

DRAFT VIRGIN ISLANDS
SHIPPING AND MARITIME
AUTHORITY ACT

1. **TITLE:** This Act shall be called the Virgin Islands Shipping and Maritime Authority Act.

PURPOSE: The purpose of the Act is to establish the Shipping and Maritime Authority. The establishment of the Authority and the introduction of a new management structure are aimed at improving the operations and viability of the BVI's ships register. The Authority will fully direct, manage, and control the maritime matters of the Virgin Islands, and its overall success hinges on the ability to be responsive to market needs and pressures, its ability to access, establish, and maintain business presence in key global market regions; and a management structure that is knowledgeable and focused therein allowing timely and objective decision making. The organizations focus has to be success as a quality flag therein supporting sustained self-sufficient revenue levels; and further bolstering the BVI company registration and tourism products. Business operations in key market regions will be required; inclusive of the ability to establish physical office functions in key markets and to execute financial transactions globally.

2. **BACKGROUND:** The change in governance of the Virgin Islands Shipping Registry (VISR) is an urgent necessity as the Government considers various initiatives for economic diversification, broadening of the BVI economic base and improving the revenue flows, transactions and jobs within the economy. The transactions of shipping business and ownership and the associated economic activities are foreseen as a part of the diversification solution.

Currently, the direction and control of VISR are with the Premiers Ministry. The appointment and installation of a Board will decentralize the responsibilities of management and leadership. Hence, legally the ultimate responsibility for international maritime compliance, regulation of the BVI maritime waters, and the efficient and effective operation of the commercial registry product will rest with the governing Board. The Board also assumes complete authority over, and the responsibility for, the conduct of the Authority's personnel and services.

The Board shall be an autonomous corporate body. Separating VISR from the Central Government administration having it work under a Management Board will provide several advantages;

- (a) the Authority will be able to manage its finances more effectively;
- (b) the Authority will be released from some of the bureaucratic hurdles it now experiences in such areas as hiring, employee continuing education and program development;
- (c) the Board will have a mix of people from the public and private sector bringing new perspectives to the operations of the Authority;
- (d) as a result of (b) and (c) above, the Authority will be proactive and respond more quickly to changes in the local, regional and international maritime arenas; and

- (e) the organization will have more flexibility in its operations as a commercial business entity negotiating with potential clients especially in an effort to attract fleets to the flag.

The establishment of an autonomous Board is in line with many global flags and reflective within the Red Ensign Group of flags with Cayman, Bermuda and Isle of Mann all being statutory.

3. ESTABLISHMENT OF THE AUTHORITY MANAGEMENT BOARD: The having powers and duties conferred or imposed upon it by the Act and any other statutory provision. The Board shall be a body corporate having perpetual succession and a common seal subject to the Act and should have the power to acquire by purchase, exchange, devise, bequest or gift, and to hold and dispose of by sale, exchange, gift or any other manner moveable and immovable property of any kind and to enter into contracts and to do all things necessary for the purposes of its functions. The Board should be able to sue and be sued in its corporate name.

4. ACCOUNTABILITY: The Board will be responsible to the Premier and by extension the Government of the British Virgin Islands. The Board will be required to report to the Premier through the Chairperson of the Board. In addition, the Board must submit an annual report to the Premier, and develop and submit its annual budget to the Premier; and Minister of Finance for approval.

5. AUTHENTICATION OF DOCUMENTS: The Board should have a seal that is authenticated by the Chairperson or the Deputy Chairperson together with the Chief Executive Officer and should be judicially and officially noticed. However, in the absence of both the Chair and Deputy Chairperson, the Chief Executive Officer may be given authorization by the Chair or Deputy Chairperson to sign on their behalf. All documents, other than those required by law to be under seal, made by the Board and all decisions of the Board should be signified under the hand of the Chairperson or any other member or officer authorized to act in that behalf.

