

BILL AS TABLED

A BILL

entitled

ANTI-DOPING IN SPORT ACT 2011

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WHEREAS a Convention entitled “the International Convention against Doping in Sport” was signed in Paris on 19 October 2005;

AND WHEREAS “the World Anti-Doping Code” which was adopted by the World Anti-Doping Agency in Copenhagen on 5 March 2003, was adopted in the Convention;

AND WHEREAS the “International Convention against Doping in Sport” of 2005 entered into force with respect to Bermuda on 1 June 2006;

AND WHEREAS it is necessary and expedient to give effect to “the International Convention Against Doping in Sport” of 2005 and to provide for the establishment of the Bermuda Sport Anti-Doping Authority;

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 Anti-Doping In Sport Act 2011.

Application

2 This Act applies to—

- (a) athletes, athlete support personnel and participants in sports in Bermuda;
- (b) athletes who possess Bermudian status or residents of Bermuda training or competing abroad;
- (c) national sport governing bodies, their affiliate members, clubs, teams, associations or leagues;
- (d) national leagues not affiliated with a national sport governing body;
- (e) participants in any capacity in any sporting activity organized, held, convened or authorized by a national event organisation, multi-sport and major games federation; and
- (f) a foreign athlete, in-competition or out-of-competition, who is present in Bermuda.

Interpretation

3 In this Act—

“Appeal Panel” means the Bermuda Anti-Doping Appeal Panel established under section 36;

“athlete” means a person who participates in a sport as—

- (a) an international-level athlete; or
- (b) a national-level athlete,

including any person in the Registered Testing Pool who is otherwise subject to the jurisdiction of this Act;

“athlete support personnel” means—

- (a) a parent or guardian of an athlete who is a minor;
- (b) a medical practitioner or paramedical personnel;
- (c) a coach, trainer, manager, official, agent or team staff; or
- (d) any other person working with or treating or assisting an athlete participating in or preparing for sport competition;

“BSADA” means the Bermuda Sport Anti-Doping Authority (BSADA) established under section 4;

“Chairman” means the person appointed under section 6;

“chaperone” means a doping control officer or a person appointed by the BSADA as a chaperone;

“Code” means the World Anti-Doping Code attached as Appendix I to the Convention, which Code was first adopted by the World Anti-Doping Agency on 5 March 2003 at Copenhagen, Denmark and which was revised and the revision approved by the World Anti-Doping Agency on 17 November 2007 and became effective as of 1 January 2009 and includes any amendments to the Code adopted by the World Anti-Doping Agency, from time to time;

“Convention” means the International Convention against Doping in Sport signed in Paris on 19 October 2005 and entered into force with respect to Bermuda on 1 June 2006;

“Court of Arbitration” means the Court of Arbitration for Sport based in Lausanne, Switzerland established by the International Olympic Committee, the statutes of which were ratified in 1983 and came into force on 30 June 1984;

“Disciplinary Panel” means the Bermuda Anti-Doping Disciplinary Panel established under section 32;

“doping control” means all the steps and processes from test distribution planning through to ultimate disposition of any appeal including all steps and processes in-between, such as provision of whereabouts information, sample collection and handling, results management and hearings;

“drug” includes a prohibited substance within the meaning of the Code;

“in-competition” means the period commencing twelve hours before a competition in which an athlete is scheduled to participate through the end of the competition and the sample collection process related to the competition;

“international-level athlete” means an athlete designated by one or more international sporting federations as being within the Registered Testing Pool for an international sporting event;

“international federation” means in relation to a particular type of sporting event or sporting activity, a body having international control over that sport or sporting event and which is recognized by the International Olympic Committee (IOC) or SportAccord, formerly known as the General Assembly of International Sports Federations (GAISF), as the entity responsible for governing that sport internationally;

“international standard” means the standard adopted by WADA in support of the Code and shall include any technical document issued pursuant to the International Standard;

“Minister” means the Minister to whom responsibility for sport is assigned;

“National Anti-Doping Organisation” means—

- (a) an entity designated by a State as possessing the primary authority and responsibility to adopt and implement rules in that State which are equivalent to the WADA Code, direct the collection of samples and manage test results; and
- (b) where such designation has not been made by the competent public authority of that State, the State’s national Olympic committee or its designatee;

