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LOI NO. 29 DE 1998 RELATIVE A LA REGIE DES AFFAIRES MARITIMES DE VANUATU.

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LOI NO. 31 DE 1998 RELATIVE AU CODE MARITIME (MODIFICATION).

LOI NO. 32 DE 1998 RELATIVE A LA POLICE DES PORTS (MODIFICATION).

LOI NO. 33 DE 1998 RELATIVE AU REGLEMENT MARITIME (MODIFICATION).

LOI NO. 34 DE 1998 RELATIVE A LA COMMISSION DES AFFAIRES FINANCIERES DE VANUATU (MODIFICATION).

NOTIFICATION OF PUBLICATION

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VANUATU MARITIME AUTHORITY ACT NO. 29 OF 1998.

COASTAL TRADING (CONTROL) (AMENDMENT) ACT NO. 30 OF 1998.

MARITIME (AMENDMENT) ACT NO. 31 OF 1998.

PORTS (AMENDMENT) ACT NO. 32 OF 1998.

SHIPPING (AMENDMENT) ACT NO. 33 OF 1998.

VANUATU FINANCIAL SERVICES COMMISSION (AMENDMENT) ACT No. 34 of 1998.

REPUBLIC OF VANUATU

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REPUBLIC OF VANUATU

Assent: 28/12/98
Commencement: 20/01/99

VANUATU MARITIME AUTHORITY
NO. 29 OF 1998

An Act to establish the Vanuatu Maritime Authority and to provide for the regulation, administration and promotion of the maritime transport industry.

BE IT ENACTED by the President and Parliament as follows:-

PART 1

PRELIMINARY PROVISIONS

INTERPRETATION

1. In this Act unless the contrary intention appears:

"accident" has the meaning given by section 2;

"Authority" means the Vanuatu Maritime Authority established under section 3;

"Commissioner" means the Commissioner of Maritime Affairs appointed under section 12;

"incident" means any occurrence, other than an accident, that is associated with the operation of a vessel and affects or could affect the safety or operation of the vessel;

"maritime document" means:

(a) any licence, permit, certificate or other document relating to maritime transport provided for under any Act or regulation; or

(b) any foreign licence, permit, certificate or other document relating to maritime transport;

"maritime product" means any thing that:

(a) comprises, or is intended to comprise, any part of a vessel; or

(b) is, or is intended to be, installed in, fitted to or supplied to a vessel; or

and includes the following:

(c) safety equipment;

(d) nautical instruments and publications, whether or not computerised or electronic, used or intended to be used in the operation of a vessel;

(e) electronic navigational aids used or intended to be used in the operation of a vessel;

(f) radio and other communication equipment;

(g) fuel and other similar consumable items necessary for the operation of a vessel;

"member" means a member of the Authority and includes the Chairperson and Deputy Chairperson;

"Minister" means the Minister responsible for the Register of Ships and Seafarers;

"mishap" means any occurrence, other than an accident, involving a vessel that causes or might cause an illness or injury to any person;

"navigational aid" includes the following:

(a) any light vessel and any floating or other light exhibited for the guidance of vessels;

(b) any type of a fog signal not carried on a vessel;

(c) all marks and signs in aid of marine navigation;

(d) any electronic, radio or other aid to marine navigation not carried on board any vessel;

"non-permanent member" means a member of the Authority appointed under subsection 4(3) or (4);

"official seal" means the seal referred to in section 3 for the authentication of documents by the Authority;

"permanent member" means a member of the Authority referred to in paragraphs 4(1) (a) to (g).

"Register of Ships and Seafarers" means:

(a) the registers referred to in section 5 of the Maritime Act [CAP 131]; or

(b) any register established and maintained under regulations made under that Act; or

(c) any register established and maintained under regulations made under the Shipping Act [CAP 53];

"safety equipment" means any equipment carried on a vessel for the health or safety of any person:

(a) during the normal operation and working of the vessel; or

(b) for fire or the abandonment of the vessel or other emergency;

and includes anchors and chain cables;

"seafarer" means any person who:

(a) is employed or engaged on any vessel in any capacity for hire or reward; or

(b) works on a vessel for gain or reward otherwise than under a contract of employment;

but does not include a pilot of a vessel or any person temporarily employed on a vessel while it is in port;

