

**No. 23 of 2023**

**VIRGIN ISLANDS**  
**VIRGIN ISLANDS SHIPPING AND MARITIME AUTHORITY ACT,**  
**2023**  
**ARRANGEMENT OF SECTIONS**

**PART I**  
**PRELIMINARY**

**SECTION**

1. Short title and commencement
2. Interpretation

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**PART II**

**ESTABLISHMENT, FUNCTIONS AND POWERS OF THE VIRGIN**  
**ISLANDS SHIPPING AND MARITIME AUTHORITY**

3. Establishment of the Virgin Islands Shipping and Maritime Authority
4. Functions of the Authority
5. Powers of the Authority
6. Power to issue general and mandatory guidance notices
7. Official website
8. Minister may give general directions
9. Board of Directors
10. Interest register
11. Delegation of powers
12. Immunity from suit
13. Confidentiality
14. Managing Director
15. Appointment of other staff

**PART III**  
**FINANCIAL PROVISIONS**

16. Financial year
17. Work plan and budget
18. Funds of the Authority
19. Initial capital and advances

20. Loans
21. Operating Fund
22. Reserve Fund
23. Investment
24. Transfer of net surplus
25. Accounts and audit
26. Publication of accounts and annual report

PART IV  
MISCELLANEOUS PROVISIONS

27. Applicability of the National Health Provisions of Social Security Act
  28. Taxation
  29. Exemption from Work Permit
  30. Transfer of Government officers and employees to the Authority
  31. Transfer of Government contracts of employment to the Authority
  32. Power to amend Schedules
  33. Regulations
  34. Savings and transitional
- SCHEDULE 1  
SCHEDULE 2

I ASSENT



Governor.

17 October, 2023



**VIRGIN ISLANDS**

**No. 23 of 2023**

AN ACT TO ESTABLISH A VIRGIN ISLANDS SHIPPING AND MARITIME AUTHORITY  
AND TO MAKE PROVISION FOR CONNECTED MATTERS.

[Gazetted \_\_\_\_\_, 2023 ]

ENACTED by the Legislature of the Virgin Islands as follows:

**PART I**

**PRELIMINARY**

**Short title and commencement**

1. (1) This Act may be cited as the Virgin Islands Shipping and Maritime Authority Act, 2023.

(2) This Act shall come into force on such date as the Minister may, by Notice published in the *Gazette* appoint, and different days may be appointed for different provisions of this Act.

**Interpretation**

2. In this Act, unless the context otherwise requires,
- “Authority” means the Virgin Islands Shipping and Maritime Authority established under section 3;
- “Board” means the Board of Directors of the Authority established under section 8;
- “Chairperson” means the Chairperson of the Board;

“commencement date”, in relation to a particular provision or Part of this Act, means the date that a provision or Part, as the case may be, comes into operation in accordance with section 1(1);

“Director” means a voting member of the Board of Directors referred to in section 8(2);

“employee” has the meaning given in section 3 of the Labour Code, 2010;

“Managing Director” means the person appointed as such by the Board pursuant to section 13 or the person deemed to be Managing Director under paragraph 3 of Schedule 2;

“Maritime Administration” means the administration as set out in the Merchant Shipping Act, 2001;

“Minister” means the Minister to whom responsibility for Shipping and Maritime Administration is assigned;

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

“net loss” means a situation in which, in any year, after accounting for bad and doubtful debts, depreciation in assets and other contingencies, the Authority’s costs exceed its revenue;

“net surplus” means a situation in which, in any year, after accounting for bad and doubtful debts, depreciation in assets and other contingencies, the Authority’s revenues exceed its costs;

“official website” means the website maintained by the Authority pursuant to section 6;

“operating fund” means the Authority’s operating fund established pursuant to section 20;

“Port State control” means the inspection of ships and watercraft, other than Virgin Islands ships, whilst they are in Virgin Islands waters to verify that the condition of the ship and its equipment comply with the requirements of international regulations and that the ship is manned and operated in compliance with these rules;

“Registrar of Shipping” means the Registrar of Shipping and Seafarers referred to in the Merchant Shipping Act, 2001 or the person deemed to be Registrar of Shipping under paragraph 3 of Schedule 2;

“Register of Ships” means the register of ships referred to in Part II of the Merchant Shipping Act 2001;

“reserve fund” means the Authority’s reserve fund established pursuant to section 21;

“Secretary” means the person selected as the Secretary of the Authority under paragraph 1 of Schedule 1;

“ship” has the meaning given in section 2(1) of the Merchant Shipping Act, 2001;

“ship registration services” includes the registration of ships, tonnage measurement and surveys and certification related to the registration process;

“Virgin Islands ship” means a ship registered in the Virgin Islands under the Merchant Shipping Act, 2001;

“Virgin Islands Shipping legislation” means the Merchant Shipping Act, 2001 and any other law relating to merchant shipping, and includes any subsidiary legislation made thereunder;

“Virgin Islands Shipping Registry” means that division of the Authority responsible under the Registrar of Shipping for the registration of ships under Part II of the Merchant Shipping Act, 2001.

## PART II

### ESTABLISHMENT, FUNCTIONS AND POWERS OF THE VIRGIN ISLANDS SHIPPING AND MARITIME AUTHORITY

#### **Establishment of the Virgin Islands Shipping and Maritime Authority**

3. (1) There is established a body to be known as the Virgin Islands Shipping and Maritime Authority (referred to in this Act as the “Authority”) to perform the functions conferred on it by or under this Act.

(2) The Authority is a body corporate to which section 21 of the Interpretation Act applies.