“national-level athlete” means an athlete, other than an international-level athlete, who is designated by the BSADA or the national anti-doping organisation to which he is subject, as being in the BSADA’s or the national anti-doping organisation’s Registered Testing Pool;

“national sport governing body”, or “NSGB” in relation to a particular sport, means—

- (a) in respect of any country, a sporting organisation that is recognized by the relevant international sporting federation as being the organisation responsible for administering the affairs of the sport in that country;
- (b) in respect of a country other than Bermuda, where there is no international sporting federation in relation to the sport, a sporting organisation that is generally recognized as being responsible for administering the affairs of the sport, or of a substantial part or section of the sport, in that country; or
- (c) in respect of Bermuda, a sporting organisation that is recognized by the Government as being responsible for all or a substantial part or section of the sport in Bermuda whether or not there exists an international sporting federation in relation to that sport;

“out-of-competition” means any doping control which is not conducted in-competition;

“participant” means any athlete or athlete support personnel;

“person” includes an athlete and athlete support personnel;

“Prohibited List” means the WADA Prohibited List identifying the prohibited substances and prohibited methods as amended from time to time which is published and revised by the WADA as described in Article 4 of the Code;

“prohibited substances and methods” means the substances and methods listed in the Prohibited List;

“Registered Testing Pool” means the pool of top level athletes, established separately by each international federation and National Anti-Doping Organisation, who are subject to both in-

competition and out-of-competition testing as part of that international federation's or National Anti-Doping Organisation's test distribution plan;

"World Anti-Doping Agency" or "WADA" means the body founded by the International Olympic Committee and constituted as a foundation in Lausanne, Switzerland by an instrument of foundation signed on 10 November 1999.

## PART 2

### ESTABLISHMENT OF THE BERMUDA SPORT ANTI-DOPING AUTHORITY (BSADA) AND THE BOARD

#### Establishment of the BSADA

4 (1) There is established a body corporate to be known as "the Bermuda Sport Anti-Doping Authority (BSADA)".

(2) The BSADA shall perform such functions as are necessary to facilitate the control and prevention of doping in sport, including—

- (a) doing all things necessary to comply with and implement any Article of the Code;
- (b) planning, implementing and monitoring information and education programmes aimed at educating athletes, athlete support personnel, parents, the media and the general public in Bermuda about doping in sport matters, such as—
  - (i) the health consequences of doping;
  - (ii) the harm of doping to the ethical values of sport;
  - (iii) prohibited substances and prohibited methods;
  - (iv) therapeutic use exemptions;
  - (v) nutritional supplements;
  - (vi) doping control procedures and results management; and
  - (vii) athletes' rights and responsibilities and the consequences of committing an anti-doping violation;

- (c) facilitating the sharing of information between national sporting organisations and other relevant agencies to reduce the prevalence and availability of prohibited substances and methods;
- (d) facilitating the access of national sporting organisations to accredited laboratories for analysis of samples;
- (e) directing the anti-doping programme of the Government specific to sports including the conducting of tests on athletes, planning, co-ordinating and implementing the collection of samples, the management of test results and conducting hearings in keeping with the mandatory international standards set out in the Code;
- (f) promoting and encouraging research about doping in sport matters to develop effective prevention strategies and more effective anti-doping programmes;
- (g) entering into reciprocal testing agreements with national anti-doping organisations outside Bermuda;
- (h) consulting with, advising and assisting departments and agencies of the Government, local authorities, the Bermuda Olympic Association, national sporting organisations, and other bodies or persons on any matters concerned with doping in sport issues and related matters;
- (i) developing appropriate procedures to—
  - (i) reflect the needs of athletes who have not attained the age of eighteen;
  - (ii) reflect any disabilities or other special concerns of athletes; and
  - (iii) protect each athlete's right to privacy;
- (j) advising the Minister on any doping in sport matters;
- (k) providing information, advice or other services requested of the BSADA;

- (l) performing any other functions relating to doping in sport that are conferred on the BSADA by this or any other legislative instrument; and
- (m) generally taking all steps necessary or desirable to achieve the purposes of this Act.

(3) The BSADA shall adopt the Code and current international standards.

Minister may give directions to BSADA

5 (1) The Minister may, after consultation with the Chairman of the BSADA, give to the BSADA written directions of a general nature as to the policy to be followed by the BSADA in the performance of its functions, as appear to the Minister to be necessary in the public interest and the BSADA shall give effect to the directions.

