

SEYCHELLES MARITIME SAFETY AUTHORITY BILL, 2019

(Bill No. 18 of 2019)

OBJECTS AND REASONS

The Bill seeks to establish a statutory Authority, that is, the Seychelles Maritime Safety Authority to administer, regulate, co-ordinate and oversee maritime affairs in the place of Seychelles Maritime Safety Administration.

The Bill is divided into 7 parts.

Part I provides for preliminary matters, such as short title, commencement and interpretation.

Part II provides for the establishment of the Seychelles Maritime Safety Authority and its functions.

Part III provides for administration of the Authority by a Board, appointment of its members, terms and conditions of their appointment, proceedings in the meetings of the Board, appointment of Chief Executive Officer and Deputy Chief Executive Officer and their powers, terms and conditions of their appointment, appointment of other officers of the Authority, etc.

Part IV makes provisions for the constitution of the Appeals Board for filing appeals against decisions of the Authority, appointment of the Chairperson, his or her qualification, term of office, terms and conditions of appointment and decisions of the Appeals Board.

Part V provides for the funds of the Authority, insurance cover for property and liabilities, power of Minister to issue directions, preparation of operational plans, Accounts and Audits and Annual Reports.

Part VI provides for transfer of employees of the Seychelles Maritime Safety Administration to the Authority.

Part VII provides for miscellaneous matters such as saving provisions, application of certain provisions of the Penal Code, protection of acts in good

faith, compounding of offences, clarification as to reference in other written laws and provisions for regulation making by the Minister and rule making by the Authority.

Schedule to the Bill specifies the law to be administered by the Authority.

Dated this 27th day of November, 2019.

**FRANK D.R. ALLY
ATTORNEY-GENERAL**

SEYCHELLES MARITIME SAFETY AUTHORITY BILL, 2019

(Bill No. 18 of 2019)

ARRANGEMENT OF SECTIONS

PART I - PRELIMINARY

1. Short title and commencement
2. Interpretation

**PART II - ESTABLISHMENT AND FUNCTIONS OF THE
AUTHORITY**

3. Establishment of the Authority
4. Functions of the Authority

PART III - BOARD OF THE AUTHORITY

5. Board of the Authority
6. Meetings of Board
7. Powers of Board
8. Chief Executive Officer
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PART IV - APPEALS BOARD

11. Appeals Board
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13. Funds of the Authority
14. Insurance cover
15. Direction by Minister
16. Operational plan
17. Accounts and Audits
18. Annual report

PART VI - TRANSFER OF EMPLOYEES

19. Transfer of employees

PART VII - MISCELLANEOUS

20. Transitional and savings
21. Application of certain Penal Code provisions
22. Protection of acts done in good faith
23. Compounding of offence
24. Reference in other written laws
25. Regulations
26. Rules

SCHEDULE

[Section 4(2)(b)]

Merchant Shipping Act (Cap 282)

- (l) demarcation of sea passage and designation of zones in relation to the usage of and the issue of permission for any activities at sea;
 - (m) fees for any services provided by the Authority;
 - (n) amending the Schedule.
- (3) Regulations made under subsection (1) may —
- (a) create offences and provide penalties therefor to a fine not exceeding SCR300,000 and to imprisonment not exceeding 5 years or to both such fine and imprisonment;
 - (b) provide for forfeiture of ships.
- Rules 26. The Authority may make rules for the purpose of —
- (a) prescribing form of any service provided by the Authority, notices, guidance notes and circulars for the enforcement of mandatory instruments;
 - (b) keeping of registers of seafarers and ships;
 - (c) conducting survey, inspection and issue of safety certificates for ships including fishing vessels;
 - (d) providing conduct of port State control inspections;
 - (e) markings on ships;
 - (f) prescribing the range, which a ship sails from the point of departure shall maintain;
 - (g) designation of mooring areas and anchoring area for ships including fishing vessels.