#### **Functions of the Authority**

4. (1) The Authority shall

- (a) continue the functions relating to maritime affairs under Part II and Part XIX of the Merchant Shipping Act 2001;
- (b) administer and enforce all matters for which the Minister is responsible under this Act and the laws in force in the Virgin Islands relating to merchant shipping and seafarers; and
- (c) promote the proper development of ship registration, survey, inspection, safety management audits and related services.

(2) Without prejudice to the generality of subsection (1), the Authority shall

- (a) provide ship registration services and maintain the Register of Ships for all registrations of ships in the Virgin Islands;
- (b) provide maritime regulatory services, including
  - (i) survey, safety management audits and inspection services for all ships on the register;
  - (ii) documentation and certification services for all ships on the register and all crew serving on those ships;
  - (iii) conduct of surveys and inspections relating to marine pollution;
  - (iv) conduct of inspections on ships relating to working and living conditions thereon;

- (v) monitoring in respect of all ships on the register to ensure compliance with applicable requirements of international conventions relating to shipping which have been extended to the Virgin Islands, together with related instruments and codes;
  - (vi) in appropriate circumstances, of exemptions, substantial equivalencies and dispensations from the requirements referred to in subparagraph (iv);
  - (vii) port State control on foreign ships;
  - (viii) detention of unsafe or unseaworthy ships;
  - (ix) preparation of cases for prosecution of offences committed under any Virgin Islands Shipping legislation;
  - (x) maritime search and rescue operations in co-ordination with other relevant Government departments and bodies;
  - (xi) providing hydrographic and nautical information relating to safe navigation in the Virgin Islands waters;
  - (xii) international relations within the maritime sector including cooperation with regional agreements on port State control;
- (c) promote the development of Virgin Islands as an international shipping centre;
  - (d) provide advice to the Minister on maritime policy, legislative requirements and economic issues pertaining to the activities in this section and with respect to Maritime Administration in the Virgin Islands;
  - (e) liaise with the United Kingdom on matters relating to development and introduction of merchant shipping legislation relating to international maritime conventions and development of technical standards for the implementation of international maritime instruments;
  - (f) collect annual registration fees, tonnage fees, service fees and any moneys payable under the Merchant Shipping Act 2001 and regulations made under that Act;
  - (g) expand and create maritime employment opportunities for belongers;
  - (h) enter, with the approval of the Minister, into agreements or arrangements with other organisations or bodies relating to maritime affairs that are beneficial to the efficient administration of the Authority;
  - (i) represent the Virgin Islands at international fora related to maritime affairs; and
  - (j) perform such other functions as are conferred on it by this Act or any other Act.

### **Powers of the Authority**

5. (1) For the purposes of carrying out its functions, but subject to this Act, the Authority shall have the power to

- (a) carry on such business and other activities;
- (b) do all such things and enter into all such transactions,

as appear to the Authority to be necessary, or advantageous, for it to carry on or perform or enter into, for or in connection with the discharge of its functions.

(2) Without prejudice to the generality of the foregoing, but subject to this Act, the Authority may

- (a) engage such consultants and persons as it considers necessary, on such terms and conditions as it considers appropriate, subject to the requirements of applicable law of the Virgin Islands;
- (b) provide an advisory service and disseminate information and guidance on matters relating to ship registration, maritime regulatory requirements and maritime legislation in the Virgin Islands;
- (c) charge such fees, as the Authority may determine, for the provision of its services; and
- (d) with the approval of the Minister for Finance, borrow money and otherwise raise capital in accordance with this Act.

### **Power to issue general and mandatory guidance notices**

6. (1) The Authority may

- (a) issue notices having mandatory effect for the purposes of any Virgin Islands Shipping legislation; or
- (b) adopt any notices or similar instruments issued by any international or regional organisation or national maritime authority which, in the opinion of the Managing Director
  - (i) are applicable to the Virgin Islands, and
  - (ii) shall have mandatory effect for the purposes of any Virgin Islands Shipping legislation.

(2) The Authority may

- (a) issue general guidance notices for the purposes of any Virgin Islands Shipping legislation; or
- (b) adopt guidance issued by any international or regional organisation or maritime authority which, in the opinion of the Managing Director
  - (i) is applicable to the Virgin Islands, and
  - (ii) is relevant to any Virgin Islands Shipping legislation.

(3) Any notice, instrument or guidance issued or adopted pursuant to this section may be amended with such modifications as may be necessary, or may be revoked.

(4) A notice or instrument shall not be issued or adopted under subsection (1) without the written approval of the Minister.

(5) Any notice or guidance issued or adopted under this section shall be in such form as the Authority may determine and shall be published in the *Gazette*.

(6) Where a notice or instrument issued or adopted under subsection (1) is referred to in any Virgin Islands Shipping legislation, an owner or master of a ship shall, to the extent specified in the Virgin Islands Shipping legislation, comply with the notice or instrument.

(7) Without prejudice to subsection (6), in discharging a duty under any Virgin Islands Shipping legislation, the owner or master of a ship shall have regard to any relevant provision of a notice, instrument or guidance issued or adopted under this section.

(8) A failure to comply with subsection (7) may be taken into account by any court, arbitrator, the Managing Director or a surveyor or inspector appointed under the Merchant Shipping Act 2001 when determining whether the owner or master of a ship has complied with their duties under any Virgin Islands Shipping legislation.

(9) When exercising any function under a Virgin Islands Shipping legislation, the Managing Director or a surveyor or inspector appointed under the Merchant Shipping Act 2001 shall have regard to any relevant provision of a notice, instrument or guidance issued or adopted under this section.

