



BERMUDA

BERMUDA SHIPPING AND MARITIME AUTHORITY ACT 2016

2016 : 29

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SCHEDULE 1 CONSTITUTION AND PROCEEDINGS OF THE BOARD

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Whereas it is expedient to establish a Bermuda Shipping and Maritime Authority and make provision for connected matters;

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 Bermuda Shipping and Maritime Authority Act 2016.

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Interpretation

2 In this Act, unless the context otherwise requires—

“Authority” means the Bermuda Shipping and Maritime Authority established under section 3;

“Bermuda ship” means a ship registered in Bermuda under the Merchant Shipping Act 2002;

“Bermuda Shipping Acts” means the Merchant Shipping Act 2002, the Maritime Security Act 1997 and any other law relating to merchant shipping;

“Bermuda Shipping Registry” means that division of the Authority responsible under the Registrar of Shipping for the registration of British ships under Part IV of the Merchant Shipping Act 2002;

“Board” means the Board of Directors of the Authority referred to in section 8(1);

“Chairman” means the Chairman of the Board;

“Chief Executive Officer” means the person appointed as such by the Board pursuant to section 25;

“commencement date”, in relation to a particular provision or Part of this Act, means the date that the provision or Part, as the case may be, comes into operation in accordance with section 32;

“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 Employment Act 2000;

“Maritime Administration” means the administration as set out in Part II of the Merchant Shipping Act 2002;

“Minister” means the Minister responsible for Maritime Administration;

“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 revenues;

“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 16;

“port State control” means the inspection of ships and watercraft, other than Bermuda ships, whilst they are in Bermuda waters;

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“Registrar of Shipping” means the Registrar of Shipping for Bermuda referred to in the Merchant Shipping Act 2002;

“Register of Ships” means the register of ships referred to in Part IV of the Merchant Shipping Act 2002;

“Reserve Fund” means the Authority’s Reserve Fund established pursuant to section 17;

“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 2002;

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

PART 2

BERMUDA SHIPPING AND MARITIME AUTHORITY

Establishment of the Bermuda Shipping and Maritime Authority

3 (1) There is established an authority to be known as the “Bermuda Shipping and Maritime Authority” which shall—

- (a) continue the functions relating to Maritime Administration under Part II of the Merchant Shipping Act 2002; and
- (b) have such functions as are assigned to it by this Act and by any other law.

(2) The Authority is a body corporate, having perpetual succession and a common seal.

(3) The Authority may sue and be sued in its corporate name and may for all purposes be described by that name.

Principal functions

4 (1) The Authority shall—

- (a) administer and enforce all matters for which the Minister is responsible under this Act and the laws in force in Bermuda relating to merchant shipping and seamen; and
- (b) promote the proper development of ship registration, survey, inspection, safety management audits and related services.

(2) In particular, and without prejudice to the generality of subsection (1), the Authority shall—

- (a) provide ship registration services and maintain the Register of British Ships for all registrations of ships in Bermuda;
- (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 Bermuda, together with related instruments and codes;
- (vi) issuance, 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) investigations into marine casualties;
- (ix) detention of unsafe or unseaworthy ships;
- (x) preparation of cases for prosecution of offences committed under the Bermuda Shipping Acts and relevant regulations;
- (xi) maritime search and rescue operations in co-ordination with other relevant Government departments and bodies;
- (xii) providing hydrographic and nautical information relating to safe navigation in the Bermuda waters;
- (xiii) issuance of shipping notices disseminating advice and information to the shipping industry; and
- (xiv) international relations within the maritime sector including co-operation with regional agreements on port State control;
- (c) promote the development of Bermuda 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 Bermuda;
- (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 2002 and regulations made under that Act;

- (g) expand and create maritime employment opportunities for Bermudians;
- (h) enter, with the approval of the Minister, into agreements or arrangements with other organisations or bodies relating to Maritime Administration that are beneficial to the efficient administration of the Authority;
- (i) represent Bermuda at international fora related to maritime affairs; and
- (j) discharge such other functions as are for the time being conferred on it by virtue of this Act or any other Act.

