

No. 13 of 2001

VIRGIN ISLANDS

MERCHANT SHIPPING ACT, 2001

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“British citizen”, “British Dependent Territories citizen”, “British Overseas citizen”, and “Commonwealth citizen” have the same meanings as in the British Nationality Act 1981;

“British ship” has the meaning given in section 1(1) of the Merchant Shipping Act 1995 of the United Kingdom;

“Collision Convention” means the International Convention on Regulations for the Prevention of Collisions at Sea, 1972 as amended;

“commissioned military officer” means a commissioned officer in Her Majesty’s land forces on full pay;

“commissioned naval officer” means a commissioned officer in Her Majesty’s Navy on full pay;

“Consular officer”, in relation to a foreign country, means the officer recognised by Her Majesty as a consular officer of that foreign country;

“contravention” includes failure to comply (and “failure” includes refusal);

“Court” means the High Court;

“Director” means the Director appointed pursuant to section 414;

“fishing vessel” means a vessel for the time being used or, intended to be used, for or in connection with fishing for sea fish other than a vessel used or intended to be used for fishing otherwise than for profit or a vessel for the time being used or intended to be used wholly for the purpose of conveying persons wishing to fish for pleasure;

“foreign”, in relation to a ship, means a ship which is not a Virgin Islands ship;

“Government ship” means any ship owned by the Government or held by any person on behalf of or for the benefit of the Government;

“harbour” includes estuaries, navigable rivers, piers, jetties and other works in or at which ships can obtain shelter or ship and unship goods or passengers;

“length” has the same meaning as may be prescribed in the tonnage regulations;

“Load Line Convention” means the “1966 Convention” as defined in section 222 (1);

“Marine Pollution Convention” means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 as amended;

“master” includes every person (except a pilot) having command or charge of a ship and, in relation to a fishing vessel, means the skipper;

“mile” means an international nautical mile of 1852 metres;

“Minister” means the Minister appointed by instrument by the Governor to administer this Act or any Part thereof;

“Organization” or “IMO” means the International Maritime Organization;

“owner”, in relation to a ship, or “shipowner” means, in respect of a registered ship, the registered owner and includes a bareboat charterer and a managing owner or a managing agent;

“passenger” means any person carried on a ship, except

- (a) a person employed or engaged in any capacity on the business of the ship,
- (b) a person on board the ship either in pursuance of the obligation laid upon the master to carry shipwrecked,

distressed or other persons, or by reason of any circumstance that neither the master nor the owner nor the charterer, if any, could have prevented or forestalled,

- (c) a child under one year of age;

“passenger ship” means a ship carrying more than twelve passengers;

“pleasure vessel” means

- (a) any vessel including a dive boat which at the time it is being used is
 - (i) in the case of a vessel wholly owned by an individual or individuals, used only for the sport or pleasure of the owner or the immediate family or friends of the owner; or
 - (ii) in the case of a vessel owned by a body corporate, one on which the persons are employees, officers or shareholders of the body corporate, or their immediate family or friends; and
 - (iii) on a voyage or excursion for which the owner does not receive money for or in connection with operating the vessel or carrying any person, other than as a contribution to the direct expenses of the operation of the vessel incurred during the voyage or excursion, or
- (b) any vessel wholly owned by or on behalf of a club formed for the purpose of sport or pleasure which, at the time it is being used, is used only for the sport or pleasure of members of the club or their immediate family, and for the use of which any charges levied are paid into club funds and applied for the general use of the club, and

in the case of any vessel referred to in paragraph (a) or (b), no other payments are made by or on behalf of the users of the vessel, other than by the owner; and in this definition, “immediate family” means, in relation to an individual, the husband or wife of the individual, and a relative of the individual or the relative’s husband or wife, and “relative” means brother, sister, ancestor or lineal descendant, and “owner” includes charterer;

“port” includes place;

“Ports Authority” includes all persons entrusted with the function of constructing, improving, managing, regulating, maintaining or lighting a harbour;

“proper officer” means, in relation to a port in the United Kingdom, a relevant British possession, the Republic of Ireland, or a country mentioned in Schedule 3 of the British Nationality Act 1981, any officer exercising in that port functions similar to those of a Superintendent, and in relation to any other port, a consular officer appointed by Her Majesty’s Government in the United Kingdom;

“Registrar” means the Registrar of Shipping and Seamen appointed under section 449 (1);

“registration regulations” means regulations made pursuant to sections 64 and 65;

“relevant British possession” means

- (a) the Isle of Man;
- (b) any of the Channel Islands; and
- (c) any colony;

“ro-ro passenger ship” means a passenger ship provided with cargo or vehicle spaces not normally subdivided in any way and extending to either a substantial length or the entire length of the ship in which vehicles or cargo can be loaded or unloaded in a horizontal direction;

“STCW Convention” means the International Convention on Standards of Training, Certification and Watchkeeping, 1978 as amended in 1995;

“Safety Convention” has the same meaning as in section 171;

“safety regulations” means regulations made pursuant to sections 174, 175 or 206 as appropriate;

“seaman” includes every person (except masters and pilots) employed or engaged in any capacity on board any ship;

“ship” includes every description of vessel used in navigation;

“small ship” means a ship less than twenty-four metres in length;

“Superintendent” means an official exercising functions similar to those of a Superintendent in the United Kingdom;

“surveyor of ships” has the meaning given in section 414;

“Tonnage Convention” means the International Convention on Tonnage Measurement of Ships, 1969 as amended;

“tonnage regulations” means regulations made under section 50;

“Virgin Islands citizen” means a British Dependent Territories citizen by virtue of a connection with the Virgin Islands, and, for the purposes of this Act includes an individual who under the laws of the Virgin Islands, possesses belonger status or is a permanent resident of the Virgin Islands;

“Virgin Islands ship” means a ship registered in the Territory under this Act, and “Virgin Islands vessel” and “Virgin Islands fishing vessel” shall be construed accordingly;

“wages” includes emoluments.

(2) In this Act,

- (a) “Virgin Islands waters” means the sea or other waters within the seaward limits of the territorial sea of the Virgin Islands; and
- (b) “national waters”, in relation to the Virgin Islands, means Virgin Islands waters landward of the baselines for measuring the breadth of its territorial sea.

PART II
REGISTRATION OF SHIPS
Registration

Virgin Islands ship

3. (1) A ship shall be a Virgin Islands ship for the purposes of this Part if the ship is registered in the Virgin Islands under this Part.

(2) A ship registered in the Virgin Islands under Part I of the Merchant Shipping Act 1894 of the United Kingdom shall be deemed to be a ship registered in the Virgin Islands under this Act.

Qualifications for
owning a Virgin Islands
ship

4. (1) For the purposes of this Act, the following are persons qualified to be owners of Virgin Islands ships, namely,

- (a) Virgin Islands citizens;
- (b) British citizens;
- (c) British Dependent Territories citizens;
- (d) British Overseas citizens;
- (e) British subjects;
- (f) persons who under the Hong Kong (British Nationality) Order 1986 are British Nationals (overseas);
- (g) persons, other than those referred to in paragraphs (a) to (f), who are nationals of a Member State of the European Union or European Economic Area, including the overseas territories of such Member State;

- (h) bodies corporate incorporated in any Member State of the European Union or European Economic Area, including the United Kingdom, and having a place of business in any such Member State;
- (i) bodies corporate incorporated in any relevant British possession, other than the Virgin Islands, or in any overseas territory of a Member State of the European Union or the European Economic

Area, and having a place of business in any such possession or overseas territory; and

- (j) bodies corporate incorporated in the Virgin Islands or incorporated in a Member State of the Caribbean Community or the Organisation of Eastern Caribbean States and registered in the Virgin Islands.

(2) A person who is not qualified under subsection (1) to be an owner of a Virgin Islands ship may nevertheless be one of the owners of such a ship if

- (a) a majority interest in the ship, within the meaning of section 5, is owned by persons who are qualified to be owners of Virgin Islands ships; and
- (b) the ship is registered in accordance with the provisions of section 5.

(3) In this section “place of business” means the place where meetings of the directors of the body corporate are regularly held and, in the case of a meeting held by electronic or other mechanical means, the place where the majority of members of the body corporate taking part in the meeting are present.

5. (1) Subject to sections 7 and 8, this section has effect for the purpose of determining whether a ship is entitled to be registered in the Virgin Islands under this Act.

Entitlement of ship to be registered under this Act

(2) Subject to subsection (3), a ship shall be entitled to be registered if a majority interest in the ship is owned by one or more persons qualified to be owners of Virgin Islands ships by virtue of section 4 (1).

(3) Where

- (a) a ship falling within subsection (2) is twenty-four metres or more in length, and
- (b) the person, or (as the case may be) each of the persons, by whom the majority interest is owned is not resident in the Virgin Islands,

the ship shall only be entitled to be registered if a representative person resident in the Virgin Islands is appointed in relation to the ship.

(4) For the purposes of this section,

- (a) one or more persons shall be treated as owning a majority interest in a ship if there is vested in that person or in those persons taken together, the legal title to thirty-three or more, or all of the sixty-four shares into which the property in the ship is divided, for the purpose of registration in accordance with section 12 (there being left out of account for this purpose any share in which any beneficial interest is owned by a person who is not qualified to be an owner of a Virgin Islands ship); and
- (b) a body corporate shall be treated as resident in the Virgin Islands if it is incorporated in the Virgin Islands and has a place of business there.

Representative person

6. (1) Where the entitlement of a ship to be registered is, by virtue of section 5, conditional on the appointment of a representative person in relation to the ship, the owner of the ship shall

- (a) before applying for the ship to be registered, appoint an individual or body corporate satisfying the prescribed requirements to be the representative person in relation to the ship, and
- (b) ensure that so long as the ship remains registered, an individual or body corporate satisfying those requirements is so appointed.

(2) For the purposes of subsection (1), the prescribed requirements are

- (a) that the representative person is either
 - (i) an individual resident in the Virgin Islands; or
 - (ii) a body corporate incorporated in the Virgin Islands and having a place of business there; and
- (b) such other requirements as the Governor in Council may by regulations prescribe.

(3) The owner of a ship in relation to which any representative person is for the time being appointed shall,

- (a) on applying for the ship to be registered, notify the Registrar of the name and address of the representative person, and
- (b) in the event of any change in the identity, or in the address, of the representative person so appointed, notify the Registrar of the name and address of the new representative person, or, as the case may be, of the new address, as soon as practicable after the change occurs,

and the Registrar shall record any particulars notified to him in pursuance of this section in the register kept by him under this Act.

(4) Any document required or authorised, by virtue of any statutory provision, to be served for the purpose of the institution of, or otherwise in connection with, proceedings for an offence under this Act, or under any instruments in force under this Act shall, where the person to be served is the owner of a registered ship, be treated as duly served on him if

- (a) delivered to any representative person for the time being appointed in relation to the ship;
- (b) sent to any such person by post at the address notified (or, as the case may be, last notified) to the Registrar under subsection (3) in relation to that person; or
- (c) left for any such person at that address.

(5) Any person who contravenes subsection (1) (b) or (3) (b) commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

7. (1) Notwithstanding that any ship in respect of which an application for registration has been made is entitled to be registered, the Director may direct the Registrar not to register a ship if he is satisfied that having regard to

Refusal of registration

- (a) the condition of the ship so far as is relevant to safety or to any risk of pollution,
- (b) the safety, health and welfare of persons employed or engaged in any capacity on board the ship, or
- (c) the possibility that the ship may be used for criminal purposes,

it would be detrimental to the interests of the Virgin Islands or of international shipping for the ship to be registered.

(2) If it appears to the Director that a ship in respect of which an application for registration has been made is not entitled to be registered, having regard to the matters mentioned in paragraphs (a),(b) or (c) of subsection (1), he shall inform the applicant, or any representative person for the time being appointed in relation to the ship, and the Registrar of Shipping shall not register the ship.

8. (1) The Registrar may, subject to subsection (5), terminate a ship's registration in the following circumstances:

- (a) where the Director is satisfied that
 - (i) having regard to the matters mentioned in paragraph (a), (b) or (c) of section 7(1), it would be detrimental to the interests of the Virgin Islands or of international shipping for a registered ship to continue to be registered,
 - (ii) any penalty imposed on the owner of a registered ship in respect of a contravention of this Act, or of any instrument in force under this Act, has remained unpaid for a period of more than three months and no appeal against the penalty is pending, or
 - (iii) any summons for any such contravention has been duly served on the owner of a registered ship and the owner has failed to appear at the time and place appointed for the trial of the information or complaint in question and a period of not less than three months has elapsed since that time,

and the Director so informs the Registrar;

- (b) if the annual tonnage fees of a registered ship has remained unpaid for a period of more than two years;
- (c) if a registered ship is no longer entitled to remain registered;
- (d) on application by the registered owner stating that he wishes to terminate the registration of the ship;
- (e) upon a registered ship becoming a total loss or being otherwise destroyed by, *inter alia*, shipwreck, demolition, fire or sinking; or
- (f) if section 6 (1) (b) is contravened.

(2) In the event of a registered ship being in any condition referred to in subsection (1) (e), every registered owner of the ship or any share therein shall, immediately upon obtaining knowledge of the event, inform the Registrar who shall make an entry thereof in the register.

(3) Where the registration of a ship is terminated

- (a) under subsection (1), the Registrar shall notify all registered mortgagees of the closure of the ship's registration; and

- (b) under paragraphs (d) or (e) of subsection (1), the Registrar shall forthwith issue a closure transcript to the owner of the ship.
- (4) On receipt of the closure transcript referred to in subsection (3) (b), the owner shall immediately surrender the ship's certificate of registry to the Registrar for cancellation.

(5) Where

- (a) the circumstances referred to in subsection (1)(a) applies, and it appears to the Registrar that subsection (1) (b), (c) or (f) apply, he may serve notice on the owner or on any representative person for the time being appointed in relation to that ship to produce, within twenty-one days, evidence sufficient to satisfy the Director or the Registrar, as the case may be, that the ship is eligible to remain on the register, and if at the expiry of that period the Director or the Registrar, as the case may be, is not so satisfied, the Registrar may
 - (i) extend the notice and ask for further information or evidence; or
 - (ii) serve a final notice informing the owner or the representative person of the termination of the ship's registry, and such termination shall take effect seven days after the service of that notice;
- (b) the Registrar serves a notice under this subsection on the owner of a ship in respect of which a mortgage is registered, the Registrar shall send a copy of that notice to the mortgagee at the address recorded for him in the register;
- (c) a ship's registration is terminated under this subsection, the Registrar shall issue a closure transcript and the owner of the ship shall forthwith surrender its certificate of registry.

(6) Any person who

- (a) in connection with the making of any representations in pursuance of subsection (5)(a), knowingly or recklessly furnishes information which is false in a material particular commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale; or on conviction on indictment to a fine not exceeding ten thousand dollars; or

- (b) fails, without reasonable cause to surrender a certificate of registry when required to do so under subsection (4) or (5), commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Penal liability

9. (1) Where a body corporate commits an offence under this Act or any regulations made under it, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate commit that offence and are liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Procedure For Registration

Directions to Registrar

10. The Director may give directions of a general nature with regard to the discharge of any of the functions of the Registrar.

Register

11. (1) There shall continue to be a register of Virgin Islands ships for all registrations of ships in the Virgin Islands.

(2) The register shall be maintained by the Registrar.

(3) The register shall be so constituted as to distinguish, registrations of small ships, pleasure vessels and submersible craft and may otherwise distinguish between classes or descriptions of ships.

(4) The register shall be maintained in accordance with the registration regulations and the private law provisions for registered ships and any directions given by the Director under section 10.

(5) The register shall be available for public inspection during official working hours.

12. Entries in the register in relation to property in a ship shall be made in accordance with the following provisions: Entries in register

- (a) the property in a ship shall be divided into sixty-four shares;
- (b) subject to the provisions of this Act with respect to joint owners or owners by transmission, not more than sixty-four individuals shall be entitled to be registered at the same time as owners of any one ship, but this rule shall not affect the beneficial title of any number of persons or of any company represented by or claiming under or through any registered owner or joint owner;
- (c) a person shall not be entitled to be registered as owner of a fractional part of a share in a ship, but any number of persons not exceeding five may be registered as joint owners of a ship or of any share or shares therein;
- (d) joint owners shall be considered as constituting one person only as regards the persons entitled to be registered, and shall not be entitled to dispose in severalty of any interest in a ship, or in any share therein in respect of which they are registered;
- (e) a body corporate shall be registered as owner by its corporate name.

13. (1) Every ship shall, before registration, be surveyed by a surveyor of ships and her tonnage ascertained in accordance with the tonnage regulations made under this Act, and the surveyor shall grant his certificate specifying the ship's tonnage and build, and such other particulars descriptive of the identity of the ship as may for the time being be required by the Director and such certificate shall be delivered to the Registrar before registration. Survey and measurement of ships

(2) When the tonnage of any ship has been ascertained and registered in accordance with the tonnage regulations that tonnage shall be treated as the tonnage of the ship except so far as regulations provide, in specified circumstances, for the ship to be re-measured and the register amended accordingly.

14. (1) Every ship, other than a pleasure vessel which is under twenty-four metres in length, shall before registration be marked permanently and conspicuously to the satisfaction of the Director as follows:

- (a) her name shall be marked on each of her bows, and her name and the name of her port of registry shall be marked on her stern, in letters of a contrasting colour so as to be clearly visible, such letters to be of a length not less than one decimetre, and of proportionate breadth;
- (b) her official number and net tonnage shall be permanently marked on a main part of the ship's permanent structure that is readily visible and accessible in such manner as may be specified by a surveyor of ships;
- (c) subject to paragraph (e), in the case of every such ship built before the 1st day of May, 1988 a scale of feet denoting her draught of water shall be marked on each side of her stem and of her stern post in Roman capital numerals or in figures, not less than six inches in length, the lower line of such letters or figures to coincide with the draught line denoted thereby, and those letters and figures shall be marked by being cut in and painted in a contrasting colour so as to be clearly visible, or in such other way as the Director may approve;
- (d) in the case of every such ship built after the 1st day of May, 1988, a scale of decimetres, or of metres and decimetres, denoting a draught of water shall be marked on each side of her stem and her stern post in figures at two-decimetre intervals and at intervening two-decimetre intervals, if the scale is in metres and decimetres, the capital letter "M" being placed after each metre figure; the top figure of the scale showing both the metre and (except where it marks a full metre interval) the decimetre figure; the lower line of the figures, or figures and letters (as the case may be), coinciding with the draught line denoted thereby; the figures and letters being not less than one decimetre in length and being marked by being cut in and painted in a contrasting colour so as to be clearly visible, or in such other way as the Director may approve;
- (e) every ship built before the 1st day of May 1988 may comply with the requirements of paragraph (d).

(2) Unless in special circumstances the Director directs otherwise, a pleasure vessel of twenty-four metres in length or over, shall be deemed to be in compliance

with subsection (1) (a) if her name and the name of her port of registry is marked on her stern in the manner provided in that subsection.

(3) If the scale showing the ship's draught of water is in any respect inaccurate, so as to be likely to mislead, the owner of the ship commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) The marks required by this section shall be permanently continued, and no alteration shall be made therein, except in the event of any of the particulars thereby denoted being altered in the manner provided by this Act.

(5) If an owner or master of a registered ship neglects to keep his ship marked as required by this section, or if any person conceals, removes, alters, defaces, or obliterates or suffers any person under his control to conceal, remove, alter, deface, or obliterate any of the said marks, except in the event referred to in subsection (4), that owner, master, or person commits an offence, and for each such offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale, and on a certificate from a surveyor of ships that a ship is insufficiently or inaccurately marked the ship may be detained until the insufficiency or inaccuracy has been remedied.

(6) It shall be a defence for an owner, master or person referred to in subsection (5) to prove

- (a) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence, or
- (b) that the commission of the offence was for the purpose of escaping capture by an enemy.

(7) Where a ship proceeds to sea without being marked in accordance with this section, the owner commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

(8) The Director may exempt any class of ships from all or any of the requirements of this section.

15. An application for registration of a ship shall be made in the case of individuals by the person requiring to be registered as owner, or by one or more of the persons so requiring if more than one, or by his or their agent, and in the case of

Application for
registration

bodies corporate by their agent, and the authority of the agent shall be testified by writing, if appointed by individuals, under the hands of the appointers, and, if appointed by a body corporate, under the common seal of that body corporate or by deed or instrument under seal.

Declaration of eligibility

16. (1) A person shall not be entitled to be registered as owner of a ship or of a share therein until he, or in the case of a body corporate the person authorised by this Act to make declarations on behalf of the body corporate, has made and signed a declaration of eligibility, referring to the ship as described in the certificate of the surveyor, and containing the following particulars:

- (a) a statement of his qualifications to own a Virgin Islands ship, or in the case of a body corporate, of such circumstances of the constitution and business thereof as prove it to be qualified to own a Virgin Islands ship;
- (b) in the case of a foreign ship, a statement of her foreign name;
- (c) a statement of the number of shares in the ship the legal title to which is vested in him or, as the case may be, the body corporate, whether alone or jointly with any other person or persons; and
- (d) a declaration that, to the best of his knowledge and belief, a majority interest in the ship is owned by persons qualified to be owners of Virgin Islands ships, and the ship is otherwise entitled to be registered.

(2) In the application of this section to a ship which is not wholly owned by persons qualified to be owners of Virgin Islands ships, paragraph (a) of subsection (1) shall have effect only in relation to persons who are so qualified.

Evidence of title on first registry

17. On the first registration of a ship such evidence of title shall be produced as specified in the registration regulations.

Entry of particulars in register

18. When the requirements of this Act preliminary to registration have been complied with, the Registrar shall register the ship in accordance with the registration regulations by entering in the register particulars respecting the ship as specified in the registration regulations.