#### **Official website**

7. The Authority shall maintain an official website, on which it shall publish

- (a) a directory, which shall include the official telephone number and email address for the Authority, including emergency numbers;
- (b) the full text of or a link to
  - (i) this Act; and
  - (ii) all regulations, shipping notices, guidelines and policies made pursuant to this Act and any Virgin Islands Shipping legislation.
- (c) any additional information that the Authority is required to publish on the website pursuant to this Act.

#### **Minister of may give general directions**

8. (1) The Minister shall continue to have the general oversight of all matters relating to merchant shipping and seafarers and is authorised to carry into execution this Act and all statutory provisions relating to merchant shipping and seafarers for the time being in force, except where otherwise provided.

(2) The Minister may, after consultation with the Board, and after taking into account and having due regard to such representations as the Board may make to the Minister, give to the Board in written form general and specific directions

- (a) on matters relating to finances; and



- (b) on matters of policy as the Minister is currently empowered to give under the Merchant Shipping Act 2001 in relation to Maritime Administration,

and the Board shall give effect to such directions.

- (3) Section 447 of the Merchant Shipping Act 2001 shall apply in relation to the statutory functions of the Minister.

### **Board of Directors**

9. (1) There shall be a Board of Directors of the Authority which shall, subject to this Act and legislation relating to merchant shipping, be responsible for the actions of the Authority and the general administration of its affairs and business.

(2) The Board shall consist of not less than five nor more than seven Directors who are voting members of the Board, including a Chairperson and Deputy Chairperson, appointed by the Minister with the approval of Cabinet, from persons qualified and having experience in or having shown capacity in matters relating to

- (a) maritime affairs;
- (b) industry;
- (c) commerce;
- (d) transportation;
- (e) finance;
- (f) law;
- (g) government; or
- (h) administration,

and one non-voting member.

(3) For the purposes of subsection (2), one person shall be nominated by the Leader of the Opposition.

(4) The Directors shall be paid such fees and allowances as Cabinet may determine.

(5) Schedule 1 shall have effect with respect to the constitution and proceedings of the Board and, subject to this Act, the Board may regulate its own proceedings.

### **Interest register**

10. (1) The Minister shall cause to be compiled and maintained, in accordance with this Act and in such form as the Minister considers appropriate, an interest register.

(2) Where any Director has an interest in any business conducted by the Authority, the Director shall file a written notice in the interest register as soon as reasonably practicable after the Director becomes aware that such business is being transacted.

### **Delegation of powers**

11. (1) Subject to this Act, the Board may, delegate to

- (a) a Director;
- (b) a committee appointed by the Board; or
- (c) the Managing Director,

any of the functions or powers of the Authority under this Act, except the power of delegation conferred by this section.

(2) Every delegation under this section shall be in writing and shall be revocable by the Board, but no such delegation shall prevent the Board from exercising the powers so delegated.

### **Immunity from suit**

12. No action, suit, prosecution or other proceedings shall lie against any Director, any member of the staff or any person acting on behalf of the Authority in respect of any act done, or any omission made, in good faith in the execution or intended execution of any function under this Act.

### **Confidentiality**

13. (1) Subject to subsection (2), a person, being a Director, an officer, employee, agent or adviser or member of staff of the Authority shall not reveal or in any manner communicate or disclose to any other person, except as authorised or required by law, any information acquired by him or her by reason of his or her office or employment or in exercise of the Authority's function under or for the purposes of this Act or any other law, which information relates to the affairs of

- (a) the Authority;
  - (b) a ship on the register; or
  - (c) registered owner of a Virgin Islands ship.
- (2) Subsection (1) shall not apply to a disclosure
- (a) lawfully required or permitted by a court of competent jurisdiction in the Virgin Islands;
  - (b) made for the purpose of assisting the Authority to exercise a function conferred on it by this Act or any other law;
  - (c) made in respect of the affairs of a ship or its owner for which consent has been voluntarily given by the owner;
  - (d) where the information disclosed is or has been available to the public from any other source;
  - (e) where the information disclosed is in a summary or in statistics expressed in a manner that does not enable the identity of the person to whom, or a ship to which, the information relates to be ascertained; or
  - (f) lawfully made to a person entitled to obtain such information under the laws of the Virgin Islands.

(3) A person who knowingly contravenes subsection (1) commits an offence and is liable

- (a) on summary conviction, to a fine not exceeding twenty thousand dollars or to a term of imprisonment not exceeding one year or both; or
- (b) on conviction on indictment, to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years or both.

### **Managing Director**

14. (1) The Board shall, with the approval of Cabinet, appoint a Managing Director as the principal officer of the Authority who shall have

- (a) general management and direction of the Authority;
- (b) superintendence of ships registered in the Virgin Islands; and
- (c) responsibility for the enforcement and administration, on behalf of the Board, of the Merchant Shipping Act, 2001 and any other related law.

(2) When the Managing Director is absent or is for any reason unable to perform his or her functions, the Board shall appoint the Deputy Managing Director or in the absence of the Deputy Managing Director, a senior employee of the Authority to discharge the functions of the Managing Director during the period of his or her absence or inability.

(3) Any person appointed pursuant to subsection (2), when acting within the scope of the appointment, shall exercise the full authority of the Managing Director, and shall be eligible for remuneration commensurate to the service provided.

(4) Subject to this Act and applicable laws, the terms and conditions on which the Managing Director holds office are to be as determined by the Board.