General powers

5 (1) For the purposes of carrying out its functions, but subject to the provisions of 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 provisions of this Act, but subject to the provisions of this Act, the Authority may—

- (a) engage such staff, consultants and persons as it considers necessary, on such terms and conditions as it considers appropriate, subject to the requirements of applicable law of Bermuda;
- (b) provide an advisory service and disseminate information and guidance on matters relating to ship registration, maritime regulatory requirements and maritime legislation in Bermuda;
- (c) make such charges, as the Authority may determine, for the provision of its services under this subsection and collect fees prescribed under the Merchant Shipping Act 2002 in relation to Part II of that Act; and
- (d) with the approval of the Minister of Finance, borrow money and otherwise raise capital in accordance with this Act.

Official website

6 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;
 - (ii) all regulations, shipping notices and policies made by the Minister pursuant to this Act, the Merchant Shipping Act 2002 or other Act;
 - (iii) any international conventions that are applicable to Bermuda; and

- (c) any additional information that the Authority is required to publish on the website pursuant to this Act.

Minister may give general directions

7 (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 the provisions of this Act and of 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 him, give to the Board in written form general and specific directions—

- (a) on matters relating to finances; and
- (b) on matters of policy as he is currently empowered to give under the Merchant Shipping Act 2002 in relation to Maritime Administration,

and the Board shall give effect to such directions.

(3) Section 7(2) of the Merchant Shipping Act 2002 shall apply in relation to the statutory functions of the Minister.

Board of Directors

8 (1) There shall be a Board of Directors of the Authority which, subject to the provisions of this Act and legislation relating to merchant shipping, shall 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 Chairman and Deputy Chairman, appointed by the Minister from persons appearing to him to be qualified as having had experience of 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) The Directors shall be paid such fees and allowances as the Minister may determine.

(4) The provisions of Schedule 1 shall have effect with respect to the constitution and proceedings of the Board and, subject to the provisions of Schedule 1, the Board may regulate its own proceedings.

Interest register

9 (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

10 (1) Subject to this Act, the Board may delegate to—

- (a) a Director;
- (b) a committee appointed by the Board;
- (c) any employee; or
- (d) the Chief Executive Officer,

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.

PART 3

FINANCE AND BUDGET

Financial year

11 (1) The financial year of the Authority is the period of twelve months ending on the 31st day of March 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 31st day of March of the following year.

Work plan and budget

12 (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) and 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 of 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 Ministers may require, for the upcoming financial year.

(4) The Minister of 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 of 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) Once 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.

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(9) The Authority shall submit to the Minister its reports quarterly 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 Chief Executive Officer; and
- (b) any other person who, under the immediate authority of a Director or the Chief Executive Officer—
 - (i) exercises managerial functions; or
 - (ii) is responsible for maintaining accounts or other records of the Authority.

Funds of the Authority

13 (1) The funds of the Authority for the performance of its functions shall consist of—

- (a) the authorised and paid-up capital;
- (b) the Operating Fund; and
- (c) the Reserve Fund.

(2) The Authority may create such special funds as appropriate with the express approval of the Minister of 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 14 or borrowed by the Authority under section 5(2)(d);
- (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 and the Board, with the approval of the Minister of Finance; 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 of Finance, may require.

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

Initial paid-up capital and advances

14 (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 of 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 31st day of March 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 from time to time, with the consent of the Minister of Finance, out of money appropriated by the Legislature for the purpose, make advances to the Authority.

(3) 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

15 (1) The Minister may, with the consent of the Minister of Finance, make loans to the Authority, in which case the Minister 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 consent of the Minister of Finance, may enter into loan agreements with licensed financial institutions, which may be secured by either—

- (a) the full faith and credit of the Government; or
- (b) the future anticipated revenue that the Authority will derive from the payment of the Authority's fees.

(3) The Minister of Finance may provide a guarantee to any financial institution that makes a loan to the Authority pursuant to subsection (2).

Operating Fund

16 (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 14 or borrowed by the Authority pursuant to section 5(2)(d); or

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- (ii) accrue to the Authority from its operations, including registration fees, annual fees, inspection fees or other payments prescribed by the Merchant Shipping Act 2002 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

- 17 (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

- 18 (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 Bermuda.
- (3) With the prior approval of the Minister of Finance and in accordance with his directions, the Authority may maintain any part of the funds in its Operating Account in interest-bearing bank accounts in a bank outside of Bermuda—
- (a) if the bank outside Bermuda in which the funds will be kept is approved by that Minister for such purpose; and
 - (b) in accordance with the instructions of the Minister of 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 of Finance and in—
- (a) interest-bearing bank accounts;
 - (b) certificates of deposit; and
 - (c) Treasury bills issued by the Government of the United States of America.