Documents to be retained by Registrar of Shipping

19. On the registration of a ship the Registrar shall retain in his possession such documents as are specified in the registration regulations.

20. (1) The port of Road Harbour, Virgin Islands shall be the port of registry of a ship registered under this Act and the port to which she belongs. Port of Registry

(2) The Governor in Council may appoint, by notification published in the **Gazette**, any other port in the Virgin Islands as a port of registry for the purposes of subsection (1).

Certificate of Registry

21. On completion of the registration of a ship, the Registrar shall grant a certificate of registry comprising such particulars respecting the ship as are specified in the registration regulations. Certificate of Registry

22. (1) The certificate of registry shall be used only for the lawful navigation of the ship, and shall not be subject to detention by reason of any title, lien, charge, or interest had or claimed by any owner, mortgagee, or other person to, on, or in the ship.

(2) If any person, whether interested in the ship or not, refuses on request to surrender the certificate of registry when in his possession or under his control to the person entitled to the custody thereof for the purposes of the lawful navigation of the ship, or to the Registrar, any customs officer or other person entitled by law to require such surrender, any court capable of taking cognisance of the matter, may summon the person so refusing to appear before such court, and to be examined touching such refusal, and unless it is proved to the satisfaction of such court that there was reasonable cause for such refusal, that person commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale, but if it is shown to the court that the certificate is lost, the person summoned shall be discharged, and the court shall certify that the certificate of registry is lost.

(3) If the person so refusing is proved to have absconded so that the process of a court cannot be served on him, or if he persists in not surrendering the certificate, the court shall certify the fact, and the same proceedings may then be taken as in the case of a certificate mislaid, lost, or destroyed, or as near thereto as circumstances permit.

Custody of certificate

Penalty for use of improper certificate

23. If the master or owner of a ship uses or attempts to use for her navigation a certificate of registry not legally granted in respect of the ship, he commits an offence, and in respect of each such offence, is liable on summary conviction to a fine not exceeding twenty-five thousand dollars, and the ship is subject to forfeiture under this Act.

Power to grant new certificate

24. The Registrar may, with the approval of the Director, and upon the surrender to him of the certificate of registry of a ship, grant a new certificate in lieu thereof.

Duplicate certificates

25. (1) If it is shown to the satisfaction of the Registrar that the certificate of registry has been lost, stolen or destroyed or has become defaced or illegible (“the event”), he may issue to the owner a duplicate of that certificate, which shall be marked as such, and shall be of the same effect as the original.

(2) Where a duplicate certificate of registry is issued the original, if then available or if subsequently found or recovered, shall be forthwith surrendered to the Registrar.

(3) If

- (a) the port where the ship is at the time of the event or, as the case may be, where it first arrives after the event, is not in the Virgin Islands, and
- (b) the master of the ship, or some other person having knowledge of the facts of the case, makes a declaration before the proper officer as to the loss, theft, destruction, defacement or illegibility of the certificate,

the proper officer shall notify the Registrar.

(4) On being notified of the event and being satisfied that the ship is entitled to be issued with a duplicate certificate the Registrar shall

- (a) send by facsimile or any other form of electronic transmission to the proper officer a copy of the duplicate certificate which the proper

officer shall endorse with a statement of the circumstances, under which it is granted; or

- (b) where there are no facsimile or other electronic transmission facilities, the proper officer shall issue a temporary certificate so endorsed.

(5) The facsimile or other electronically transmitted version of the duplicate certificate, or the temporary certificate, as the case may be, shall be surrendered to the Registrar, as soon as an original duplicate certificate referred to in subsection (1) is received by the owner.

(6) Any person who fails, without reasonable cause to surrender a certificate of registry when required to do so under subsection (2), commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

26. (1) Whenever a change occurs in the registered ownership of a ship, the Registrar may endorse the change on the certificate of registry or issue a new certificate of registry.

Endorsement of change of ownership

(2) The master shall, for the purpose of such endorsement by the Registrar, deliver the certificate of registry to the Registrar forthwith after the change.

(3) If the master fails to deliver to the Registrar the certificate of registry as required by this section he commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

27. (1) If a ship becomes entitled to be registered while at port in a country outside the Virgin Islands, then subject to this section, the proper officer may, on the application of the master of the ship, grant to him a provisional certificate stating

Provisional certificate for ship becoming entitled to be registered while abroad

- (a) the name of the ship,
- (b) the time and place of the purchase of the ship and the names of the purchasers, and
- (c) the best particulars respecting the tonnage, build and description of the ship which the person granting the certificate is able to obtain,

and shall forward a copy of the certificate at the first convenient opportunity to the Registrar.

(2) No provisional certificate shall be granted by any person under this section unless he is satisfied that an application under the registration regulations for registration of the ship has been made or is intended.

(3) A provisional certificate shall have the effect of a certificate of registry until

- (a) the expiration of a period not exceeding three months from its date, or
- (b) the ship's arrival at the port of Road Harbour, Virgin Islands,

whichever happens first, and shall then cease to be of any effect.

(4) Where a provisional certificate has been granted for a ship under this section, no further provisional certificate shall be so granted for the ship within one year from the date of that certificate except with the consent of the Director.

Bareboat Charter Registration

Registration of ships chartered by bareboat to a qualified person

28. (1) Subject to subsection (3), a ship of 1500 gross tonnage or above shall be entitled to be registered under this Act in the Virgin Islands if

- (a) the ship is operated under a bareboat charter which complies with the requirements set out in subsection (2);
- (b) the charterer is a person qualified to be an owner of a Virgin Islands ship by virtue of section 4; and
- (c) the requirements corresponding to those imposed on the owner of a majority interest in the ship by section 5(3) and (4)(b) with respect to entitlement to registration, are satisfied by the charterer.

(2) The requirements referred to in subsection (1)(a) are

- (a) that the charter is in writing;
- (b) that the demise effected by the charter is
 - (i) made by the owner of the ship,
 - (ii) made to a charterer who has a single legal personality, and

- (iii) for a fixed period of two years or more or such lesser period as may be allowed by the Director; and
- (c) that under the terms of the charter the operation, management and control of the ship (including responsibility for the engagement or employment of the master and crew of the ship) is vested in the charterer.

(3) Without prejudice to subsection (4), the Registrar may refuse to register a ship which is entitled to be registered under subsection (1) if

- (a) he is not satisfied that
 - (i) the owner of the ship has consented to the registration of the ship in the Virgin Islands, or
 - (ii) any mortgagee of the ship has consented to the registration of the ship in the Virgin Islands;
- (b) the tonnage of the ship cannot be ascertained in accordance with the tonnage regulations;
- (c) the ship cannot be marked in accordance with section 14;
- (d) he reasonably believes that the ship would be precluded by some other Act to which it is subject from flying the Virgin Islands' national colours in accordance with section 70;
- (e) the charter by demise has an unexpired period of less than two years at the date when the application to register the ship is made; or
- (f) it is not in the interests of the Virgin Islands that the ship should be registered in the Virgin Islands.

(4) Sections 6, 7 and 8 shall apply in respect of any ship entitled to be registered in the Virgin Islands pursuant to subsection (1) as if the ship was entitled to be registered pursuant to section 5.

29. Where a ship is registered pursuant to section 28(1), it shall

- (a) be a Virgin Islands ship for the purposes of this Act; and
- (b) not fly any colours other than the Virgin Islands' national colours specified in section 70.

Consequences of registration pursuant to section 28(1)

30. (1) Where application is made to register a ship which is entitled to be registered pursuant to section 28(1) or, application having been made to register a ship which is entitled to be registered pursuant to section 28(1), the ship has been registered,

- (a) the provisions of this Part shall apply to the ship and its registration subject to the modifications and adaptations to those provisions set out in subsection (2); and
- (b) any act or thing as is mentioned in this subsection, required to be done or not done under this Act by an owner of such a ship shall be required to be done or not done by the charterer, and
 - (i) the charterer shall be liable for doing or omitting to do such act or thing as if he were the owner of the ship, and
 - (ii) a reference to "owner" in this Act shall, in the case of such a ship as is mentioned in this subsection, be deemed to be a reference to "charterer" and the words "registered owner" and "registered ownership" shall be construed accordingly.

(2) The modifications and adaptations to the provisions of this Part referred to in subsection (1) are as follows:

- (a) paragraphs (a) to (e) of section 12 shall not apply;
- (b) the ship shall not be required to be surveyed for the purpose of ascertaining the tonnage of the ship pursuant to section 13 if there is in force in respect of the ship an International Tonnage Certificate (1969) and in such case the tonnage of such ship shall be deemed to have been ascertained and, upon registration, registered in accordance with the tonnage regulations;
- (c) the declaration required by section 16 shall include in place of the statements referred to in paragraphs (c) and (d) of that section, a statement that the ship is subject to a bareboat charter and that the person on whose behalf the declaration is made is the charterer of the ship pursuant to that charter and there shall be attached to such declaration and produced to the Registrar of Shipping a certified copy of that bareboat charter;
- (d) section 17 shall not apply;
- (e) in place of the particulars required to be entered in the register under section 18 the following particulars shall be entered:

- (i) the name of the charterer as if he were the owner of the ship with such annotation as may be necessary to show that the ship is entitled to be registered under section 28(1);
- (ii) the name and address of the owner or owners determined in accordance with the provisions of paragraphs (a) to (e) of section 12; and
- (iii) the name and address of any person who has been granted a mortgage of the ship or any share in the ship by any owner whose name is or is to be noted on the register pursuant to sub-paragraph (ii);
- (iv) such details of the terms of any mortgage referred to in sub-paragraph (iii) as the Registrar shall require to be noted; and
- (v) the previous name, if any, of the ship;
- (f) the Registrar shall retain in his possession, in addition to the surveyor's certificate issued pursuant to section 13, the certified copy of the charter by demise and any certified copy of a transfer referred to in section 31(1)(c) produced to him;
- (g) a certificate of registry granted by the Registrar pursuant to section 21 shall be granted for a fixed period of time expiring on the date upon which the bareboat charter shall come to an end by effluxion of time;
- (h) a ship shall cease to be entitled to be registered within the meaning of section 8(1)(c) upon the expiry of the fixed period specified in the certificate of registry or, if sooner, upon either
 - (i) the termination of the bareboat charter; or
 - (ii) the transfer by the charterer of his rights and obligations under the charter in circumstances which cause the registration to cease pursuant to section 31; and
- (i) sections 54, 55 and 72 to 86 shall not apply.

31. (1) Where a ship is registered pursuant to section 28(1) and the charterer transfers his rights and obligations under obligations of the bareboat charter to another person so that the charterer is no longer under any contractual obligation to the owner of the ship in respect of the operation, management and control of the ship, the registration shall cease upon such transfer unless

Transfer of the rights and obligations of the charterer under the bareboat charter

- (a) the transferee is qualified to own a Virgin Islands ship;
- (b) prior to the execution of the transfer, the transferee, or in the case of a body corporate, the person authorised by this Act to make declarations on behalf of the body corporate, makes and signs a declaration referring to the ship and containing a statement of the qualification of the transferee to own a Virgin Islands ship, or if the transferee is a body corporate of such circumstances of the constitution and business thereof as prove it to be qualified to own a Virgin Islands ship; and
- (c) a certified copy of the transfer executed by the charterer in favour of the transferee is produced to the Registrar.

(2) In subsection (1) "transferee" means the person to whom the charterer has transferred his rights and obligations under the bareboat charter .

Rights and obligations relating to interests in ships registered pursuant to section 28(1)

32. Where a ship is registered pursuant to section 28(1), the rights and obligations of the parties to any contract, bill of sale, mortgage, charge or other instrument creating or disposing of any legal or equitable interest in the ship, whether existing at the date of registration of the ship pursuant to section 28(1) or created thereafter, shall not be affected by such registration.

Dispensations for ships bareboat chartered and registered outside the Virgin Islands

33. (1) Where he is satisfied that it is proper for him to do so, the Director may grant to the owner of a ship of 1500 gross tonnage or above registered in the Virgin Islands under this Act a dispensation under this section.

(2) The Director shall not grant a dispensation under this section unless he is satisfied

- (a) that the ship is subject to a charter pursuant to which the registered owner of the ship is not responsible for the management, operation or control of the ship for the period of the charter;
- (b) that any registered mortgagee of the ship has consented to the dispensation being granted;
- (c) that in addition to the registration of the ship in the Virgin Islands, the ship is intended to be registered under the law of a country outside the Virgin Islands; and
- (d) that upon registration under the law of a country outside the Virgin Islands, the ship will become subject to laws which implement and apply to the ship such provisions of the Collision Convention, the

relevant International Labour Conventions, the Load Line Convention, the Marine Pollution Convention, the Safety Convention and the STCW Convention to the same extent as they apply in respect of the ship by virtue of her registration in the Virgin Islands.

(3) Where the Director has granted to the owner of a ship a dispensation under this section, with effect from the date upon which the conditions set out in subsection (4) have been complied with, sections 68(4) and 70 shall not apply to the ship and section 68(1) shall apply to the ship as though the ship was not a Virgin Islands ship.

(4) The conditions referred to in subsection (3) are

- (a) that the owner has delivered to the Registrar the following documents:
 - (i) a certified copy of the bareboat charter referred to in subsection (2)(a);
 - (ii) in exchange for a receipt, the certificate of registry granted under section 21; and
 - (iii) any certificate issued in respect of the ship under this Act;
- (b) that the owner, or in the case of a body corporate the person authorised by this Act to make declarations on behalf of the body corporate, has delivered to the Registrar a declaration referring to the ship and containing a statement that the ship is lawfully registered in a named country outside the Virgin Islands and is subject to the jurisdiction of that country in respect of the enforcement of such provisions of the conventions referred to in paragraph (d) of subsection (2) as apply in respect of the ship by virtue of her registration in the Virgin Islands; and
- (c) that the Registrar has received confirmation from the administration of the country outside the Virgin Islands in which the ship is registered that the ship is so registered and is subject to the jurisdiction of that country.

34. (1) Any dispensation granted by the Director under section 33 shall terminate automatically if

- (a) the ship ceases to be registered in the country named in the declaration made pursuant to section 33(4)(b); or

Termination and
revocation of
dispensations granted
under section 33

- (b) the bareboat charter terminates, whether upon expiry or otherwise.
- (2) The Director may revoke any dispensation granted by him under section 33
 - (a) upon the application of any registered owner or registered mortgagee of the ship;
 - (b) if he is satisfied that any declaration made for the purpose of section 33(4)(b) is false or misleading;
 - (c) at the request of the country named in the declaration made pursuant to section 33(4)(b); or
 - (d) if it is not in the interests of the Virgin Islands that the dispensation should continue.

Flag to be used where a dispensation has been granted under section 33

35. (1) Where a dispensation granted under section 33 has taken effect, the ship shall fly only the colours lawfully borne by ships registered in the country named in the declaration made pursuant to section 33(4)(b).

(2) Without prejudice to section 33(3), where a ship flies colours in contravention of subsection (1) the registered owner commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

Interim Registration in the Course of Transfer of Ownership

Registration of transfer of ownership

36. (1) This section applies in the following circumstances, namely that

- (a) there is in existence a written contract for the transfer of a ship or a share in a ship; and
- (b) pursuant to the terms of that contract the owner has agreed
 - (i) to transfer the ship or any share in the ship to a person qualified to own Virgin Islands ships and who intends to register the ship in the Virgin Islands, and
 - (ii) to provide the transferee with a bill of sale of the ship and a certificate stating that the ship is free from registered mortgages; and
- (c) upon the execution of the bill of sale the ship will be entitled to be registered in the Virgin Islands provided the requirements of section 5 are satisfied.

(2) Where this section applies the Registrar may, if satisfied that it is proper for him to do so,

- (a) enter in the register the particulars referred to in section 18 subject to the modifications referred to in subsection (3); and
 - (b) grant to the transferee a certificate of registry which is valid for a period of twenty-one days from its date of issue.
- (3) The modifications referred to in subsection (2)(a), are that

- (a) the name and description of the owner required to be entered pursuant to the registration regulations shall be the name and description of the transferee of the ship or of the share therein, and
- (b) there shall also be entered a note that the registration is conditional upon a bill of sale transferring the ship or the share therein to the person or persons named in the register being produced to the Registrar within twenty-one days.

(4) The Registrar shall only be satisfied that it is proper for him to make the entry in the register and grant a certificate of registry pursuant to subsection (3) if

- (a) sections 13, 14, 15, and 17 and section 18 as modified by subsection (3) have been complied with;
- (b) the transferee, or in the case of a body corporate the person authorised by this Act to make declarations on behalf of the body corporate, has made and signed a declaration, referring to the ship as described in the surveyor's certificate issued pursuant to section 13, and containing the following particulars:
 - (i) if he is a person qualified to own a Virgin Islands ship, a statement of his qualifications to own a Virgin Islands ship, or in the case of a body corporate, of such circumstances of the constitution and the business thereof as prove it to be qualified to own a Virgin Islands ship;
 - (ii) if the ship is a foreign ship, a statement of the ship's foreign name;
 - (iii) a statement that there is in existence a written contract for the transfer of the ship or a share in the ship and that the ship is not registered in the Virgin Islands;
 - (iv) a statement that the owner has agreed
 - (aa) to transfer the ship or any share in the ship to the transferee;

- (bb) to provide the transferee with a bill of sale of the ship and a certificate stating that the ship is free from registered mortgages; and
- (cc) to procure the termination of the registration of the ship in the country in which it is then registered; and
- (v) a statement that, to the best of his knowledge and belief, upon the execution of the bill of sale a majority interest in the ship will be owned by persons qualified to be owners of Virgin Islands ships, and the ship is otherwise entitled to be registered; and
- (c) there is produced to the Registrar a certified copy of the contract referred to in the declaration made pursuant to paragraph (b).

(5) Where a ship is registered pursuant to subsection (2), the transferee shall within twenty-one days after the date of issue of the certificate of registry granted pursuant to subsection (2)(b) deliver to the Registrar a declaration made in accordance with section 16 and a bill of sale executed pursuant to the contract the certified copy of which has been produced to the Registrar pursuant to subsection (4)(c) and thereupon the Registrar shall make the entries in the register required by section 18 and grant a certificate of registry pursuant to section 21.

(6) If the transferee does not comply with the requirements of subsection (5), the registration of the ship shall automatically terminate at the expiration of the certificate of registry granted pursuant to subsection (2)(b) and the certificate of registry and any certificate issued in respect of the ship under this Act shall be delivered to the Registrar.

Consequences of registration pursuant to section 36

37. (1) Where a ship is registered pursuant to section 36, it shall be deemed to be a Virgin Islands ship for the purposes of this Act.

(2) Where a ship is registered pursuant to section 36, it shall not hoist any colours other than the Virgin Islands' national colours specified in section 70.

Provisions relating to the application of this Act where a ship is registered under section 36

38. Where a certificate of registry has been granted in respect of a ship pursuant to section 36(2),

- (a) the provisions of this Part except sections 47 and 48, shall apply to the ship and its registration; and

- (b) any act or thing required to be done or not done under this Act by the owner of a ship shall be deemed to be required to be done or not done by the transferee, and
 - (i) the transferee shall be liable for doing or omitting to do such act or thing as if he were the owner of the ship, and
 - (ii) a reference to "owner" in this Act shall, in the case of such a ship as is mentioned in this section, be deemed to be a reference to "transferee" and the words "registered owner" and "registered ownership" shall be construed accordingly.

39. In sections 36 and 38, "transferee" means a person to whom the ownership of a ship or a share in a ship is to be transferred in the circumstances set out in section 36(1).

Definition of transferee
in this Part

Name of Ship

40. (1) A ship shall not be described by any name other than that which she is for the time being registered.

Rules as to name of ship

(2) A change shall not be made in the name of a ship without the previous written permission of the Registrar.

(3) Application for that permission shall be in writing and if the Registrar is of opinion that the application is reasonable he may grant permission, and thereupon require notice thereof to be published in such form and manner as he thinks fit.

(4) On permission being granted to change the name, the ship's name shall forthwith be altered in the register, in the ship's certificate of registry, and on her bows and stern.

(5) If it is shown to the satisfaction of the Registrar that the name of any ship has been changed without his permission he shall direct that her name be altered into that which she bore before the change, and the name shall be altered in the register, in the ship's certificate of registry, and on her bows and stern accordingly.

Offences

41. If any person acts, or suffers any person under his control to act, in contravention of section 40, or omits to do, or suffers any person under his control to omit to do, anything required by that section, he commits an offence, and for each such offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale, and, except in the case of an application being made under that section with respect to a foreign ship which not having at any previous time been registered as a Virgin Islands ship has become a Virgin Islands ship, the ship may be detained until there is compliance with that section.

Registration of Alterations and Registration Anew

Registration of alterations

42. When a registered ship is so altered as not to correspond with the particulars relating to her tonnage or description contained in the register, then the Registrar shall, on application being made to him, and on receipt of a certificate from the proper surveyor stating the particulars of the alteration, either cause the alteration to be registered, or direct that the ship be registered anew.

Offences

43. If default is made in registering anew a ship, or in registering an alteration of a ship so altered as provided in section 42, the owner of the ship commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, in addition, to a fine not exceeding one hundred dollars for every day during which the offence continues after conviction.

Procedure for registration of alterations

44. (1) For the purpose of the registration of an alteration in a ship, the ship's certificate of registry shall be produced to the Registrar, and the Registrar shall, in his discretion, either retain the certificate of registry and grant a new certificate of registry containing a description of the ship as altered, or endorse and sign on the existing certificate a memorandum of the alteration.

(2) The particulars of the alteration so made, and the fact of the new certificate having been granted, or endorsement having been made, shall be entered by the Registrar in the register.