"serious harm" means

(a) death; or

(b) long-term impairment of a person's physical or mental condition;

"State" means the Republic of Vanuatu;

"STCW" means the Standards of Training, Certification and Watchkeeping for Seafarers issued by the International Maritime Organization of the United Nations, as amended from time to time;

"Tribunal" means the Maritime Appeal Tribunal established under section 42;

"vessel" means:

(a) any marine craft used in commercial trade, whether or not it has any means of propulsion; or

(b) any marine craft that is used for game fishing or transport of passengers for hire or reward outside the port areas of Port Vila or Luganville;

and includes:

(c) any fishing vessel, hovercraft, seaplane on the water, non-displacement vessel, mobile offshore drilling unit, submarine or other submersible, barge, lighter or other like vessels; and

(d) any pleasure craft of any size not engaged in any form of commercial trade whose owner voluntarily wishes to register the craft in Vanuatu;

but does not include:

(e) the life boats, rafts, work boats or launches which form part of the equipment of a larger vessel and are being used as such; or

(f) punts, barges or other boats whose sole means of propulsion is by manpower.

DEFINITION OF ACCIDENT

2. An accident is an occurrence that involves a vessel and in which:

(a) a person (other than a stowaway hiding outside the areas normally available to passengers or crew of the vessel) suffers serious harm as a result of :

(i) being on the vessel; or

(ii) direct contact with any part of the vessel, including any part that has become detached from the vessel; or

(iii) direct exposure to the wash of the vessel or interaction (other than direct contact) between the vessel and any other vessel; or

(iv) being involved in the salvage of another vessel;

unless the injuries are self-inflicted or inflicted by another person; or

(b) the vessel sustains damage or structural failure that:

(i) adversely affects the structural strength, performance or seaworthiness of the vessel; or

(ii) would normally require major repair or replacement of the affected component of the vessel; or

(iii) poses a threat to the safety of people on board the vessel; or

(c) there is a complete or partial failure of machinery or equipment that affects the seaworthiness of the vessel; or

(d) there is a loss of, or damage to, or movement of, or change in the state of, the cargo of the vessel which poses a risk to the safety of people on board the vessel, the vessel or any other vessel; or

(e) there is a significant loss of, or significant damage to, property on board the vessel (not being the cargo carried by the vessel), whether or not the loss or damage arises from an interaction between the vessel and any other vessel; or

(f) there is a loss or escape of any substance or thing that:

(i) may result, or has resulted, in serious harm to any person; or

(ii) may pose a risk, or has resulted in damage, to any maritime product or any other property on board the vessel or any other vessel; or

(g) a person is lost at sea (whether or not subsequently found) or is missing; or

(h) the vessel is foundering, capsizing, being abandoned, stranding, missing, or has foundered, capsized, been abandoned, stranded, been in a collision, or has had a major fire on board.

PART 2

ESTABLISHMENT AND CONSTITUTION

ESTABLISHMENT OF THE VANUATU MARITIME AUTHORITY

3. (1) The Vanuatu Maritime Authority is established.

(2) The Authority:

(a) is a body corporate with perpetual succession; and

(b) is to have an official seal; and

(c) may sue and be sued in its corporate name.

COMPOSITION OF THE AUTHORITY

4. (1) The Authority consists of the following members:

(a) the Attorney General;

(b) the Financial Services Commissioner;

(c) the Director General, Prime Minister's Office;

(d) the Director General responsible for maritime transport;

(e) the Director General responsible for fisheries;

(f) the Director General responsible for finance;

(g) the Commissioner of Maritime Affairs;

(h) a person appointed under subsection (3);

(i) a person appointed by the Minister under subsection (4).

(2) A member of the Authority (other than a member appointed under subsection (3) or (4)) may nominate an immediate subordinate to represent the member at meetings of the Authority.

(3) The permanent members of the Authority must, by instrument in writing, appoint a person with substantial expertise in international maritime affairs to be a non-permanent member.

(4) The Minister must, by instrument in writing, appoint a person to be a non-permanent member.

(5) A person may hold office as a member concurrently with any other office.