**SEYCHELLES MARITIME SAFETY AUTHORITY
BILL, 2019**

(Bill No. 18 of 2019)



A BILL

OF

AN ACT to establish the Seychelles Maritime Safety Authority to administer, regulate, co-ordinate and oversee maritime affairs and for matters connected therewith or incidental thereto.

ENACTED by the President and the National Assembly.

PART I - PRELIMINARY

1. This Act may be cited as the Seychelles Maritime Safety Authority Act, 2019 and shall come into force on such date as the Minister may by notice published in the *Gazette*, appoint.

Short title
and
commencement

Interpretation

2. In this Act —

“Appeals Board” means the Appeals Board established under section 11;

“Authority” means the Seychelles Maritime Safety Authority established under section 3;

“Board” means the Board of the Authority constituted under section 5(1);

“Certificate” means a certificate issued by the Authority showing competency, proficiency and any required qualification of a seafarer;

“Chairperson” means the Chairperson of the Board appointed under section 5(2);

“Chief Executive Officer” means the Chief Executive Officer of the Authority appointed under section 8;

“Deputy Chief Executive Officer” means the Deputy Chief Executive Officer of the Authority appointed under section 9;

“fishing vessel” means any ship or boat, of any nature whatsoever, irrespective of the form of ownership or size, used or intended to be used or capable of being used for fishing or fishing related activities excluding fishing for pleasure;

“identification” means ships that have been identified as per section 16(3) of the Merchant Shipping Act (Cap 282);

“Minister” means the Minister responsible for Maritime Affairs;

Regulations

25.(1) The Minister may, in consultation with the Authority, make regulations for the purpose of carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of subsection (1) such regulations may provide for —

- (a) the manner and fees for filing appeal to the Appeals Board;
- (b) the certification of seafarers and approval of maritime training institutions;
- (c) the protection of maritime environment, prevention of pollution from ships and for dealing with maritime environment incidents;
- (d) maritime safety and security;
- (e) the investigation of maritime casualties or incidents;
- (f) the registration and licencing of ships;
- (g) regulating the survey and certification activities delegated to recognised organisations;
- (h) licencing of ferries, Dive Centers, Dive operators and marine surveyors;
- (i) stopping, boarding, and impounding ships engaged in local voyages and confiscating articles and equipment;
- (j) specifying alcohol limits in the blood, urine and breath of seafarers on board ships including fishing vessels;
- (k) specifying the safe operation and speed limits of ships including fishing vessels;

rights, interests, privileges, liabilities and obligations of the Administration shall, subject to subsection (5), be transferred to and vest in the Authority.

(5) If any question arises as to whether any particular movable property or any particular asset, right, interest, liability or obligation has been transferred to or vested in the Authority under subsection (4), a certificate under the hand of the Minister shall be conclusive evidence that the property, asset, right, interest, liability or obligation was or was not so transferred or vested as the case may be.

Application
of certain
Penal Code
provisions

21.(1) All members of the Board and officers of the Authority shall be deemed to be employed in the public service for the purpose of sections 91 to 96 of the Penal Code.

Protection
for acts in
good faith

22. No civil or criminal proceedings shall lie against the Authority, Chairperson, Vice-Chairperson, or member of the Board or the officers and other employees of the Authority in respect of an act done or omission made in good faith in the performance of the functions of the Authority, in pursuance of this Act.

Compounding
of offence

23.(1) Where a person agrees in writing to the compounding of an offence punishable on conviction with fine, the Authority may in consultation with the Attorney General, compound the offence in the manner as prescribed by regulations.

(2) In any proceedings brought against any person for an offence under this Act it shall be a good defence if the person proves that the offence has been compounded under this section.

Reference in
other written
laws

24. Any reference in any written law to the Seychelles Maritime Safety Administration, its Director General or other officers shall be deemed to be a reference to the Seychelles Maritime Safety Authority; its Chief Executive Officer or other corresponding officers as the case may be.

