the Regatta Director, but does not include any person falling within the definition of Bermudian labour;

"Team" means any sailing team which competes in the 35th America's Cup;

"Team Member" means any individual who is a sailor, manager, employee, contractor, agent, representative or official of a Team—

- (a) whose name is submitted to ACBDA in such manner as ACBDA may require; and
- (b) who does not fall within the definition of Bermudian labour;

"work permit" has the meaning given in section 57(2A) of the Bermuda Immigration and Protection Act 1956.

*[Section 2 definition "Dockyard" inserted by 2017 : 5 s. 2 effective 1 April 2017]*

## PART 2

### CONCESSIONS & EXEMPTIONS

#### Advertising

3 In relation to advertising of and at the Bermuda Events, ACEA and its designated commercial partners, and the Teams and their designated commercial partners, shall be exempt from—

- (a) sections 2, 3, 4 and 6(c) of the Advertisements Regulation Act 1911;
- (b) section 14(4) of the Development and Planning Act 1974;
- (c) the Motor Car (Control of Design, Colour and Advertising Matter) Regulations 1952; and
- (d) sections 3 and 4 of the Alcohol Advertisement (Health Warning) Act 1993.

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### Air navigation

4 (1) This section applies to any helicopter or UAS owned or operated by ACEA or any of its designated commercial partners which is brought to Bermuda for the purposes of any of the Bermuda Events.

(2) No fees shall be payable under the Air Navigation (Fees for Certificates and Services) Regulations 2012 in respect of any helicopter or UAS to which this section applies.

(3) "UAS" means an unmanned aerial system, as defined in those Regulations.

### Broadcasting and electronic communications

5 No fees shall be payable by ACEA or any of its designated commercial partners under the Telecommunications Act 1986, the Electronic Communications Act 2011 or the Regulatory Authority Act 2011.

### Customs duty

6 (1) In relation to any goods imported by a person employed by ACEA or a Team who comes to reside in Bermuda for the purposes of any of the Bermuda Events—

- (a) the definition of "used personal baggage" in Note 1 to Chapter 98 of the First Schedule to the Customs Tariff Act 1970 shall be read as if the words from "that has been in the possession of the importer" to the end of that definition were omitted;
- (b) the definition of "personal baggage" in Note 1 to Chapter 98 of the First Schedule to the Customs Tariff Act 1970 shall be read as if it does not exclude motor cycles (as defined in the Motor Car Act 1951) and vessels not exceeding 50 feet in length but, in relation to such goods, section 13 of that Act shall apply with the necessary modifications; and
- (c) wharfage shall not be payable under the Hamilton Goods Wharfage and Storage Charges Ordinance 1967 or the St George's Goods Wharfage and Storage Charges Ordinance 1967.

(2) In relation to any racing or exhibition vessels imported by ACEA and any of its designated commercial partners, or a Team or any of its designated commercial partners, for the purposes of any of the Bermuda Events, CPC 5006 in the Sixth Schedule to the Customs Tariff Act 1970 (temporary importation relief) shall be read as if for the words "the goods must be exported within one month of the date of importation" there were substituted "the goods must be exported by the end of the event period (as defined in the America's Cup Act 2015)".

(3) In relation to any vessel or aircraft imported by ACEA and any of its designated commercial partners, or a Team or any of its designated commercial partners, or a Regatta Official for use in connection with any of the Bermuda Events, CPC 5008 in the Sixth Schedule to that Act (temporary importation relief) shall be read as if for the words "the goods must be exported within three months of the date of importation" there were substituted "the goods must be exported by the end of the event period (as defined in the America's Cup Act 2015)".

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(4) In relation to goods imported for use in connection with the Bermuda Events by ACEA and any of its designated commercial partners, or a Team or any of its designated commercial partners, or a Regatta Official, CPC 5022 in the Sixth Schedule to the Customs Tariff Act 1970 (temporary importation relief for goods in connection with sporting events sponsored by Bermuda Tourism Authority) shall apply as follows—

- (a) as if, under the heading "Eligible Beneficiary", the words "All importers" were deleted and the following substituted, "ACEA and any of its designated commercial partners, a Team and any of its designated commercial partners, a Regatta Official, and any person importing for the sole purpose of supply to such a person";
- (b) as if, for condition 2 under the heading "Temporary Importation Conditions/ Restrictions", there were substituted "Goods must be supplied to ACEA or any of its designated commercial partners, or a Team or any of its designated commercial partners, or a Regatta Official;
- (c) as if, under the heading "Specific Controls/ Diversion", there were included—

"1. The goods must be exported by the end of the event period.

2. Uniforms must be worn during the races on board America's Cup yachts competing in the Bermuda Events.";

- (d) as if, under the heading "Construction" there were added "Expressions used in this CPC and the America's Cup Act 2015 shall have the meanings given in section 2 of that Act."