PART 3

OBJECTIVES, FUNCTIONS AND POWERS

PRINCIPAL OBJECTIVES OF THE AUTHORITY

5. The principal objectives of the Authority are to:

(a) regulate, administer and promote the Vanuatu maritime transport industry; and

(b) promote the provision of an effective marine pollution prevention programme; and

(c) promote the provision of an effective marine pollution response system.

FUNCTIONS OF THE AUTHORITY

6. In furtherance of its principal objectives, the Authority has the following functions:

(a) to be responsible for:

(i) the general administration of the Acts specified in Schedule 1 and any regulations and rules made under those Acts; and

(ii) the collection of fees, charges and other revenue payable under those Acts, regulations or rules;

in accordance with the provisions of those Acts, regulations and rules;

(b) to ensure compliance with the law in respect of the registration, licensing, operation and crewing of vessels;

(c) to ensure that the teaching and training of seafarers by the Vanuatu Maritime College meet the STCW requirements;

(d) to promote compliance with safety standards in the maritime transport industry;

(e) to promote regular reviews of, and improvements and developments in, the maritime transport industry;

(f) to promote compliance with marine pollution prevention standards in the maritime transport industry;

(g) to promote Vanuatu's preparedness for, and ability to respond to, occurrences resulting in the pollution of the marine environment;

(h) to ensure the provision of appropriate distress and safety radio communication systems and navigational aids for shipping;

(i) to ensure compliance with occupational health and safety standards for seafarers;

(j) to promote safety in the maritime transport industry by providing information and advice on maritime safety;

(k) to ensure the investigation of accidents, mishaps and incidents, and the reporting of those investigations as obliged under any convention, memorandum of understanding or other agreement to which Vanuatu is a party;

(l) to maintain and preserve records and documents relating to the Authority's functions;

(m) to produce, publish and distribute, whether for payment or otherwise, in paper, electronic or magnetic form such reports, papers or other information as may be conducive to the carrying out of the Authority's functions;

(n) to provide training schemes, whether by itself or with the co-operation of such other persons or bodies as the Authority thinks fit, for its employees or for other persons concerned with maritime affairs;

(o) to advise the Minister on maritime transport policy;

(p) to undertake such research as is necessary to enable the Authority to perform any of its functions;

(q) to act internationally as the national authority, or representative, of Vanuatu in respect of matters relating to the supervision and regulation of the maritime transport industry;

(r) to provide advice and assistance to the government in relation to matters affecting the maritime transport industry, including:

(i) to prepare and submit reports to the government and other persons or bodies engaged in the marine transport industry in or from within Vanuatu; and

(ii) to make recommendations on the regulation of the maritime transport industry and on legislation relating to the industry;

(s) to assist and advise the government on matters relating to any Act or regulation directly or indirectly relevant to the maritime transport industry;

(t) such other functions as are conferred on it by this Act or any other Act;

(u) such other functions as the Minister may prescribe by notice in the *Gazette*;

(v) to do anything else that is incidental or conducive to the performance of any of the preceding functions.

POWERS OF THE AUTHORITY

7. (1) In addition to any other powers conferred on it by this Act, the Authority has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

(2) Without limiting subsection (1), the powers include the following:

(a) to enter into contracts;

(b) to acquire, hold and dispose of real and personal property;

(c) to engage persons to perform services for the Authority;

(d) to do anything incidental to any of the powers specified in this subsection or otherwise conferred on the Authority.

AUTHORITY TO HAVE REGARD TO GOVERNMENT POLICY

8. In the performance of its functions and in the exercise of its powers, the Authority must have regard to the policy of the government in relation to maritime transport.

AUTHORITY TO CONSULT

9. The Authority must, where appropriate, consult with government, commercial, industrial, consumer and other relevant bodies and organisations in performing its functions and exercising its powers.

PART 4

PERFORMANCE AGREEMENT

PERFORMANCE AGREEMENT

10. (1) Not later than 60 days before the start of a financial year, the Authority must give to the Minister and the Minister responsible for finance a draft performance agreement for the financial year.