“prescribed” means prescribed by Regulations made by the Minister under section 25;

“rules” means the rules made by the Authority under section 26;

“Seafarer” means any person, including a master and an apprentice, who is employed or engaged or works in any capacity on board a ship;

“Seychelles waters” means the Exclusive Economic Zone, Territorial Waters, Internal Waters and all other waters subject to the jurisdiction of Seychelles;

“ship” includes every description of vessel or artificial craft used or capable of being used as a means of transportation on or in water, whether or not it is actually afloat, and whether or not it has any means of propulsion but does not include a seaplane.

PART II - ESTABLISHMENT AND FUNCTIONS OF THE AUTHORITY

3.(1) There is hereby established an Authority to be known as the Seychelles Maritime Safety Authority.

Establishment
of the
Authority

(2) The Authority, shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of —

- (a) suing and being sued;
- (b) purchasing or otherwise acquiring, holding, charging disposing of movable or immovable property;

- (c) borrowing money with the approval of the Minister responsible for Finance; and
- (d) collecting all dues, rental fees and other monies payable to the Authority under this Act or any other law administered by the Authority.

(3) The Authority may enter into agreements and arrangements with any organisation in respect of any matter relating to maritime affairs or any matter the Authority deems expedient.

Functions
of the
Authority

4.(1) The Authority shall carry out such functions as may be necessary for the purposes of this Act.

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

- (a) advise the Government or any relevant agency on any matter relating to maritime affairs;
- (b) administer and enforce the provisions of the laws relating to the marine sector specified in the Schedule;
- (c) discharge Flag, Coastal and Port State responsibilities in an efficient and effective manner having regard to international maritime conventions, treaties, agreements and other instruments to which Seychelles is a party;
- (d) ensure the implementation of international maritime conventions, treaties, agreements and other instruments;

Chief Executive Officer respectively and shall perform their functions under this Act until such time the President makes appointment under section 8 and 9.

(3) All the other public officers and other employees working in the Administration shall be deemed to have been appointed by the Authority under section 10 and shall stand transferred to the service of the Authority.

(4) The terms and conditions, salary and allowances of the officers and other employees transferred to the Authority under subsections (2) and (3) shall not be less favourable than those applicable to them in the service of the Administration immediately before such transfer.

PART VII - MISCELLANEOUS

20.(1) Any licences or certificate issued, permission granted, orders issued, legal proceedings initiated in any court or other authorities by the Administration shall be deemed have been issued, granted or initiated, as the case may be, by the Authority.

Savings

(2) All deeds, bonds, agreements and arrangements subsisting immediately before the date of commencement of this Act relating to the Administration or to any person transferred to the service of the Authority shall continue in force on and after that date and shall be enforceable by or against the Authority as if the Authority had been named therein and had been a party thereto.

(3) Any proceeding or cause of action pending or existing immediately before the date of commencement of this Act by or against the Administration or any person acting on its behalf may be continued and enforced by or against the Authority.

(4) As from the date of commencement of this Act, all movable property vested in the Administration and all assets,

Annual
report

18.(1) The Authority shall, as soon as possible after the expiration of each financial year and in any event not later than the 31st day of March in any year, submit to the Minister, and the Minister responsible for Finance, an annual report dealing generally with the administration and its activities during the preceding financial year.

(2) The Authority shall within three months of completion of the audit of its account in respect of any financial year, submit to the Minister and the Minister responsible for Finance—

- (a) a copy of its audited statement of accounts;
- (b) a copy of annual report specified under subsection (1) for that financial year together with a copy of the audited statement of accounts and a copy of any report by the Auditor General on the statement of accounts of the Authority.

(3) The Minister shall, within 30 days of receiving the Authority's audited statement of accounts, annual report and the report of the Auditor General on the statement of accounts, specified under subsection (2), cause them to be laid in the National Assembly.

PART VI - TRANSFER OF EMPLOYEES

Transfer of
employees
to the
Authority

19.(1) For the purpose of this section and section 20 "Administration" means the Department of the "Seychelles Maritime Safety Administration" established under the Merchant Shipping Act (Cap 282).