45. Where the ownership of any ship is changed, the Registrar may, on the application of the owners of the ship register the ship anew, although registration anew is not required under this Act.

Registration anew on change of ownership

46. (1) Where a ship is to be registered anew, the Registrar shall proceed as in the case of first registry, and on the surrender to him of the existing certificate of registry, and on compliance with the other requirements for registration, or in the case of a change of ownership, compliance with such of them as the Registrar thinks material, shall register the ship anew, and grant a new certificate.

Procedure for registration anew

(2) When a ship is registered anew, her former register shall be considered as closed, except so far as relates to any unsatisfied mortgage or existing certificates of sale or mortgage entered thereon, but the names of all persons appearing on the former register to be interested in the ship, as owners or mortgagees shall be entered in the new register, and the registration anew shall not in any way affect the rights of any of those persons.

Transfer of Registration between the Virgin Islands and the United Kingdom or a Relevant British Possession

47. (1) Subject to subsection (2), the registration of a ship under this Part may be transferred from Road Harbour, Virgin Islands to a port in the United Kingdom or in another relevant British possession on the application to the Registrar made by declaration in writing of all persons appearing on the register to be interested in the ship as owners or mortgagees, but that transfer shall not in any way affect the rights of those persons or any of them, and those rights shall in all respects continue in the same manner as if no such transfer had been effected.

Transfer of registration from or to Road Harbour, Virgin Islands

(2) On any such application the Registrar shall transmit notice thereof to the registrar of the intended port of registry with a copy of all particulars relating to the ship, and the names of all persons appearing on the register to be interested in the ship as owners or mortgagees.

(3) The ship's certificate of registry shall be surrendered either to the Registrar or the registrar of the ship's intended port of registry, and if surrendered to the former, shall be transmitted to the registrar of the intended port of registry.

(4) Where an application is made under this section for the transfer of a ship's registration to a port in the United Kingdom or in another relevant British possession, the Registrar shall not proceed to deal with the application unless he is satisfied that registration of the ship under this Part at the intended port of registry is not precluded by any Act in force in the United Kingdom or in the possession in question, as the case may be.

(5) Any certificate purporting to be signed by the registrar of the intended port of registry and stating that any such registration of the ship is not precluded by any such provision shall be conclusive evidence for the purposes of subsection (4) and this subsection of the matters stated in it.

(6) Where the registrar of the intended port of registry grants a new certificate of registry in pursuance of any such application as is mentioned in subsection (2), the ship in question shall thenceforth be considered as registered at the new port of registry, and the name of Road Harbour, Virgin Islands shall be removed from the ship's stern.

(7) The Registrar shall, on being notified by the registrar of the new port of registry of the grant of the new certificate of registry, terminate the registration of the ship in the register.

Transfer of registration
to Road Harbour, Virgin
Islands

48. (1) Where a ship is registered in the United Kingdom or in another relevant British possession the registration of that ship may, subject to subsections (5) and (7), be transferred to Road Harbour, Virgin Islands, if

- (a) an application to the registrar of the existing port of registry has been made for the purpose by a declaration in writing by all the persons appearing on his register to be interested in the ship as owners or mortgagees; and
- (b) the documents mentioned in subsection (2) have been transmitted to the Registrar.

(2) The documents referred to in subsection (1) are

- (a) a notice of the application transmitted by the registrar of the existing port of registry;
- (b) a copy transmitted by him of all the registered particulars of the ship and the names of all the persons appearing on his register to be interested in the ship as owners or mortgagees; and

(c) the ship's certificate of registry.

(3) On receipt of those documents the Registrar shall, subject to subsection (5),

- (a) enter in the register all the particulars and names so transmitted, and
- (b) grant a new certificate of registry,

and thenceforth the ship in question shall be considered as registered at Road Harbour, Virgin Islands, and the name of that port shall be substituted for the name of the former port of registry on the ship's stern.

(4) The Registrar shall notify the registrar of the former port of registry of the grant of a new certificate of registry.

(5) Where the entitlement of a ship to be registered is by virtue of any provision of section 5, subject to any condition specified in that provision being satisfied, the registration of the ship shall not be transferred to Road Harbour, Virgin Islands under this section unless it appears to the Registrar that the condition is satisfied.

(6) A transfer of registration under this section shall not affect the rights of any of the persons mentioned in subsection (1)(a).

(7) Section 7 shall apply *mutatis mutandis* to this section.

Tonnage Measurement

49. (1) Where it appears to him that the Tonnage Convention has been adopted by a foreign country and is in force there, the Director may apply the provisions of that Convention to the ships of such country as provided in this section.

Tonnage of ships of foreign countries adopting tonnage regulations

(2) The Director may order that ships of the foreign country shall, without being re-measured in the Virgin Islands, be treated as being of the tonnage denoted by their certificates of registry or other national papers, to the same extent, and for the same purposes as the tonnage denoted in the certificate of registry of a Virgin Islands ship is treated as being the tonnage of that ship.

(3) Where the Director orders a ship to be treated as provided in subsection (2), any space shown in the ship's certificate of registry or other national papers as deducted from the tonnage shall, if a similar deduction in the case of a Virgin Islands ship depends on compliance with any conditions or on the compliance being evidenced in any manner, be treated as complying with those conditions and as being so evidenced, unless a surveyor of ships certifies to the Director that the construction and equipment of the ship as respects that space do not come up to the standard which would be required if the ship were a Virgin Islands ship.

(4) Any such order may

- (a) operate for a limited time; and
- (b) be subject to such conditions and qualifications, if any, as the Director may consider expedient.

(5) If it appears to the Director that the tonnage of any foreign ship, as measured by the rules of the country to which the ship belongs, materially differs from what it would be under the tonnage regulations, he may order further that any of the ships of that country may, for all or any of the purposes of this Act, be re-measured in accordance with the tonnage regulations.

Tonnage Regulations

50. (1) The tonnage of any ship to be registered under this Part shall be ascertained in accordance with regulations made by the Governor in Council ("tonnage regulations") and whenever the tonnage of any ship has been ascertained and registered in accordance with the tonnage regulations, the same shall be repeated in every subsequent registration thereof, unless any alteration is made in the form or capacity of the ship, or unless it is discovered that the tonnage of the ship has been erroneously computed, and in either of those cases the ship shall be re-measured, and its tonnage determined and registered according to the tonnage regulations.

(2) Tonnage regulations may

- (a) make different provisions for different descriptions of ships or for the same description of ships in different circumstances;
- (b) make any regulations dependent on compliance with such conditions, to be evidenced in such manner, as may be specified in the regulations;
- (c) prohibit or restrict the carriage of goods or stores in spaces not included in the net tonnage and may provide for making the master

and the owner each guilty of an offence and liable on summary conviction to a fine not exceeding ten thousand dollars where such a prohibition or restriction is contravened.

(3) Tonnage regulations may make provision

- (a) for assigning to a ship, either instead of or as an alternative to the tonnage ascertained in accordance with the other provisions of the regulations, a lower tonnage applicable where the ship is not loaded to the full depth to which it can safely be loaded;
- (b) for indicating on the ship, by such mark as may be specified in the regulations, that such a lower tonnage has been assigned to it; and
- (c) where the lower tonnage has been assigned to it as an alternative, for indicating on the ship the depth to which the ship may be loaded for the lower tonnage to be applicable.

(4) Tonnage regulations may provide for the measurement and survey of ships to be undertaken, in such circumstances as may be specified in the regulations by persons appointed by such organisations as may be authorised for the purpose by the Director.

(5) Tonnage regulations may provide for the issue, by the Director or by persons appointed by such organisations as may be authorised for the purpose by the Director, of certificates of the tonnage of any ship or of the tonnage which is to be taken for any purpose specified in the regulations as the tonnage of a ship not registered in the Virgin Islands, and for the cancellation and surrender of such certificates in such circumstances as may be prescribed by the regulations.

(6) Regulations requiring the surrender of any certificate may make a failure to comply with the requirement an offence punishable on summary conviction with a fine not exceeding level 5 on the standard scale.

(7) In making the tonnage regulations the Governor in Council shall pay due regard to the provisions of the Tonnage Convention.

(8) Surveyors shall carry out surveys and measurements of ships in accordance with the regulations made under this section.

Unregistered Ships

Liabilities of
unregistered ships

51. (1) Where a ship
- (a) is twenty-four metres or more in length, and
 - (b) a majority interest in the ship is owned by belongers or a body corporate established under the laws of the Virgin Islands and having a place of business in the Virgin Islands, and
 - (c) is not registered in the Virgin Islands or elsewhere,

then (notwithstanding that the ship is not entitled to any benefits, privileges, advantage or protection usually enjoyed by a Virgin Islands ship) the ship shall, for the purposes mentioned in subsection (2), be dealt with in the same manner in all respects as if the ship were a Virgin Islands ship.

(2) The purposes referred to in subsection (1) are

- (a) payment of dues, fees or other charges;
- (b) liability to fines and forfeiture; and
- (c) punishment of any offences punishable under this Act.

Application of this Act
to unregistered ships

52. (1) Subject to subsection (2), sections 89 to 104, sections 108, 109, 117, 122 (6), sections 134 to 139 and sections 142, 326, 327 and 429 shall apply to sea-going ships of twenty-four metres or more in length

- (a) in which a majority interest is owned by belongers or a body corporate established under the laws of the Virgin Islands and having a place of business in the Virgin Islands; and
- (b) which are not registered in the Virgin Islands or elsewhere.

(2) In the application of section 93 to ships described in subsection (1), for the reference to a ship ceasing to be registered in the Virgin Islands, there shall be substituted a reference to its ceasing to be entitled to be so registered.

(3) Subject to subsection (4), sections 134 to 139, and section 429 shall apply to sea going ships less than twenty-four metres in length described in paragraphs (a) and (b) of subsection (1).

(4) In the application of section 429 to ships described in subsection (3), where

- (a) any person dies in a ship described in subsection (3), or
- (b) the master or a seaman of such a ship dies in a country outside the Virgin Islands,

an inquiry into the cause of death shall be held only if the Director so directs.

Miscellaneous

53. (1) Where a ship is entitled to be registered in the Virgin Islands by virtue of section 5 and the ship is so registered, the ship shall not be registered under the law of a country outside the Virgin Islands except pursuant to a dispensation granted under section 33.

Termination of overseas registration

(2) Where a ship is entitled to be registered in the Virgin Islands by virtue of section 28(1) and the ship is so registered, the ship shall not be registered under the law of a country outside the Virgin Islands except where such registration is effected by an owner of the ship whose name is noted in the register under section 30(2)(e)(ii).

(3) Where a ship is registered under the law of a country outside the Virgin Islands in contravention of subsection (1) or (2), the registered owner, subject to subsection (4), commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

(4) It shall be a defence for any person charged with an offence under this section to prove that he had taken all reasonable steps to secure the termination of the registry of the ship under the law of the country in which the ship is registered in contravention of subsection(1) or (2).

54. (1) Every Virgin Islands ship shall carry insurance cover against risks of loss or damage to third parties, and in particular

Requirement for insurance cover

(a) in respect of the shipowners' liabilities to a crew member under any provision of Part V; and

(b) without prejudice to the relevant provisions of Part XIV and Schedules 3 and 4, claims in respect of loss or damage caused by any cargo carried on board the ship.

(2) Every ship anchoring in or trading in or from Virgin Islands waters or entering a port in the Virgin Islands shall carry insurance cover against risks of loss or damage to third parties, and against wreck removal expenses in an amount satisfactory to the Receiver of Wreck.

(3) If a ship is in contravention of this section, the owner thereof commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars.

55. (1) Subject to subsection (2), no trust, express, implied, or constructive, shall be registered by the Registrar.

(2) Where on the bankruptcy of a registered owner or mortgagee his title is transmitted to his trustee in bankruptcy, that person may be registered as the owner or mortgagee of a Virgin Islands ship or a share therein, provided the ship remains entitled to be registered as a Virgin Islands ship pursuant to section 5.

(3) The expression "beneficial interest", where used in this Part, includes interests arising under contract and other equitable interests, and without prejudice to the provisions of this Act for preventing trusts being entered in the register or received by the Registrar, and without prejudice to the powers of disposition and of giving receipts conferred by this Act on registered owners and mortgagees, and without prejudice to the provisions of this Act relating to the exclusion of unqualified persons from the ownership of Virgin Islands ships, interests arising under contract or other equitable interests may be enforced by or against owners and mortgagees of ships in respect of their interest therein in the same manner as in respect of any other personal property.

(4) Where any person is beneficially interested, otherwise than by way of mortgage, in any ship or share in a ship registered in the name of some other person as owner, the person so interested shall, as well as the registered owner, be subject to all pecuniary penalties imposed by this or any other enactment on the owners of

ships or shares therein, so nevertheless that proceedings may be taken for the enforcement of any such penalties against both or either of the above mentioned parties, with or without joining the other of them.

56. (1) When, under this Part, any person is required to make a declaration on behalf of himself or of any body corporate, or any evidence is required to be produced to the Registrar and it is shown to the satisfaction of the Registrar that from any reasonable cause that person is unable to make the declaration, or that the evidence cannot be produced, the Registrar may, with the approval of the Director, and on the production of such other evidence, and subject to such terms as he may reasonably think fit, dispense with the declaration or evidence.

Registrar may dispense with declaration or evidence

(2) Declarations required by this Part may be made on behalf of a body corporate by the secretary or any other officer of the body corporate authorised by it for the purpose.

57. (1) Such fees as the Director determines shall be paid in respect of the measurement of a ship's tonnage.

Fees

(2) All fees authorised to be taken under this Part, shall, except where otherwise provided in this Act, be paid into the Consolidated Fund.

58. The Registrar shall, if requested by the Registrar General of Shipping and Seamen of the United Kingdom, transmit to him a full return, at such times and in such form as the Registrar General may direct, of all registries, transfers, transmissions, mortgages, and other dealings with ships which have been registered by or communicated to him in his capacity as Registrar, and of the names of the persons concerned in the same, and of such other particulars as may be directed by the said Registrar General.

Returns to be made by Registrar of Shipping

59. (1) A person, on payment of a prescribed fee, may, on application to the Registrar at a reasonable time during the hours of his official attendance, inspect the register.

Evidence of certificate of registry and other documents

(2) The following documents shall be admissible in evidence in the manner provided by this Act:

- (a) a certificate of registry under this Act purporting to be signed by the Registrar or other proper officer;
- (b) an endorsement on a certificate of registry purporting to be signed by the Registrar or other proper officer; and
- (c) every declaration made in pursuance of this Part.

(3) A person shall be entitled, on payment of the prescribed fee, to obtain a copy, certified as a true copy by the Registrar, of any information contained in an entry in the register.

(4) A person shall be entitled, on payment of the prescribed fee, to obtain such a certified copy of the information entered in the register in respect of the registration of a ship, together with a statement certified by the Registrar showing who is for the time being the owner of the ship.

(5) Subsection (5) of section 443 shall apply to any document supplied in pursuance of subsection (3) or (4) of this section as they apply to any document to which that section applies.

(6) In subsections (1), (3) and (4) "prescribed fee" means the fee fixed by the Director for the purposes of those subsections and published in the Gazette.

Forms of documents
Schedule 1

60. (1) The several instruments and documents referred to in Schedule 1 shall, subject to subsection (3), be in the form prescribed or as near thereto as circumstances permit.

(2) The Registrar shall not be required to receive and enter in the register any bill of sale, mortgage, or other instrument of the disposal or transfer of any ship or share, or any interest therein, which is made in any form other than that for the time being required under this Part, or which contains any particulars other than those contained in such form.

(3) In this section,

- (a) the references to “form” include references to alterations made thereto from time to time as deemed necessary; and
- (b) such public notice of the alteration referred to in paragraph (a) shall be given as may be necessary in order to prevent inconvenience.

61. The Minister may, for carrying into effect this Part, give such instructions to his officers as to the manner of making entries in the register, as to the execution and attestation of powers of attorney, as to any evidence required for identifying any person, as to the referring to himself of any question involving doubt or difficulty, and generally as to any act or thing to be done in pursuance of this Part, as he thinks fit.

Instructions as to registration

62. (1) If any person forges, or fraudulently alters

Forgery of documents

- (a) any entry or endorsement in the register, or
- (b) any other document as respects which provision is made by, under or by virtue of this Part (or any entry or endorsement in or on such other document and as respects which provision is so made),

he commits an offence and is liable

- (i) on summary conviction, to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding eighteen months, or both; or
- (ii) on conviction on indictment, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding three years, or both.

63. (1) If any person in the case of any declaration made in the presence of or produced to the Registrar under this Part, or in any document or other evidence produced to the Registrar

False declarations

- (a) wilfully makes, or assists in making, or procures to be made any false statement concerning the title to or ownership of, or the interest existing in any ship, or any share in a ship, or
- (b) utters, produces, or makes use of any declaration or document containing any such false statement knowing the same to be false,

he commits an offence and in respect of each offence is liable on summary conviction to a fine not exceeding ten thousand dollars.

(2) If any person wilfully makes a false declaration touching the qualification of himself or of any other person or of any body corporate to own a Virgin Islands ship or any share therein or with respect to the entitlement of a ship to be registered, he commits an offence and is liable on summary conviction to a fine not exceeding fifteen thousand dollars and that ship or share therein is subject to forfeiture under this Act to the extent of the interest therein of the declarant, and also, unless it is proved that the declaration was made without authority, of any person or body corporate on behalf of whom the declaration is made.

Registration regulations

64. The Governor in Council may make regulations for and in connection with the registration of ships as Virgin Islands ships.

Matters to be prescribed in registration regulations

65. (1) Without prejudice to the generality of section 64, the regulations may, in particular, make provision with respect to any of the following matters:

- (a) the issue of certificates (including provisional certificates) of registry, their production and surrender;
- (b) restricting and regulating the names of ships registered or to be registered;
- (c) the marking of ships registered or to be registered, including marks for identifying the port to which a ship is to be treated as belonging;
- (d) the period for which registration may remain effective without renewal;
- (e) the survey and inspection of ships registered or to be registered and the recording of their tonnage as ascertained (or re-ascertained) under the tonnage regulations;
- (f) the refusal, suspension and termination of registration specifying circumstances;
- (g) matters arising out of the expiration, suspension or termination of registration (including the removal of marks and the cancellation of certificates);
- (h) the charging of fees in connection with registration or registered ships;
- (i) the transfer of the registration of ships to and from the register, from and to registers, or corresponding records in registries other than in the Virgin Islands;

- (j) inspection of the registry;
- (k) any matter in relation to the registration of small ships and pleasure vessels; and
- (l) any other matter which is authorised or required by this Act to be prescribed in registration regulations.

(2) The regulations may

- (a) make different provision for different classes or descriptions of ships and for different circumstances;
- (b) without prejudice to paragraph (a), make provision for the granting of exemptions or dispensations by the Director from specified requirements of the regulations, subject to such conditions (if any) as he thinks fit to impose;
- (c) make such transitional, incidental or supplementary provision as appears to the Governor in Council to be necessary or expedient;
- (d) make provision for the registration of any class or description of ships to be such as to exclude the application of any private law provisions for registered ships and, if they do, may regulate for the transfer, transmission or mortgaging of ships of the class or description so excluded;
- (e) make provision for any matter which is authorised or required by those provisions to be prescribed by regulations; and
- (f) provide for
 - (i) the approval of forms by the Director; and
 - (ii) the discharge of specified functions by specified authorities or persons.

(3) The regulations may provide that any reference in any other enactment or in any instrument made under any other enactment to the port of registry or the port to which a ship belongs shall be construed as a reference to the port identified by the marks required for the purpose by this Act and the regulations.

(4) The contravention of any regulations made under this section shall be punishable by a fine not exceeding twenty thousand dollars.

Certified copy of entry
in register to be evidence

66. Any document purporting to be a copy of any information contained in an entry in the register and to be certified as a true copy by the Registrar shall be evidence of the matters stated in the document.

PART III

NATIONAL CHARACTER AND FLAG

National character of
ship to be declared
before clearance

67. (1) A customs officer shall not grant clearance for any ship until the master of the ship has declared to that officer the name of the nation to which he claims that the ship belongs, and that officer shall thereupon inscribe that name on the clearance.

(2) If a ship attempts to proceed to sea without such clearance, she may be detained until the declaration is made.

Offences relating to
Virgin Islands character
of ship

68. (1) If the master or owner of a ship which is not a Virgin Islands ship does anything, or permits anything to be done, for the purpose of causing the ship to appear to be a Virgin Islands ship then, except as provided by subsections (2) and (3), the ship is liable to forfeiture and each of the master, owner and charterer, if any, commits an offence and is liable as provided in section 69.

(2) No liability arises under subsection (1) where the assumption of Virgin Islands' national character has been made for the purpose of escaping capture by an enemy or by a foreign ship of war in the exercise of some belligerent right.

(3) Where the registration of any ship has terminated by virtue of any provision of this Act or the registration regulations, any marks prescribed by such regulations displayed on the ship within the period of fourteen days beginning with the date of termination of that registration shall be disregarded for the purposes of subsection (1).

(4) If the master or owner of a Virgin Islands ship does anything, or permits anything to be done, for the purpose of concealing the nationality of the ship, the ship is liable to forfeiture and each of the master, owner and charterer, if any, commits an offence and is liable as provided in section 69.

(5) Without prejudice to the generality of subsections (1) and (4), those subsections apply in particular to acts or deliberate omissions as respects

- (a) the flying of a national flag;
- (b) the carrying or production of certificates of registry or other documents relating to the nationality of the ship; and
- (c) the display of marks required by the law of any country.

69. (1) A person who commits an offence under section 68 is liable on summary conviction to a fine not exceeding twenty-five thousand dollars, or imprisonment for a term not exceeding two years, or both.

Penalties

(2) This section and section 68 apply to things done outside, as well as to things done within, the Virgin Islands.