Transfer of net surplus

- 19 (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 Minister and the Board, with the approval of the Minister of 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

20 (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 he is a public accountant who is registered or deemed to be registered under the Chartered Professional Accountants of Bermuda Act 1973.

(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 his 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 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

21 (1) The Authority, within 30 days of receiving the auditor's report referred to in section 20(7), shall 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 12;
 - (iii) any significant deviations from the budget adopted by the Authority pursuant to section 12; 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 as soon as practicable after receipt thereof—
- (a) lay a copy of such audited accounts before each House of the Legislature, together with a copy of any report made by the auditor on the accounts; and
 - (b) cause a copy of the report referred to in subsection (1)(a) and the annual financial statements to be laid before both Houses of the Legislature.

PART 4

PROTECTION OF BOARD

Immunity from suit

22 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

23 (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 by reason of his 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) a registered owner of a Bermuda ship.

- (2) Subsection (1) shall not apply to a disclosure—
- (a) lawfully required or permitted by a court of competent jurisdiction in Bermuda;
 - (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 Bermuda.
- (3) A person who knowingly contravenes subsection (1) commits an offence and is liable—
- (a) on summary conviction, to a fine not exceeding \$20,000 or to imprisonment not exceeding one year or to both such fine or imprisonment; or
 - (b) on conviction on indictment, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding two years or to both such fine or imprisonment.

PART 5

STAFF OF THE AUTHORITY

Appointment of staff

24 (1) The Authority shall appoint and employ as staff qualified persons necessary for the performance of its functions.

(2) The Chief Executive Officer may arrange with the Permanent Secretary of the Ministry or department concerned for the secondment of a public officer to work at the Authority, and any person so seconded shall, in relation to salary, pensions, gratuity or conditions of service, be treated as continuing in the service of the Government.

(3) Consistent with its approved budget, and subject to all applicable laws, the Authority shall establish the remuneration, terms and conditions of employment of each member of the staff.

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Chief Executive Officer

25 (1) The Board shall appoint and employ a Chief Executive Officer as the principal officer of the Authority who shall have—

- (a) general managing direction of the Authority;
- (b) superintendence of ships registered in Bermuda; and
- (c) responsibility for the enforcement and administration, on behalf of the Board, of the provisions of Part II of the Merchant Shipping Act 2002 and any other related law.

(2) In the Chief Executive Officer's absence or inability to fulfil his functions, the Board may appoint a senior employee of the Authority to discharge the functions of the Chief Executive Officer during the period of his 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 Chief Executive Officer, and shall be eligible for remuneration commensurate to the service provided.

(4) Subject to this Act and applicable law, the terms and conditions on which the Chief Executive Officer holds office are to be as determined by the Board.

Transfer of Bermuda Department of Maritime Administration officers to the Authority

26 (1) A person who immediately before the coming into force of this Act was a public officer in the service of the Department of Maritime Administration may be offered employment by the Authority.

(2) If he accepts such offer, the person shall become an employee of the Authority on terms and conditions of employment no less favourable than those that applied to his office immediately before the coming into force of this Act, except—

- (a) to the extent that other terms and conditions of employment are agreed between him and the Authority (subject to the Employment Act 2000 and other applicable laws);
- (b) that disciplinary matters shall be dealt with in accordance with the disciplinary rules and procedures established by the Authority (which shall be subject to the Employment Act 2000 and other applicable laws);
- (c) to the extent that applicable law otherwise provides.

(3) Every public officer who accepts employment with the Authority offered to him pursuant to this section shall be deemed to have transferred into employment as an employee with the Authority on the date of such acceptance.

Authority to comply with National Pension Scheme (Occupational Pensions) Act 1998

27 For the avoidance of doubt, the Authority shall comply with the National Pension Scheme (Occupational Pensions) Act 1998 in relation to pensions for employees of the Authority.

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Applicability of Health Insurance Act 1970

28 For the avoidance of doubt, the Health Insurance Act 1970 shall apply to the Authority.

PART 6

SAVINGS, TRANSITIONAL AND FINAL PROVISIONS

Regulations

29 (1) The Minister may make regulations prescribing anything which may be or is required to be prescribed under this Act.

(2) The Minister may by Regulations repeal or amend any provision relating to merchant shipping and maritime administration—

(a) in any law that is passed before this Act; or

(b) in any other instrument made under an Act before the passing of this Act,

where it appears to him that that provision is inconsistent with, or requires amendment consequentially upon, or has become unnecessary in consequence of, the provisions of this Act or regulations made hereunder.