### **Appointment of other staff**

15. (1) The Board shall appoint and employ such number of qualified staff including a Deputy Managing Director as it considers necessary and proper for the performance of its functions.

(2) Appointments under this Act shall be on such terms as to remuneration, expenses, pensions and other conditions of service as the Board thinks fit.

(3) Subject to subsection (4), the Board may establish and maintain such plans or make such other arrangements as it thinks fit for the payment of pensions and other benefits in respect of its officers and employees.

(4) The Minister, with the approval of the Cabinet, may approve the establishment and maintenance of such plans or other arrangements.

PART III  
FINANCIAL PROVISIONS

**Financial year**

16. (1) The financial year of the Authority is the period of twelve months ending on the 31<sup>st</sup> day of December in any year.

(2) The first financial year shall consist of the period commencing on the date of the establishment of the Authority and ending on the 31<sup>st</sup> day December of the following year.

**Work plan and budget**

17. (1) The Authority shall prepare an annual budget, which shall include
- (a) an estimate of total operating expenditures for the upcoming financial year;
  - (b) an estimate of the total capital expenditures for the upcoming financial year; and
  - (c) an estimate of the total revenues, by source.

(2) Not later than six months before the commencement of each financial year, the Authority shall prepare its work plan for the upcoming financial year, which shall include

- (a) the Authority's strategic priorities for the upcoming financial year;
- (b) any major activities that the Authority anticipates undertaking during the upcoming financial year;
- (c) any quantitative indicators that the Authority has adopted to measure its performance during the upcoming financial year; and
- (d) a preliminary estimate of the Authority's budget for the upcoming financial year.

(3) Not later than three months before the commencement of each financial year, the Authority shall submit to the Minister and to the Minister for Finance

- (a) a preliminary report setting out the Authority's proposed work plan for the next financial year; and
- (b) a proposed budget, with a request for approval, in such form and in such detail as the Minister for Finance may require, for the upcoming financial year.

(4) The Minister for Finance shall

- (a) consider
  - (i) the documents submitted under subsection (3) and any other information submitted by the Authority; and
  - (ii) any information submitted by the Minister;
- (b) after taking into account and having due regard to such representations made by the Authority and the Minister, make any

modifications to the proposed budget that the Minister for Finance deems necessary and proper; and

(c) issue a written decision approving the budget.

(5) The budget that is approved under subsection (4)(c) shall constitute the Authority's budget for the upcoming financial year and shall be published in the *Gazette*.

(6) After the budget has been approved, the Authority shall issue a final report setting out the Authority's work plan for the next financial year.

(7) The Authority shall not, without the approval of the Minister, spend in total in any financial year more than the total amount of expenditures specified in the approved budget for that financial year.

(8) The Authority shall make annual or periodic budget reports in respect of its activities in such form as the Minister may direct.

(9) The Authority shall submit to the Minister for Finance quarterly reports during each financial year or as the Minister may from time to time otherwise require.

(10) The Authority shall specify in its annual report the title and corresponding salary of every senior executive within the Authority.

(11) In this section, "senior executive" means

(a) a Director or the Managing Director; and

(b) any other person who, under the immediate authority of a Director or the Managing Director

(i) exercises managerial functions; or

(ii) is responsible for maintaining accounts or other records of the Authority.

### **Funds of the Authority**

18. (1) The funds of the Authority shall consist of

(a) fees, charges and other monies payable to the Authority;

(b) such monies as may be appropriated by the House of Assembly for the purposes of the Authority;

(c) monies paid and property provided to the Authority by way of grants, fees, charges, rent, interest and other income derived from the investment of the Authority's funds;

(d) monies derived from the disposal of or dealing with real or personal property held by the Authority; and

(e) monies borrowed by the Authority in accordance with this Act;

(f) any property lawfully received or made available to the Authority.

(2) The Authority may create such special funds as appropriate with the express approval of the Minister for Finance.

(3) The Authority, consistent with its approved budget, shall apply its funds and revenues

(a) towards

(i) remuneration and allowances to the officers, employees and other persons employed or engaged by the Authority; and

(ii) allowances and fees for Directors;

(b) in the repayment of any sums provided or advanced by the Government under section 18 or borrowed by the Authority under section 19;

(c) to meet all other costs and expenditures properly incurred in carrying out the functions of the Authority.

(4) The authorised capital of the Authority

(a) shall be established by agreement between the Minister for Finance and the Board; and

(b) shall include sufficient capital to allow the Authority to operate efficiently;

(c) shall be subscribed at such times and in such amounts as the Board, with the approval of the Minister for Finance, may require.

(5) The Authority may increase the authorised capital, subject to the approval of the Minister with the approval of the Minister for Finance.

### **Initial capital and advances**

19. (1) The initial paid-up capital of the Authority shall be established by agreement between the Minister and the Board, and approved by the Minister for Finance, and shall be used

(a) to fund the start-up of the Authority; and

(b) to cover the operating expenses that the Authority incurs during the period from the establishment of the Authority until the earlier of

(i) the 31<sup>st</sup> day of December of the year following the date of the initial meeting of the Board; or

(ii) the date by which the Authority has collected sufficient revenues from fees to cover operating expenses on a going forward basis.

(2) The Minister may enter into agreements with the Authority for the repayment, on terms satisfactory to the Minister of Finance, of the initial paid-up capital and any amount from time to time provided or advanced to the Authority by the Government.

## **Loans**

**20.** (1) The Minister for Finance, subject to the approval of Cabinet, may with the approval of the House of Assembly make loans to the Authority, and shall specify in writing the terms and conditions of the loan, including the duration of the loan and the rate of interest to be charged.