70. (1) The red ensign bearing the Virgin Islands' coat of arms usually worn by merchant ships, or without the coat of arms, is hereby declared to be the proper national colours for all Virgin Islands ships, except in the case of Her Majesty's ships, or in the case of any other ship for the time being allowed to wear any other national colours in pursuance of a warrant from Her Majesty or from the Admiralty.

National colours and penalty for carrying improper colours or not showing colours

(2) If any distinctive national colours, except the red ensign or the Union Jack with a white border or any colours usually worn by Her Majesty's ships or resembling those of Her Majesty, or the pendant usually carried by Her Majesty's ships or any pendant resembling that pendant, are or is hoisted on board any Virgin Islands ship without warrant from Her Majesty or from the Admiralty, the master of the ship, the owner if on board the ship, and every other person hoisting the colours or pendant, each commits an offence and for each such offence is liable on summary conviction to a fine not exceeding twenty-five thousand dollars.

(3) Any commissioned officer on full pay in the military or naval service of Her Majesty, or any customs officer in Her Majesty's dominions, or any British consular officer, may board any Virgin Islands ship on which any colours or pendants are hoisted contrary to this section, and seize the colours or pendant, and the colours or pendant shall be forfeited to Her Majesty.

(4) A Virgin Islands ship shall hoist the proper national colours

- (a) on a signal being made to her by one of Her Majesty's ships (including any vessel under the command of an officer of Her Majesty's navy on full pay);
- (b) on entering or leaving any foreign port; and
- (c) if of 50 gross tonnage or upwards, on entering or leaving a port in the Virgin Islands.

(5) If default is made on board any such ship complying with subsection (4), the master of the ship commits an offence, and for each such offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) The provisions of this section with respect to colours worn by merchant ships shall not affect any other power of the Admiralty in relation thereto.

71. (1) Where any ship has either wholly or as to any share in it become liable to forfeiture under this Act,

- (a) any commissioned naval or military officer, or
- (b) any person appointed by the Minister for the purposes of this section,

may seize and detain the ship and bring the ship for adjudication before the Court.

(2) Where a ship is subject to adjudication under this section, the Court may

- (a) adjudge the ship and her equipment to be forfeited to the Government; and
- (b) make such order in the case as seems just.

(3) No officer or person bringing proceedings under this section is liable in damages in respect of the seizure or detention of the ship, notwithstanding that the ship has not been proceeded against or, if proceeded against, adjudicated not liable to forfeiture, if the Court is satisfied that there were reasonable grounds for the seizure or detention.

(4) If the Court is not so satisfied the Court may award costs and damages to the party aggrieved and make such other order as the Court thinks just.

PART IV

PROPRIETARY INTERESTS IN SHIPS

General

72. (1) Subject to any rights and powers appearing from the register to be vested in any other person, the registered owner of a ship or of a share in a ship shall have power absolutely to dispose of it provided the disposal is made in accordance with this Act. Rights of owners and mortgagees

(2) Subsection (1) does not imply that interests arising under contract or other equitable interests cannot subsist in relation to a ship or a share in a ship, and such interests may be enforced by or against owners and mortgagees of ships in respect of their interest in the ship or share in the same manner as in respect of any other personal property.

(3) The registered owner of a ship or of a share in a ship shall have power to give effectual receipts for any money paid or advanced by way of consideration on any disposal of the ship or share.

(4) There shall be no stamp duty payable in respect of ships' mortgages registered in the Virgin Islands' registry.

Transfers and Transmissions

73. (1) Any transfer of a registered ship, or a share in any such ship, shall be effected by a bill of sale. Transfers

(2) The bill of sale shall contain such description of the ship as is contained in the surveyor's certificate, or some other description sufficient to identify the ship to the satisfaction of the Registrar, and shall be executed by the transferor in the presence of, and be attested by, a witness or witnesses.

74. (1) Where a registered ship or a share therein is transferred in accordance with section 73(1), the transferee shall not be entitled to be registered as Declaration of transfer

owner thereof until he, or, in the case of a body corporate, the person authorised by this Act to make declarations on behalf of the body corporate, has made and signed a declaration (in this Act called a “declaration of transfer”) referring to the ship, and containing

- (a) a statement of the qualification of the transferee to own a Virgin Islands ship, or if the transferee is a body corporate, of such circumstances of the constitution and business thereof as prove it to be qualified to own a Virgin Islands ship; and
- (b) a declaration that, to the best of his knowledge and belief, a majority interest in the ship is owned by persons qualified to be owners of Virgin Islands ships, and the ship is otherwise entitled to be registered.

(2) In the application of this section to a ship which is not wholly owned by persons qualified to be owners of Virgin Islands ships, subsection 1 (a) shall have effect only in relation to persons who are so qualified.

Registration of transfer

75. (1) Every bill of sale for the transfer within the Virgin Islands registry of a registered ship or of a share therein, when duly executed, shall be produced to the Registrar, with the declaration of transfer, and upon being satisfied that the ship remains entitled to be registered in the Virgin Islands, the Registrar shall thereupon enter in the register the name of the transferee as owner of the ship or share, and shall endorse on the bill of sale the fact of that entry having been made, with the date and time thereof.

(2) Bills of sale of a ship or of shares therein shall be entered in the register in the order of their production to the Registrar.

(3) Upon the transfer being registered in the manner provided in sub-section (1), the Registrar shall issue a new certificate of registry.

Transmission of property in ship on death, bankruptcy, marriage, etc.

76. (1) Where the property in a registered ship or share therein is transmitted to any person by any lawful means other than a transfer under section 73 and a majority interest remains in the ownership of a person qualified to be an owner of a Virgin Islands ship,

- (a) that person shall authenticate the transmission by making and signing a declaration (in this Act called a “declaration of transmission”) identifying the ship and containing the several

statements required to be contained in a declaration of transfer under section 74, or as near thereto as circumstances admit, and also provide a statement of the manner in which the property has been transmitted;

- (b) if the transmission is consequent on bankruptcy, the declaration of transmission shall be accompanied by such evidence as is acceptable by the Court as proof of the title of persons claiming under a bankruptcy;
- (c) if the transmission is consequent on death, the declaration of transmission shall be accompanied by the instrument of representation, or an official extract therefrom; and
- (d) if the transmission was consequent upon an order of a Court, a copy of the order or judgement of that Court.

(2) The Registrar, on receipt of the declaration of transmission so accompanied, and upon being satisfied that the ship remains entitled to be registered in the Virgin Islands, shall enter in the register the name of the person entitled under the transmission as owner of the ship or share the property in which has been transmitted, and, where there is more than one such person, shall enter the names of all those persons in the register, but those persons, however numerous, shall, for the purpose of the provisions of this Act with respect to the number of persons entitled to be registered as owners, be considered as one person.

77. (1) Where the property in a registered ship or share therein is transmitted to any person by any lawful means other than a transfer under section 73, but as a result of the transmission a majority interest in the ship no longer remains in the ownership of persons qualified to be owners of a Virgin Islands ship, then the Court may, on an application by or on behalf of that person, order a sale of the property so transmitted and direct that the proceeds of sale, after deducting the expenses of the sale, shall be paid to that person or otherwise as the Court directs.

Order for sale on
transmission to
unqualified person

(2) The Court may require any evidence in support of the application they think requisite, and may make the order on any terms and conditions they think just, or may refuse to make the order, and generally may act in the case as the justice of the case requires.

(3) Every such application for sale must be made within twenty-eight days after the occurrence of the event on which the transmission has taken place, or

within such further time (not exceeding in the whole one year from the date of the occurrence) as the Court allows.

(4) If such an application is not made within the time specified under subsection (3), or if the Court refuses an order for sale, the ship or share transmitted shall thereupon be subject to forfeiture under this Act.

Transfer of ship or sale
by order of Court

78. Where the Court, whether under this Act or otherwise, orders the sale of any ship or share therein, the order of the Court shall contain a declaration vesting in some person named by the Court the right to transfer that ship or share, and that person shall thereupon be entitled to transfer the ship or share in the same manner and to the same extent as if he were the registered owner thereof, and the Registrar shall deal with any application relating to the transfer of the ship or share made by the person so named as if that person were the registered owner.

Power of Court

79. The Court may, if it thinks fit without prejudice to the exercise of any other power of the Court, on the application of any interested person, make an order prohibiting for a time specified, any dealing with a ship or any share therein, and the Court may make the order on any terms or conditions it thinks just, or may refuse to make the order, or may discharge the order when made, with or without costs, and generally may act in the case as the justice of the case requires and the Registrar without being made a party to the proceedings, shall on being served with the order or an official copy obey the same.

Mortgages

Mortgage of ship or
share

80. (1) A registered ship, or a share in any such ship, may be made a security for the repayment of a loan or the discharge of any other obligation.

(2) The instrument creating any such security (referred to in this Part as a “mortgage”) shall be in the form prescribed.

(3) Where a mortgage executed in accordance with sub-section (2) is produced to the Registrar, he shall register the mortgage in the prescribed manner.

(4) Mortgages shall be registered in the order in which they are produced to the Registrar for the purposes of registration and he shall enter and sign on each

mortgage a statement to the effect that it has been registered by him, stating the date and time of the registration.

(5) Where it is stated in the mortgage instrument that it is prohibited to create further mortgages over a vessel without the prior written consent of the mortgagee, the Registrar shall make a note in the register to such effect, and the Registrar shall not register any further mortgage unless the consent in writing of the holder of a prior mortgage is produced to him, and any mortgage registered in violation of this provision shall be void.

(6) Where it is stated in the mortgage instrument that it is prohibited to transfer the ownership of a ship or terminate the registration of the ship in the manner provided in section 8(1)(d), without the prior written consent of the mortgagee, the Registrar shall make a note in the register to such effect, and the Registrar shall not record a transfer of ownership of the ship or terminate the ship's registration, as the case may be, unless the appropriate consent in writing of the holder of the mortgage is produced to him, and any recording in the register of a transfer of ownership or a termination of the ship's registration in the circumstances referred to in this subsection shall be void.

81. (1) Where two or more mortgages are registered in respect of the same ship or share, the priority of the mortgagees between themselves shall, subject to sub-section (2), be determined by the order in which the mortgages were registered and not by reference to any other matter.

Priority of mortgages

(2) Registration regulations may provide for the giving to the Registrar by intending mortgagees of "priority notices" in a form prescribed by or approved under the regulations which, when recorded in the register, determine the priority of the interest to which the notice relates.

82. (1) Where a registered mortgage is discharged, the Registrar shall, on the production of the mortgage deed, with a receipt for the mortgage money endorsed thereon, duly signed and attested, make an entry in the register to the effect that the mortgage has been discharged, and on that entry being made the estate, if any, which passed to the mortgagee shall vest in the person in whom having regard to intervening acts and circumstances, if any, it would have vested if the mortgage had not been made.

Entry of discharge of mortgage

(2) If for good reason the registered mortgage cannot be produced to the Registrar, he may, on being satisfied that the mortgage has been properly discharged, record in the register that the mortgage has been discharged.

Protection of
undischarged mortgage

83. (1) Where the registration of a ship terminates by virtue of any provision of this Act, that termination shall not affect any entry in the register of any undischarged registered mortgage of that ship or any share therein.

(2) Subsection (1) shall not apply to an entry in the register in a case where the Registrar is satisfied that any person appearing on the register to be interested as a mortgagee under the mortgage in question has consented to the entry ceasing to have effect.

Mortgagee not owner
and mortgagee's power
of sale

84. (1) Except as far as may be necessary for making a mortgaged ship or share available as a security for the mortgage debt, the mortgagee shall not by reason of the mortgage be deemed to be the owner of the ship or share, nor shall the mortgagor be deemed to have ceased to be owner thereof.

(2) Subject to sub-section (3), every registered mortgagee shall have power, if the mortgage money or any part of it is due, to sell the ship or share in respect of which he is registered, and to give effectual receipts for the purchase money.

(3) Where two or more mortgagees are registered in respect of the same ship or share, a subsequent mortgagee shall not, except under an order of a court of competent jurisdiction, sell the ship or share without the concurrence of every prior mortgagee.

Mortgage not affected
by bankruptcy

85. A registered mortgage of a ship or share shall not be affected by any act of bankruptcy committed by the mortgagor after the date of the registration of the mortgage, notwithstanding that the mortgagor at the commencement of his bankruptcy had the ship or share in his possession, order, or disposition, or was reputed owner thereof, and the mortgage shall be preferred to any right, claim or interest therein of the other creditors of the bankrupt or any trustee or assignee on their behalf.

Transfer of mortgages
and transmission of
mortgage interest by
death, bankruptcy, etc.

86. (1) A registered mortgage of a ship or share may be transferred to any person and on production of the instrument effecting the transfer the Registrar shall record it by entering in the register the name of the transferee as mortgagee of the

ship or share, and shall enter and sign on the instrument of transfer a statement to the effect that it has been registered by him, stating the date and time of the registration.

(2) Where the mortgage interest in a ship or share is transmitted to any person by any lawful means, other than by a transfer under subsection (1), that person shall produce to the Registrar a statement of the manner in which and the person to whom the property has been transmitted, and shall be accompanied by the like evidence as is by this Act required in case of a corresponding transmission of the ownership of a ship or share.

(3) The Registrar on the receipt of the documents, and the production of the evidence referred to in sub-section (2), shall enter the name of the person entitled under the transmission in the register as mortgagee of the ship or share.

PART V

MASTERS AND SEAMEN

Interpretation and Application of Part

87. (1) In this Part,

Interpretation

"crew agreement" has the meaning given to it by section 89;

"relief and maintenance" includes the provision of surgical or medical treatment and such dental and optical treatment (including the repair or replacement of any appliance) as cannot be postponed without impairing efficiency; and

"ship's boat" includes a life-raft.

(2) References in this Part to going to sea include references to going to sea from any country outside the Virgin Islands.

(3) For the purposes of this Part, a seaman is discharged from a ship when his employment in that ship is terminated.

(4) For the purposes of this Part, a seaman discharged from a ship in any country and left there shall be deemed to be left behind in that country notwithstanding that the ship also remains there.

(5) Any power conferred by this Part to provide for or grant an exemption includes power to provide for or grant the exemption subject to conditions.

Application of this Part

88. (1) With the exceptions specified in subsection (2), this Part applies only to ships which are sea-going ships and masters and seamen employed in sea-going ships.

(2) The exceptions referred to in subsection (1) are sections 107, 110 to 116, 118, 119, 122, 125 to 132 and 133.

Engagement and Discharge of Crews

Crew agreements

89. (1) Except as provided under subsection (5), an agreement in writing shall be made between each person employed as a seaman in a Virgin Islands ship and the persons employing him and shall be signed both by him and by or on behalf of them.

(2) The agreements made under this section with the several persons employed in a ship shall be contained in one document (in this Part referred to as a "crew agreement") except that in such cases as the Director may approve,

- (a) the agreements to be made under this section with the persons employed in a ship may be contained in more than one crew agreement; and
- (b) one crew agreement may relate to more than one ship.

(3) The provisions and form of a crew agreement shall be of a kind approved by the Director, and different provisions and forms may be so approved for different circumstances.

(4) Subject to the following provisions of this section, a crew agreement shall be carried in the ship to which it relates whenever the ship goes to sea.

(5) The Governor in Council may make regulations providing for exemptions from the requirements of this section with respect to

- (a) such descriptions of ships as may be specified in the regulations; or
- (b) such description of seamen as may be specified.

(6) The Director may grant other exemptions from those requirements (whether with respect to particular seamen or with respect to seamen employed by a specified person or in a specified ship or in the ships of a specified person) in cases where the Director is satisfied that the seamen to be employed otherwise than under a crew agreement will be adequately protected.

(7) Where, but for an exemption granted by the Director, a crew agreement would be required to be carried in a ship or a crew agreement carried in the ship would be required to contain an agreement with a person employed in a ship, the ship shall carry such document evidencing the exemption as the Director may direct.

(8) Regulations under this section may enable ships required under this section to carry a crew agreement to comply with the requirement by carrying a copy thereof, certified in such manner as may be provided by the regulations.

(9) If a ship goes to sea or attempts to go to sea in contravention of the requirements of this section the master or the person employing the crew commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars and the ship, if in the Virgin Islands, may be detained.

90. (1) The Governor in Council may make regulations

Regulations relating to crew agreements

- (a) requiring such notice as may be specified in the regulations to be given to the Superintendent or proper officer, except in such circumstances as may be so specified, before a crew agreement is made or an agreement with any person is added to those contained in a crew agreement;
- (b) providing for the delivery to the Superintendent or proper officer or the Registrar of crew agreements and agreements added to those contained in a crew agreement and of copies of crew agreements and of agreements so added;
- (c) requiring the posting in ships of copies of or extracts from crew agreements;
- (d) requiring copies of or extracts from crew agreements to be supplied to members of the crew demanding them and requiring copies of or

extracts from documents referred to in crew agreements to be made available, in such circumstances as may be specified in the regulations, for inspection by members of the crew; and

- (e) requiring any documents carried in a ship in pursuance of section 89 to be produced on demand to a customs officer.

(2) Regulations under this section may make a contravention of any provision thereof an offence punishable, on summary conviction, with a fine not exceeding fifteen thousand dollars or such less amount as may be specified in the regulations.

Discharge of seamen

91. (1) The Governor in Council may make regulations prescribing the procedure to be followed in connection with the discharge of seamen from Virgin Islands ships.

(2) Without prejudice to the generality of subsection (1), regulations under this section may make provision

- (a) requiring notice of such a discharge to be given at such time as may be specified in the regulations to the Superintendent or proper officer at a place specified in or determined under the regulations; and
- (b) requiring such a discharge to be recorded, whether by entries in the crew agreement and discharge book or otherwise, and requiring copies of any such entry to be given to the Superintendent or proper officer or the Registrar.

(3) Regulations under this section may provide that in such cases as may be specified in the regulations, or except in such cases as may be specified in or determined under the regulations, a seaman shall not be discharged outside the Virgin Islands from a Virgin Islands ship without the consent of the proper officer.

(4) Regulations under this section may make a contravention of any provision thereof an offence punishable, on summary conviction, with a fine not exceeding fifteen thousand dollars or such less amount as may be specified in the regulations.

Seaman left behind
abroad otherwise than
on discharge

92. Regulations made under section 91 may apply any provision thereof, with such modifications as appear to the Governor in Council to be appropriate, to cases where a seaman employed in a Virgin Islands ship is left behind outside the Virgin Islands otherwise than on being discharged from the ship.

93. Where a Virgin Islands ship ceases to be registered, any seaman employed in the ship shall be discharged from the ship unless he consents in writing to continue his employment in the ship, and sections 94 to 97 shall apply in relation to his wages as if the ship had remained a Virgin Islands ship.

Discharge of seaman when the ship ceases to be registered in the Virgin Islands

Wages, etc.

94. (1) Where a seaman employed under a crew agreement relating to a Virgin Islands ship leaves the ship on being discharged from it, then, except as provided by or under this Part or any other enactment, the wages due to the seaman under the agreement shall either

Payment of seamen's wages

- (a) be paid to him in full at the time when he so leaves the ship (in this section and in section 95 referred to as the "time of discharge"); or
- (b) be paid to him in accordance with subsections (4) and (5).

(2) If the amount shown in the account delivered to a seaman under section 95(1) as being the amount payable to him under subsection (1) (a) is replaced by an increased amount shown in a further account delivered to him under section 95(3), the balance shall be paid to him within seven days of the time of discharge, and if the amount so shown in the account delivered to him under section 95(1) exceeds two hundred dollars and it is not practicable to pay the whole of it at the time of discharge, not less than two hundred dollars nor less than one-quarter of the amount so shown shall be paid to him at that time and the balance within seven days of that time.

(3) If any amount which, under subsection (1)(a) or (2), is payable to a seaman is not paid at the time at which it is so payable the seaman shall be entitled to wages at the rate last payable under the crew agreement for every day on which it remains unpaid during the period of fifty-six days following the time of discharge, and if any such amount or any amount payable by virtue of this subsection remains unpaid after the end of that period it shall carry interest at the rate of twenty percent per annum.

(4) Where the crew agreement referred to in subsection (1) provides for the seaman's basic wages to be payable up to date at specified intervals not exceeding one month, and for any additional amounts of wages to be payable within the pay cycle following that to which they relate, any amount of wages due to the seaman under the agreement shall, subject to subsection (5), be paid to him not later than the

date on which the next payment of his basic wages following the time of discharge would have fallen due if his employment under the agreement had continued.

(5) If it is not practicable, in the case of any amount due to the seaman by way of wages additional to his basic wages, to pay that amount by the date mentioned in subsection (4), that amount shall be paid to him not later than what would have been the last day of the pay cycle immediately following that date if his employment under the crew agreement had continued.

(6) If any amount which, under subsection (4) or (5), is payable to a seaman is not paid at the time at which it is so payable, it shall carry interest at the rate of twenty percent per annum.

(7) The provisions of subsection (3) or (6) shall not apply if the failure to pay was due to

- (a) a mistake,
- (b) a reasonable dispute as to liability,
- (c) the act or default of the seaman, or
- (d) any other cause, not being the wrongful act or default of the persons liable to pay his wages or of their servants or agents,

and so much of those provisions as relates to interest on the amount due shall not apply if the Court in proceedings for its recovery so directs.

(8) Where a seaman is employed under a crew agreement relating to more than one ship the preceding provisions of this section shall have effect, in relation to wages due to him under the agreement, as if for any reference to the time of discharge there were substituted a reference to the termination of his employment under the crew agreement.

(9) Where a seaman, in pursuance of section 93, is discharged from a ship outside the Virgin Islands but returns to the Virgin Islands under arrangements made by the persons who employed him, the preceding provisions of this section shall have effect, in relation to the wages due to him under a crew agreement relating to the ship, as if for the references in subsections (1) to (4) to the time of discharge there were substituted references to the time of his return to the Virgin Islands, and subsection (8) were omitted.