(5) No fees shall be payable under the Customs Tariff Act 1970 or the Customs Department Act 1952 (as prescribed in the Government Fees Regulations 1976) in respect of any vessel, aircraft or goods mentioned in subsections (2) to (4).

(6) In relation to goods imported for use in respect of any building materials, furnishings, fixtures and equipment necessary for capital development projects at the Royal Naval Dockyard approved by the Minister, CPC 4210 of the Fifth Schedule to the Customs Tariff Act 1970 (goods for Government capital expenditure schemes) shall apply as follows—

- (a) as if for the entry under the heading Duty Rate there were substituted "0%";
- (b) as if for paragraphs 1 and 2 of the End-Use Conditions/Restrictions there were substituted—

"1. Goods must be imported and used only for a capital development scheme at the Royal Naval Dockyard that has been approved by the Minister responsible for the America's Cup.

2. The Minister shall complete a certificate (a "Minister's certificate") and thereon certify that the importation is for the purposes of such an approved scheme."; and

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(c) as if in paragraphs 3 to 5 of the End-Use Conditions/Restrictions for "Head of Department's certificate" there were substituted "Minister's certificate".

(7) In the Fifth Schedule to the Customs Tariff Act 1970, in CPC 4140 (goods for youth organizations etc), under "eligible beneficiary" insert in alphabetical order—

- (a) "America's Cup Red Bull Youth Bermuda Team"; and
- (b) "Endeavour Community Sailing".

(8) In the Fifth Schedule to the Customs Tariff Act 1970, insert the following new CPC—

|                                   |                                                                                                                                                                                                                                                                                                                |
|-----------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Description                       | Goods for the 35th America's Cup                                                                                                                                                                                                                                                                               |
| CPC                               | 4223                                                                                                                                                                                                                                                                                                           |
| Duty Rate                         | 0%                                                                                                                                                                                                                                                                                                             |
| Eligible Beneficiary              | The ACEA and any of its designated commercial partners, a Team and any of its designated commercial partners, a Regatta Official, and any person importing goods for the sole purpose of supply to such a person                                                                                               |
| Qualifying Goods                  | All goods                                                                                                                                                                                                                                                                                                      |
| End-Use Conditions / Restrictions | Goods must be imported and used only for the purposes of importing, installing, using, maintaining, removing or exporting any goods lawfully imported by an Eligible Beneficiary under CPC 5006, CPC 5008 or CPC 5022 of the Sixth Schedule, as modified by section 6(2) to (4) of the America's Cup Act 2015. |
| Specific Controls / Diversion     |                                                                                                                                                                                                                                                                                                                |
| Construction                      | For the avoidance of doubt, the general provisions of this Schedule shall be construed as one with this CPC.<br><br>Expressions used in this CPC and the America's Cup Act 2015 shall have the meanings given in section 2 of that Act.                                                                        |

*[Section 6(1) amended by 2016 : 15 s. 15 effective 1 April 2016; subsection (4) amended and subsection (7) inserted by 2016 : 31 s. 2 effective 14 July 2016; subsection (8) inserted by 2016 : 31 s. 2 shall be deemed to have come into effect on 28 February 2015; subsection (6) repealed and substituted by 2017 : 5 s. 3 shall be deemed to have come into operation on 28 February 2015]*

Development and planning

7 No fees shall be payable under Heads 10, 11 or 21 of the Government Fees Regulations 1976 (Building Act 1988, Building Authority Act 1962 and Development and

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Planning Act 1974) in respect of applications submitted to the Department of Planning by ACBDA for capital development projects at the Royal Naval Dockyard which have been approved by the Minister for the purposes of preparation for the 35th America's Cup.

### Employment

8 (1) Notwithstanding the provisions of any other enactment, ACEA and the Regatta Officials shall be exempt from the requirement to make payments (including taxes and fees) under the statutory provisions listed in subsection (3), which would otherwise be required in relation to any of their relevant employees.

(2) "Relevant employee" means an employee—

- (a) who does not fall within the definition of Bermudian labour; and
- (b) has not been resident in Bermuda at any time in the three years preceding 10 November 2014.

(3) The enactments are—

- (a) the Payroll Tax Act 1995;
- (b) the National Pension Scheme (Occupational Pensions) Act 1998;
- (c) the Health Insurance Act 1970;
- (d) Head 6 paragraph (5) of the Government Fees Regulations 1976 (work permit fees).

(4) The exemption in subsection (3)(c) is, in the case of each relevant employee, subject to the employer ensuring that the employee obtains and maintains adequate health care and medical insurance from a private sector insurer to cover any medical expenses in Bermuda.

(5) Notwithstanding the provisions of the Payroll Tax Act 1995, ACEA and the Regatta Officials shall be exempt from paying the employer's share of payroll tax (which the employer is not entitled to deduct from an employee's earnings under section 19 of the Payroll Tax Act 1995) which would otherwise be payable in relation to any of their employees falling within the definition of Bermudian labour.