- (2) The Authority, with the written approval of the Minister for Finance,
- (a) may enter into loan agreements with licensed financial institutions; and
  - (b) secure the repayment of any monies borrowed by future anticipated revenue that the Authority will derive from the payment of the Authority's fees.

(3) The Minister for Finance, subject to the approval of Cabinet, may, with the approval of the House of Assembly, guarantee, in such manner the terms and conditions as the Cabinet thinks fit, the payment of the principal of, and any interest and other charges on, any sums borrowed by the Authority.

(4) A guarantee given under this section shall be given in writing in the name of the Government and may be signed for or on behalf of the Government by the Minister for Finance or any person authorised in writing by the Minister for Finance to do so.

## **Operating Fund**

**21.** (1) The Authority shall establish and maintain an operating fund.

- (2) The operating fund shall consist of
- (a) any moneys as from time to time
    - (i) are provided or advanced by the Government pursuant to section 18 or borrowed by the Authority pursuant to section 5(2)(d); or
    - (ii) accrue to the Authority from its operations, including registration fees, annual fees, inspection fees or other payments prescribed by the Merchant Shipping Act, 2001 or any other law relating to the powers and functions of the Authority;
  - (b) such other property as may from time to time be lawfully vested in the Authority.

## **Reserve Fund**

**22.** (1) The Authority shall establish and maintain a Reserve Fund.

- (2) The Reserve Fund shall consist of funds necessary
- (a) to cover any immediate accident or incident expenditures prior to insurance claims; and
  - (b) to cover expenditures in case of loss of business.

## **Investment**

**23.** (1) The Authority shall open bank accounts and purchase the financial instruments specified in subsection (4), in its own name.

(2) Subject to subsection (3), the Authority shall maintain the operating fund in interest-bearing bank accounts within the Virgin Islands.

(3) With the prior approval of the Minister for Finance and in accordance with his or her directions, the Authority may maintain any part of the funds in its Operating Account in interest-bearing bank accounts in a bank outside of the Virgin Islands

- (a) if the bank outside the Virgin Islands in which the funds will be kept is approved by the Minister for Finance for such purpose; and
- (b) in accordance with the instructions of the Minister for Finance relating to how such account shall be managed.

(4) The Authority shall maintain its Reserve Fund in an amount agreed with the Minister and the Minister for Finance and in

- (a) interest-bearing bank accounts;
- (b) certificates of deposit;
- (c) treasury bills issued by the Government of the United States of America; and
- (d) such other investments as the Board considers fit.

## **Transfer of net surplus**

**24.** (1) In any year in which the Authority realises a net surplus, the Authority, after recouping any net losses, shall transfer any remaining surplus in the manner and in the amounts (by reference to a percentage amount) as from time to time agreed by the Board, with the approval of the Minister for Finance, to

- (a) the Consolidated Fund;
- (b) the paid-up capital of the Authority; and
- (c) the Reserve Fund.

(2) Notwithstanding subsection (1), in any year in which making the payment specified in subsection (1)(b) would cause paid-up capital and the Reserve Fund to exceed the Authority's authorised capital, the Authority

- (a) after making the payment specified pursuant to subsection (1)(a); and
- (b) after making any payment necessary to cause paid-up capital and the Reserve Fund to equal the Authority's authorised capital,

shall pay the balance of the net surplus to the Consolidated Fund.

## **Accounts and audit**

**25.** (1) The Authority shall

- (a) keep proper accounts and records of its transactions and affairs;



(b) do all things necessary to ensure that all payments out of its moneys are properly authorised and correctly made, and that adequate control is maintained over its assets, or those assets in its custody, and its expenditure; and

(c) for each financial year, prepare financial statements in such form as the Accountant General may direct.

(2) The accounts of the Authority shall be audited by the Auditor General or such other auditor as may be appointed annually by the Auditor General.

(3) A person shall not be qualified for appointment as an auditor under subsection (2) unless the auditor is a certified or chartered accountant who is practicing in the Virgin Islands.

(4) If the Auditor General appoints an auditor under subsection (2), the remuneration of that auditor shall be paid by the Authority.

(5) Within three months after the end of each financial year, the Authority shall submit to the auditor its financial statements for the year and shall meet any reasonable request from the auditor for information relevant to the audit.

(6) The auditor shall, as soon as practicable after the financial statements have been submitted for audit, conduct the audit and send a report of the audit to the Authority.

(7) The Authority shall submit a copy of the audited accounts to the Minister together with a copy of any report made by the auditor.

(8) The auditor shall also submit such periodical and special reports to the Minister for Finance and to the Authority as may appear to the auditor to be necessary or as the Minister or the Authority may require.

(9) In subsections (4) to (8), where an auditor has not been appointed under subsection (2), "auditor" includes the Auditor General.

### **Publication of accounts and annual report**

**26.** (1) The Authority shall, within thirty days of receiving the auditor's report referred to in section 24 (7), prepare and transmit to the Minister

(a) a report on the operations of the Authority during the preceding financial year, including a discussion of

(i) the major activities undertaken;

(ii) any significant deviations from the work plan adopted by the Authority pursuant to section 16;

(iii) any significant deviations from the budget adopted by the Authority pursuant to section 16; and

(iv) the results achieved; and

(b) a copy of the annual financial statements of the Authority certified by the auditor.

(2) The Minister shall, within three months of receiving the Authority's Annual Report, auditor's report and certified financial statements, lay them in the House of Assembly.