(10) For the purposes of this section, any amount of wages shall, if not paid to him in cash, be taken to have been paid to a seaman

- (a) on the date when a cheque, or a money or postal order issued by the Post Office, for that amount was dispatched by the recorded delivery service to the seaman's last known address; or
- (b) on the date when any account kept by the seaman with a bank or other institution was credited with that amount.

95. (1) Subject to subsections (4) and (5) and to regulations made under section 96 or 137, the master of every Virgin Islands ship shall deliver to every seaman employed in the ship under a crew agreement an account of the wages due to him under that crew agreement and of the deductions subject to which the wages are payable.

Account of seaman's wages

(2) The account shall indicate that the amounts stated therein are subject to any later adjustment that may be found necessary and shall be delivered not later than 24 hours before the time of discharge or, if the seaman is discharged without notice or at less than 24 hours' notice, at the time of discharge.

(3) If the amounts stated in the account require adjustment the persons who employed the seaman shall deliver to him a further account stating the adjusted amounts, and that account shall be delivered not later than the time at which the balance of his wages is payable to the seaman.

(4) Where section 94(4) or (5) applies to the payment of any amount of wages due to a seaman under a crew agreement,

- (a) the persons who employed the seaman shall deliver to him an account of the wages payable to him under that subsection and of the deductions subject to which the wages are payable,
- (b) any such account shall be so delivered at the time when the wages are paid to him, and
- (c) subsections (1) to (3) shall not apply,

and section 94(10) shall apply for the purposes of this subsection as it applies for the purposes of that section.

(5) Where a seaman is employed under a crew agreement relating to more than one ship, any account which under the preceding provisions of this section would be

required to be delivered to him by the master shall instead be delivered to him by the persons employing him and shall be so delivered on or before the termination of his employment under the crew agreement.

(6) If a person fails without reasonable excuse to comply with the provisions of this section he commits an offence and is liable, on summary conviction, to a fine not exceeding ten thousand dollars.

Regulations relating to wages and accounts

96. The Governor in Council may make regulations

- (a) authorising deductions to be made from the wages due to a seaman under a crew agreement (in addition to any authorised by any provision of this Part or of any other enactment for the time being in force) in cases where a breach of his obligations under the agreement is alleged against him and such conditions, if any, as may be specified in the regulations are complied with, or in such other cases as may be specified in the regulations;
- (b) regulating the manner in which any amounts deducted under the regulations are to be dealt with;
- (c) prescribing the manner in which wages due to a seaman under a crew agreement are to be or may be paid;
- (d) regulating the manner in which such wages are to be dealt with and accounted for in circumstances where a seaman leaves his ship in the Virgin Islands otherwise than on being discharged therefrom; and
- (e) prescribing the form and manner in which any account required to be delivered by section 95 is to be prepared and the particulars to be contained therein (which may include estimated amounts).

Power of Shipping Master or proper officer to decide disputes on wages

97. (1) Any dispute relating to the amount payable to a seaman employed under a crew agreement may be submitted by the parties to a Superintendent or proper officer for decision, but the Superintendent or proper officer shall not be bound to accept the submission or, if he has accepted it, to decide the dispute, if he is of the opinion that the dispute, whether by reason of the amount involved or for any other reason, ought not to be decided by him.

(2) The decision of a Superintendent or proper officer on a dispute submitted to him under this section shall be final.

98. (1) As respects the wages due or accruing to a seaman employed in a Virgin Islands ship,

Restriction on assignment of and charge upon wages

- (a) the wages shall not be subject to attachment;
- (b) an assignment thereof before they have accrued shall not bind the seaman and the payment of the wages to the seaman shall be valid notwithstanding any previous assignment or charge; and
- (c) a power of attorney or authority for the receipt of the wages shall not be irrevocable.

(2) Nothing in this section shall affect the provisions of this Part with respect to allotment notes.

99. In any proceedings by the master of a ship or a person employed in a ship otherwise than under a crew agreement for the recovery of any sum due to him as wages the Court, unless it appears to it that the delay in paying the sum was due to

Power of Court to award interest on wages due

- (a) a mistake,
- (b) a reasonable dispute as to liability,
- (c) the act or default of the person claiming the amount, or
- (d) any other cause, not being the wrongful act or default of the persons liable to make the payment or their servants or agents,

may order them to pay, in addition to the sum due, interest on it at the rate of twenty percent per annum or such lower rate as the Court may specify, for the period beginning seven days after the sum became due and ending when the sum is paid.

100. (1) Subject to the provisions of this section, a seaman may, by means of an allotment note issued in accordance with regulations made by the Governor in Council, allot to any person or persons part of the wages to which he will become entitled in the course of his employment in a Virgin Islands ship or ships.

Allotment notes

(2) A seaman's right to make an allotment under this section shall be subject to such limitations as may, by virtue of the provisions of this section, be imposed by regulations made by the Governor in Council.

(3) Regulations made by the Governor in Council for the purposes of this section may prescribe the form of allotment notes and may

- (a) limit the circumstances in which allotments may be made;

- (b) limit (whether by reference to an amount or by reference to a proportion) the part of the wages that may be allotted and the number of persons to whom it may be allotted and may prescribe the method by which that part is to be calculated;
- (c) limit the persons to whom allotments may be made by a seaman to persons of such descriptions or persons standing to him in such relationships as may be prescribed by the regulations;
- (d) prescribe the times and the intervals at which payments under allotment notes are to be made.

(4) Regulations under this section may make different provisions in relation to different descriptions of seamen and different circumstances.

Right of person named in allotment to sue in own name

101. (1) A person to whom any part of a seaman's wages has been allotted by an allotment note issued in accordance with regulations made under section 100 shall have the right to recover that part in his own name and for that purpose shall have the same remedies as the seaman has for the recovery of his wages.

(2) In any proceedings brought by a person named in such an allotment note as the person to whom any part of a seaman's wages has been allotted it shall be presumed, unless the contrary is shown, that the seaman is entitled to the wages specified in the note and that the allotment has not been varied or cancelled.

Right, or loss of right to wages in certain circumstances

102. (1) Where a Virgin Islands ship is wrecked or lost, a seaman whose employment in the ship is thereby terminated before the date contemplated in the agreement under which he is so employed shall, subject to the provisions of this section, be entitled to wages at the rate payable under the agreement at the date of the wreck or loss for every day on which he is unemployed in the two months following that date.

(2) Where a Virgin Islands ship is sold while outside the Virgin Islands or ceases to be a Virgin Islands ship and a seaman's employment in the ship is thereby terminated before the date contemplated in the agreement under which he is so employed, then, unless it is otherwise provided in the agreement, he shall, subject to the provisions of this section, be entitled to wages at the rate payable under the agreement at the date on which his employment is terminated for every day on which he is unemployed in the two months following that date.

(3) A seaman shall not be entitled to wages by virtue of subsection (1) or (2) for a day on which he was unemployed, if it is shown

- (a) that the unemployment was not due to the wreck or loss of the ship or, as the case may be, the termination of his employment on the sale of the ship or its ceasing to be a Virgin Islands ship; or
- (b) that the seaman was able to obtain suitable employment for that day but unreasonably refused or failed to take it.

(4) This section shall apply to a master as it does to a seaman.

103. (1) A seaman's lien, his remedies for the recovery of his wages, his right to wages in case of the wreck or loss of his ship, and any right he may have or obtain in the nature of salvage shall not be capable of being renounced by any agreement.

Protection of certain rights and remedies

(2) Subsection (1) does not affect such of the terms of any agreement made with the seamen belonging to a ship which, in accordance with the agreement, is to be employed on salvage service, as provide for the remuneration to be paid to them for salvage services rendered by that ship.

104. The master of a ship shall have the same lien for his remuneration, and all disbursements or liabilities properly made or incurred by him on account of the ship, as a seaman has for his wages.

Remedies of master for remuneration, disbursements, etc.

Safety, Health and Welfare

105. (1) In every contract of employment between the owner of a Virgin Islands ship and the master of or any seaman employed in the ship there shall be implied an obligation on the owner of the ship that

Obligation of shipowners as to seaworthiness

- (a) the owner of the ship, and
- (b) the master of the ship, and
- (c) every agent charged with
 - (i) the loading of the ship,
 - (ii) the preparing of the ship for sea, or
 - (iii) the sending of the ship to sea,

shall use all reasonable means to ensure the seaworthiness of the ship for the voyage at the time when the voyage commences and to keep the ship in a seaworthy condition for the voyage during the voyage.

(2) The obligation imposed by subsection (1) applies notwithstanding any agreement to the contrary.

Shipowners relief from liability for unseaworthiness

106. No liability on the owner of a ship arises under section 105 (1) in respect of the ship being sent to sea in an unseaworthy state where, owing to special circumstances, the sending of the ship to sea in such a state was reasonable and justifiable.

Crew accommodation

107. (1) The Governor in Council may make regulations with respect to the crew accommodation to be provided in Virgin Islands ships.

(2) Without prejudice to the generality of subsection (1), regulations made under this section may, in particular

- (a) prescribe the minimum space per person which must be provided by way of sleeping accommodation for seamen and the maximum number of persons by whom a specified part of such sleeping accommodation may be used;
- (b) regulate the position in the ship in which the crew accommodation or any part thereof may be located and the standards to be observed in the construction, equipment and furnishing of any such accommodation;
- (c) require the submission to a surveyor of ships of plans and specifications of any works proposed to be carried out for the purpose of the provision or alteration of any such accommodation and authorise the surveyor to inspect any such works; and
- (c) provide for the maintenance and repair of any such accommodation and prohibit or restrict the use of any such accommodation for purposes other than those for which it is designed.

(3) Regulations under this section may exempt ships of any description from any requirements of the regulations and the Director may grant other exemptions from any such requirement with respect to any ship.

(4) Regulations under this section may require the master of a ship or any officer authorised by him for the purpose to carry out such inspections of the crew accommodation as may be prescribed by the regulations.

(5) If the provisions of any regulations under this section are contravened in the case of a ship the owner or master commits an offence and is liable on summary conviction to a fine not exceeding fifteen thousand dollars and the ship, if in the Virgin Islands, may be detained.

(6) In this section "crew accommodation" includes sleeping rooms, mess rooms, sanitary accommodation, hospital accommodation, recreation accommodation, store rooms and catering accommodation provided for the use of seamen but does not include any accommodation which is also used by or provided for the use of passengers.

108. (1) If three or more seamen employed in a Virgin Islands ship consider that the provisions or water provided for the seamen employed in that ship are not in accordance with safety regulations made under this Act containing requirements as to the provisions and water to be provided on ships (whether because of bad quality, unfitness for use or deficiency in quantity), they may complain to the master, who shall investigate the complaint.

Complaints about provisions or water

(2) If the seamen are dissatisfied with the action taken by the master as a result of his investigation or by his failure to take any action they may state their dissatisfaction to him and may complain to the Superintendent or proper officer, and thereupon the master shall make adequate arrangements to enable the seamen to do so as soon as the service of the ship permits.

(3) The Superintendent or proper officer to whom a complaint has been made under this section shall investigate the complaint and may examine the provisions or water or cause them to be examined.

(4) If the master fails without reasonable excuse to comply with the provisions of subsection (2), he commits an offence and is liable on summary conviction to a fine not exceeding fifteen thousand dollars and if he has been notified in writing by the person making an examination under subsection (3) that any provisions or water are found to be unfit for use or not of the quality required by the regulations, then

- (a) if they are not replaced within a reasonable time the master or owner commits an offence and is liable on summary conviction to a fine not exceeding fifteen thousand dollars, unless he proves that the failure to replace them was not due to his neglect or default; or
- (b) if the master, without reasonable excuse, permits them to be used he commits an offence and is liable on summary conviction to a fine not exceeding fifteen thousand dollars.

Expenses of medical and other treatment during voyage

109. (1) If a person, while employed in a Virgin Islands ship, receives outside the Virgin Islands any surgical or medical treatment or such dental or optical treatment (including the repair or replacement of any appliance) as cannot be postponed without impairing efficiency, the reasonable expenses thereof shall be borne by the persons employing him.

(2) If a person dies while employed in a Virgin Islands ship and is buried or cremated outside the Virgin Islands, the expenses of his burial or cremation shall be borne by the persons employing him.

(3) The reference in subsection (2) to dying in a ship includes a reference to dying in a ship's boat.

Manning, Qualifications, Training and Uniform

Application of sections 111 to 115

110. Sections 111 to 115 apply to every Virgin Islands ship and also to any ship registered under the laws of a country outside the Virgin Islands which carries passengers

- (a) between places in the Virgin Islands; or
- (b) on a voyage which begins and ends at the same place in the Virgin Islands and on which the ship calls at no place outside the Virgin Islands.

Manning

111. (1) Subject to subsection (3), the Governor in Council may make regulations (referred to in this Act as the "Safe Manning Regulations")

- (a) requiring ships to which this section applies to carry such number of qualified officers of any description, qualified doctors and qualified cooks and such number of other seamen or qualified seamen of any description as may be specified in the regulations;

- (b) prescribing or enabling the Governor in Council to specify standards of competence to be attained and other conditions to be satisfied (subject to any exceptions allowed by or under the regulations) by officers and other seamen of any description in order to be qualified for the purposes of this section; and
- (c) prescribing medical fitness requirements for seafarers.

(2) In making regulations under this section, the Governor in Council shall have due regard to the STCW Convention.

(3) The Governor in Council shall not exercise his power to make regulations requiring ships to carry seamen other than doctors and cooks except to the extent that it appears to him necessary or expedient in the interests of safety.

(4) Regulations under this section may make different provisions for different descriptions of ships or for ships of the same description in different circumstances.

(5) Without prejudice to the generality of subsection (1)(b), the conditions prescribed or specified under that paragraph may include conditions as to nationality, and regulations made for the purposes of that paragraph may make provision, or enable the Director to make provision, for

- (a) the manner in which the attainment of any standard or the satisfaction of any other condition is to be evidenced,
- (b) the conduct of any examinations, the conditions for admission to them and the appointment and remuneration of examiners, and
- (c) the issue, form and recording of certificates and other documents,

and different provisions may be so made or enabled to be made for different circumstances.

(6) If a person makes a statement which he knows to be false or recklessly makes a statement which is false in a material particular for the purpose of obtaining for himself or another person a certificate or other document which may be issued under this section, he commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars.

112. (1) The Director may exempt any ship or description of ship from any requirements of regulations made under section 111.

Power to exempt from manning requirements

(2) An exemption given under this section may be confined to a particular period or to one or more particular voyages.

Prohibition on going to sea undermanned

113. (1) Subject to section 112, if a ship to which this section applies goes to sea or attempts to go to sea without carrying such officers and other seamen as it is required to carry under section 111, the owner or master commits an offence and is liable

- (a) on summary conviction, to a fine not exceeding twenty-five thousand dollars,
- (b) on conviction on indictment, to a fine not exceeding fifty thousand dollars,

and the ship, if in the Virgin Islands, may be detained.

(2) This section shall, in its application to ships which are not sea-going ships, have effect as if for the words "goes to sea or attempts to go to sea" there were substituted the words "goes on a voyage or excursion or attempts to do so" and the words "if in the Virgin Islands" were omitted.

Production of certificates and other documents of qualifications

114. (1) Any person serving or engaged to serve in any ship to which this section applies and holding any certificate or other document which is evidence that he is qualified for the purposes of section 111 shall on demand produce it to the Superintendent, any surveyor of ships or proper officer and (if he is not himself the master) to the master of the ship.

(2) If, without reasonable excuse, a person fails to comply with subsection (1), he commits an offence and is liable on summary conviction to a fine not exceeding fifteen thousand dollars.

Crew's knowledge of English

115. (1) Where in the opinion of the Superintendent or proper officer the crew of a ship to which this section applies consists of or includes persons who may not understand orders given to them in the course of their duty because of their insufficient knowledge of English and the absence of adequate arrangements for transmitting the orders in a language of which they have sufficient knowledge, then

- (a) if the Superintendent or proper officer has informed the master of that opinion, the ship shall not go to sea; and
- (b) if the ship is in the Virgin Islands, it may be detained.

(2) If a ship goes to sea or attempts to go to sea in contravention of this section the owner or master commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars.

116. (1) If a person goes to sea as a qualified officer or seaman of any description without being such a qualified officer or seaman, he commits an offence and is liable

Unqualified seamen going to sea as qualified persons

- (a) on summary conviction, to a fine not exceeding ten thousand dollars;
- (b) on conviction on indictment, to a fine not exceeding twenty thousand dollars.

(2) In this section "qualified" means qualified for the purposes of section 111.

117. Where a Virgin Islands ship does not carry a doctor among the seamen employed in it, the master shall make arrangements for securing that any medical attention on board the ship is given either by him or under his supervision by a person appointed by him for the purpose.

Medical treatment on board ship

118. (1) The Director may issue and record documents certifying the attainment of any standard of competence relating to ships or their operation, notwithstanding that the standard is not among those prescribed or specified under section 111(1)(b), and the Governor in Council may, in relation thereto, make regulations for purposes corresponding to those mentioned in section 111(4).

Special certificates of competence

(2) If a person makes a statement which he knows to be false or recklessly makes a statement which is false in a material particular for the purpose of obtaining for himself or another person a document which may be issued under this section, he commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars.

119. (1) A person under school-leaving age shall not be employed in any Virgin Islands ship except as permitted by regulations under this section.

Young persons

(2) The Governor in Council may make regulations

- (a) prescribing circumstances in which and conditions subject to which persons under school-leaving age who have attained such age as

may be specified in the regulations may be employed in a ship in such capacities as may be so specified;

- (b) prescribing circumstances and capacities in which persons over school leaving-age but under the age of eighteen or under such lower age as may be specified in the regulations must not be employed in a Virgin Islands ship or may be so employed only subject to such conditions as may be specified in the regulations.

(3) Regulations made for the purposes of this section may make different provisions for different employments and different descriptions of ships and any other different circumstances.

(4) If any person is employed in a ship in contravention of this section or if any condition subject to which a person may be employed under regulations made for the purposes of this section is not complied with, the owner or master commits an offence and is liable on summary conviction to a fine not exceeding fifteen thousand dollars.

(5) For the purposes of this section, a person employed in a ship shall be deemed to be over school-leaving age if he has, and under school-leaving age if he has not, attained the age which is the upper limit of compulsory school age under the enactment relating to education in the Virgin Islands.

Financial assistance

120. (1) The Minister may give any person or body of persons of any description determined by him, financial assistance in respect of expenses incurred or to be incurred by any such person or body in connection with the training of officers and ratings for service in merchant ships, including expenses incurred or to be incurred by any such person in connection with his undergoing any such training.

(2) Assistance under this section may be given by way of a grant or a loan or otherwise, and in giving any such assistance the Minister may impose such conditions as he thinks fit, including conditions requiring a grant to be repaid in specified circumstances.

(3) This section is without prejudice to any other power of the Governor in Council to give financial assistance in connection with any such training as is mentioned in subsection (1).

121. (1) Subject to subsection (3), if any person, not being entitled to wear the merchant navy uniform, wears that uniform or any part thereof, or any dress having the appearance or bearing any of the distinctive marks of that uniform, he commits an offence.

Uniform

(2) A person who commits an offence under subsection (1) is liable, on summary conviction,

- (a) except in a case falling within paragraph (b), to a fine not exceeding level five on the standard scale;
- (b) if he wears it in such a manner or under such circumstances as to be likely to bring contempt on the uniform, to a fine not exceeding level five on the standard scale or to imprisonment for a term not exceeding one month.

(3) Subsection (1) shall not prevent any person from wearing any uniform or dress in the course or for the purposes of a stage play or representation, or a music-hall or circus performance if the uniform is not worn in such a manner or under such circumstances as to bring it into contempt.

(4) If any person entitled to wear the merchant navy uniform when aboard a ship in port or on shore appears dressed partly in uniform and partly not in uniform under such circumstances as to be likely to bring contempt on the uniform, or, being entitled to wear the uniform appropriate to a particular rank or position, wears the uniform appropriate to some higher rank or position, he commits an offence and is liable on summary conviction to a fine not exceeding level five on the standard scale.

Offences by Seamen

122. (1) This section applies
- (a) to the master of, or any seaman employed in, a Virgin Islands ship; and
 - (b) to the master of, or any seaman employed in, a ship which
 - (i) is a foreign ship; and

Conduct endangering ship, persons, etc.

- (ii) is in a port in the Virgin Islands or within Virgin Islands waters while proceeding to or from any such port.

(2) If a person to whom this section applies, while on board his ship or in its immediate vicinity,

- (a) does any act which causes or is likely to cause
 - (i) the loss or destruction of or serious damage to his ship or its machinery, navigational equipment or safety equipment,
 - (ii) the loss or destruction of or serious damage to any other ship or any structure, or
 - (iii) the death of or serious injury to any person, or
- (b) omits to do anything required
 - (i) to preserve his ship or its machinery, navigational equipment or safety equipment from being lost, destroyed or seriously damaged,
 - (ii) to preserve any person on board his ship from death or serious injury, or
 - (iii) to prevent his ship from causing the loss or destruction of, or serious damage to, any other ship or any structure, or the death of or serious injury to any person not on board his ship,

and either of the conditions specified in subsection (3) is satisfied with respect to that act or omission, he is, subject to subsections (6) and (7), guilty of an offence.

(3) The conditions referred to in subsection (2) are

- (a) that the act or omission was deliberate or amounted to a breach or neglect of duty;
- (b) that the master or seaman in question was under the influence of drink or a drug at the time of the act or omission.