(2) A draft performance agreement must set out the following:

(a) the Authority's budget for the financial year;

(b) the Authority's statement of objectives for that year;

(c) the methods, including financial and non-financial performance measures, by which the Authority intends to assess the extent to which it meets those objectives during that year;

(d) how the Authority intends to report on the extent to which it has met or is meeting those objectives for that year, and the dates by which interim reports, if any, will be given to the Minister;

(e) any new borrowings that the Authority intends to incur during that year.

(3) Within 30 days after receiving a draft performance agreement from the Authority under subsection (1), or an amended version of it under subsection (4), (whether or not for the first time) the Minister, after consultation with the Minister responsible for finance, must:

(a) approve it; or

(b) reject it and return it to the Authority with directions that it be amended.

(4) If a draft performance agreement is returned to the Authority by the Minister, the Authority must amend the draft agreement in accordance with the Minister's directions and return it to the Minister for approval.

(5) Subject to subsections (6), (7) and (8), a draft performance agreement approved for a financial year by the Minister constitutes the performance agreement between the Minister and the Authority for that year.

(6) If the Authority fails to comply with subsection (1), the Minister must cause to be prepared a performance agreement.

(7) If the Minister fails to comply with subsection (3) within the required time, the draft performance agreement given to the Minister is taken to have been approved by the Minister as the performance agreement.

(8) If the Authority fails within 30 days to amend a draft performance agreement in accordance with the Minister's directions under paragraph (3)(b), the Minister must amend the draft agreement and the agreement as so amended constitutes the performance agreement.

VARIATION OF PERFORMANCE AGREEMENTS

11. (1) At any time during a financial year, the Minister and the Authority may in writing agree to amend the performance agreement for that year.

(2) At any time during a financial year, the Minister may direct the Authority to amend any provision of the performance agreement for that year, and the Authority must amend the performance agreement accordingly.

PART 5

COMMISSIONER OF MARITIME AFFAIRS

COMMISSIONER OF MARITIME AFFAIRS

12. (1) Subject to the written consent of the Minister, whose consent must not be unreasonably withheld, the Authority must appoint a person as the Commissioner of Maritime Affairs.

(2) The person appointed as the Commissioner of Maritime Affairs must be able to demonstrate experience and competence in maritime affairs and:

(a) must hold a qualification in engineering, law, accounting, management or maritime studies at undergraduate or postgraduate level from a recognised university; or

(b) have at least 15 years management experience in maritime transport operations.

(3) The Commissioner must be appointed for a period of at least 2 years but not more than 4 years, and may be reappointed.

(4) The Commissioner is responsible to the Authority and is the Secretary to the Authority.

(5) The Authority must cause to be published in the *Gazette* details of the appointment of a person as the Commissioner of Maritime Affairs.

FUNCTIONS AND POWERS OF THE COMMISSIONER

13. (1) The Commissioner must perform the following functions and exercise the following powers:

(a) such functions and powers as may be conferred on the Commissioner by this Act or any other Act;

(b) such functions and powers as may be delegated to the Commissioner by the Authority under this Act.

(2) Without limiting subsection (1), the Commissioner must:

(a) ensure the proper operation of the maritime transport system by issuing, granting, recognising or accepting maritime documents; and

(b) take such action as may be appropriate in the public interest, including the carrying out or requiring of inspections and audits, to enforce the provisions of this Act, the Acts specified in Schedule 1 and any other Act, and the regulations and rules made under any of those Acts.

(3) The Commissioner is not subject to the direction or control of any person or body in performing any functions, or exercising any powers, in relation to:

(a) the issuing, granting, suspension, revocation, recognition or acceptance of maritime documents; or

(b) the granting of exemptions in relation to maritime documents; or

(c) the enforcement of the provisions of this Act, the Acts specified in Schedule 1 and any other Act, and the regulations and rules made under any of those Acts.

(4) The Commissioner may, by instrument in writing, make rules to deal with emergencies involving the safety of vessels or the health or safety of crew members of vessels.

(5) A rule made under subsection (4) expires after 7 days.

TERMS AND CONDITIONS

14. The Authority must determine the terms and conditions of employment of the Commissioner not provided for by this Act.