(2) Directions given under subsection (1), shall not relate to—

- (a) a particular athlete;
- (b) a particular athlete support personnel; or
- (c) doping control.

Board of the BSADA

6 (1) The BSADA shall be managed by a Board hereinafter referred to as “the Board”.

(2) The Board shall comprise not less than seven, nor more than thirteen members, appointed by the Minister from the following categories—

- (a) a person who has demonstrated knowledge or experience in sports medicine or pharmacology;
- (b) a person who has experience in dealing with doping or substance abuse prevention matters;
- (c) a person who is a former athlete, former coach, former sports administrator or former NSGB executive;
- (d) a person with a proven academic background, education and training in sports and athletics;

- (e) a person who has demonstrated knowledge or experience in marketing or public relations;
- (f) a person who has knowledge or experience in financial accounting, human resources or management;
- (g) a person who has a legal, regulatory or compliance background relating to sports, athletics or doping in sports;
- (h) a barrister;
- (i) three persons who by virtue of their skill or experience can contribute meaningfully to the work of the Board; and
- (j) the Senior Sports Development Officer within the Department of Sport who shall be an *ex officio* member.

(3) The members of the Board shall choose a Chairman and a Vice-Chairman from among them.

(4) Subject to the provisions of subsections (5), (6) and (7), the members of the Board shall hold office for a period not exceeding four years and shall be eligible for reappointment.

(5) The Minister may terminate the appointment of a member of the Board where that member—

- (a) is guilty of misconduct in the performance of his duties;
- (b) has, without reasonable excuse, failed to carry out his duties for a continuous period of three months; or
- (c) is unable by reason of physical or mental incapacity to perform his duties or is otherwise unable or unfit to perform his duties.

(6) A member of the Board may resign his office by instrument in writing which is addressed to the Minister.

(7) A member of the Board shall be deemed to have vacated his office if without leave of absence from the Board, he fails to attend three consecutive statutory meetings of the Board, or, without leave of absence from the Board, fails to attend a minimum of three statutory meetings of the Board in any year.

(8) If any member of the Board is temporarily prevented by illness or other cause from exercising his functions, the Minister may appoint some other person to act in his stead for the period of such illness or incapacity.

(9) The appointment of a person as a member of the Board to fill the vacancy occurring under subsections (5), (6) and (7), shall be for the unexpired portion of the term of the member to whose office that person has been appointed and such a person is eligible for reappointment.

(10) Subsections (4) to (9) shall not apply to an ex officio member of the Board.

#### Secretary and seal of the BSADA

7 (1) The Board shall appoint a Secretary who shall have custody of the seal of the BSADA.

(2) The seal of the BSADA shall be attested by the signature of the Secretary and the Chairman or a member of the Board duly authorized by the Board to act on his behalf.

(3) All documents, other than those required by any written law to be under seal and all decisions of the Board shall be signified under the hand of the Chairman, the Secretary or a member duly authorized by the Board.

#### Functions and powers of the Board

8 The Board shall—

- (a) monitor the administrative operations of the BSADA;
- (b) ensure that correct protocols are followed in the process of securing samples;
- (c) ensure that the rights of everyone involved in the doping control procedures are respected;
- (d) assist in ensuring that the BSADA receives and manages funds in a prudent manner; and
- (e) assist the BSADA in finding ways to make itself financially viable.

Acting appointment

9 (1) Where the Chairman is absent at any meeting, the Vice-Chairman shall perform the functions of the Chairman.

(2) Where a member, other than the Chairman is absent or unable to perform his duties, the Minister may appoint another person to act in the place of that member.

Location and meetings

10 (1) The BSADA shall be located in such place as it determines to be suitable, and its address shall be published in the Gazette.

(2) The Board shall meet as often as the Chairman deems necessary for the performance of its functions and in any event not less than once every quarter.

Chief Executive Officer

11 The Minister shall appoint a suitably qualified person as Chief Executive Officer of the BSADA.

Staff of the BSADA

12 (1) The BSADA shall employ such members of staff as are required for the performance of its functions, including—

- (a) a results and compliance manager;
- (b) an administrative officer;
- (c) an education officer; and
- (d) a doping control manager,

on such terms and conditions as are agreed upon between the employee and the BSADA.

(2) The BSADA may, on such terms and conditions as it thinks fit, engage any suitably qualified person to provide it with services, information or advice.