*[Section 8 subsection (5) amended by 2017 : 21 s. 18 effective 1 April 2017]*

### Food and drink

9 (1) If an occasional licence is granted under the Liquor Licence Act 1974 for a Bermuda Event which is to be held in a closed off area of Front Street in Hamilton, it shall not be unlawful for the holder of the occasional licence to sell intoxicating liquor to the public during and at the Event, provided that there is no public access for motor vehicles to that area of Front Street during the Event.

(1A) If an America's Cup event licence is granted under section 22B of the Liquor Licence Act 1974 for a Bermuda Event which is to be held in Dockyard, it shall not be unlawful for the holder of the licence to sell intoxicating liquor to the public during and at the Event in accordance with the licence.



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(2) For the avoidance of doubt, nothing in subsection (1) or (1A) permits the sale of intoxicating liquor to persons under the age of eighteen years.

(3) Where subsection (1) or (1A) applies, no offence shall be committed by a person under section 10 of the Summary Offences Act 1926 (drinking in a public street).

(4) Where, but for this section, any activity of a designated commercial partner of ACEA would be prohibited under the Prohibited Restaurant Act 1997, that Act shall not apply to such activity carried out in the vicinity of, and during, any of the Bermuda Events.

*[Section 9 subsection (1A) inserted and subsections (2) and (3) amended by 2017 : 5 s. 4 effective 1 April 2017]*

### Modification of Liquor Licence Act 1974

9A For the purposes of this Act, the Liquor Licence Act 1974 shall be read as if after section 22A (tourism event licence) there were inserted—

“America’s Cup event licence

22B (1) In this section—

- (a) expressions used in this section and in the America’s Cup Act 2015 shall have the meanings given in that Act; and
- (b) “relevant period” means the period beginning on the first day of the America’s Cup Challenger Playoffs (26 May 2017) and ending on the last day of the 35th America’s Cup Match (on or around 27 June 2017).

(2) The chairman may, on an application duly made—

- (a) by ACEA; or
- (b) by a person authorized in writing by ACEA to make such an application,

grant a licence (an “America’s Cup event licence”) authorizing that person to sell intoxicating liquor to persons attending an America’s Cup Bermuda Event in Dockyard (or such part of Dockyard as may be specified in the licence) during the hours of 10am to 2am on such day or days during the relevant period as may be specified in the licence.

(3) The fee for an America’s Cup event licence shall be \$100 per day to which the licence relates.

(4) The following provisions shall, with the necessary modifications, apply to an America’s Cup event licence as they apply to a tourism event licence—

- (a) section 17A (mandatory licence condition requiring photographic identification of person appearing to be a minor);
- (b) subsections (3) to (7) of section 22A (licence to specify times and places, application for licence, duty to produce licence etc);

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(c) Form 16 in the Schedule to the Liquor Licence (Forms) Regulations 1974 (form of a tourism event licence).

(5) Section 39B (mandatory training for managers, supervisors and persons in charge of bars) shall not apply in respect of persons selling intoxicating liquor in accordance with an America's Cup event licence."

*[Section 9A inserted by 2017 : 5 s. 5 effective 1 April 2017]*

### Health practitioners

10 (1) This section applies to a health practitioner—

- (a) who is permitted to engage in gainful occupation in Bermuda by virtue of an America's Cup work permit;
- (b) who is employed by ACEA, the Regatta Officials or any of the Teams to provide health services only to ACEA, the Regatta Officials or a Team Member (as the case may be) for the purposes of the Bermuda Events; and
- (c) who does not provide health services in Bermuda to any person except a person employed by ACEA, the Regatta Officials or a Team Member.

(2) "Health practitioner" means a doctor, nurse, physiotherapist or practitioner of another profession listed in the First Schedule to the Allied Health Professions Act 1973, who is registered and regulated as such a practitioner in a jurisdiction outside Bermuda (whether or not the profession is known by another name in that jurisdiction).

(3) A health practitioner to whom this section applies is exempt (as the case may be) from—

- (a) section 2 of the Medical Practitioners Act 1950 and shall not be required to register under section 7 of that Act;
- (b) section 8A of the Nursing Act 1997; or
- (c) sections 5, 11 and 13 of the Allied Health Professions Act 1973.

### Land tax

10A (1) No tax shall be charged, levied or collected under the Land Tax Act 1967 in respect of any valuation unit with a commercial end use which is leased by ACBDA from the West End Development Corporation solely for the purposes of the America's Cup.

(2) Subsection (1) has effect notwithstanding section 3(8) of the West End Development Corporation Act 1982.