ACTING COMMISSIONER

15. (1) The Authority may, after consultation with the Minister, appoint a person to act as the Commissioner:

(a) during a vacancy in the office of the Commissioner whether or not an appointment has previously been made to that office; or

(b) during any period, or during all periods, when the Commissioner is absent from duty or from Vanuatu or is, for any reason, unable to perform the duties of that office.

(2) Anything done by or in relation to a person purporting to act pursuant to an appointment made under this section is not invalid merely because there was a defect or irregularity in connection with the appointment.

PART 6

DELEGATIONS

DELEGATION OF MINISTER'S FUNCTIONS OR POWERS TO AUTHORITY

16. (1) Subject to subsection (2), the Minister may delegate to the Authority all or any of the Minister's functions or powers under this Act.

(2) The Minister must not delegate his or her power to make regulations or rules.

(3) The Authority must not delegate any function or power that has been delegated to the Authority by the Minister without first obtaining the written consent of the Minister.

DELEGATION OF AUTHORITY'S FUNCTIONS OR POWERS TO EMPLOYEES OF AUTHORITY

17. (1) The Authority may delegate to the Commissioner or any employee of the Authority all or any of its functions or powers under this Act.

(2) The Commissioner or an employee of the Authority to whom a function or power has been delegated must not delegate the function or power to another person without first obtaining the written consent of the Authority.

(3) A delegation may be made to:

(a) a specified employee of the Authority; or

(b) employees of a specified class; or

(c) to the holder or holders for the time being of a specified office or specified class of offices of the Authority.

(4) The Commissioner or an employee of the Authority purporting to act under a delegation must, when reasonably requested to do so, produce evidence of his or her authority to act.

DELEGATION OF COMMISSIONER'S FUNCTIONS OR POWERS TO EMPLOYEES OF AUTHORITY

18. (1) The Commissioner may, with the written consent of the Authority, delegate to an employee of the Authority any or all of the Commissioner's functions or powers under this Act.

(2) A delegation must not include the power to delegate.

(3) A delegation may be made to:

(a) a specified employee of the Authority; or

(b) employees of a specified class; or

(c) to the holder or holders for the time being of a specified office or specified class of offices of the Authority.

(4) An employee of the Authority purporting to act under a delegation must, when reasonably requested to do so, produce evidence of his or her authority to act.

DELEGATION OF AUTHORITY'S OR COMMISSIONER'S FUNCTIONS OR POWERS TO PERSONS OUTSIDE AUTHORITY

19. (1) The Authority may delegate to any person who is not an employee of the Authority any or all of the Authority's functions or powers under this Act, other than the power to borrow money under section 22.

(2) Subject to subsection (3), the Commissioner may delegate to any person who is not an employee of the Authority any or all of the Commissioner's functions or powers under this Act.

(3) The Commissioner must not delegate a function or power without first obtaining the written consent of the Authority to the delegation.

(4) A person to whom a function or power has been delegated must not delegate the function or power to another person without first obtaining the written consent of the Authority.

(5) A delegation may be made to a specified person or persons of a specified class, or to the holder or holders for the time being of a specified office or specified class of office.

(6) A person purporting to act under a delegation must, when reasonably requested to do so, produce evidence of his or her authority to act.

(7) Any person who exercises any function or power under a delegation under this section may charge the person for whom the function or power is exercised a reasonable fee for the exercise of that function or power.

EFFECT OF DELEGATION

20. Where a section of this Act confers power on a person or the Authority (in this section called the "delegator") to delegate a function or power:

(a) the delegation must be made by instrument in writing; and

(b) the delegation may be made either generally or as otherwise provided by the instrument of delegation; and

(c) a function or power so delegated, when performed or exercised by the delegate, is for the purposes of this Act, taken to have been performed or exercised by the delegator; and

(d) a delegation of a function or power by the delegator does not prevent the performance or exercise of the function or power by the delegator; and

(e) subject to any general or special directions given or conditions imposed by the delegator, the delegate may exercise a function or power so delegated in the same manner and with the same effect as if it had been conferred on the delegate by this Act and not by delegation; and

(f) in the absence of proof to the contrary, the delegate is presumed to be acting in accordance with the terms of the delegation when the delegate purportedly acts pursuant to the delegation; and

(g) the delegation may be given for a specified period, but is revocable at will by the delegator.