Therapeutic Use Exemption Committee

13 (1) The BSADA shall establish a Therapeutic Use Exemption Committee (TUEC) comprising three physicians with experience in the care

and treatment of athletes and a sound knowledge of clinical, sports and exercise medicine.

- (2) The TUEC—
  - (a) shall monitor existing Therapeutic Use Exemptions;
  - (b) shall consider new requests for Therapeutic Use Exemptions;
  - (c) may seek medical or scientific expertise when it deems appropriate while reviewing an application for a Therapeutic Use Exemption; and
  - (d) may grant a Therapeutic Use Exemption Certificate.
- (3) The members of the TUEC shall—
  - (a) possess a clear understanding of the international standards including international standards for Therapeutic Use Exemptions and criteria that govern Therapeutic Use Exemptions; and
  - (b) be familiar with the Prohibited List.

#### Results Management Committee

14 (1) The BSADA shall establish a Results Management Committee comprising five persons.

(2) The members of the Results Management Committee shall have the ability to appropriately deal with the results of any test, including where the results are negative or of an adverse nature.

- (3) The Results Management Committee shall—
  - (a) notify an athlete of the result of his test;
  - (b) recommend adverse analytical findings to the Disciplinary Panel;
  - (c) maintain a database on athletes' testing missions and identify any situations that may be suspicious;
  - (d) notify an athlete of possible violations that he may inadvertently be committing; and
  - (e) manage the suspensions and sanctions of athletes.

#### Funds

15 The funds of the BSADA shall consist of—

- (a) revenue from fees charged in the provision of its services or from investments made by the BSADA;
- (b) all sums collected by virtue of donations or grants from national and international organisations; and
- (c) such sums as may be provided annually by the Legislature.

#### Accounts and audit

16 (1) The BSADA shall keep proper accounts of its receipts, payments, credits and liabilities.

(2) The BSADA shall submit the accounts referred to in subsection (1) from time to time to the Auditor General or a qualified auditor appointed by the Auditor General to be audited.

#### Annual reports and estimates

17 (1) The BSADA shall present within three months of the end of each financial year, a report of its proceedings for that year, including the accounts that have been audited in accordance with section 16(2), to the Minister.

(2) A copy of the report referred to in subsection (1) shall be laid in the House of Assembly within three months of the date of receipt by the Minister.

(3) The BSADA shall, at the end of each financial year, submit its estimates of revenue and expenditure in respect of its next financial year for approval by the Minister.

(4) A copy of the approved estimates shall be published in the Gazette.

#### Liability of members

18 A member of the Board or the staff of the BSADA shall not be personally liable for any act or default of the BSADA, done or omitted to be done in good faith in the course of its operations.

PART 3  
TESTING AND DOPING CONTROLS

National Anti-Doping Programme

- 19 (1) The BSADA shall develop a National Anti-Doping Programme.
- (2) The Programme shall provide for the following—
- (a) comprehensive anti-doping rules, including rules on illicit and performance enhancing drugs;
  - (b) an extensive education programme for athletes, athlete support personnel, administrators, participants and the general public on anti-doping and the promotion of health, fairness and equality in sport;
  - (c) detailed protocols for results management;
  - (d) detailed protocols for Therapeutic Use Exemptions;
  - (e) research relevant to anti-doping;
  - (f) the development of an Athlete Testing Programme, including the development of protocols governing the location and whereabouts of athletes for the purposes of testing; and
  - (g) any other related matters.
- (3) The Programme shall be developed in accordance with all established international standards as developed by the WADA.

Responsibility of athlete

- 20 (1) An athlete shall not use any prohibited substances or methods unless he has a Therapeutic Use Exemption in accordance with section 22.
- (2) An athlete shall—
- (a) comply with all applicable anti-doping policies and rules adopted pursuant to the Code;
  - (b) be available for sample collection;
  - (c) take responsibility, in the context of anti-doping, for what he ingests and uses; and

- (d) inform medical personnel of his obligation not to use prohibited substances and prohibited methods and shall take responsibility to ensure that any medical treatment received does not violate anti-doping policies and rules adopted pursuant to the Code.

(3) An athlete is responsible for any prohibited substance or its metabolites or markers found to be present in his bodily specimen.