(3) Regulations made by a Minister pursuant to this Act shall be subject to the negative resolution procedure.

Savings and transitional

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

Consequential amendments

31 The consequential amendments that are set out in Schedule 3 shall have effect.

Commencement

32 (1) This Act shall come into operation on such day as the Minister may by notice in the Gazette appoint.

(2) The Minister may appoint different days for different provisions of this Act.

SCHEDULE 1

(Section 8(4))

CONSTITUTION AND PROCEEDINGS OF THE BOARD

Appointment of Chairman and other officers

1 (1) The Minister shall appoint from among the Directors a Chairman, a Deputy Chairman and the Directors shall select one of the members of the Board as a Secretary.

(2) The Minister may appoint the Chief Executive Officer to be an ex-officio, non-voting member of the Board.

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 any term not exceeding three years.

Resignation

3 Any Director may resign from his 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 office before the expiry of the term for which he 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 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 his interest appears in the register of interests kept under section 9(1)), disclose the nature of his interest at the first meeting of the Board at which he is present after the relevant facts have come to his 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 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 delegated by the Board under subparagraph (2), at 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 chairman of each committee appointed under this paragraph shall ensure that the committee prepares and submits to the Chairman 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 authenticated by the Chairman or Deputy Chairman, together with the signature of the Chief Executive Officer or other officer or servant of the Authority duly authorised to act on behalf of the Chief Executive Officer, 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 chairman 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 Chairman shall summon meetings as often as may be required and must summon at least two meetings every year.

(2) The quorum at every meeting of the Board shall be three Directors.

(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 Chairman, Deputy Chairman or Director presiding shall have a casting vote in addition to his original vote.

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

(5) Where both the Chairman and the Deputy Chairman 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 Chairman by notice in writing signed by them to convene a meeting of the Board for any purpose specified in the notice, the Chairman 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 the provisions of 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 thereof or by any defect in the appointment of a member thereof.

SCHEDULE 2

(Section 30)

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 2002.

(3) The Register of Ships shall continue to contain the information that is set out in the Merchant Shipping Act 2002.

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 2002, 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 Maritime Administration, shall hold the office of Chief Executive Officer 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 applicable law, that applied to the office of Director of Maritime Administration immediately before the commencement date;

(b) 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 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 Bermuda Government and used by it for the operation of the Bermuda 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.

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(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 Bermuda Shipping Registry was subject to.

(3) Subject to the provisions of 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.

Transitional period for contribution to Public Service Superannuation Fund

6 (1) In this section, “the Fund” means the Public Service Superannuation Fund established by the Public Treasury (Administration and Payments) Act 1969.

(2) Notwithstanding section 3 of the Public Service Superannuation Act 1981 and for the period of six months beginning with the commencement date of section 27, a public officer who accepts employment with the Authority and is transferred to the Authority thereby becoming an employee of the Authority—

- (a) may elect to continue to participate in the Fund for that six-month period as if he were continuing in the service of the Government; and

- (b) if he so elects, shall remain subject to the Public Service Superannuation Act 1981 for that six-month period.

(3) No employee of the Authority is entitled to continue to contribute to the Fund for that six-month period unless that employee is eligible to contribute to the Fund under this section.

(4) An employee of the Authority is eligible to continue to contribute to the Fund for that six-month period if, and only if—

- (a) he was, on the commencement date of section 27 employed in the Department of Maritime Administration and contributing to the Fund; and
- (b) he elects, within 30 days after the coming into operation of this section, to continue to contribute to the Fund (if, immediately before the coming into operation of this section, he is contributing to the Fund).

(5) An election under subsection (4)(b) shall be made in writing to the Accountant General in such form as the Accountant General may determine.

(6) It is hereby declared, for the avoidance of doubt, that the Authority will be responsible for making contributions for the purposes of this section as the employer.

(7) The Minister may, with the consent of the Minister of Finance, by order extend the time limit imposed pursuant to this section for a further period not exceeding three months if he considers it expedient to do so.

(8) An order made by the Minister under subsection (7) shall be subject to the negative resolution procedure.

Transitional period for contribution to Government Employees Health Insurance Act

7 (1) In this section, “the Scheme” means the health insurance scheme for government employees and retired government employees established under section 3 of the Government Employees (Health Insurance) Act 1986.