*[Section 10A inserted by 2016 : 31 s. 3 shall be deemed to have come into effect on 28 February 2015]*

### Motor vehicles

11 (1) ACEA and its designated commercial partners may, without paying any licence duty or fee which would otherwise be payable under the Motor Car Act 1951, import and license for use on public roads during the event period—

- (a) a maximum of 12 motor vehicles (in total) which fall within paragraph J of Schedule 1 to the Motor Car Act 1951 (not exceeding 175 inches in length and 71 inches in width, and engine capacity not exceeding 2,500c.c.); and
  - (b) a maximum of 80 motor vehicles (in total), the overall length and width of which does not exceed 210 inches by 77 inches.
- (2) Subsection (1) is subject to the following conditions—
- (a) the motor vehicles shall only be used to transport personnel involved in the Bermuda Events and their representatives;
  - (b) no person shall be charged a fee in respect of the use of the vehicles;
  - (c) the motor vehicles shall be removed from Bermuda no later than the end of the event period; and
  - (d) motor vehicles falling within subsection (1)(b) shall only be driven by a person falling within the definition of Bermudian labour who has a valid Bermuda driver's licence.
- (3) ACEA and its designated commercial partners may, without paying any licence duty or fee which would otherwise be payable under the Motor Car Act 1951, import such other motor vehicles as they may reasonably require for promotional purposes, provided that the vehicles—
- (a) are not driven on public roads; and
  - (b) are removed from Bermuda no later than the end of the event period.
- (4) ACEA and each Team may, without paying any licence duty or fee which would otherwise be payable under the Motor Car Act 1951, import and licence for use on public roads during the event period, a maximum of five light, intermediate or heavy trucks with trailers or boat trailers (as defined in the Motor Car Act 1951).
- (5) Subsection (4) is subject to the following conditions—
- (a) the trucks and trailers shall only be used for the purposes of the Bermuda Events;
  - (b) no person shall be charged a fee in respect of the use of the trucks and trailers; and
  - (c) the trucks and trailers shall be removed from Bermuda no later than the end of the event period.

Ships and boats: port dues, registration and mooring fees

- 12 (1) In this section, "exempted person" means—
- (a) ACEA or any of its designated commercial partners;
  - (b) a Team or any of its designated commercial partners;
  - (c) a Regatta Official.

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(2) Port dues shall not be payable under the Marine & Ports Authority (Port Dues) Regulations 1969 in respect of any ship owned by an exempted person.

(3) No fee shall be payable under the Registration of Boats Regulations 1990 where the applicant for registration is an exempted person.

(4) No fee shall be payable under section 5 of the Marine Board (Mooring) Regulations 2000 in relation to a licence granted under those Regulations to an exempted person.

### Ships: compulsory pilotage

13 (1) This section applies to a ship which is chartered or plying for hire or reward for the purpose of any of the Bermuda Events during the period beginning one month before that Event and ending one month after that Event, and which is not an excepted ship within the meaning of section 48(3) of the Marine Board Act 1962.

(2) The Minister charged with responsibility for marine and ports services may issue a certificate excepting such a ship from section 48(1) of the Marine Board Act 1962 (requirement for branch pilot) if, on the advice of the Warden of Pilots, he is satisfied—

- (a) that the master of the ship is competent to navigate the ship in the waters of Bermuda without a pilot on board;
- (b) as to the safety and navigational equipment on the ship;
- (c) as to the extent of public liability insurance held in respect of the ship.

(3) The Minister may issue a certificate under subsection (2) subject to such terms and conditions as he considers appropriate.

(4) No fee shall be payable for the issue of a certificate under subsection (2).

### Visiting vessels - permit tax and charter tax

13A (1) In this section—

“Director” means the Director of the Department of Marine and Ports Services;

“exempted vessel” means—

- (a) a participating vessel, unless it is to be used for chartering and so will require a charter permit; or
- (b) a vessel which is registered in Bermuda;

“participating vessel” means a vessel participating either as a competitor or support vessel—

- (a) in an event listed in paragraph (b), (c) or (d) of the definition of Bermuda Events; or
- (b) in any other sailing event approved by the Minister for the purposes of this section;

“qualifying vessel” means a visiting vessel which is—

- (a) 12 metres or more in length; and
- (b) registered as a commercial yacht in a jurisdiction outside Bermuda, and certified to the satisfaction of the Director as being compliant with applicable requirements for commercial chartering operations in that jurisdiction;

“relevant period” means the period beginning on 26 April 2017 and ending on 31 July 2017;

“responsible person” means—

- (a) in relation to a qualifying vessel, the agent; or
- (b) in relation to any other visiting vessel, the owner, operator or agent;

“tariff code” has the meaning assigned in the Customs Tariff Act 1970;

“vessel” has the meaning assigned in the Revenue Act 1898;

“visiting vessel” means—

- (a) an excursion boat or ferry boat of tariff code 8901.100, if it is to be used for chartering;
- (b) a sail-training vessel of tariff code 8901.900, if it is to be used for chartering;
- (c) a vessel of tariff code 8903.910 (sailboats);
- (d) a vessel of tariff code 8903.920 or 8903.999 (motorboats),

which is temporarily imported into Bermuda during the relevant period, whether or not the reason for its visit relates to any of the Bermuda Events, but does not include an exempted vessel;

“wreck” has the meaning assigned in the Merchant Shipping Act 2002.