#### Responsibility of support personnel

21 Athlete support personnel shall—

- (a) be knowledgeable of and comply with all anti-doping policies and rules adopted pursuant to the Code which are applicable to them or the athlete whom they support;
- (b) cooperate with the Athlete Testing Programme; and
- (c) encourage and motivate athletes to foster anti-doping attitudes.

#### Application for a Therapeutic Use Exemption

22 Where an athlete, with a documented medical condition requires the use of a prohibited substance or method, he shall apply to the TUEC, established under section 13, for a Therapeutic Use Exemption Certificate.

#### Notification of grant of Therapeutic Use Exemption Certificate

23 (1) The TUEC shall immediately notify the BSADA of its decision to grant a Therapeutic Use Exemption Certificate.

(2) The BSADA shall thereafter report to the WADA any Therapeutic Use Exemption Certificate granted to an athlete.

#### WADA may review or reverse Therapeutic Use Exemption

24 (1) The WADA at the request of an athlete or on its own initiative may review the granting or denial of a Therapeutic Use Exemption Certificate by the TUEC.

(2) Where the WADA determines that the granting or the denial of the Therapeutic Use Exemption Certificate by the TUEC was not in compliance with the international standard for Therapeutic Use Exemption

in force at the time, it may reverse the decision to grant or deny the Therapeutic Use Exemption Certificate.

#### Testing

25 An athlete shall submit himself to in-competition testing and out-of-competition testing by the BSADA at any time or place, with or without advance notice.

#### Registered Testing Pool

26 (1) The BSADA shall establish a Registered Testing Pool.

(2) The BSADA shall notify an athlete of the inclusion of his name in the Registered Testing Pool.

(3) Subject to section 27, the athlete is required to—

(a) file quarterly whereabouts information with the BSADA on the requisite forms;

(b) specify on a daily basis the locations and times where he will be residing, training or competing; and

(c) update the information as necessary.

(4) Where the athlete is required to provide whereabouts information to their international federation, he shall simultaneously provide a copy of the information to the BSADA, unless it is available through the WADA clearing house.

(5) Where the athlete fails to submit the mandatory whereabouts report he may be deemed ineligible for government support and he may be unable to participate in national competitions.

(6) An athlete who is unavailable for testing on three attempts during any period of eighteen consecutive months commits an anti-doping rule violation.

#### Retired athlete

27 (1) An athlete who has retired shall give written notice to the BSADA and his national sporting organisation that he has retired.

(2) The retired athlete is not subject to the requirements under section 25 or section 26.

(3) Where a retired athlete makes a decision to return to competition he shall give written notice of his decision to the BSADA and will no longer be considered a retired athlete.

#### Analysis of samples

28 (1) A doping control sample shall be analysed at a laboratory accredited by the WADA, to detect prohibited substances and prohibited methods.

(2) An athlete may give written consent for his sample to be analysed for a purpose other than under subsection (1).

#### Results sent to Results Management Committee

29 The results of a sample which has been analysed shall be forwarded to the Results Management Committee which is established under section 14.

#### Anti-doping rule violations

30 (1) Anti-doping rule violations include the following—

- (a) the presence of a prohibited substance or its metabolites or markers in a sample of an athlete, unless the athlete has a Therapeutic Use Exemption for the use of the prohibited substance or its metabolites or markers;
- (b) the use or attempted use of a prohibited substance or a prohibited method by an athlete;
- (c) the refusal or failure without compelling justification of an athlete to submit to sample collection after notification as authorized in applicable anti-doping rules, or otherwise evading Sample collection;
- (d) violation of applicable requirements regarding athlete availability for out-of-competition testing, including failure to file required whereabouts information and missed tests which are declared based on rules which comply with the international standard for testing;
- (e) tampering or attempted tampering with any part of doping control;

- (f) possession of prohibited substances and prohibited methods;
  - (g) trafficking or attempted trafficking in any prohibited substance or prohibited method;
  - (h) administration or attempted administration to any athlete in-competition of any prohibited method or prohibited substance, or administration or attempted administration to any athlete out-of-competition of any prohibited method or any prohibited substance that is prohibited out-of-competition; and
  - (i) assisting, encouraging, aiding, abetting, covering up or any other type of complicity involving an anti-doping rule violation or any attempted anti-doping rule violation.
- (2) A person who violates an anti-doping rule may—
- (a) be disqualified from a particular competition or event;
  - (b) become ineligible for a specified period of time from participating in any competition or other activity;
  - (c) become ineligible for funding; and
  - (d) be suspended for a period of time from participating in any competition prior to the final decision of the Disciplinary Panel.