6. CONSTITUTION OF THE BOARD: It is very useful to appoint a variety of skills to the Board, since this will bring a valuable set of resources that the Authority needs to draw on for its strength and effectiveness. The Board should consist of not less than five but no more than seven members in addition the Minister may appoint the Managing Director as an ex-officio non-voting members. The board will be appointed by Cabinet and comprised of persons appearing to be qualified as having had experience of or having shown capacity in matters relating to maritime affairs; industry; commerce; transportation; finance; law; government; or administration.

7. REMUNERATION OF MEMBERS: The Directors shall be paid such fees and allowances as Cabinet may determine. It is recommended that the Chairperson and other members be paid four hundred dollars (\$500.00) and two hundred (\$300.00), respectively, per board meeting.

8. BOARD MEETINGS: The Board should meet as often as it deems necessary or expedient for the due performance of its functions, but in any event, should not meet less than two times per year. The quorum of the Board should be three voting members, including the member of the Board presiding at that particular meeting. Every question or matter to be determined by the Board at any meeting shall be decided on by a majority of

the votes of the members present and voting on the matter – provided that in the event of an equal division of votes on any question or matter the person presiding at the meeting may give a second or casting vote.

9. TENURE OF OFFICE AND VACATION OF SEATS: For effective planning and continuity in the Authority operation, there must be continuity of the Board membership. Membership maximizes at four (4) years. The Chairperson and Deputy Chairperson are appointed by the Minister from among the members; with at least one member having a two (2) year term, at least one a three (3) year term, and at least one a term of four (4) years. A member may be reappointed for any term not exceeding three (3) years. Any member may at any time tender his resignation in writing, addressed to the Minister.

10. ROLE AND RESPONSIBILITIES OF THE BOARD: A proper and clear definition of the roles and responsibilities of the Authority is very critical to the effective functioning of the Board. The Board should has the general charge and management of the Authority and any moveable or immovable property. The Board should:

- (a) set the strategic direction of the Authority, through the development of its strategic plan and determine Authority policies;
- (b) manage the operations of the Authority and control its activities to ensure that the primary functions are achieved;
- (c) establish within the Authority such departments or divisions as are considered necessary;
- (d) ensure that the premises of the Authority are kept as resistant to disaster as possible and that there is a disaster preparedness plan for the Authority that is known to all staff;
- (e) develop and maintain a pension scheme for employees that is no less favourable than that of employees in the Government Service;
- (f) recruit, appoint, train, promote members of staff of the Authority and exercise discipline over such staff, including the suspension and/or termination of employment through its Human Resources Department;

- (g) ensure that the highest performance is realized by all staff employed and that professional standards are maintained;
- (h) develop a marketing plan that promotes the Authority's services and attracts individuals to utilize the services that are provided, creating partnership and encouraging involvement with the community, which will serve the best interest of the Authority;
- (i) prescribe and collect all fees payable to the Authority for services provided;
- (j) ensure the development and implementation of a customer service programme that encompasses all levels of Authority services, creating partnership and encouraging involvement with the community, which will serve the best interest of the Authority;
- (o) ensure that the Authority develops and implements a quality assurance programme and attains accreditation from the appropriate accrediting body;
- (p) ensure adequate financing and control of expenses through a well planned annual budget and prepare and submit a financial report to the the Ministry of Finance;
- (q) ensure that audited reports are available so that they can be laid on the table at Legislative Council in a timely manner;
- (r) give effect to general policy directions given by the Minister including directions pertaining to the provision of services by the Authority, the determination of the principles upon which the fees payable for services rendered by or at the Authority are imposed and any other matter concerning the Authority and integral to the protection of the public interest.