(2) On or before a visiting vessel's arrival in Bermuda, the responsible person shall apply to the Director for one of the following permits—

- (a) a transient permit, for a visit not exceeding five days;
- (b) a cruising permit, for a visit exceeding five days; or
- (c) a charter permit, in the case of a qualifying vessel which is intended to be used for commercial activity during the relevant period.

(3) On the arrival of a visiting vessel in Bermuda, the responsible person shall be liable to pay to the Collector of Customs permit tax, calculated by reference to the total length of the vessel, at the following applicable rate—

- (a) \$3 per metre, for a transient permit;
- (b) \$8 per metre, for a cruising permit;
- (c) \$8 per metre, for a charter permit.

(4) If the owner or operator of a visiting vessel granted a transient permit seeks to extend the vessel's visit beyond five days, the responsible person—

- (a) shall apply to the Director for a cruising permit; and
- (b) shall be liable to pay to the Collector of Customs permit tax at the higher rate, credit being given for the permit tax already paid in respect of the transient permit.

(5) The owner or operator of a qualifying vessel granted a charter permit may charter the vessel or ply for hire or reward during the relevant period in accordance with the terms and conditions of the charter permit, and the responsible person shall be liable to pay a charter tax of 5% of gross charter receipts during the relevant period (whether or not the charter relates to any of the Bermuda Events).

(6) The owner or operator of a vessel which would be a qualifying vessel but for the fact that it arrived in Bermuda before the beginning of the relevant period may apply to the Director for a charter permit, and if granted may charter the vessel or ply for hire or reward during the relevant period in accordance with the terms and conditions of the charter permit, and the responsible person shall be liable to pay a charter tax of 5% of gross charter receipts during the relevant period (whether or not the charter relates to any of the Bermuda Events).

(7) Notwithstanding section 7(3) of the Revenue Act 1898, the Collector of Customs or other proper officer (as defined in that Act) may withhold the certificate of clearance under that section if he is not satisfied that permit tax and charter tax have been accurately accounted for and paid in accordance with this section.

(8) Permit tax shall not be payable in respect of the following visiting vessels—

- (a) vessels travelling on behalf of, or at the expense of, the Government of Bermuda or the Government of the United Kingdom or any foreign Government;
- (b) vessels arriving in Bermuda solely by reason of distress or emergency;
- (c) wrecks.

(9) Passenger departure tax under Part VB of the Miscellaneous Taxes Act 1976 shall not be charged in respect of visiting vessels or participating vessels.

(10) Section 11(4) of the Customs Tariff Act 1970, which imposes a surcharge on goods discharged from CPC 5000 of the Sixth Schedule to that Act (business temporary importation relief), shall not apply in respect of a visiting vessel for which a charter permit is obtained and charter tax paid in accordance with this section.

(11) Sections 32J, 32L and 32N of the Miscellaneous Taxes Act 1976 (liability for payment and penalties for late or non-payment) apply in relation to permit tax and charter tax payable under this section as they apply to passenger departure tax, with the necessary modifications.

(12) The First Schedule to the Taxes Management Act 1976 shall be read as if at the end there were inserted a reference to permit tax and charter tax payable under section 13A

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of the America's Cup Act 2015; and accordingly that Act shall apply, with the necessary modifications, in relation to permit tax and charter tax payable under this section.

*[Section 13A inserted by 2017 : 5 s. 6 effective 1 April 2017]*

### PART 3

#### AMERICA'S CUP CONCESSION ORDERS

Application to the Minister for an America's Cup concession order

14 (1) ACEA or the manager of a Team may apply in writing to the Minister for the making of an order (an "America's Cup concession order") modifying the effect of any statutory provision (other than one relating to national security or health and safety) so as to grant a tax concession or other exemption from the law of Bermuda during the event period in relation to the Bermuda Events to such of the following as may be specified in the application—

- (a) ACEA or any of its designated commercial partners;
- (b) a Team or any of its designated commercial partners;
- (c) the Regatta Officials.

(2) The application shall contain full details of the tax concession or other exemption requested, reasons for the request, and such other information as the Minister may require.

America's Cup concession orders

15 (1) The Minister shall consider an application under section 14 in consultation with—

- (a) the Economic Development Committee; and
- (b) any Minister whose portfolio responsibilities may be affected by the making of the America's Cup concession order.

(2) The Minister shall consider whether the concession or exemption applied for is necessary for the proper conduct and operation of the 35th America's Cup and whether it is in the best interests of Bermuda, taking into account all relevant circumstances including such of the following factors as may be relevant to the application—

- (a) whether the requested concession or exemption is fair, reasonable and proportional to the operational and administrative circumstances of the Bermuda Events;
- (b) the possible or likely impact on the proper operations, administrative conduct and management of the Bermuda Events if the requested concession or exemption is not granted;
- (c) the likely impact of the requested concession or exemption on persons or property in Bermuda;

- (d) whether there are any detrimental consequences or implications of the requested concession or exemption for Bermuda, and the duration of such consequences;
- (e) whether the concession or exemption is likely to benefit the tourism industry and the economy generally; and
- (f) whether the concession or exemption is likely to create employment and entrepreneurial opportunities for Bermudians.