PART IV  
MISCELLANEOUS PROVISIONS

**Applicability of National Health Insurance provisions of the Social Security Act**

27. For the avoidance of doubt, the National Health Insurance provisions of the Social Security Act shall apply to the Authority.

**Taxation**

28. (1) The Authority is exempt from payment of stamp duty, customs duty, land and other taxes of like nature including vehicle licensing fees on its income and operations.

(2) The Authority is under a legal duty to compute all savings from subsidies given by the Government in order to reflect the real operating cost of the Authority.

**Exemption from Work Permit**

29. A person who is employed by the Authority, whether as a contract officer or a consultant, and who would be required to obtain a work permit pursuant to the Labour Code Act 2010, is exempted from applying for and holding a work permit for the purpose of his or her employment with the Commission.

**Transfer of Government officers and employees to the Authority**

30. (1) Subject to subsection (2), every officer or employee of the Virgin Islands Shipping Registry shall be deemed to be transferred from the service of the Government to the service of the Authority upon terms and conditions, including any tax benefits, not less favourable in aggregate than those which were attached to the appointments held by such officers and employees under the Government.

(2) Every officer and employee who is deemed to have been transferred under subsection (1) shall, within six months of the coming into force of this Act, have the option of electing

- (a) to continue in the service of the Authority, in which case such service shall be retrospective from the date of his or her transfer and he or she shall be entitled to such pension, gratuity and other allowances and rights, if any, as he or she would have received had he or she been retired from the service of the Government on the abolition of his or her office on the date of his or her transfer to the Authority;
- (b) to be transferred to another department of the Government, subject to a suitable vacancy existing, with his or her service with the Authority counting as service with the Government in respect of his or her pension, gratuity and other allowances and rights, if any; or
- (c) to be deemed to have retired from the service of the Government on the abolition of his or her office

- (i) on the date he or she ceases to be in the service of the Authority; or
- (ii) where his or her service with the Authority has not been broken, on the date that he or she would have completed thirty-three and a third years' continuous service with the Government had he or she remained in the service of the Government, whichever is earlier.

(3) Where any officer or employee referred to in this section fails to elect as provided under subsection (2), he or she shall be deemed to have elected under subsection (2)(a) and he or she shall be treated accordingly.

(4) The Authority shall reimburse the Government with the cost of any pension, gratuity and other allowances and rights, if any, arising from the period which any such officers or employees who elect not to continue with the Authority did serve with the Authority.

- (5) Nothing in this section shall be deemed to affect the right of the Board
  - (a) to terminate the employment of any officer or employee transferred to the service of the Authority; or
  - (b) to vary the rate of pay or conditions of service of an officer or employee, in the manner and to the extent that the Government could have done had he continued in the service of the Government.

(6) Subject to subsection (7), where any officer or employee has elected to continue in the service of the Authority under subsection (2) or has been deemed to so continue under subsection (3), he or she shall not be entitled to be paid any pension, gratuity or other allowance that may have accrued to him or her whilst in the service of the Authority, until the time when he or she would have qualified for pension, gratuity or other allowance under the Pensions Act had he or she continued in the service of the Government.

(7) Subsection (6) shall not be construed as requiring a person to cease to be in the service of the Authority in order for him or her to be entitled to be paid any pension, gratuity or other allowance pursuant to that subsection.

- (8) Nothing in this section prevents a person who
  - (a) has elected to continue in the service of the Authority under subsection (2) or has been deemed to so continue under subsection (3); and
  - (b) is or may become entitled to be paid any pension, gratuity or other allowance by virtue of this section,

from participating in and benefitting from any scheme or arrangement for the payment of pensions and other benefits established by the Authority, or from being re-employed by the Authority on contract while receiving any pension, gratuity or other allowance by virtue of this section.

### **Transfer of Government contracts of employment to the Authority**

31. (1) Where, immediately before the coming into force of this Act, the Government had a contract of employment with a person, other than an officer or employee referred to in section 14 then, upon the coming into force of this Act,

such contract shall continue to have effect in accordance with its terms as if it was originally made between such person and the Authority, and all the rights, powers, duties and liabilities which accrued under or in connection with such contract shall be enforceable by or against the Authority as if it were originally made between that person and the Authority.

#### **Power to amend Schedules**

32. The Minister may, with the approval of the Cabinet, amend the Schedules by Order published in the *Gazette*.

#### **Regulations**

33. (1) The Minister may, with the approval of Cabinet, make Regulations for carrying into effect the provisions of this Act

(2) Regulations made pursuant to this Act shall be subject to an affirmative resolution of the House of Assembly.

#### **Savings and transitional**

34. The savings and transitional provisions that are set out in Schedule 2 shall have effect.

## SCHEDULE 1

[Section 8(4)]

### CONSTITUTION AND PROCEEDINGS OF THE BOARD

#### Appointment of Chairperson and other officers

1. (1) The Minister shall appoint from among the Directors a Chairperson, and a Deputy Chairperson.

(2) The Managing Director shall be an *ex-officio*, non-voting member of the Board.

(3) The Board shall appoint a Secretary to the Board with such duties as the Board may determine.

#### Tenure of office of Directors

2. (1) Subject to subparagraph (2), a Director shall hold office on such conditions and for such term as the Minister may determine.

(2) The initial Directors of the Board shall be appointed as follows:

- (a) at least one for a term of two years;
- (b) at least one for a term of three years; and
- (c) at least one for a term of four years.

(3) A Director may be reappointed for a term not exceeding three years and shall not be eligible to serve more than three consecutive terms.