11. POWERS OF THE BOARD: With reference to the Authority, the Board may:

- (a) establish sub-committees as deemed necessary;
- (b) delegate the performance of any duty imposed or the exercise of any power conferred by or under the Act upon the Board to a sub-committee composed of Board members or Board members and non-Board members. However, no act of the sub-committee shall have any effect unless the Board ratifies such act.
- (h) borrow money and to secure the repayment of any money borrowed by mortgaging or pledging any property of the Board or by the issue of debentures, debenture stock or scrip or otherwise;
- (i) draw, negotiate and accept bills of exchange, cheques and promissory notes;

- (j) make, with the approval of the Minister for Finance, schemes providing for the establishment and maintenance of superannuation funds, the contributions payable thereto and the benefits receivable therefrom;
- (k) enter into all such contracts, as the Board may consider necessary or expedient to be entered into for the due performance of any duty imposed or the effective exercise of any power conferred upon the Board by or under the Act;
- (l) incur expenditures as the Board may consider necessary or expedient for the due performance of any duty that is imposed or the effective exercise of any power conferred upon the Board by or under the Act; and

12. FINANCIAL RESOURCES OF THE BOARD:

The initial paid-up capital of the Authority shall be established by agreement between the Minister and the Board, and approved by the Minister of Finance. The funds shall be used to fund the start-up of the authority. The Authority shall establish an operating fund and a reserve fund.

In any year in which the Authority realizes a net surplus; the Authority shall after recouping net losses transfer any remaining surplus to Government in amounts as from time to time agreed by the Board with the approval of the Minister of Finance.

13. AUDITING: The Board shall:

- (a) keep proper accounts and adequate financial and other records to the satisfaction of and in accordance with the directions of the Chief Auditor or any Auditor for the purpose of auditing the accounts;
- (b) prepare a statement of accounts in respect of each financial year;

The Auditor General or such other auditor as appointed by the Auditor General shall audit the Authority's accounts annually. Submissions shall be made to the Auditor within three months of the end of the financial year. The Authority shall within 30 days of receiving the auditor's report transmit the report to the Minister.

24. TAXATION: All property, real or personal, appertaining to the Authority shall be exempted from stamp duty, customs, land and other taxes of like nature including vehicle-licensing fees. However, the Authority should be required to compute all savings from subsidies given by Government in order to reflect the real operating cost.

25. EXEMPTION FROM WORK PERMIT: Contract Officers and Consultants employed by the Authority shall be exempted from requiring Work Permits.

26. TRANSFER OF SERVICE AND PRESERVATION OF PENSION:

- (a) The Board may make appropriate arrangements for the transfer or secondment of an officer in the Public Service to the service of the Board.
- (b) Where an officer in the Public Service is transferred or seconded to the staff of the Board –
 - (i) his rights to any pension , gratuity or other allowance for which he would have been eligible had he remained in the public service are preserved; and
 - (ii) his service with the Board shall, unless the Governor otherwise decides, be pensionable under the Pensions Act as if the officer had not been so transferred or seconded.
- (c) The Board may make arrangements for the loan to the Government of the services of an employee of the Board.
- (d) Where the services of a person employed by the Board are on loan to the Government for the purpose of providing service within the Public Service, the person providing such service is entitled to the benefits and terms of employment that are applicable to the post that person occupies, and the service with the Government shall be taken into account as continuous service with the Board, and the *Pension Act* and *Pension Regulations* shall apply to him as if his service with the Board were service within the meaning of that Act.

27. TRANSITIONAL: (1) Upon the coming into operation of the Act:

- (a) all funds and assets appropriated for the operation and management of the Authority shall vest by virtue of the Act, in the Board;
- (b) all rights, powers, privileges and authorities relating to the management or operation of the Authority that immediately before the commencement of the Act were vested in and exercisable by the Crown are vested in and exercisable by the Board;
- (c) all liabilities incurred by the Crown in respect of the functions of the Authority and subsisting immediately before the commencement of the Act shall have effect as they had been incurred by or on behalf of the Board;
- (d) without affecting paragraph (b), all contracts made by or on behalf of the Crown subsisting immediately before the commencement of the Act shall be deemed to have been made by or on behalf of the Board and shall be construed with such modification and adaptations as may be necessary to give effect to them.

(2) All civil proceedings commenced before the commencement of the Act in any court of competent jurisdiction by or against the Crown with regard to any matter concerning the Authority may be continued by or against the Board and process in

those proceedings may be amended accordingly.