(3) If, after such consideration, the Minister determines that granting the application is necessary for the proper conduct and operation of the Bermuda Events and in the best interests of Bermuda, he may make an America's Cup concession order under this section modifying the effect of any statutory provision so as to grant a tax concession or other exemption from the law of Bermuda during the event period in relation to the Bermuda Events to any of the following—

- (a) ACEA or any of its designated commercial partners;
- (b) a Team or any of its designated commercial partners;
- (c) the Regatta Officials.

(4) But an America's Cup concession order shall not modify any statutory provision relating to national security or health and safety.

(5) An America's Cup concession order may be made subject to such terms and conditions as the Minister thinks fit.

(6) The Minister need not give any reasons for not making an America's Cup concession order in response to an application under section 14, or for attaching terms and conditions to an order.

(7) The decision of the Minister to make an America's Cup concession order, or to make an order subject to terms and conditions, or not to make an order, is final for all purposes and is not subject to any appeal.

#### Application to amend America's Cup concession order

16 (1) ACEA or the manager of a Team may make a written application to the Minister for the amendment of an America's Cup concession order, which shall be supported by such information as the Minister may require.

(2) Section 15 applies, with the necessary modifications, to an application under this section as it applies to an application under section 14.

#### Minister's power to amend or revoke an America's Cup concession order

17 (1) The Minister may amend or revoke an America's Cup concession order—

- (a) if there has been any breach of the terms and conditions contained in the order;



- (b) if any false declarations are made to the Collector of Customs in respect of goods to which any customs duty relief applies;
  - (c) if any goods which were imported subject to customs duty relief by virtue of the order are used for purposes which do not relate directly to the Bermuda Events; or
  - (d) where any offence under section 8 of the Hotels Concession Act 2000 as applied by section 18 of this Act is committed.
- (2) Before the Minister amends or revokes an America's Cup concession order he shall—
- (a) consult the Economic Development Committee and any Minister whose portfolio responsibilities are or may be affected by the America's Cup concession order or its amendment or revocation;
  - (b) give ACEA and the manager of a Team which benefits from the America's Cup concession order notice in writing of the reasons why he is minded to amend or revoke the America's Cup concession order;
  - (c) afford those persons an opportunity to make objection in writing within the period of 14 days after receipt of the notice; and
  - (d) take any such objection into account.
- (3) If the Minister thereafter decides to amend or revoke the America's Cup concession order, he shall serve an order on ACEA and the manager of a Team which benefits from the America's Cup concession order amending or revoking the America's Cup concession order from such date as may be specified.
- (4) An order under subsection (3) shall be final for all purposes and is not subject to any appeal.

Application of sections 6 to 9 of the Hotels Concession Act 2000

18 Sections 6 to 9 of the Hotels Concession Act 2000 (relief from customs duty, payment of duty on diversion, offences and penalties) apply, with the necessary modifications, in relation to an America's Cup concession order made under this Part as those provisions apply to a hotels concession order made under that Act.

PART 4

BRAND PROTECTION

Unauthorized representation of association with 35th America's Cup

- 19 (1) Subject to section 20, no unauthorized person may, during the event period, make any representation in a way likely to suggest to a reasonable person that there is an association between the 35th America's Cup and—
- (a) goods or services;

- (b) a brand of goods or services; or
  - (c) a person who provides goods or services.
- (2) A person who makes a representation includes a person who—
- (a) pays for, commissions or authorizes the representation; or
  - (b) receives consideration for the placement or the location of the representation.
- (3) A representation is in breach of this section if it includes any of the following—
- (a) America's Cup words, including those in Schedule 1;
  - (b) an America's Cup emblem, as set out in Schedule 2;
  - (c) a representation that so closely resembles America's Cup words or an America's Cup emblem as to be likely to deceive or confuse a reasonable person.
- (4) Subsection (3) applies even if the representation is qualified by the word "unauthorized" or "unofficial", or other words that are intended to defeat the purpose of this section.

Exceptions to section 19

- 20 (1) Section 19 does not apply if—
- (a) the association between the 35th America's Cup and the goods, services, brand of goods or services, or person who provides goods or services has the written authorization of ACEA;
  - (b) the representation has the written authorization of ACEA;
  - (c) the representation is of a personal opinion made by an individual for no commercial gain; or
  - (d) in accordance with honest practices in industrial or commercial matters, the representation—
    - (i) is necessary to indicate the intended purpose of goods or services;
    - (ii) is made by an organization in existence before the commencement date of this Act which is continuing to carry out its ordinary activities;
    - (iii) is for the purposes of reporting news, information, criticism, or a review (including promoting that news, information, criticism, or review) in a newspaper or magazine, or by means of television, radio, film, the internet, or other means of reporting; or
    - (iv) in the case of a word or emblem (provided that the word or emblem is not being used in combination with other words or emblems with the intention of suggesting an association that breaches section 19), comprises the whole or part of—

- (A) the legal or trade name of the person making the representation (provided that it is not being used for the purpose of defeating the intention of section 19); or
- (B) a trade mark registered under the Trade Marks Act 1974 before 10 November 2014.