(4) If a person to whom this section applies

- (a) discharges any of his duties, or performs any other function in relation to the operation of his ship or its machinery or equipment, in such a manner as to cause, or to be likely to cause, any such loss, destruction, death or injury as is mentioned in subsection (2)(a), or
- (b) fails to discharge any of his duties, or to perform any such function, properly to such an extent as to cause, or to be likely to cause, any of those things,

he is, subject to subsections (6) and (7), guilty of an offence.

(5) A person guilty of an offence under this section is liable

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale;
- (b) on conviction on indictment to a fine not exceeding ten thousand dollars or, to imprisonment for a term not exceeding two years, or both.

(6) In proceedings for an offence under this section it shall be a defence to prove,

- (a) in the case of an offence under subsection (2) where the act or omission alleged against the accused constituted a breach or neglect of duty, that the accused took all reasonable steps to discharge that duty;
- (b) in the case of an offence under subsection (2), that at the time of the act or omission alleged against the accused he was under the influence of a drug taken by him for medical purposes and either that he took it on medical advice and complied with any directions given as part of that advice or that he had no reason to believe that the drug might have the influence it had;
- (c) in the case of an offence under subsection (4), that the accused took all reasonable precautions and exercised all due diligence to avoid committing the offence; or
- (d) in the case of an offence under either of subsections (2) or (4)
 - (i) that he could have avoided committing the offence only by disobeying a lawful command, or
 - (ii) that in all the circumstances the loss, destruction, damage, death or injury in question, or (as the case may be) the likelihood of it being caused, either could not reasonably have been foreseen by the accused or could not reasonably have been avoided by him.

(7) In the application of this section to any person falling within subsection (1)(b), subsections (2) and (4) shall have effect as if subsection (2)(a)(i) and (b)(i) were omitted, and no proceedings for any offence under this section shall be instituted against any such person without the consent of the Attorney General.

(8) In this section,

"breach or neglect of duty", except in relation to a master, includes any disobedience to a lawful command;

"duty",

- (a) in relation to a master or seaman, means any duty falling to be discharged by him in his capacity as such; and
- (b) in relation to a master, includes his duty with respect to the good management of his ship and his duty with respect to the safety of operation of his ship, its machinery and equipment; and

"structure" means any fixed or movable structure (of whatever description) other than a ship.

Concerted disobedience
and neglect of duty

123. (1) If a seaman employed in a Virgin Islands ship combines with other seamen employed in that ship

- (a) to disobey lawful commands which are required to be obeyed at a time while the ship is at sea,
- (b) to neglect any duty which is required to be discharged at such a time, or
- (c) to impede, at such a time, the progress of a voyage or the navigation of the ship,

he commits an offence.

(2) A seaman who commits an offence under subsection (1) is liable,

- (a) on summary conviction, to a fine not exceeding ten thousand dollars;
- (b) on conviction on indictment, to a fine not exceeding fifteen thousand dollars, or to imprisonment for a term not exceeding two years, or both.

(3) For the purposes of this section, a ship shall be treated as being at sea at any time when it is not securely moored in a safe berth.

Disciplinary Offences

124. (1) The Governor in Council may make regulations under the provisions of this section for the purpose of maintaining discipline on board Virgin Islands ships, and in this section "disciplinary body" means a body established or approved by the Minister under subsection (6).

(2) Regulations may provide for the hearing on shore in the Virgin Islands, by a disciplinary body, of a complaint by the master or owner of a Virgin Islands ship, other than a fishing vessel, against a seaman alleging that during his employment on board the ship the seaman contravened, on or off the ship and in the Virgin Islands or elsewhere, a provision of a code of conduct approved by the Director for the purposes of this section.

(3) Regulations may enable a disciplinary body

- (a) to dismiss the complaint if it finds the allegation not proved;
- (b) if it finds the allegation proved,
 - (i) to warn the seaman;
 - (ii) to reprimand the seaman; or
 - (iii) to recommend to the Director that the seaman shall, either for a period specified in the recommendation or permanently, cease to be entitled to a discharge book in pursuance of section 144 and shall be required to surrender any such book which has been issued to him.

(4) Regulations may

- (a) enable the seaman to appeal against such a recommendation to another disciplinary body (an "appellate body"); and
- (b) enable an appellate body
 - (i) to confirm the recommendation;
 - (ii) to cancel the recommendation; or
 - (iii) in the case of a recommendation that the seaman shall cease to be entitled to a discharge book permanently or for a particular period, to substitute for it a recommendation that he shall cease to be so entitled, instead of permanently, for a period specified in the substituted recommendation or, instead of for the particular period, for a shorter period so specified.

(5) Regulations may make provision for securing that a recommendation that the seaman shall permanently cease to be entitled to a discharge book is not

submitted to the Director unless it has been confirmed, either on appeal or otherwise, by an appellate body.

(6) Regulations may make provision for the establishment or approval for the purposes of this section of such number of bodies as the Minister thinks fit and with respect to the composition, jurisdiction and procedure of any such body.

(7) Regulations may make provision for the payment of such remuneration and allowances as the Minister may determine to any member of such a body.

(8) Regulations may make different provisions for different circumstances and may contain such incidental and supplemental provisions as the Governor in Council considers appropriate.

(9) Without prejudice to the generality of the preceding provisions, regulations may include provision for any proceedings to take place notwithstanding the absence of the seaman to whom they relate.

(10) Nothing in the regulations or done in pursuance of the regulations shall be construed as affecting any power to institute, prosecute, entertain or determine proceedings (including criminal proceedings) under any other enactment or at common law.

Disqualification of Seamen and Inquiries

Inquiry into fitness or
conduct of officer

125. (1) If it appears to the Director that an officer
- (a) is unfit to discharge his duties, whether by reason of incompetence or misconduct or for any other reason,
 - (b) has been seriously negligent in the discharge of his duties, or
 - (c) has failed to comply with the provisions of section 151,

the Director may cause an inquiry to be held by one or more persons appointed by him and, if he does so, may, if he thinks fit, suspend, pending the outcome of the inquiry, any certificate issued to the officer in pursuance of section 111 and require the officer to deliver it to him.

(2) Where a certificate issued to an officer has been suspended under subsection (1) the suspension may, on the application of the officer, be terminated by the Court, and the decision of the Court on such an application shall be final.

(3) An inquiry under this section shall be conducted in accordance with rules made under section 129(1) and those rules shall require the persons holding the inquiry to hold it with the assistance of one or more assessors.

(4) The persons holding an inquiry under this section into the fitness or conduct of an officer

- (a) may, if satisfied of any of the matters mentioned in paragraphs (a) to (c) of subsection (1), cancel or suspend any certificate issued to him under section 111 or censure him,
- (b) may make such order with regard to the costs of the inquiry as they think just, and
- (c) shall make a report on the case to the Director,

and if the certificate is cancelled or suspended the officer (unless he has delivered it to the Director in pursuance of subsection (1)) shall deliver it forthwith to the persons holding the inquiry or to the Director.

(5) Any costs which a person is ordered to pay under subsection (4)(b) may be recovered from him by the Director.

126. (1) Where it appears to the Director that a person who is the holder of a certificate to which this section applies is unfit to be the holder of such a certificate, whether by reason of incompetence or misconduct or for any other reason, the Director may give him notice in writing that he is considering the suspension or cancellation of the certificate.

Disqualification of holder of certificate other than officer

(2) The notice shall state the reasons why it appears to the Director that the person is unfit to be the holder of such a certificate and shall state that within a period specified in the notice, or such longer period as the Director may allow, he may make written representations to the Director or claim to make oral representations to the Director.

(3) After considering any representations made in pursuance of subsection (2) the Director shall decide whether or not to suspend or cancel the certificate and shall give the holder of it written notice of his decision.

(4) Where the decision is to suspend or cancel the certificate, the notice shall state the date from which the cancellation is to take effect, or the date from which and the period for which the suspension is to take effect, and shall require the holder to deliver the certificate to the Director not later than the date so specified unless before that date the holder has required the case to be dealt with by an inquiry under section 127.

(5) Where, before the date specified in the notice, the holder requires the case to be dealt with by such an inquiry, then, unless he withdraws the requirement, the suspension or cancellation shall not take effect except as ordered in pursuance of the inquiry.

(6) The Governor in Council may make regulations prescribing the procedure to be followed with respect to the making and consideration of representations in pursuance of this section, the form of any notice to be given under this section and the period to be specified in any such notice as the period within which any steps are to be taken.

(7) This section applies to every certificate issued under section 118 and to any certificate issued under section 111 other than one certifying that a person is qualified as an officer.

Inquiry into fitness or
conduct of seaman

127. (1) Where a person has, before the date mentioned in section 126(4), required his case to be dealt with by an inquiry under this section, the Minister shall cause an inquiry to be held by one or more persons appointed by him.

(2) An inquiry under this section shall be conducted in accordance with rules made under section 129(1) and those rules shall require the persons holding the inquiry to hold it with the assistance of one or more assessors.

(3) The persons holding an inquiry under this section

(a) may confirm the decision of the Director and cancel or suspend the certificate accordingly,

- (b) may, where the decision was to cancel the certificate, suspend it instead,
- (c) may, where the decision was to suspend the certificate, suspend it for a different period,
- (d) may, instead of confirming the decision of the Director, censure the holder of the certificate or take no further action,
- (e) may make such order with regard to the costs of the inquiry as they think just, and
- (f) shall make a report on the case to the Minister,

and if the certificate is cancelled or suspended it shall be delivered forthwith to the persons holding the inquiry or to the Director.

(4) Any costs which a person is ordered to pay under subsection (3)(e) may be recovered from him by the Minister.

128. (1) Where an inquiry has been held under section 125 or 127, the Minister may order the whole or part of the case to be reheard, and shall do so

Re-hearing and appeal from inquiries

- (a) if new and important evidence which could not be produced at the inquiry has been discovered; or
- (b) if there appear to the Minister to be other grounds for suspecting that a miscarriage of justice may have occurred.

(2) An order under subsection (1) may provide for the rehearing to be by the Court.

(3) Where the persons holding the inquiry have decided to cancel or suspend the certificate of any person or have found any person at fault, then, if no application for an order under subsection (1) has been made or such an application has been refused, that person or any other person who, having an interest in the inquiry, has appeared at the hearing and is affected by the decision or finding, may appeal to the Court.

129. (1) The Governor in Council may make rules for the conduct of inquiries under sections 125 and 127, appeals and for any re-hearing under section 128.

Rules as to inquiries and appeals

(2) Without prejudice to the generality of subsection (1), rules under this section may provide for the appointment and summoning of assessors, the manner in which any facts may be proved, the persons allowed to appear, and the notices to be given to persons affected.

(3) Rules of Court made for the purpose of re-hearings under section 128 which are held by the Court, or of appeals to the Court, may require the Court, subject to such exceptions, if any, as may be allowed by the rules, to hold such a re-hearing or hear such an appeal with the assistance of one or more assessors.

Failure to deliver
cancelled or suspended
certificate

130. If a person fails to deliver a certificate as required under section 125, 126 or 127, he commits an offence and is liable on summary conviction to a fine not exceeding fifteen thousand dollars.

Power to restore
certificate

131. Where a certificate has been cancelled or suspended under section 125, 126, 127 or 128, the Director, if of the opinion that the justice of the case requires it, may re-issue the certificate or, as the case may be, reduce the period of suspension and return the certificate, or may grant a new certificate of the same or a lower grade in place of the cancelled or suspended certificate.

Power to summon
witness to inquiry

132. (1) The persons holding an inquiry under section 125 or 127 may

- (a) by summons require any person to attend, at a time and place stated in the summons, to give evidence or to produce any documents in his custody or under his control which relate to any matter in question at the inquiry; and
- (b) take evidence on oath (and for that purpose administer oaths) or, instead of administering an oath, require the person examined to make a solemn affirmation.

(2) If on the failure of a person to attend such an inquiry in answer to a summons under this section

- (a) the persons holding the inquiry are satisfied by evidence on oath that
 - (i) the person in question is likely to be able to give material evidence or produce any document which relates to any matter in question at the inquiry,
 - (ii) he has been duly served with the summons, and

(iii) a reasonable sum has been paid or tendered to him for costs and expenses, and

(b) it appears to them that there is no just excuse for the failure,

they may issue a warrant to arrest him and bring him before the inquiry at a time and place specified in the warrant.

133. (1) If any person attending or brought before an inquiry referred to in section 132 refuses without just excuse to be sworn or give evidence, or to produce any document, the persons holding the inquiry may

Refusal to give evidence to inquiry

(a) commit him to custody until the end of such period not exceeding one month as may be specified in the warrant or until he gives evidence or produces the document (whichever occurs first), or

(b) impose on him a fine not exceeding level 1 on the standard scale,

or both.

(2) A fine imposed under subsection (1)(b) shall be treated for the purposes of its collection, enforcement and remission as having been imposed by the Court, and the persons holding the inquiry shall, as soon as practicable after imposing the fine, give particulars of it to the clerk of that Court.

Civil Liability Of Seamen For Offences

134. (1) The provisions of this section shall apply with respect to the liability of a seaman employed in a Virgin Islands ship to damages for being absent from his ship at a time when he is required under his contract of employment to be on board.

Civil liability for absence without leave

(2) If he proves that his absence was due to an accident or mistake or some other cause beyond his control and that he took all reasonable precautions to avoid being absent his absence shall not be treated as a breach of contract.

(3) Where subsection (2) does not apply, then

(a) if no special damages are claimed his liability shall be twenty dollars;

(b) if special damages are claimed his liability shall not be more than two hundred dollars.

Civil liability for smuggling

135. If a seaman employed in a Virgin Islands ship is found in civil proceedings before a Court in the Virgin Islands to have committed an act of smuggling, whether within or outside the Virgin Islands, he shall be liable to make good any loss or expense that the act has caused to any other person.

Civil liability for fines under immigration Acts

136. (1) The provisions of this section shall apply where, at a time when a Virgin Islands ship is in the national or territorial seas of any country outside the Virgin Islands, a seaman employed in the ship is absent without leave and present in that country in contravention of that country's laws.

(2) If, by reason of the contravention, a penalty is incurred under those laws by the persons employing the seaman the penalty shall be treated as being attributable to his absence without leave and may, subject to the provisions of section 134, be recovered from him as special damages for breach of contract.

(3) If, by reason of the contravention, a penalty is incurred under those laws by any other person the amount thereof, or, if that amount exceeds one hundred dollars then one hundred dollars may be recovered by him from the seaman.

Relief And Repatriation And Relief Costs

Relief and return of seamen left behind or shipwrecked

137. (1) Where

- (a) a person employed as a seaman in a Virgin Islands ship is left behind in any country outside the Virgin Islands or is taken to such a country on being shipwrecked, or
- (b) a person who became so employed under an agreement entered into outside the Virgin Islands is left behind in the Virgin Islands or is taken to the Virgin Islands on being shipwrecked,

the persons who last employed him as a seaman shall make such provision for his return and for his relief and maintenance until his return and such other provisions as may be required by regulations made by the Governor in Council.

(2) The provisions to be so made may include the repayment of expenses incurred in bringing a shipwrecked seaman ashore and maintaining him until he is brought ashore and the payment of the expenses of the burial or cremation of a seaman who dies before he can be returned.

(3) The Governor in Council may also make regulations providing for the manner in which any wages due to any person left behind or taken to any country as mentioned in subsection (1) , and any property of his left on board ship, are to be dealt with.

(4) The Governor in Council may make regulations requiring the Superintendent or proper officer to make such provision as may be prescribed by the regulations with respect to any matter for which provision may be required to be made by regulations under the preceding provisions of this section.

(5) Without prejudice to the generality of the preceding provisions, regulations made under this section may make provision

- (a) for determining the place to which a person is to be returned;
- (b) for requiring the master of any Virgin Islands ship to convey a person to a place determined in accordance with the regulations and for enabling the Superintendent or proper officer to give the master directions for that purpose;
- (c) for the making of payments in respect of the conveyance of a person in accordance with the regulations; and
- (d) for the keeping of records and the rendering of accounts.

(6) Regulations under this section may make a contravention of any provision thereof an offence punishable on summary conviction with a fine not exceeding fifteen thousand dollars or such less amount as may be specified in the regulations.

(7) This section applies to a person left behind on being discharged in pursuance of section 93, whether or not at the time he is left behind the ship is still a Virgin Islands ship.

(8) This section applies to the master of a ship as it applies to a seaman and sections 138 and 139 shall have effect accordingly.

138. Where a person left behind in or taken to any country as mentioned in section 137(1) remains there after the end of a period of three months, the persons who last employed him as a seaman shall not be liable under that section to make provision for his return or for any matter arising after the end of that period, unless they have before the end of that period been under an obligation imposed on them by regulations under that section to make provision with respect to him.

Limit of employer's
liability under section
137

Recovery of expenses
from employers incurred
for relief and return

139. Where any expenses are incurred in respect of any matter for which the employers of a seaman are required to make provision under section 137, then

- (a) if the expenses are incurred by the Minister, or are incurred by the government of any country outside the Virgin Islands and repaid to them on behalf of the Government, the Minister may recover them from the employers;
- (b) if the expenses are incurred by the seaman, he may recover them from the employers unless they prove either that under the terms of his employment they were to be borne by him or that he would not have been left behind but for his own wrongful act or neglect.

Recovery of expenses
from seaman

140. Where, in the case of any seaman, expenses are incurred by the Minister or are incurred by the government of any country outside the Virgin Islands and repaid to them on behalf of the Government

- (a) in respect of any matter for which, but for section 138, the seaman's last employers would have been required to make provision under section 137, or
- (b) in respect of any matter for which provision is required to be made under section 137(5)(b),

the Minister may recover them from the seaman (or, if he has died, from his personal representatives).

Documentation

Official and other log
books

141. (1) Except as provided by regulations made under this section, an official log book in a form approved by the Director shall be kept in every Virgin Islands ship.

(2) The Governor in Council may make regulations prescribing the particulars to be entered in English 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 made 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 made under this section may make a contravention of any provision thereof an offence punishable on summary conviction with a fine not exceeding ten thousand dollars or not exceeding a lesser amount.

(6) All Virgin Islands ships shall, in addition to the official log book, carry on board a deck log book and an engine room log book in which shall be recorded particulars relating to the deck watch and the engine room watch respectively.

(7) Subject to subsection (8), the entries in the deck log book and engine room log book referred to in subsection (6) shall be made in English except where all persons making entries in those log books have a common language other than English in which case the entries may be made in that common language.

(8) The Director may require a log book or an extract thereof written in a language other than English to be translated officially into English.

(9) All log books referred to in this section shall be admissible in evidence.

(10) If a person intentionally destroys or mutilates or renders illegible any entry in any log book he commits an offence and is liable on summary conviction to a fine not exceeding fifteen thousand dollars.

142. (1) Except as provided by regulations made under this section, the master of every Virgin Islands ship shall make and maintain a list of the crew containing such particulars as may be required by the regulations.

Lists of crew

(2) The Governor in Council may make regulations

- (a) specifying the particulars to be entered in a list of the crew;
- (b) limiting the time for which a list of the crew may remain in force;
- (c) providing for the maintenance by such persons and either in such place as may be specified in the regulations or, if it is so specified, in the ship, of a copy or copies of each list of a crew and for the notification to such persons of any changes therein;

- (d) for the production of a list of the crew to such persons, in such circumstances and within such time as may be specified in the regulations; and
- (e) for the delivery to the Superintendent or proper officer or the Registrar, in such circumstances as may be specified in the regulations, of a list of the crew or a copy thereof maintained under the regulations and for the notification to him of any changes in such a list.

(3) Regulations under this section may enable a list of the crew to be contained in the same document as a crew agreement and may treat any particulars entered in the crew agreement as forming part of the particulars entered in the list.

(4) Regulations under this section may exempt from the requirements thereof such descriptions of ship as may be specified in the regulations and may make different provisions for different circumstances.

(5) Regulations under this section may make a contravention of any provision thereof an offence punishable on summary conviction with a fine not exceeding ten thousand dollars or not exceeding a lesser amount.

Virgin Islands seamen's
cards

143. (1) The Governor in Council may make regulations providing
- (a) for the issue to Virgin Islands seamen of cards (in this section referred to as "Virgin Islands seamen's cards") in such form and containing such particulars with respect to the holders thereof and such other particulars (if any) as may be prescribed by the regulations, and for requiring Virgin Islands seamen to apply for such cards,
 - (b) for requiring the holders of Virgin Islands seamen's cards to produce them to such persons and in such circumstances as may be prescribed by the regulations,
 - (c) for the surrender of Virgin Islands seamen's cards in such circumstances as may be prescribed by the regulations,
 - (d) for any incidental or supplementary matters for which the Governor in Council thinks it expedient for the purposes of the regulations to provide,

and any provision of the regulations having effect by virtue of paragraph (a) may be so framed as to apply to all Virgin Islands seamen or any description of them and

as to have effect subject to any exemptions for which provision may be made by the regulations.

(2) Regulations under this section may make a contravention of any provision thereof an offence punishable on summary conviction with a fine not exceeding ten thousand dollars or not exceeding a lesser amount.

(3) If a person makes a statement which he knows to be false or recklessly makes a statement which is false in a material particular for the purpose of obtaining for himself or another person a Virgin Islands seaman's card, he commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

144. (1) The Governor in Council may make regulations providing

Discharge books

- (a) for the issue to persons who are or have been employed in Virgin Islands ships of discharge books in such form and containing such particulars with respect to the holders thereof and such other particulars (if any) as may be prescribed by the regulations and for requiring such persons to apply for such discharge books,
- (b) for requiring the holders of discharge books to produce them to such persons and in such circumstances as may be prescribed by the regulations,
- (c) for the surrender of discharge books in such circumstances as may be prescribed by the regulations,
- (d) for any incidental or supplementary matters for which the Governor in Council thinks it expedient for the purposes of the regulations to provide,

and any provision of the regulations having effect by virtue of paragraph (a) may be so framed as to apply to all such persons as are mentioned in that paragraph or any description of such persons and as to have effect subject to any exemptions for which provision may be made by the regulations.