(2) The Director General and Director working in the Administration shall be deemed to have been transferred to the service of the Authority as Chief Executive Officer and Deputy

- (e) regulate, control and administer all matters relating to maritime safety, the training and certification of seafarers and approval of maritime training institutions;
- (f) ensure, in collaboration with relevant agencies, the protection of the marine environment and prevention of pollution from ships and response to marine environment incidents;
- (g) implement or assist other agencies in the co-ordination of matters relating to the maritime security including the specification of any equipment to be carried on board ships for security purposes, including fishing vessels;
- (h) represent Seychelles on maritime affairs at both the national and international level;
- (i) communicate information on the text of laws, orders, decrees, regulations and other mandatory reports to the International Maritime Organisation under the applicable mandatory instruments;
- (j) conduct, in collaboration with relevant entities, investigations into maritime casualties or incidents including wreck;
- (k) ensure, in collaboration with relevant agencies, appropriate observance of international rules and regulations pertaining to the management of dangerous goods;
- (l) coordinate activities of agencies and bodies involved in search and rescue operations and make policy decisions therein;

- (m) assist, in collaboration with relevant agencies, the implementation of the national oil spill contingency plan;
- (n) issue merchant shipping notices, guidance notes, notice to mariners and circulars for the implementation and enforcement of applicable mandatory instruments;
- (o) register and identify ships;
- (p) administer and maintain the register of seafarers and ships;
- (q) undertake surveying, inspection and issuance of safety certificates for ships including fishing vessels;
- (r) issue licence for ships, except fishing vessels;
- (s) monitor and regulate the survey and certification activities delegated to recognised organisations;
- (t) conduct port State control inspections;
- (u) ensure compliance with building, alterations, maintenance, manufacture, possession, use, sale and purchase of ships including fishing vessels;
- (v) specify markings on ships according to the type of registration or identification;
- (w) provide for the certification, examination, revalidation, authentication, endorsements, exemptions of certificates and issuance of dispensations for seafarers;

15.(1) The Minister may, in writing give general or special directions to the Authority regarding the performance of its functions under this Act or any other written law administered by it or any matter that may affect the public interest.

Direction by
Minister

(2) The Authority shall comply with the directions issued under subsection (1).

16.(1) The Authority shall prepare an operational plan at least 90 days before the beginning of each financial year and submit it to the Minister for his or her approval.

Operational
plan

(2) The operational plan shall —

- (a) include a statement of the short and medium term operational objectives;
- (b) outline the strategies that the Authority intends to employ in order to achieve its objectives; and
- (c) include, *inter alia*, a financial plan, a human resources plan and performance indicators.

(3) The financial plan shall include estimates of expenditure and revenue for the financial year next following.

(4) The Authority may amend the operational plan with the approval of the Minister.

17.(1) The financial year of the Authority shall be the calendar year.

Accounts and
Audits

(2) The Authority shall keep proper accounts and other relevant records and prepare a statement of accounts in such form as may be approved by the Auditor General.

(3) The accounts of the Authority shall be audited by the Auditor General in accordance with Article 158 of the Constitution.

- (c) quashing the decision; or
- (d) ordering to reconsider the decision.

PART V - FINANCIAL PROVISIONS

Funds of
Authority

13.(1) The funds of the Authority shall consist of —

- (a) such moneys as may be appropriated by the National Assembly pursuant to an Appropriation Act for the purpose of the Authority;
- (b) any moneys received by the Authority from its operations or other payments;
- (c) any moneys as are from time to time received by the Authority by way of donations, gifts or grants, subject to the approval by the Minister responsible for Finance.

(2) The funds of the Authority shall be applied in the discharge of expenses incurred in the carrying out of the functions of the Authority, the payment of remuneration to the Chairperson, members of the Board, officers and other employees of the Authority and in the repayment of any sum borrowed by the Authority.