BSADA to refer matter to the Disciplinary Panel

31 Where it is suspected that there has been an anti-doping rule violation, the BSADA shall refer the matter to the Disciplinary Panel.

#### PART 4

#### THE BERMUDA ANTI-DOPING DISCIPLINARY PANEL

Establishment of the Disciplinary Panel

32 There is established the Bermuda Anti-Doping Disciplinary Panel (hereinafter referred to as “the Disciplinary Panel”).

Composition and appointment of the Disciplinary Panel

33 (1) The Disciplinary Panel shall comprise a pool of nine persons appointed by the Minister as follows—

- (a) three legal practitioners of not less than five years standing, one of whom shall be the Chairman and the other two who shall each be a Vice-Chairman;
- (b) three medical practitioners of not less than five years standing; and
- (c) three persons each of whom is, or has previously been, a sports administrator or an athlete.

(2) The members of the Disciplinary Panel shall hold office for a period of three years and are eligible for reappointment.

(3) The Chairman or in his absence, a Vice-Chairman shall appoint three members from the Disciplinary Panel to hear and determine each case.

(4) Every hearing shall comprise the Chairman or a Vice-Chairman as chairman of the hearing panel, one medical practitioner member and one sports administrator or athlete member.

(5) Where a member of the Disciplinary Panel dies, is unable to perform his duties or resigns, the Minister may appoint a person to fill the vacancy.

(6) The appointment of a person as a member of the Disciplinary Panel to fill the vacancy occurring under subsection (5), shall be for the unexpired portion of the term of the member to whose office that person has been appointed and such a person is eligible for reappointment.

Functions of the Disciplinary Panel

34 (1) The Disciplinary Panel shall—

- (a) receive, examine and hear evidence relating to an anti-doping violation;
- (b) conduct disciplinary hearings related to anti-doping violations referred to it by the BSADA;
- (c) determine whether an anti-doping violation has occurred;

- (d) impose sanctions; and
  - (e) perform any other functions that may be conferred on the Disciplinary Panel by the Act.
- (2) Upon the receipt of a written reference from the BSADA asserting the occurrence of an anti-doping violation, the Disciplinary Panel shall—
- (a) conduct a hearing within fourteen days of receipt of the reference;
  - (b) issue a written decision within twenty days after the conclusion of the hearing; and
  - (c) issue written reasons for any decision within thirty days after the written decision has been issued.

#### Right to appeal decision to the Appeal Panel

35 (1) Subject to section 39, where the following person or body is aggrieved by a decision from the Disciplinary Panel, the person or body may lodge an appeal with the Appeal Panel within fourteen days from the decision of the Disciplinary Panel—

- (a) an athlete or other person;
- (b) the BSADA;
- (c) the relevant national sporting organisation;
- (d) the relevant international sporting federation;
- (e) the Bermuda Olympic Association; and
- (f) the WADA.

(2) The decision of the Disciplinary Panel shall remain in effect until the determination of the appeal.

## PART 5

### THE BERMUDA ANTI-DOPING APPEAL PANEL

#### Establishment of the Appeal Panel

36 There is established the Bermuda Anti-Doping Appeal Panel (hereinafter referred to as “the Appeal Panel”).

### Composition and appointment of the Appeal Panel

37 (1) The Appeal Panel shall comprise nine persons appointed by the Minister as follows—

- (a) three legal practitioners of not less than five years standing, one of whom shall be the Chairman and the other two who shall each be a Vice-Chairman;
- (b) three medical practitioners of not less than five years standing; and
- (c) three persons each of whom is, or has previously been, a sports administrator or an athlete.

(2) The members of the Appeal Panel shall hold office for a period of three years and are eligible for reappointment.

(3) Where a member of the Appeal Panel dies, is unable to perform his duties or resigns, the Minister may appoint a person to fill the vacancy.

(4) The appointment of a person as a member of the Appeal Panel to fill the vacancy occurring under subsection (3), shall be for the unexpired portion of the term of the member to whose office that person has been appointed and such a person is eligible for reappointment.