(4) The Minister may, by notice in writing, revoke the appointment of a Director, if satisfied that the Director

- (a) is incapable, for any reason, of discharging his or her functions as a Director;
- (b) has, without the consent of the Chairperson, been absent from three consecutive meetings of the Board;
- (c) is, or becomes disqualified from being appointed as a Director pursuant to section 9(2); or
- (d) is guilty of misconduct.

#### Resignation

3. Any Director may resign from his or her appointment at any time by giving notice in writing to the Minister.

#### Filling of vacancies

4. If a Director resigns, dies or otherwise vacates his or her office before the expiry of the term for which the Director has been appointed, the Minister may appoint another person for the unexpired period of the term of office of the Director in whose place he or she is appointed.

### **Disclosure of interest by Directors**

5. (1) A Director who is in any way, directly or indirectly, interested in any matter relating to a contract, other transaction or project of the Board shall whether or not the Director's interest appears in the register of interests, disclose the nature of his or her interest at the first meeting of the Board at which he or she is present after the relevant facts have come to his or her knowledge.

(2) A disclosure under subparagraph (1) shall be recorded in the minutes of the meeting of the Board and, after the disclosure, that Director shall not take part in any deliberation of the Board with respect to that contract, transaction or project.

(3) For the purpose of determining whether there is a quorum, a Director shall be treated as being present at a meeting notwithstanding that under subparagraph (2) he or she cannot vote or has withdrawn from the meeting in respect of the matter in question.

### **Committees of Board**

6. (1) For the purpose of advising or assisting the Board in the performance of its functions, the Board may appoint such committees as the Board determines is appropriate.

(2) Each committee appointed by the Board shall consist of at least two Directors together with such other persons as the Board determines is appropriate for the purpose in respect of which the committee is appointed.

(3) On receipt of advice from any of its committees, the Board shall decide whether or not to adopt that advice, in whole or in part or with such modifications as the Board thinks fit.

(4) A committee appointed under this paragraph shall, in the performance of functions, all times be subject to such directions, conditions and restrictions as may be imposed by the Board and shall adhere to all policies of the Board.

(5) The Chairperson of each committee appointed under this paragraph shall ensure that the committee prepares and submits to the Chairperson of the Board a report of the functions delegated to the committee, and the progress thereof, before the end of every quarter in the year.

### **Use of Seal, authentication and authenticity of documents**

7. (1) The seal of the Authority shall be

(a) kept in the custody of the Secretary of the Board; and

(b) fixed to all documents issued by the Board in the presence of at least one other member of the Board and shall be authenticated by the signatures of the Chairperson or Deputy Chairperson, together with the signature of the Managing Director or other officer or employee of the Authority duly authorised to act on behalf of the Managing Director and the seal shall be judicially noticed.

(2) All instruments, contracts and other documents issued by the Authority, other than those required by law to be under seal, and all decisions of the Authority, shall be signed by the Chairperson or some other member, officer or

employee of the Authority authorised by the Board to do so on behalf of the Authority.

(3) A document purporting to be an instrument issued by the Authority, and to be sealed or signed on behalf of the Authority in accordance with this paragraph, shall be received in evidence and shall be deemed to be such an instrument without further proof unless the contrary is shown.

### **Meetings and proceedings of Board**

8. (1) The Chairperson shall summon meetings as often as may be required and shall summon meetings at least once per quarter.

(2) The quorum at every meeting of the Board shall be three Directors except where the Board consists of seven members, the quorum shall be four.

(3) A decision at a meeting of the Board shall be adopted by a simple majority of the Directors present and voting except that in the case of an equality of votes the Chairperson, Deputy Chairperson or Director presiding shall have a casting vote in addition to his original vote.

(4) The Chairperson, or in his or her absence the Deputy Chairperson, shall preside at all meetings of the Board.

(5) Where both the Chairperson and the Deputy Chairperson are absent from a meeting, the Directors present may elect a Director to preside at that meeting.

(6) Where not less than four Directors of the Board request the Chairperson by notice in writing signed by them to convene a meeting of the Board for any purpose specified in the notice, the Chairperson shall, within seven days from the receipt of the notice, convene a meeting for that purpose.

(7) The Board may act notwithstanding any vacancy in its Directorship.

(8) Subject to this Act, the Board may make rules to regulate its own procedure generally, and, in particular, the holding of meetings, the notice to be given of such meetings, the proceedings thereat, the keeping of minutes and the custody, production and inspection of such minutes.

### **Validity of acts**

9. Provided a quorum is present, the validity of any proceeding of the Authority shall not be affected by any vacancy amongst the members or by any defect in the appointment of a member.

## SCHEDULE 2

[Section 33]

### SAVINGS AND TRANSITIONAL MATTERS

#### Continuity of Register of Ships

1. (1) Anything done by or in relation to the Register of Ships and having effect immediately before the commencement date shall, so far as is required for continuing its effect thereafter, be treated as if it had been done by or in relation to the Authority.

(2) The Authority shall continue to maintain the Register of Ships that has been kept under the Merchant Shipping Act 2001.

(3) The Register of Ships shall continue to contain the information that is set out in the Merchant Shipping Act 2001.

#### Transfer of Register of Ships

2. The Register of Ships shall transfer to the Authority together with all the powers and functions vested in the appointments under the Merchant Shipping Act 2001 and references in enactments and instruments to the Register of Ships shall be construed accordingly.