(2) Nothing in subsection (1)(d)(iii) authorizes a person to make a representation in a way likely to suggest to a reasonable person that there is an association between news, information, criticism, or a review about the 35th America's Cup and—

- (a) goods or services;
- (b) a brand of goods or services; or
- (c) a person who provides goods or services.

#### Restricted marketing order

21 (1) On the application of ACEA, the Minister may make a restricted marketing order—

- (a) in relation to such areas ("restricted areas"); and
- (b) for such periods,

as may be specified by the Minister in the order for the purposes of the Bermuda Events.

(2) Before making an order under this section, the Minister must consult the Economic Development Committee and take into account the extent to which the restrictions are required in order to—

- (a) obtain maximum benefits for Bermudians; whilst
- (b) preventing unauthorized commercial exploitation at the expense of ACEA or any of its designated commercial partners.

#### Restricted street trading and advertising

22 (1) A restricted marketing order may prohibit or limit the extent to which a person may engage in street trading in a restricted area without the written authorization of ACEA.

(2) "Street trading" means selling or giving away goods or services, but does not include operating an existing business out of existing permanent premises of that business.

(3) A restricted marketing order may prohibit or limit the extent to which a person may—

- (a) advertise in a restricted area; or
- (b) advertise in a manner that is clearly visible from anywhere within the restricted area,

without the written authorization of ACEA.

Offences and penalties

- 23 (1) A person commits an offence if he knowingly breaches section 19.
- (2) A person commits an offence if, knowing that a representation that breaches section 19 has been made in relation to or applied to goods, he—
- (a) imports those goods into Bermuda for the purpose of trade or manufacture;
  - (b) sells those goods, or offers or exposes those goods for sale; or
  - (c) possesses those goods for the purpose of trade or manufacture.
- (3) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding \$20,000, and is liable to forfeiture of the goods to which the offence relates.
- (4) It is a defence to a charge of an offence under subsection (1), in relation to a representation that is an advertisement, if the defendant proves—
- (a) that the defendant's business includes publishing or arranging for the publication of advertisements; and
  - (b) that the defendant received the representation in the ordinary course of that business and did not know, and had no reason to believe, that publishing it would constitute such a breach.
- (5) A person who knowingly engages in any activity in breach of a restricted marketing order made under section 21 shall be liable on summary conviction to a fine not exceeding \$20,000.

PART 5

MISCELLANEOUS & FINAL PROVISIONS

Provisions relating to ACBDA

- 24 (1) The Government shall indemnify a present or former director or officer of ACBDA, and his legal representatives, against any costs, charges or expenses, including any amount paid to settle an action or satisfy a judgment, that are reasonably incurred by him in respect of any civil or administrative action or proceeding to which he is a party by reason of being or having been such a director or officer, if he—
- (a) acted honestly and in good faith with a view to the best interests of ACBDA; and
  - (b) in the case of an administrative action or proceeding that is enforced by a monetary penalty, believed on reasonable grounds that his conduct was lawful.
- (2) Notwithstanding subsection (1), the Government shall indemnify a present or former director or officer of ACBDA, and his legal representatives, against any costs, charges or expenses incurred by him in connection with the defence of any civil or administrative

## AMERICA'S CUP ACT 2015

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action or proceeding to which he was made a party by reason of being or having been such a director or officer, if he—

- (a) was substantially successful on the merits of the action or proceeding; and
- (b) fulfils the conditions set out in paragraphs (a) and (b) of subsection (1).

(3) Any amount payable in respect of indemnification under this section may be paid out of the Consolidated Fund.

(4) Section 88 of the Companies Act 1981 (power to waive laying of accounts and appointment of auditor) shall not apply to ACBDA.

(5) This section shall be deemed to have come into effect on 24 December 2014.

### Parliamentary scrutiny

25 Any order made by the Minister under this Act shall be made subject to the negative resolution procedure.

### Offences by corporations

26 Where an individual who has committed an offence against this Act was at the time he committed the offence a director, manager, secretary or other similar functionary of a body corporate and committed the offence in that capacity, then the body corporate also is guilty of the offence and liable to be proceeded against and punished accordingly.

### Commencement, and duration of concessions and exemptions

27 (1) This Act shall come into operation on 28 February 2015.

(2) Any concession or exemption which is—

- (a) provided by Part 2; or
- (b) granted under an America's Cup concession order made under Part 3 and which has not been amended or revoked,

shall cease to have effect at the end of the event period.