Insurance
cover

14. The Authority shall ensure that insurance is maintained in respect of —

- (a) the property that the Authority manages, holds, owns or occupies; and
- (b) any liability that may arise in relation to the activities in which the Authority engages or activities that it controls or permits.

- (x) regulate and issue operating license for ferries, Dive Centres, Dive Operators and all other commercial water sport activities;
- (y) issue licence and certify marine surveyors;
- (z) provide powers for stopping, boarding, confiscation of any articles, equipment and impoundment of ships engaged in local voyages in collaboration with relevant agencies;
- (aa) determine the range limit which the ship is allowed to sail from the point of departure;
- (bb) designate, in collaboration with relevant agencies, mooring and anchoring areas for ships including fishing vessels;
- (cc) specify the accepted limit of alcohol in the blood, urine and breath of seafarers onboard ships including fishing vessels;
- (dd) specify the speed limits of ships including fishing vessels in Seychelles waters;
- (ee) collaborate with relevant agencies for the demarcation of a sea passage and designation of zones in relation to the usage of sea and issue permission for any activities to be performed at sea;
- (ff) provide and maintain navigational aids, except within port limits, where necessary;
- (gg) prescribe forms for any services provided for by the Authority;

- (hh) collect fees including surcharges for any services provided for by the Authority;
- (ii) perform all such other functions which contribute to the attainment of the objects of the Authority.

PART III - BOARD OF THE AUTHORITY

Board of the
Authority

5.(1) The Authority shall be administered by a Board consisting of seven members appointed by the President from among persons having wide experience of, and having shown capacity in, matters relating to maritime affairs, maritime safety, maritime security, maritime commerce, maritime transportation, nautical science, maritime education, maritime law, maritime administration or maritime industrial relations.

(2) The President shall appoint a Chairperson and a Vice-Chairperson of the Board from among the members of the Board.

(3) The salary and allowances and other terms and conditions of service of the Chairperson, Vice-Chairperson and Members of the Board shall be such as may be determined by the President.

(4) A member of the Board shall hold office for such period, not exceeding three years, as the President may specify in the instrument of his or her appointment and shall be eligible for reappointment.

(5) A member of the Board may at any time resign by a letter addressed to the President and such member shall cease to be member of the Board from the date on which the President accepts the resignation.

(6) Where a member of the Board vacates office, the President shall, having regard to subsection (1), appoint a

(2) The Chairperson shall be a person having qualification and experience in the marine sector and of good character and integrity and shall not be an office bearer of any political party.

(3) The Chairperson of the Appeals Board shall hold office for three years and shall be eligible for reappointment.

(4) The appointment of the Chairperson shall be on such terms and conditions as may be determined by the President.

(5) The President shall at any time terminate the appointment of the Chairperson if he or she has been found guilty of —

- (a) any misconduct, default or breach of trust in the discharge of his or her duties; or
- (b) an offence of such nature which renders it desirable that the Chairperson's appointment be terminated.

(6) The Appeals Board may regulate its own proceedings.

12.(1) A person aggrieved by any decision of the Authority may appeal to the Appeals Board.

Appeals

(2) An appeal under subsection (1) shall be made within such time, accompanied by such fees and in such manner as may be prescribed.

(3) The Appeals Board may, where it entertains an appeal, decide the appeal by —

- (a) confirming the decision;
- (b) varying the decision;

- (c) Surveyor;
- (d) Examiner;
- (e) Receiver of wrecks;
- (f) Senior Legal Officer;
- (g) Inspector.

(2) The Chairperson may, in consultation with the Board, appoint a suitable person as Secretary of the Board.

(3) The Secretary shall be responsible for convening meetings of the Board, keeping records of meetings and decisions of the Board, communicating the decisions of the Board, submitting documents on behalf of the Board and, when required by the Board, executing orders of the Board.

(4) The Authority may also employ such other persons or agents as are necessary for the effective performance of its functions, on such terms and conditions as it deems fit.