#### Transfer of appointments

3. The person who immediately before the commencement date

(a) was the holder of the office of Director of the Virgin Islands Shipping Registry, shall hold the office of Managing Director under and for the purposes of this Act as if that person had been appointed under this Act on the same terms and conditions, subject to the applicable law, that applied to the office of Director of the Virgin Islands Shipping Registry immediately before the commencement date;

(b) was the holder of the office of Deputy Director of the Virgin Islands Shipping Registry, shall hold the office of Deputy Managing Director under and for the purposes of this Act as if that person had been appointed under this Act on the same terms and conditions, subject to the applicable law, that applied to the office of Deputy Managing Director of the Virgin Islands Shipping Registry immediately before the commencement date;

(c) was the holder of the office of

(i) Chief Marine Surveyor; or

(ii) Registrar of Shipping,

shall hold that office under and for the purposes of this Act as if that person had been appointed under this Act on the same terms and conditions, subject to the applicable law, that applied to that office immediately before the commencement date.



### **Transfer of property, rights and liabilities**

4. (1) With effect from the date of the commencement date, all chattels and movable property vested immediately before that date in the Government of the Virgin Islands and used by it for the operation of the Virgin Islands Shipping Registry are hereby transferred to and vested in the Authority in the same manner and for the same purpose as previously held by the Government.

(2) The transfer and vesting as set out in subparagraph (1) shall extend to the whole of such chattels or movable property and undertakings and shall include

- (a) all rights, powers, privileges and all things necessary or ancillary thereto which are held or enjoyed in connection with, or appertaining to, the same;
- (b) all liabilities and other obligations,

which, immediately before the commencement date, the Virgin Islands Shipping Registry was subject to.

(3) Subject to this Act, all laws, rules, regulations, orders, judgments, decrees, awards, deeds, bonds, contracts, agreements, instruments, documents, warrants and other arrangements subsisting immediately before the commencement date affecting or relating to any of the chattels, movable properties or undertakings transferred to the Authority by or under this Act shall

- (a) have full force and effect against or in favour of the Authority; and
- (b) be enforceable fully and effectually,

as if instead of the Government, the Authority has been named therein or had been a party thereto, and otherwise in substitution of the Government.

### **Transfer of proceedings etc.**

5. (1) Anything in the process of being done by the Government or in relation to the Register of Ships on the commencement date, including any legal proceedings then pending to which either of those bodies is a party, may be continued by or in relation to the Authority.

(2) Where, immediately before the commencement date

- (a) any legal proceedings are pending to which the Government is or is entitled to be a party; and
- (b) such proceedings are related to any of the chattels, movable properties or undertakings, or any right or liability transferred by or under this Act,

the Authority shall, as from the date aforesaid, be substituted in such proceedings for the Government or shall be made a party thereto in like manner as the Government could have become, and such proceedings shall not abate by reason of the substitution.

Passed by the House of Assembly this 12<sup>th</sup> day of September, 2023.



Corine N. George-Massicote,  
Speaker.



Phyllis Evans,  
Clerk of the House of Assembly.

## LEGAL REPORT

This Act establishes the Virgin Islands Shipping and Maritime Authority which is a body responsible for the administrative matters currently provided for in the Merchant Shipping Act, 2001.

The Act consists of four parts.

Part I (sections 1 - 2) provides for preliminary matters.

The preliminary provisions provide for the short title and commencement of the Act, as well as define various terms used throughout the Act.

Part II (sections 3 - 15) provides for the establishment, functions and powers of the Virgin Islands Shipping and Maritime Authority.

Sections 3 to 5 provides for the establishment, functions and powers of the Authority. Section 6 gives the Authority the power to issue general and mandatory guidance notices. Section 7 provides for the Authority to maintain an official website. Section 8 provides for the Minister to give general directions to the Authority.

Section 9 provides for a Board of Directors. Section 10 provides for the Minister to maintain an Interest Register which contains any interest a Director may have in any business being conducted by the Authority. Section 11 provides for the Board to delegate some of its powers with the approval of the Minister. Sections 12 and 13 protect the Directors and persons acting on behalf of the Authority from prosecution for acts done in the execution of their functions. It also provides for persons to keep confidential any information acquired by reason of their office or employment with the Authority.

Sections 14 and 15 provide for the appointment of the staff of the Authority, including a Managing Director.

Part III (sections 16 - 26) set out the financial provisions.

Section 16 prescribes the financial year of the Authority. Sections 17 and 18 provide for the preparation of a work plan and budget, and the funds of the Authority. Sections 19 and 20 provide for the initial capital of the Authority as well as for advances to be made to the Authority or for loans.

Sections 21 and 22 require the Authority to establish an operating fund and a reserve fund. Whilst section 23 provides for investments by the Authority. Section 24 provides for the transfer of net surplus and section 25 the keeping of proper accounts and records of the Authority's finances and auditing of the Authority's accounts.

Section 26 provide for the annual report of the Commission to be laid before the House of Assembly.

Part IV (sections 27 - 34) provides for various miscellaneous matters including, exempting the Authority from taxes and duties and exempting its employees from work permit requirements. It also provides for the transfer of the officers and employees of the Virgin Islands Shipping Registry to the Authority or to another department of Government, as well as the transfer of contract workers to the Authority.

Sections 33 and 34 provide for the Minister to amend the Schedules by Order and for the making of regulations, and for the savings and transitional provisions.

This Act was introduced in the House of Assembly on the 29<sup>th</sup> June, 2023, taken through its remaining stages and passed on the 12<sup>th</sup> September, 2023.

In my opinion, His Excellency the Governor may properly assent to this Act in the name and on behalf of His Majesty.



Dawn J. Smith  
Attorney General  
12<sup>th</sup> October, 2023