SCHEDULE 1

(Section 19(3)(a))

AMERICA'S CUP WORDS

"America's Cup", and any expression using those words

"ACEA"

"ACRM"

"ACWS"

"AC35"

"AC45"

"AC62"

"AC 2017"

"AC Class"

"LVACWS"

"World Series of Racing"

"World Series of Sailing"

"World Series of Yachting"

*[Schedule 1 amended by 2016 : 31 s. 4 effective 14 July 2016]*

SCHEDULE 2

(Section 19(3)(b))

AMERICA'S CUP EMBLEMS

MASTER BRAND

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WORLD SERIES EVENT BRAND

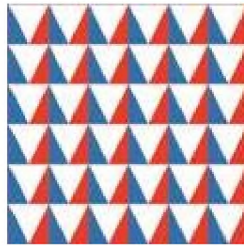
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BERMUDA 2017 EVENT BRAND

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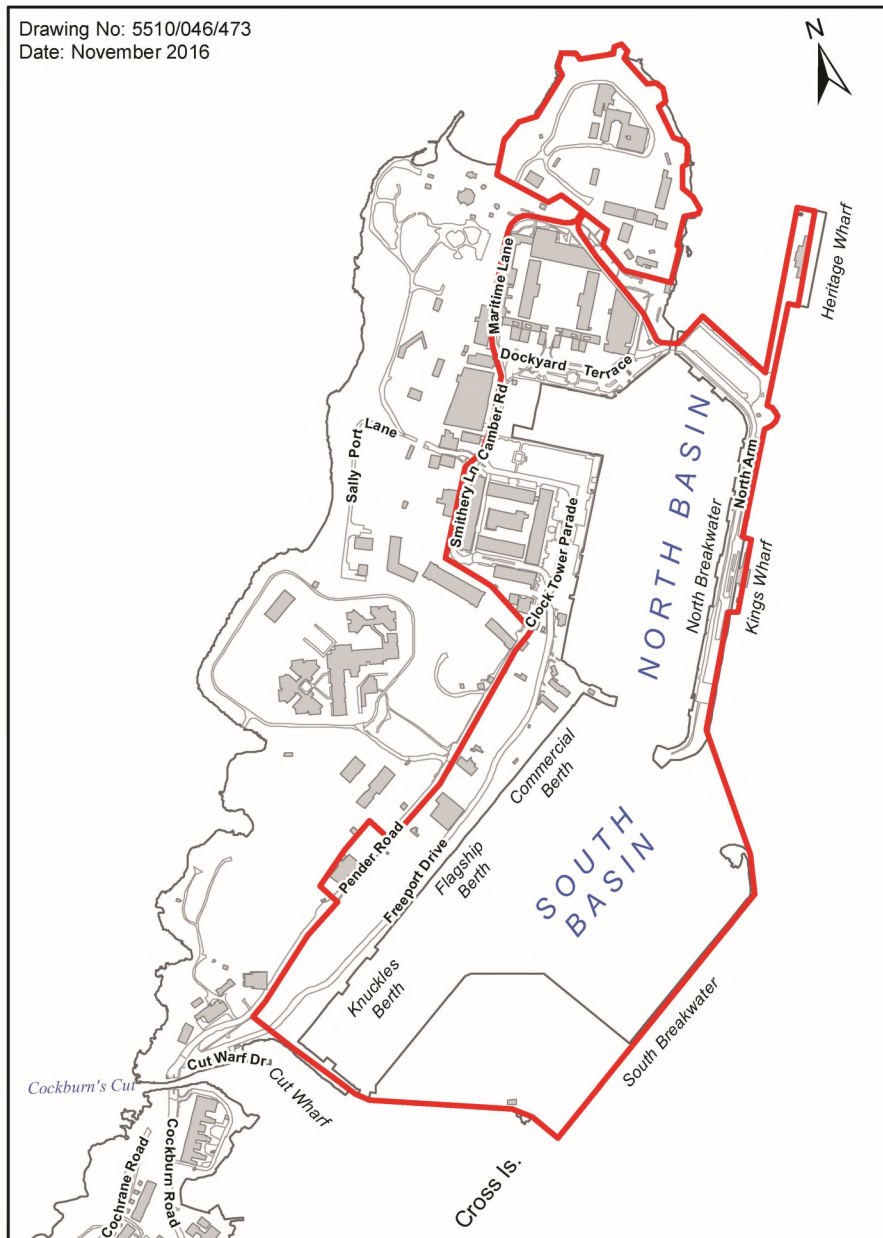
*[Schedule 2 amended by 2016 : 31 s. 5 effective 14 July 2016]*



SCHEDULE 3

(Section 2)

PLAN OF DOCKYARD



## AMERICA'S CUP ACT 2015

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[Assent Date: 27 February 2015]

[Operative Date: 28 February 2015]

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*Amended by*

2016 15

2016 31

2017 5

2017 21]