(2) Regulations under this section may provide

- (a) for a person to cease to be entitled to a discharge book in consequence of a recommendation made by a disciplinary body by virtue of regulations made under section 124 (3) or (4); and
- (b) for the re-issue of discharge books which have been surrendered in consequence of such a recommendation.

(3) Regulations under this section may make a contravention of any provision thereof an offence punishable on summary conviction with a fine not exceeding ten thousand dollars or not exceeding a lesser amount.

(4) A person who, in the Virgin Islands or elsewhere,

- (a) obtains employment as a seaman on board a Virgin Islands ship and does so when he is disentitled to a discharge book by virtue of regulations made under subsection (2)(a), or
- (b) employs as such a seaman a person who he knows or has reason to suspect is disentitled as provided in paragraph (a),

commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale or, on conviction on indictment to a fine not exceeding ten thousand dollars or, imprisonment for a term not exceeding one year, or both.

Handing over of
documents by master

145. (1) If a person ceases to be the master of a Virgin Islands ship during a voyage of the ship he shall deliver to his successor the documents relating to the ship or its crew which are in his custody.

(2) If, without reasonable excuse, the master of such a ship fails to comply with subsection (1), he commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

PART VI

PREVENTION OF COLLISIONS AND SAFETY OF NAVIGATION

Collision Regulations, Distress and Safety

Collision regulations

146. The Governor in Council may make regulations, (hereinafter referred to as the "collision regulations")

- (a) for the prevention of collisions at sea,
- (b) respecting the lights to be carried and exhibited, and
- (c) respecting the steering and sailing rules to be observed by ships,

and in making such regulations he shall have regard to any international convention for the time being in force for the prevention of collisions at sea.

147. (1) All owners and masters of Virgin Islands ships shall obey the collisions regulations and shall not carry or exhibit any other lights or use any fog signals other than such as are prescribed by those regulations.

Virgin Islands ships to observe collision regulations

(2) If an infringement of the collision regulations is caused by the wilful default of the master or owner of a ship he commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Subsections (1) and (2) shall apply to the owners and pilots of seaplanes on the surface of water as they apply to the owners and masters of ships.

148. The collision regulations shall be observed by all foreign ships and seaplanes within Virgin Islands waters, and in any case before a Court in the Virgin Islands concerning a breach of the collision regulations arising within Virgin Islands waters, foreign ships and seaplanes shall be treated as if they were Virgin Islands ships and seaplanes registered in the Virgin Islands.

Foreign ships in Virgin Islands waters

149. (1) Liability for collision damage, including damage to vessels, their cargoes, the effects or other property of the crew, passengers or other persons on board, or to third parties, shall be apportioned according to the degree of fault of each ship involved in a collision.

Collision liability

(2) Where it is not possible to determine the degree of fault of each vessel, or if it appears that the faults are equal, liability shall be apportioned equally.

(3) There shall be no presumption of fault against a ship for a contravention of the collision regulations without proof of fault or negligence.

(4) If the collision is accidental or caused by *force majeure*, or if the cause is left in doubt, the damage shall be borne by those who have suffered them,

notwithstanding that the vessels, or any one of them, may have been at anchor, or was otherwise made fast, at the time of the collision.

(5) If the collision is caused by the fault of one of the vessels, liability to make good the damage shall attach to the one which has committed the fault.

(6) In respect of damage caused by death or personal injuries, the vessels in fault shall be jointly and severally liable to third parties, without prejudice, however, to the right of the vessel which has paid a larger part than that which, in accordance with the provisions of subsections (1) and (2), it ought ultimately to bear, to obtain a contribution from the other vessel or vessels at fault.

(7) Collision liability shall attach in accordance with this section in cases where the collision may be caused by the fault of a pilot whether or not the pilot is carried by compulsion of law.

(8) The right of action for the recovery of damages resulting from a collision is not conditional upon the entering of a protest or the fulfilment of any other special formality.

(9) Where no collision has actually taken place, liability for damage to the vessels involved in the incident, or to goods or persons on board the vessels resulting from the execution or non-execution of a manoeuvre or a contravention of the collision regulations shall be determined in accordance with this section.

Inspection to enforce compliance with Collision regulations

150. A surveyor or inspector may inspect a ship of any nationality in a port of the Virgin Islands to determine whether the ship is properly provided with lights and shapes and the means of making sound signals as required by the collision regulations, and if the surveyor or inspector finds that the ship is not so provided, he shall specify in writing the action required to rectify the deficiency and shall detain the ship until such deficiency is rectified to his satisfaction.

Duty to render assistance following collision

151. (1) In every case of collision between ships, the master of each ship shall, if and so far as he can do so without damage to his own ship, crew and passengers, if any,

- (a) render to the other ship, the master, crew and passengers, if any, thereof, such assistance as may be practicable and as may be

necessary to save them from any danger by the collision, and stand by the other ship, until he has ascertained that such ship has no need for further assistance;

- (b) give the master of the other ship the name and port of registry of his ship, and the names of the ports from which his ship sailed and to which his ship is bound.

(2) Subsection (1) shall apply to the masters of Virgin Islands ships and to the masters of foreign ships when in Virgin Islands waters.

(3) The failure of the master of a ship to comply with this section shall not raise any presumption of law that the collision was caused by his wrongful act, neglect, or default.

152. If the master of a ship fails without reasonable cause to comply with section 151, he commits an offence and is liable on conviction, Offence

- (a) in the case of a failure to comply with section 151(1) (a), to a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding six months, or both, and
- (b) in the case of a failure to comply with section 151(1) (b), to a fine not exceeding level 5 on the standard scale,

and in either case if he is a certificated officer, an inquiry into his conduct may be held, and his certificate cancelled or suspended.

153. (1) The master of any Virgin Islands ship upon encountering any of the dangers to navigation specified in subsection (2), shall send information accordingly by any means of communication at his disposal to the appropriate shore based authorities via a coast radio station, as listed in the Admiralty List of Radio Signals Volume 1, and shall be repeated to ships in the vicinity as practicable. Master to notify hazards to navigation

(2) The dangers to navigation referred to in subsection (1) are

- (a) dangerous ice;
- (b) a dangerous derelict;
- (c) a tropical storm;
- (d) air temperatures below freezing point associated with gale force winds causing severe ice accretion on the superstructure of ships;

- (e) winds of force 10 or above on the Beaufort scale for which no storm warning has been received; or
- (f) any other direct danger to navigation.

(3) The information referred to in subsections (1) and (2) shall

- (a) be sent on the authority of the master of the ship in English, or by means of the International Code of Signals, and where it is transmitted by radio messages, it may be sent in one of the working languages of the International Telecommunication Union and, where language difficulties are encountered, the IMO Standard Communication Phrases may be used;
- (b) when sent on the authority of the master of the ship by means of radio, be preceded by the safety signal or code sequence, as prescribed by the radio regulations and shall be in a format permitted under those regulations.

(4) Every person in charge of a radio station in the Virgin Islands or on board any Virgin Islands ship shall, on receiving the signal prescribed in the regulations for indicating that a message is about to be sent under this section, refrain from sending messages for a time sufficient to allow other stations to receive the message, and if so required by regulations made under subsection (1) shall transmit the message in the prescribed manner.

(5) If the master fails to comply with this section, he commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) It shall be a defence for any person charged under subsection (5) to show that he took all reasonable precautions to avoid the commission of the offence.

(7) For the purposes of this section,

- (a) “Admiralty List of Radio Signals” means the publication of that name published by the Hydrographer of the Navy in force at the date of these regulations, and any amendment, correction or replacement thereto;
- (b) “International Code of Signals” means the publication of that name published by the Organisation in 1985, and includes any document published by the Organisation amending that publication;

- (c) “radio regulations” means the radio regulations annexed to, or regarded as being annexed to, the International Telecommunication Convention 1992 and includes all amendments now in force;
- (d) “tropical storm” means a hurricane, typhoon, cyclone or other storm of a similar nature, and a master of a ship shall be deemed to have encountered a tropical storm if he has reason to believe that there is such a storm in the vicinity.

(8) A transmission of messages in pursuance of this section shall be without charge.

154. (1) The master of a Virgin Islands ship, when ice is reported on or near his course, shall at night either proceed at a safe speed adapted to the prevailing circumstances or change his course so as to keep amply clear of the ice reported and of the area of danger.

Master to proceed moderately in danger area

(2) The master of a ship who fails to comply with this section, commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

155. (1) The master of a Virgin Islands ship on receiving at sea a signal from any source that a ship or aircraft or a survival craft thereof is in distress, shall proceed with all speed to the assistance of the persons in distress, informing them if possible that he is doing so, and if

Duty to assist ships in distress

- (a) he is unable to do so, or
- (b) in the special circumstances of the case he considers it unreasonable or unnecessary to proceed to their assistance,

he shall enter in the log book of the ship the reason for failing to proceed to the assistance of the persons in distress.

(2) The master of a ship shall be released from the duty imposed by subsection (1) as soon as he is informed of the requisition of one or more ships, other than his own, under section 156 that the requisition, is being complied with by the ship or ships requisitioned.

156. (1) The master of a ship in distress, after consultation, so far as may be possible, with the masters of the ships which answer his call for assistance, has

Right to requisition ships when in distress

the right to requisition one or more of those ships as he considers best able to render assistance, and it shall be the duty of the masters of the ships requisitioned to comply with the requisition by proceeding with all speed to the assistance of persons in distress.

(2) The master of a ship shall be released from the duty imposed by section 155 (1) and, if his ship has been requisitioned, from the duty imposed by subsection (1), if he is informed by the persons in distress or by the master of another ship which has reached such persons that assistance is no longer required.

Duty to assist persons in danger at sea

157. The master of a ship shall, so far as he can do so without serious danger to his own ship and persons thereon, render assistance to any person in danger of being lost at sea.

158. (1) The duties imposed on the master of a ship by sections 155, 156 and 157 shall apply to the masters of Virgin Islands ships and to the masters of foreign ships when in Virgin Islands waters.

Application of duties imposed by sections 155, 156 and 157, penalties for failure to comply and salvage rights

(2) If a master fails to comply with sections 155, 156 and 157, he commits an offence for each such failure, and upon summary conviction is liable, for each such offence, to a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding six months, or both.

(3) Compliance by a master with sections 155, 156 and 157 shall not affect his right, or the right of any other person to salvage.

Regulations for signals of distress

159. (1) The Governor in Council may make regulations relating to signals of distress and urgency and the signals prescribed by the regulations shall be deemed to be signals of distress and urgency.

(2) Where a master of a ship uses or displays, or causes, or permits any person under his authority to use or display

- (a) any signal except in circumstances and for the purposes prescribed, and
- (b) any signal that is liable to be mistaken for any prescribed signal,

he commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale, and in addition, is liable to pay compensation for any

labour undertaken, risk incurred or loss sustained in consequence of the signal having been supposed to be a signal of distress or urgency, and such compensation may, without prejudice to any other remedy, be recovered in the same manner in which salvage is recoverable.

(3) Where the master who contravenes subsection (2) is a certificated officer under this Act, he shall be subjected to an inquiry into his conduct as provided in section 125.

160. (1) When a ship

Reports of accidents to ships

- (a) has sustained or caused any accident occasioning loss of life or any serious injury to any person, or
- (b) has sustained any material damage affecting her seaworthiness or her efficiency, either in her hull or in any part of her machinery,

the owner or master thereof shall, within twenty-four hours after the happening of the accident or causing of the damage or as soon as possible thereafter, transmit to a proper officer if the ship is in a foreign port, or otherwise to the Director, a report of the accident or damage.

(2) Every report of accident or damage to a ship made under subsection (1) shall be signed by the owner or master of the ship, and shall state

- (a) the name of the ship, the port to which the ship belongs, the official number, if any, of the ship and the place where the ship is located;
- (b) the circumstances in which the accident or damage occurred; and
- (c) the probable cause of the accident or damage.

(3) If the owner or managing owner, or if there is no owner or managing owner resident in the Virgin Islands, the representative person of the owner or the agent of any ship to which this section applies, has reason to believe that the ship has sustained or caused any such accident or received any such damage as is mentioned in subsection (1), he shall satisfy himself that the accident or damage has been reported to the Director by the master, and, where any such owner, managing owner, representative person or agent has reason to believe that the accident or damage has not been so reported, he shall as soon as possible, send to the Director notice in writing stating the name of the ship, its official number, and its port of registry or the port to which it belongs, stating to the best of his knowledge and

belief, the nature and extent of the accident or damage, the probable cause thereof and the location of the ship.

(4) The master, owner, managing owner, representative person or agent who fails, without reasonable cause to comply with this section commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(5) This section applies to all Virgin Islands ships and to all foreign ships carrying passengers between places in the Virgin Islands.

Apprehended loss of ship

161. (1) If the owner, managing owner or agent of any Virgin Islands ship has reason, owing to the non-appearance of the ship or to any other circumstance, to believe that the ship has been lost, he shall cause a reasonable search to be made for the ship and shall, as soon as may be convenient, send to the Director a notice in writing signed by him and stating

- (a) the name of the ship, the port to which the ship belongs and the official number, if any, of the ship; and
- (b) a report of the loss of the ship and the circumstances and probable cause of such loss.

(2) Any managing owner or agent of a ship who fails without reasonable cause, to comply with this section within a reasonable period from the time when he has reason to believe that the ship has been lost, commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Record of boat drill to be kept in official log book

162. (1) The master of every Virgin Islands ship shall enter a statement in the official log book of every occasion on which life boat and fire drill is practised on board, and on which the appliances and equipment required to be carried are examined to see whether they are fit and ready for use, and of the result of any such examination.

(2) Where in the case of

- (a) a passenger ship, lifeboat drill or fire drill was not practised in any week,
- (b) any other ship, lifeboat drill or fire drill was not practised in any two weeks,

- (c) any ship, the said appliances and equipment were not examined in any such period as prescribed,

the master shall state the reasons therefor in the official log book.

163. (1) The Director shall take appropriate steps to advise the seafaring community and the public of any developing or existing situations which may adversely affect maritime safety.

Notices to Mariners and navigational warnings

(2) Such information may take the form of Notices to Mariners and navigational warnings may be issued and communicated by any means as the circumstances may warrant.

(3) The Director may require the assistance of any person in the communication of such information.

Aids To Navigation and Charts and Publications

164. (1) For the purposes of this section and sections 165 to 170

Interpretation and application

“aids to navigation” and “aids” means all lighthouses, buoys, beacons, radio aids, or any other light, signal or mark established to aid marine navigation and includes all buildings, moorings and other works associated therewith;

“coastal area” includes the coast of the Virgin Islands and all Virgin Islands waters except those within the limits of ports and harbours under the British Virgin Islands Ports Authority Act and the approaches thereto.

(2) Sections 165 to 170 shall apply to the coastal areas of the Virgin Islands.

165. (1) There shall be established within the coastal areas of the Virgin Islands such aids to navigation as may be necessary to facilitate safe navigation.

Establishment and management of aids

(2) If it is proposed to establish or discontinue an aid, or alter the lighting characteristics or any other distinguishing features of an aid, the Director shall be consulted before any such proposal is carried into effect.

Nautical publications,
charts and other
information

166. (1) The Director may cause the publication and updating of information on aids to navigation and declare such publications and any other publications, to be approved nautical publications.

(2) In any legal proceedings, the production of an approved nautical publication authenticated by the Director shall be *prima facie* evidence of the matters appearing therein.

(3) The Governor in Council may make regulations specifying such charts, directions or information as appear to him to be necessary or expedient for the safe operation of ships.

(4) Regulations made pursuant to this section may require Virgin Islands ships or such descriptions of Virgin Islands ships as may be specified in the regulations, to carry and use, either at all times or on such voyages as may be specified in the regulations, the charts, copies of directions or information so specified.

(5) If a ship goes to sea or attempts to go to sea without carrying the charts, copies of directions or information which it is required to carry according to the regulations made under this section, the master and owner each commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Prosecution of offences
relating to aids

167. Any person who

- (a) contravenes section 165,
- (b) wilfully or negligently damages, destroys or allows a ship to foul an aid,
- (c) wilfully or negligently does anything which causes the view of an aid to be obstructed in such a manner as to lessen its efficiency,
- (d) wilfully, negligently or without lawful authority does anything which interferes with an aid so as to hinder the effective use of the aid,
- (e) trespasses on or without lawful excuse, is found in or on an aid, or on any land upon which an aid is situated,

commits an offence and, in addition to the expenses of making good any damage so occasioned, is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

168. Where a ship damages, destroys or fouls an aid, the ship may be detained until the cost of repairing or replacing the aid or rendering the aid effective again is paid.

Detention of ships

169. (1) No person shall show a light, including light from a fire, in such a place or manner as to mislead ships navigating in the coastal areas of the Virgin Islands.

Fire or lights detrimental to navigation

(2) Any person who fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

(3) The Director may cause to be extinguished any fire or light in respect of which notice is given under this section where the person to whom the notice has been given fails to comply within the time specified therein.

(4) For the purpose of extinguishing false or unauthorised lights, an officer authorised by the British Virgin Islands Ports Authority or the Director may enter the place where the light is situated and forthwith extinguish the same without causing unnecessary damage.

170. The Director may prescribe the system of lighting and other characteristics, marks and features of aids to navigation and in doing so shall have due regard to the International Association of Lighthouse Authorities IALA Harmonised Buoyage “System B”, or any other international system of buoyage which may replace it.

Characteristics of aids

PART VII

PREVENTION OF POLLUTION AND SAFETY OF LIFE AT SEA

General

171. In this Part,
“cargo ship” means any ship that is not a
(a) passenger ship;

Interpretation

- (b) ship of war;
- (c) fishing vessel; or
- (d) pleasure vessel;

“Cargo Ship Safety Construction Certificate”, “Cargo Ship Safety Equipment Certificate”, “Cargo Ship Safety Radio Certificate” and “Passenger Ship Safety Certificate” means the certificates of those names issued pursuant to section 186;

“certificate” means a certificate issued in accordance with the Safety Convention as defined therein;

“fishing vessel” means a vessel used for catching fish, whales, seals, walrus or other living resources of the sea;

“international voyage” means a voyage between a port in one country and a port in another country where at least one of the ports is a Safety Convention Country;

“Passenger Certificate” and “Virgin Islands Cargo Ship Safety Construction Certificate” mean the certificates of those names issued pursuant to section 187;

“radio installation” means any radio installation provided on board a ship in life saving appliances, in compliance with the relevant regulations;

“radio-navigational equipment” means the equipment required by the relevant regulations;

“Safety Convention” means the International Convention for the Safety of Life at Sea, 1974 and its Protocol of 1978, together with such amendments thereof or replacements therefor as may be in effect in respect of the Virgin Islands;

“Safety Convention Country” means a country the Government of which has accepted the Safety Convention and which has not denounced that Convention or a territory of such country to which the Convention extends and remains extended;

“Safety Convention Certificate” means a certificate that is required to be issued to a Safety Convention ship that complies with the relevant provisions of the Safety Convention and includes a Safety Certificate, Safety Construction Certificate, Safety Equipment Certificate, Safety Radio Certificate, and any such certificate that is limited, modified or restricted by an Exemption Certificate;

“short international voyage” means an international voyage

- (a) in the course of which a ship is not more than 200 nautical miles from a port or place in which the passenger and crew could be placed in safety;
- (b) which does not exceed 600 nautical miles in length between the last port of call and the final destination, no account being taken of any deviation by a ship from its intended voyage due solely to stress of weather or any other circumstances that neither the master nor the owner nor the charterer, if any, of the ship could reasonably have prevented or forestalled;

“surveyor” includes any person or organisation, duly authorised by the Director to act as a surveyor for the purpose of surveying ships and issuing Safety Convention certificates;

“tanker” means a cargo ship constructed or adapted for the carriage in bulk of liquid cargoes of a flammable nature and its age shall be determined from the year of build as indicated on its certificate of registry;

“tons” means gross tons and a reference to tons in relation to a ship having alternative gross tonnages is a reference to the larger of those two tonnages.

172 (1) The Governor in Council may by Order make provision as he considers appropriate for the purpose of giving effect to any provision of any of the following which have been ratified or acceded to by the United Kingdom on behalf of the Virgin Islands:

- (a) the International Convention for the Prevention of Pollution from Ships (including its protocols, annexes and appendices) which constitutes attachment 1 to the final act of the International Conference on Marine Pollution signed in London on 2nd November 1973,
- (b) the Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil which constitutes attachment 2 to the final act aforesaid,
- (c) the Protocol relating to the said Convention which constitutes attachment 2 to the final act of the International Conference on Tanker Safety and Pollution Prevention signed in London on 17th February 1978,

Prevention of pollution from, ships, etc.

- (d) the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (including the Final Act of the Conference and the attached resolutions) signed in London on 30th November 1990,
- (e) any international agreement not mentioned in paragraphs (a) to (d) which relates to the prevention, reduction or control of pollution of the sea or other waters by matter from ships,

and in paragraph (e) the reference to an agreement includes an agreement which provides for the modification of another agreement, including the modification of an agreement mentioned in paragraphs (a) to (c).

(2) The powers conferred by subsection (1) to make provision for the purpose of giving effect to an agreement include power to provide for the provision to come into force although the agreement has not come into force.