(2) For the period of six months beginning with the commencement date of section 28, any public officer who accepts employment with the Authority and is transferred to the Authority thereby becoming an employee of the Authority—

- (a) may elect to continue to participate in the Scheme for that six-month period as if he were continuing in the service of the Government; and
- (b) if he so elects, he shall remain subject to this Act for that six-month period.

(3) No employee of the Authority is entitled to contribute to the Scheme unless that employee is eligible to contribute to the Scheme under this section.

(4) An employee of the Authority is eligible to contribute to the Scheme if, and only if—

- (a) he was immediately before the coming into operation of this section employed as a public officer in the Department of Maritime Administration and contributing to the Scheme; and

(b) he elects, within 30 days after the coming into operation of this section, to continue to contribute to the Scheme (if, immediately before the coming into operation of this section, he is contributing to the Scheme).

(5) It is hereby declared, for the avoidance of doubt, that the Authority will be responsible for making contributions for the purposes of this section as the employer.

(6) An election under subsection (4)(b) shall be made in writing to the Accountant General in such form as the Accountant General may determine.

(7) The Minister may, with the consent of the Minister of Finance, by order extend the time limit imposed pursuant to this section for a further period not exceeding three months in aggregate if he considers it reasonable to do so.

(8) An order made by the Minister under subsection (7) shall be subject to the negative resolution procedure.

SCHEDULE 3

(Section 31)

CONSEQUENTIAL AMENDMENTS

Merchant Shipping Act 2002

1 The Merchant Shipping Act 2002 is amended—

- (a) in section 2(1), by inserting in the appropriate alphabetical order the following definition—

“ “Authority” means the Bermuda Shipping and Maritime Authority established by section 3 of the Bermuda Shipping and Maritime Authority Act 2016;”;

- (b) in section 7(1), by deleting the words “general superintendence” and substituting the word “oversight”;
- (c) in section 10(1), by deleting the words “whose office shall be a public office”;
- (d) in section 11(1), by deleting the words “whose office shall be a public office”;
- (e) as follows—
 - (i) section 23 of the Merchant Shipping (ILO) Amendment Act 2012 (which repealed section 87 of the Merchant Shipping Act 2002 relating to official log books) is repealed; and
 - (ii) notwithstanding section 14(1) of the Interpretation Act 1951, section 87 of the Merchant Shipping Act 2002 shall be revived from the date on which this Schedule comes into force, and is set out below—

“Official log books

87 (1) Except as provided by regulations under this section, an official log book in a form approved by the Minister shall be kept in every Bermuda ship.

(2) The Minister may make regulations prescribing the particulars to be entered in official log books, the persons by whom such entries are to be made, signed or witnessed, and the procedure to be followed in the making of such entries and in their amendment or cancellation.

(3) The regulations may require the production or delivery of official log books to such persons, in such circumstances and within such times as may be specified therein.

(4) Regulations under this section may exempt ships of any description from any requirements thereof, either generally or in such circumstances as may be specified in the regulations.

(5) Regulations under this section may make a contravention of any provision thereof an offence punishable on summary conviction by a fine of \$1,000 or not exceeding a lesser amount.

(6) If a person intentionally destroys or mutilates or renders illegible any entry in an official log book, he commits an offence and is liable on summary conviction to a fine of \$5,000.”;

(f) in section 217—

- (i) in subsection (1), by deleting the words “The Minister may, if he thinks fit,” and substituting the words “The Authority, after consultation with the Minister, may if it thinks fit”;
- (ii) in subsection (2), by deleting the words “The Minister may, at such ports as he thinks fit,” and substituting the words “The Authority may, at such ports as it thinks fit”;
- (iii) in subsection (5), by deleting the words “The Minister” and substituting the words “The Authority”;
- (iv) in subsection (7), by deleting the words “the Minister” and substituting the words “the Authority”;
- (v) in subsection (8)(c), by deleting the words “the Minister discharging functions of his” and substituting the words “the Authority discharging functions of the Minister for the purposes of this Act”;

(g) in section 250—

- (i) in subsection (1), by inserting after the word “paid” the words “to the Authority” and by deleting the words “by a public officer” wherever they appear;
- (ii) in subsection (2), by deleting the words “into the Consolidated Fund of Bermuda” and substituting the words “to the Bermuda Shipping and Maritime Authority”;

(h) by deleting the words “Department of Maritime Administration” and substituting the words “the Authority” wherever they appear.

[Assent Date: 12 July 2016]

[Operative Date: 01 October 2016]