(5) The qualification, salary, allowances and other terms and conditions of service of the Secretary, officers and other employees shall be the same as applicable to the employees in the public service.

PART IV - APPEALS BOARD

11.(1) There shall be an Appeals Board consisting of the following members appointed by the President —

- (a) a Chairperson;
- (b) a representative of the Attorney General;
- (c) a representative of the Department of Public Administration.

Appeals
Board

person to replace that member for the remaining period of the term of office of that member.

(7) Where the Chairperson, Vice-Chairperson or any member of the Board is temporarily unable to perform the functions of his or her office due to poor health, other infirmity, absence from Seychelles or any other cause, the President shall appoint a person having regard to the provisions of subsection (1) to act in the place of such Chairperson, Vice-Chairperson or member as the case may be.

(8) The Chief Executive Officer shall be an *ex-officio* member of the Board.

(9) The appointment of the Chairperson, Vice-Chairperson and members of the Board shall be published in the *Gazette*.

6.(1) The Board shall meet at such times as may be necessary or expedient for the transaction of business and the meetings shall be held at such places and times and on such days as the Chairperson determines.

Meetings
of Board

(2) The Chairperson shall preside at the meetings of the Board and if, for any reason, he or she is unable to attend any meeting, the Vice-Chairperson shall preside and in the absence of Chairperson and Vice-Chairperson any other member elected by the members present at such meeting shall preside over the meeting of the Board.

(3) The Chairperson and four other members of the Board shall form a quorum for the meeting.

(4) The decisions of the Board shall be made by a majority of votes of the members present and in any case in which the voting is equal, the Chairperson shall have a casting vote.

(5) Where a quorum is present, the validity of any proceeding of the Board shall not be affected by any vacancy amongst its members or by any defect in the appointment of members.

(6) A member of the Board who has a direct or indirect interest in any matter to be decided by the Board shall disclose the nature of the interest at the meeting of the Board and shall not vote on the matter nor take part in any discussion in respect of that matter.

(7) Subject to the provisions of this Act and regulations made thereunder, the Board may regulate its own proceedings.

Powers of
the Board

7. The Board shall have all powers necessary for the proper performance of its administrative functions under this Act.

Chief
Executive
Officer

8.(1) The President may, in consultation with the Board, appoint a Chief Executive Officer of the Authority.

(2) The Chief Executive Officer shall be appointed for such term not exceeding three years as the President may determine, and shall be eligible for reappointment on completion of the term of appointment.

(3) The salary and allowances and other terms and conditions of service of the Chief Executive Officer shall be such as may be determined by the President.

(4) The Chief Executive Officer —

- (a) shall be responsible for the implementation of the decisions of the Authority and for the management of the day-to-day affairs of the Authority;
- (b) may, subject to the direction of the Board, sign documents on behalf of the Authority;

(c) may delegate any of his or her functions to the Deputy Chief Executive officer or any other employee of the Authority.

9.(1) The President may appoint a Deputy Chief Executive Officer of the Authority, in consultation with the Board.

Deputy Chief
Executive
Officer

(2) The Deputy Chief Executive Officer shall be appointed for such term not exceeding three years as the President may determine, and shall be eligible for reappointment on completion of the term of appointment.

(3) The salary and allowances and other terms and conditions of service of the Deputy Chief Executive Officer shall be such as may be determined by the President.

(4) The Deputy Chief Executive Officer may act in the office of the Chief Executive Officer —

- (a) during the vacancy in the office of the Chief Executive Officer;
- (b) during any period in which the Chief Executive Officer is absent from duty for any reason or is unable to perform the functions of that office; and
- (c) perform such other functions as the Chief Executive Officer may delegate.

10.(1) The Authority may appoint the following officers for the implementation of the provisions of this Act and the laws administered by the Authority —

Other officers
and staff of the
Authority

- (a) Registrar of ships;
- (b) Registrar of Seafarers;