### Functions of the Appeal Panel

38 (1) The Appeal Panel shall—

- (a) hear and determine issues arising from a decision of the Disciplinary Panel and may—
  - (i) determine that an anti-doping violation was committed;
  - (ii) impose sanctions as a result of an anti-doping violation;
  - (iii) determine that an anti-doping violation was not committed;
  - (iv) determine that a National Anti-Doping Organisation lacks the jurisdiction to rule on an anti-doping violation or the imposition of sanctions; and
  - (v) impose a provisional suspension;

- (b) determine the appropriate sanction resulting from an anti-doping violation; and
  - (c) perform such other functions as may be conferred upon it by or under this Act.
- (2) Upon the lodging of an appeal, the Appeal Panel shall—
- (a) receive, hear and examine the evidence relating to the appeal within forty days;
  - (b) issue a written decision within fifteen days after the conclusion of the hearing; and
  - (c) issue written reasons for any decision within fifteen days after the written decision has been issued.

## PART 6 MISCELLANEOUS

### Appeal by international-level athlete to Court of Arbitration

39 An international-level athlete may appeal decisions of the Disciplinary Panel directly to the Court of Arbitration.

### Appeal of decision to deny Therapeutic Use Exemption Certificate

40 (1) An athlete or the BSADA, as the case may be, may appeal to the Court of Arbitration, in respect of a decision made by the WADA, reversing the grant of, or refusal to grant a Therapeutic Use Exemption Certificate.

(2) An international-level athlete may appeal exclusively to the Court of Arbitration in respect of a decision by an international sporting federation refusing to grant him a Therapeutic Use Exemption Certificate.

(3) A national-level athlete may appeal to the Appeal Panel in respect of a decision by the TUEC refusing to grant him a Therapeutic Use Exemption Certificate.

(4) Where the Appeal Panel reverses the decision of the TUEC to grant a Therapeutic Use Exemption Certificate, the WADA may appeal to the Court of Arbitration.

Information to be kept confidential

41 (1) The following persons shall keep secret and confidential all information coming to their knowledge in the course of the administration of this Act, unless authorized by the BSADA to release that information—

- (a) a member of the BSADA;
- (b) an officer or employee of the BSADA;
- (c) an expert retained by the BSADA to assist in its investigations and deliberations;
- (d) a member of the Disciplinary Panel;
- (e) a member of the Appeal Panel; and
- (f) a member of the TUEC.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$10, 000 or to imprisonment for six months or to both fine and imprisonment.

Accredited laboratories

42 A laboratory shall not conduct doping control analysis unless it has been accredited by the WADA.

Sanctions against NSGBs

43 Where a NSGB does not comply with the provisions of this Act, the BSADA may make recommendations to the Minister for the Government to—

- (a) withhold in whole or in part, financial or non-financial support from the NSGB; and
- (b) withhold or withdraw the recognition of the NSGB, until the anti-doping rules of the NSGB are in compliance with this Act.

Regulations

44 The Minister may make Regulations, subject to the negative resolution procedure—

- (a) for the keeping of such records as the Minister may require for the purposes of this Act;

- (b) for the determination and collection of fees and charges in connection with the exercise of the functions of the BSADA; and
- (c) generally for carrying out the purposes and provisions of this Act.

**Act binds the Crown**

45 This Act binds the Crown.

**Consequential amendment to Government Authorities (Fees) Act 1971**

46 The First Schedule of the Government Authorities (Fees) Act 1971 is amended in Part B- Government Authorities, by inserting in alphabetical order the words "Bermuda Sport Anti-Doping Authority - established under section 4 of the Anti-Doping in Sport Act 2011".

**Commencement**

47 This Act comes into operation on a day to be appointed by the Minister by Notice published in the Gazette.

## ANTI-DOPING IN SPORT BILL 2011

### EXPLANATORY MEMORANDUM

This Bill provides for the application of the International Convention against Doping in Sport, 2005 to Bermuda, the establishment of the Bermuda Sport Anti-Doping Authority (BSADA) which seeks to protect the health and welfare of athletes and ensure that athletes are able to compete in fair and equitable sporting events as doping is fundamentally contrary to the spirit of sport.

Clause 1 provides the citation of the Bill.

Clause 2 provides a list of persons and entities to whom this Bill applies.

Clause 3 defines the terms used in the Bill.

Clause 4 establishes the Bermuda Sport Anti-Doping Authority, sets out the BSADA's functions and provides for the adoption by the BSADA of the World Anti-Doping Code and current international standards.

