

Seychelles

## Seychelles Maritime Safety Authority Act, 2019

Act 2 of 2020

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Seychelles Maritime Safety Authority Act, 2019  
 Contents

Part I – Preliminary ..... 1

    1. Short title and commencement ..... 1

    2. Interpretation ..... 1

Part II – Establishment and functions of the Authority ..... 2

    3. Establishment of the Authority ..... 2

    4. Functions of the Authority ..... 2

Part III – Board of the Authority ..... 4

    5. Board of the Authority ..... 4

    6. Meetings of Board ..... 4

    7. Powers of the Board ..... 5

    8. Chief Executive Officer ..... 5

    9. Deputy Chief Executive Officer ..... 5

    10. Other officers and staff of the Authority ..... 5

Part IV – Appeals Board ..... 6

    11. Appeals Board ..... 6

    12. Appeals ..... 6

Part V – Financial provisions ..... 7

    13. Funds of Authority ..... 7

    14. Insurance cover ..... 7

    15. Direction by Minister ..... 7

    16. Operational plan ..... 7

    17. Accounts and Audits ..... 8

    18. Annual report ..... 8

Part VI – Transfer of employees ..... 8

    19. Transfer of employees to the Authority ..... 8

Part VII – Miscellaneous ..... 9

    20. Savings ..... 9

    21. Application of certain Penal Code provisions ..... 9

    22. Protection for acts in good faith ..... 9

    23. Compounding of offence ..... 9

    24. Reference in other written laws ..... 9

    26. Rules ..... 10

Schedule (Section 4(2)(b)) ..... 11

# Seychelles

## Seychelles Maritime Safety Authority Act, 2019

### Act 2 of 2020

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Commenced on 1 April 2020 by Seychelles Maritime Safety Authority Act, 2020 (Commencement) Notice, 2020

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**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. Short title and commencement

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.

#### 2. Interpretation

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;

“**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. Establishment of the Authority**

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

### **4. Functions of the Authority**

- (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;
  - (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 coordination of matters relating to 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 wrecks;
- (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; administer and maintain a public register of seafarers and ships;
- (p) undertake surveying, inspection and issuance of safety certificates for ships including fishing vessels;
- (q) issue licences for ships, except fishing vessels;
- (r) monitor and regulate the survey and certification activities delegated to recognised organisations;
- (s) conduct port State control inspections;
- (t) ensure compliance with building, alterations, maintenance, manufacture, possession, use, sale and purchase of ships including fishing vessels;
- (u) specify markings on ships according to the type of registration or identification;
- (v) provide for the certification, examination, revalidation, authentication, endorsements, exemptions of certificates and issuance of dispensations for seafarers;
- (w) regulate and issue operating license for ferries, Dive Centres, Dive Operators and all other commercial water sport activities;
- (x) issue licences and certify marine surveyors;
- (y) provide powers for stopping, boarding, confiscation of any articles, equipment and impoundment of ships engaged in local voyages in collaboration with relevant agencies;
- (z) determine the range limit which a ship is allowed to sail from the point of departure;
- (aa) designate, in collaboration with relevant agencies, mooring and anchoring areas for ships including fishing vessels;
- (bb) specify the accepted limit of alcohol in the blood, urine and breath of seafarers onboard ships including fishing vessels;
- (cc) specify the speed limits of ships including fishing vessels in Seychelles waters;
- (dd) 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;
- (ee) provide and maintain navigational aids, except within port limits, where necessary;
- (ff) prescribe forms for any services provided for by the Authority;
- (gg) collect fees including surcharges for any services provided for by the Authority;
- (hh) perform all such other functions which contribute to the attainment of the objects of the Authority.

## Part III – Board of the Authority

### 5. Board of the Authority

- (1) The Authority shall be administered by a Board consisting of seven members appointed by the President in consultation with the Minister from among persons having wide experience of, and having shown capacity in, matters relating to maritime affairs, or possessing skills or experience in relevant fields.
- (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 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. Meetings of Board

- (1) The Board shall meet at least once every two months or 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.
- (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) Five members of the Board shall form a quorum for the meeting.
- (4) The decisions of the Board shall be made by a simple majority of votes of the members present and in any case in which the voting is equal, the member presiding shall have an additional or 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.

## **7. Powers of the Board**

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

## **8. Chief Executive Officer**

- (1) The President may, on the recommendation of 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. Deputy Chief Executive Officer**

- (1) The President may appoint a Deputy Chief Executive Officer of the Authority on the recommendation of the Board.
- (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. Other officers and staff of the Authority**

- (1) The Authority may appoint the following officers for the implementation of the provisions of this Act and the laws administered by the Authority—
  - (a) Registrar of ships;
  - (b) Registrar of Seafarers;
  - (c) Surveyor;
  - (d) Chief Examiner;

- (e) Receiver of wrecks;
  - (f) 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. Appeals Board

- (1) There shall be an Appeals Board consisting of three persons, one of whom shall be the Chairperson, appointed by the President on the recommendation of the Ministry.
- (2) The Appeals Board may, on such terms and conditions as it may determine, appoint any person to assist it in deciding any appeal.
- (3) The Chairperson and members of the Appeals Board shall be persons having such qualifications and experience in the marine sector as may be prescribed and be of good character and integrity.
- (4) A person shall not be appointed as Chairperson or member of the Appeals Board if that person—
- (a) is the owner or operator of, or has an interest in, a marine business subject to oversight by the Authority;
  - (b) has been convicted of, and undergone imprisonment for a term of not less than six months for, an offence involving fraud, dishonesty or moral turpitude.
- (5) The Chairperson and members of the Appeals Board shall hold office for three years and shall be eligible for reappointment.
- (6) The appointment of the Chairperson of the appeals board shall be on such terms and conditions as may be determined by the President.
- (7) 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.
- (8) The Appeals Board may regulate its own proceedings.

### 12. Appeals

- (1) A person aggrieved by any decision of the Authority may appeal to the Appeals Board.
- (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) quashing the decision; or
  - (d) ordering the decision-maker to reconsider the decision.

## **Part V – Financial provisions**

### **13. Funds of Authority**

- (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.

### **14. Insurance cover**

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.

### **15. Direction by Minister**

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

### **16. Operational plan**

- (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.
- (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. Accounts and Audits

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

## 18. Annual report

- (1) The Authority shall, as soon as possible after the expiration of each financial year and in any event not later than the 31<sup>st</sup> 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

### 19. Transfer of employees to the Authority

- (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 Chief Executive Officer respectively and shall perform their functions under this Act until such time the President makes appointments 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. Savings

- (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.
- (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, 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.

### 21. Application of certain Penal Code provisions

- (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.

### 22. Protection for acts in good faith

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.

### 23. Compounding of offence

- (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.

### 24. Reference in other written laws

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.

### 25. Regulations

- (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 the 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;
  - (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.

## 26. Rules

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;
- (h) any other matter for the purpose of carrying into effect the provisions of this Act.

## **Schedule (Section 4(2)(b))**

Merchant Shipping Act (Cap 282)