Clause 5 provides that the Minister responsible for sport may give directions to the BSADA in written form on matters of policy, not related to particular persons or doping control, after consultation with the Chairman of the BSADA.

Clause 6 establishes a Board to manage the BSADA, and provides for its composition as well as appointment procedures.

Clause 7 provides for the appointment of a Secretary by the Board and also provides for the methods of attestation the Board may use when acting.

Clause 8 provides for the functions and powers of the Board.

Clause 9 provides for persons to be appointed to act in respect of the responsibilities of absentees.

Clause 10 provides for the location and frequency of Board meetings.

Clause 11 provides for the appointment of a Chief Executive Officer by the Minister on such terms and conditions as the Minister may approve.

Clause 12 provides the BSADA with the power to employ individuals for both the performance of its functions and the provisions of services, information or advice to it.

Clause 13 provides for the establishment of a Therapeutic Use Exemption Committee (TUEC) by the BSADA for the review and issuance of Therapeutic Use Exemption Certificates, as well as its composition.

Clause 14 provides for the establishment of a Results Management Committee.

Clause 15 provides for the sources of funding to the BSADA.

Clause 16 directs the BSADA to keep proper accounts and submit them for auditing by the Auditor General from time to time.

Clause 17 directs the BSADA to produce annual reports to be laid before Parliament, and estimates of future revenue and expenditure to be submitted to the Minister.

Clause 18 provides that members of the BSADA are not liable for the acts or defaults of the BSADA done in good faith and in the course of the BSADA's operations.

Clause 19 provides for the development of a National Anti-Doping Programme by the BSADA, and the matters to be addressed by such a programme.

Clause 20 provides for the responsibilities to which athletes shall be held in respect of anti-doping.

Clause 21 provides for the responsibilities to which athlete support personnel shall be held in respect of anti-doping.

Clause 22 provides that an athlete may use a prohibited substance or method only if a documented medical condition requires such use, and the athlete has applied to the TUEC for an exemption.

Clause 23 directs the TUEC to report the granting of a Therapeutic Use Exemption to the BSADA and thereafter directs the BSADA to report Therapeutic Use Exemptions to the World Anti-Doping Authority (WADA).

Clause 24 empowers the WADA to review or reverse a Therapeutic Use Exemption decision.

Clause 25 provides for the submission of athletes to in-competition and out-of-competition testing.

Clause 26 directs the BSADA to establish a Registered Testing Pool and procedures for informing athletes of their inclusion in the pool as well as the effects of that inclusion.

Clause 27 provides requirements for retired athletes.

Clause 28 provides for procedures relating to sample analysis.

Clause 29 provides for the results of sample analyses to be forwarded to the Results Management Committee.

Clause 30 provides for what constitutes a violation of the anti-doping rules and the consequences thereof.

Clause 31 provides for violations of the anti-doping rules to be referred to the Disciplinary Panel.

Clause 32 establishes the Bermuda Anti-Doping Disciplinary Panel.

Clause 33 provides for the composition and appointment procedures for the Disciplinary Panel.

Clause 34 provides for the functions of the Disciplinary Panel and the relevant time limits with respect to a matter before it.

Clause 35 establishes a right to appeal a decision of the Disciplinary Panel.

Clause 36 establishes the Bermuda Anti-Doping Appeal Panel.

Clause 37 provides for the composition and appointment procedures for the Appeal Panel.

Clause 38 provides for the functions of the Appeal Panel and the time limits within which it should make and issue decisions.

Clause 39 provides international-level athletes with a right to appeal to the Court of Arbitration against decisions by the Disciplinary Panel.

Clause 40 establishes rights of appeal for athletes of different levels of competition in respect of decisions to deny a Therapeutic Use Exemption Certificate and gives the WADA the right to appeal to the Court of Arbitration.

Clause 41 mandates certain persons to keep certain information secret and confidential, unless authorized by the BSADA.

Clause 42 restricts the carrying out of doping control analyses to laboratories accredited by the WADA.

Clause 43 provides for sanctions against national sport governing bodies where they do not comply with this Act.

Clause 44 empowers the Minister to make Regulations subject to the negative resolution procedure.

Clause 45 directs that this Act will bind the Crown.

Clause 46 provides for members of the Board of the BSADA to be compensated in accordance with the Government Authorities (Fees) Act 1971.

Clause 47 provides that this Act shall be brought into force on a day appointed by the Minister by Notice in the Gazette.