(3) Without prejudice to the generality of subsection (1), an Order under that subsection may in particular include provision

- (a) for applying for the purpose mentioned in that subsection any enactment or instrument relating to the pollution of the sea or other waters and also any of sections 262 and 425 to 428 inclusive,
- (b) with respect to the carrying out of surveys and inspections for the purpose aforesaid and the issue, duration and recognition of certificates for that purpose;
- (c) for repealing the provisions of any enactment or instrument so far as it appears to the Governor in Council that those provisions are not required having regard to any provision made or proposed to be made by virtue of this section,
- (d) with respect to the application of the Order to the Government and the extraterritorial operation of any provision made by or under the Order,
- (e) that a contravention of a provision made by or under the Order shall be an offence punishable on summary

conviction by a fine not exceeding level 5 on the standard scale or on conviction on indictment by imprisonment for a term not exceeding two years and a fine,

- (f) for detaining any ship in respect of which such a contravention is suspected to have occurred and, in relation to such a ship, for applying section 284 with such modifications, if any, as are prescribed by the Order,

and nothing in any of the preceding provisions of this subsection shall be construed as prejudicing the generality of any other of those provisions and in particular paragraph (e) shall not prejudice paragraph (a).

(4) An Order under subsection (1) may

- (a) make different provisions for different circumstances;
- (b) make provision in terms of any document which the Minister considers relevant from time to time;
- (c) provide for exemptions from any provisions of the Order;
- (d) provide for the delegation of functions exercisable by virtue of the Order;
- (e) include such incidental, supplemental and transitional provisions as appear to the Governor in Council to be expedient for the purposes of the Order;
- (f) authorise the making of regulations and other instruments for any of the purposes of this section (except the purposes of subsection (3)(a) and (c)); and
- (g) provide that any enactment or instrument applied by the Order shall have effect as so applied subject to such modifications as may be specified in the Order.

(5) Where an Order under subsection (1) authorises the making of regulations for the purpose of giving effect to an agreement mentioned in paragraphs (a) to (d) or falling within paragraph (e) of that subsection, the Order also authorises the making of regulations for the purpose of giving effect to an agreement which provides for the modification of such an agreement.

(6) Regulations made by virtue of paragraph (e) of subsection (4) may make provision corresponding to the provision authorised for an Order by paragraphs (a) to (d) of subsection (4).

(7) An Order in pursuance of subsection (1)(b) may apply to areas of land or sea on other Virgin Islands waters notwithstanding that the agreement in question does not relate to those areas.

(8) The Governor in Council may by Order make such provision as he considers appropriate for the purpose of giving effect to any provision of the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941) for the protection and preservation of the marine environment from pollution by matter from ships.

(9) Without prejudice to the generality of subsection (8), an Order under that subsection may in particular include provision

- (a) corresponding to any provision that is authorised by subsections (3) and (4), and
- (b) specifying areas of sea above any of the areas for the time being designated under any law as waters within which the jurisdiction and rights of the Virgin Islands are exercisable in accordance with Part XII of that Convention for the protection and preservation of the marine environment,

and provision authorising the making of regulations authorises the amendment or revocation of regulations made by virtue of paragraph (e) of subsection (4).

Application of Safety
Convention and
exceptions and
exemptions thereto

173. (1) Subject to subsection (2), the Safety Convention, including all its related instruments, shall, unless excepted by this Act, apply to all Virgin Islands ships and all other ships engaged on international voyages while they are in Virgin Islands waters.

(2) Unless expressly provided otherwise, the Safety Convention shall not apply to

- (a) ships of war and troop ships;
- (b) cargo ships of less than 500 tons;
- (c) ships not propelled by mechanical means;
- (d) wooden ships of primitive build;

- (e) pleasure vessels not engaged in trade; and
- (f) fishing vessels.

(3) Except as expressly provided in this Act or in Regulations made under this Act nothing in the Safety Convention shall apply to Virgin Islands ships solely navigating the Great Lakes of North America and the River St. Actrence as far east as a straight line drawn from Cap des Rosiers to West Point, Anticosti Island and on the north side of Anticosti Island, the 63rd meridian.

(4) Notwithstanding that any provision of this Part or of any regulations made hereunder is expressed to apply to ships that are not Virgin Islands ships while they are within any port in the Virgin Islands, such provision shall not apply to a ship that would not be within any such port but for such stress of weather or any other circumstances that neither the master nor the owner nor the charterer, if any, of the ship could have prevented or forestalled.

(5) This Part applies to Virgin Islands ships wherever they may be and to other ships whilst they are in Virgin Islands waters, but not to fishing vessels or pleasure vessels.

(6) For the purposes of this Part, the classes for passenger ships not engaged on international voyages are as defined in the Merchant Shipping (Passenger Ship Construction and Survey) Regulations, 1998.

(7) The Director or such person as he may authorise for the purpose may exempt any ship or class of ship from any safety requirements imposed by or under this Act either absolutely or subject to such conditions as he thinks fit.

(8) Without prejudice to subsection (1), where a ship not normally engaged on international voyages is required to undertake a single international voyage, the Director may, if he is of opinion that the ship complies with safety requirements imposed by or under this Act, may exempt the ship while engaged on that voyage.

(9) Without prejudice to subsection (7), any ship which embodies features of a novel kind may be exempted from any requirements imposed by or under this Act relating to safety construction, life-saving appliances and radio communications, the application of which might seriously impede research into the development of such features and their incorporation in ships engaged in

international voyages, provided that such ship shall comply with safety requirements which, in the opinion of the Director or such person as he may authorise for the purpose, are adequate for the service for which it is intended and are such as to ensure the overall safety of the ship

(10) Where any such exemption as is referred to in subsection (9) is granted, the Director shall communicate to the Organisation particulars of the exemptions and the reasons therefor.

(11) The Director or such person as he may authorise for the purpose may, if he considers that the sheltered nature and conditions of the voyage are such as to render the application of any specific requirements relating to safety construction, life-saving appliances and radio communications unreasonable or unnecessary, exempt from those requirements individual Virgin Islands ships, or classes of ships which, in the course of their voyage, do not proceed more than 20 miles from the nearest land.

Regulations relating to transfers between ships in territorial waters and safety at sea

174 (1) The Governor in Council may by regulations make, in relation to the transfer of cargo, stores, bunker fuel or ballast between ships while within Virgin Islands waters, such provision as he considers appropriate for preventing pollution, danger to health or to navigation, or hazards to the environment or to natural resources.

(2) Regulations under this section may, in particular, do any of the following things:

- (a) prohibit transfers of any specified description or prohibit transfers if, or unless, carried out in specified areas, circumstances or ways;
- (b) make provision about
 - (i) the design of, and standards to be met by, ships and equipment,
 - (ii) the manning of ships, including the qualifications and experience to be possessed by persons of any specified description employed on board; and
 - (iii) the qualifications and experience to be possessed by persons (whether masters or not) controlling the carrying out of transfers or operations ancillary thereto;

- (c) provide for proposed transfers to be notified to and approved by persons appointed by the Minister, and for the supervision of transfers, and the inspection of ships and equipment, by persons so appointed;
 - (d) provide
 - (i) for the procedure to be followed in relation to the approval of transfers to be such as may be prescribed by any document specified in the regulations, and
 - (ii) for references in the regulations to any document so specified to operate as references to that document as revised or reissued from time to time;
 - (e) provide for the making and keeping of records about ships and equipment, the issuing of certificates, and the furnishing of information;
 - (f) provide for the granting by the Minister of exemptions from specified provisions of the regulations, on such terms (if any) as the Minister may specify, and for altering or cancelling exemptions;
 - (g) limit any provision of the regulations to specified cases or kinds of case.
- (3) Regulations under this section may provide
- (a) that a contravention of the regulations shall be an offence punishable on summary conviction by a fine not exceeding forty thousand dollars and on conviction on indictment by imprisonment for a term not exceeding two years or a fine or both;
 - (b) that any such contravention shall be an offence punishable only on summary conviction by a fine not exceeding forty thousand dollars or such lower amount as is prescribed by the regulations;
 - (c) that, in such areas as are prescribed by the regulations, such persons as are so prescribed shall each be guilty of an offence created by virtue of paragraph (a) or (b).
- (4) Regulations under this section may
- (a) make different provisions for different classes or descriptions of ships and for different circumstances; and
 - (b) make such transitional, incidental or supplementary provision as appears to the Governor in Council to be necessary or expedient.

(5) The Governor in Council may make such regulations as may appear to him to be necessary and expedient to give effect to the Safety Convention and its related instruments, and to provide generally for safety at sea.

(6) For the purpose of giving effect to the provisions of Chapter VIII of the Annex to the Safety Convention, the Governor in Council may make such regulations as he considers appropriate with respect to ships provided with nuclear power plants.

Surveys and Certification

Regulations for cargo
ship safety construction
requirements and
surveys

175. (1) The Governor in Council may make regulations (in this Act referred to as “Cargo Ship Safety Construction and Survey Regulations”) prescribing requirements for the hull, equipment and machinery of ships to which this section applies and requiring any Virgin Islands ship to be surveyed to such an extent, in such a manner and at such intervals as may be prescribed.

(2) The said regulations shall include requirements as appear to the Governor in Council to be necessary to implement the provisions of the Safety Convention in relation to the hull, equipment and machinery of such ship.

(3) This section applies to

- (a) Virgin Islands cargo ships of not less than 500 tons;
- (b) Virgin Islands cargo ships of such lower tonnage and of such description as the Governor in Council may specify; and
- (c) foreign cargo ships while they are within Virgin Islands waters and while they are not exempted under this Act.

Surveyor’s duties

176. (1) Surveyors appointed pursuant to section 414 shall, as and when required by or under this Act, carry out surveys of

- (a) the hull and machinery of ships;
- (b) the equipment of ships, including her tackle, and appurtenances;
- (c) the life-saving, fire-fighting and other safety equipment of ships;
- (d) the radiotelegraphy and radiotelephony installations of ships; and
- (e) the stowage and manner of loading of ships’ cargoes and the stowage of dangerous goods.

(2) The survey and inspections of ships, so far as regards the enforcement of this Part, shall be carried out by surveyors appointed under section 414.

177. (1) A surveyor may at all reasonable times inspect any ship in Virgin Islands waters and any Virgin Islands ship anywhere, for the purpose of ensuring that it is in compliance with the Safety Convention, the Load Line Convention, collision regulations and the relevant regulations made under this Act.

(2) Where the surveyor finds that the said Convention or the regulations have not been complied with, he shall give written notice to the owner or master of the ship stating in what respect there is deficiency and what action, in his opinion, is required to rectify such deficiency.

(3) Every notice so given shall be communicated in a manner directed by the Director to the proper officer of customs of any port at which the ship may seek a clearance, and if the surveyor so requires such clearance may be denied and the ship may be detained.

(4) Where the surveyor considers such ship unsafe, or, where a passenger ship, unfit to carry passengers, or the machinery or equipment defective in any way so as to expose persons on board to serious danger, he shall detain that ship, and a surveyor may also detain any ship in respect of which any of the provisions of this Act have not been complied with, if in his opinion such detention is warranted in the circumstances, and in any such case of detention as is referred to in this subsection, section 439 shall apply.

(5) Where, under this section, a surveyor visits any ship he may ask the owner or his agent, the master or chief engineer, or any other person on board and in charge or appearing to be in charge of the ship, any questions concerning the ship as he thinks fit and every such person shall fully and truthfully answer every such question.

(6) A surveyor may reasonably require of the owner or his agent the master or chief engineer or any other person on board or in charge, or appearing to be in charge of the ship that the machinery of the ship be activated or dismantled so that he may satisfy himself as to its condition and every person of whom such a request is made, capable of so doing, shall comply with the requirement.

(7) A person who contravenes subsection (5) or (6) commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Surveyor to report to
Director

178. A surveyor, if satisfied on inspection that he can with propriety do so, shall forward a report to the Director which shall contain a statement showing

- (a) that the hull and machinery are sufficient for the service intended and in good condition;
- (b) that the hull and machinery are constructed, arranged and fitted in accordance with any regulations made under this Part;
- (c) that the safety equipment and radio installations required under this Part are on board and in good condition;
- (d) that the master, mates and engineers are persons duly certificated as required under this Act and that the crew is sufficient and efficient;
- (e) the class of voyage on which the ship is fit to ply and the time, if less than one year, for which the hull, equipment and machinery will be sufficient;
- (f) if the ship is a passenger ship, the number of passengers which she may carry; and
- (g) the steam pressure that may be carried on the boilers.

Record of inspections
and certificates

179. A surveyor shall keep a record of the inspections he makes and certificates he issues in such form and with such particulars respecting them as the Director may direct, and shall furnish copies thereof and any other information pertaining to the duties of his office which the Director may require.

Survey requirements for
passenger ships

180. The structure, machinery and equipment of a passenger ship shall be subjected to the following surveys pursuant to this Part:

- (a) a survey before the ship is put in service, which shall include a complete inspection of its structure, machinery and equipment, including the outside of the ship's bottom and the inside and the outside of the boilers and shall be such as to ensure that the arrangements, material and scantlings of the structure, boilers and other pressure vessels and their appurtenances, main and auxiliary machinery, electrical installation, radio installations including those used in lifesaving appliances, fire protection, fire safety systems and appliances, life-saving appliances and arrangements, shipborne navigational equipment, nautical publications, means of embarkation for pilots, lights, shapes, means of making sound and distress signals and other equipment fully comply with the relevant regulations applicable to the ship, are in a satisfactory condition and are fit for the service for which the ship is intended;

- (b) a periodical survey before the Passenger Ship Safety Certificate or Passenger Certificate may be renewed, which shall include an inspection of the ship's structure, machinery and equipment referred to in paragraph (a) to ensure that they comply with the relevant regulations applicable to the ship, are in a satisfactory condition and are fit for the service for which the ship is intended;
- (c) an additional survey, either general or partial, according to the circumstances, to be made after a repair resulting from investigations prescribed in section 184(2), or whenever any repairs or renewals are undertaken which could materially affect the safety and condition of the ship and which shall be such as to ensure that the necessary repairs or renewals have been effectively made, that the material and workmanship of such repairs or renewals are in all respects satisfactory, and that the ship complies in all respects with the relevant regulations applicable to the ship.

181. The radio installations, including those used in life-saving appliances, of a cargo ship of 300 tons or over engaged on international voyages shall be subjected to the following surveys pursuant to this Part:

Survey requirements for the radio installations of cargo ships

- (a) a survey before the ship is put in service, which shall include a complete inspection of the radio installations, including, when appropriate, those used in life-saving appliances, to ensure that they comply with the relevant regulations applicable to the ship, are in a satisfactory condition and are fit for the service for which the ship is intended;
- (b) a periodical survey before the Cargo Ship Safety Radio Certificate may be renewed, which shall include an inspection of the radio installations, including, when appropriate, those used in life-saving appliances, to ensure that they comply with the relevant regulations applicable to the ship, are in a satisfactory condition and are fit for the service for which the ship is intended;
- (c) an additional survey, either general or partial, according to the circumstances, to be made after a repair resulting from investigations prescribed in section 184(2), or whenever any repairs or renewals are undertaken which could materially affect the safety and condition of the ship and which shall be such as to ensure that the necessary repairs or renewals have been effectively made, that the material and workmanship of such repairs or renewals are in all

respects satisfactory, and that the ship complies in all respects with the relevant regulations applicable to the ship.

182. (1) The safety equipment of a cargo ship of 500 tons or over engaged on international voyages shall be subjected to the following surveys pursuant to this Part:

- (a) a survey before the ship is put in service, which shall include a complete inspection of the life-saving appliances and arrangements (except radio installations where only the arrangements shall be inspected), the shipborne navigational equipment, the fire safety systems and appliances, the inert gas system, the fire control plans, the means of embarkation of pilots, the nautical publications, lights, shapes and means of making sound and distress signals and other equipment to ensure that they comply with the relevant regulations applicable to the ship, are in a satisfactory condition and are fit for the service for which the ship is intended;
- (b) a periodical survey before the Cargo Ship Safety Equipment Certificate may be renewed, which shall include an inspection of the equipment referred to in paragraph (a) to ensure that it complies with the relevant regulations applicable to the ship, is in a satisfactory condition and is fit for the service for which the ship is intended;
- (c) an annual survey, or, in the case of a tanker of ten years of age and over, an intermediate survey, within three months before or after the anniversary date of the Cargo Ship Safety Equipment Certificate which shall include a general inspection of the equipment referred to in paragraph (a) to ensure that it is being maintained in accordance with section 184 (1)(a) and it remains fit for the service for which the ship is intended;
- (d) an additional survey, either general or partial, according to the circumstances, to be made after a repair resulting from an investigation prescribed in section 184(2), or whenever any repairs or renewals are undertaken which could materially affect the safety and condition of the ship and which shall be such as to ensure that the necessary repairs or renewals have been effectively made, that the material and workmanship of such repairs or renewals are in all respects satisfactory, and that the ship complies in all respects with the relevant regulations applicable to the ship.

(2) In any period of five years, there shall be carried out at least one survey in accordance with this section.

183. The structure, machinery and equipment, excluding the radio installations and safety equipment to which sections 181 and 182 apply, of cargo ships of 500 tons or over shall be subjected to the following surveys pursuant to this Part:

Survey requirements for the structure, machinery and equipment of cargo ships

- (a) a survey before the ship is put in service, which shall ensure that the arrangements, materials and scantlings of the structure including the sea connections, overboard discharge valves and other ship side fittings, the boilers and other pressure vessels and their appurtenances (other than domestic boilers having a heating surface of 5 square metres or less and a working pressure of 3.5 bar gauge or less and other domestic pressure vessels having such a working pressure), main and auxiliary machinery including steering gear and associated control systems, electrical installation, structural fire protection and special measures for tankers and other equipment comply with the relevant regulations applicable to the ship, are in a satisfactory condition and are fit for the service for which the ship is intended and that the required stability information is provided; and which shall, for the purposes of the survey of the outside of the ship's bottom, the sea connections, overboard discharge valves and other ship side fittings and the rudder be carried out whilst the ship is in dry dock; and shall also, in the case of tankers, include an inspection of the pump rooms, cargo and bunker piping systems, vent piping, pressure/vacuum-valves and flame arresting screens;
- (b) a periodic survey, before the Cargo Ship Safety Construction Certificate or the Virgin Islands Cargo Ship Safety Construction Certificate may be renewed, which shall be such as to ensure that the arrangements, materials and scantlings referred to in subparagraph (a) comply with the relevant regulations applicable to the ship, are in a satisfactory condition and are fit for the service for which the ship is intended and which shall, in the case of tankers, include an inspection of the pump rooms, cargo and bunker piping systems, vent piping, pressure/vacuum-valves and flame arresting screens;
- (c) in the case of a tanker of ten years of age or over, at least one intermediate survey, during the period of validity of the certificate; there is only one such survey, it shall be held not more than six

months before, nor later than six months after, the half way date of the period of validity of the certificate. In no case shall the period between the surveys so required exceed three years and the surveys shall include an inspection of the arrangements, materials and scantlings of the structure provided in compliance with the relevant regulations applicable to the ship and the steering gear and associated control systems, cargo and bunker piping systems on deck and in the pump rooms, vent piping, pressure/vacuum-valves, flame arresting screens and the electrical installation in hazardous zones to ensure that they remain satisfactory for the service for which the ship is intended;

- (d) an annual survey within three months before or after each anniversary date of the Cargo Ship Safety Construction Certificate or the Virgin Islands Cargo Ship Safety Construction Certificate, except that an annual survey shall not be required in respect of a tanker of ten years of age or over in any year in which it has been surveyed in accordance with paragraph (c) within three months before or after the anniversary date of the Cargo Ship Safety Construction Certificate; such surveys to include a general inspection of the arrangements, materials and scantlings of the structure provided in compliance with the relevant regulations applicable to the ship to ensure that they are being maintained in accordance with section 184(1)(a) and that they remain fit for the service for which the ship is intended;
- (e) a minimum of two surveys of the lower areas of the hull, including the sea connections, overboard discharge and other ship side fittings and the rudder with the ship in dry dock during any five year period, provided that in all cases the interval between any two such surveys shall not exceed thirty-six months and the surveys shall be such as to ensure that they remain satisfactory for the service for which the ship is intended;
- (f) an additional survey, either general or partial, according to the circumstances, to be made after resulting from an investigation prescribed in section 184(2), or whenever any repairs or renewals are undertaken which could materially affect the safety and condition of the ship, and shall be such as to ensure that the necessary repairs or renewals have been effectively made, that the material and workmanship of such repairs or renewals are in all

respects satisfactory, and that the ship complies in all respects with the relevant regulations applicable to the ship.

184. (1) The owner and master of every ship to which this section applies shall ensure that

Responsibilities of owner and master and compliance with ISM Code

- (a) the condition of the ship, including its structure, machinery and equipment, is maintained so as to comply with the relevant provisions of this Part applicable to the ship;
- (b) after any survey required by this Part has been completed, no material change is made to the structure, machinery and equipment of the ship which was subject to the survey without the approval of a surveyor, except by direct replacement;
- (c) whenever an accident occurs to a ship or a defect is discovered either of which affects the safety of the ship or the efficiency or completeness of the ship, including its structure, machinery and equipment,
 - (i) it is reported at the earliest opportunity to a surveyor, or a proper officer; and
 - (ii) if a Virgin Islands ship is in such a case in a port outside the Virgin Islands, it is also reported to the appropriate authorities of the country in which the port is situated.

(2) Whenever an accident or defect is reported to a surveyor or to a proper officer under subsection (1)(c)(i), the surveyor or proper officer, as the case may be, shall cause investigations to be initiated to determine whether a survey is necessary and shall, in that event, require such a survey to be carried out.

(3) Subsections (1) and (2) apply to

- (i) Virgin Islands ships; and
- (ii) except as regards subsection (1)(a) , other ships which have been surveyed pursuant to this Part.

(4) All Virgin Islands ships, all other ships while in Virgin Islands waters and all companies in relation to ships referred to in this subsection shall comply with the ISM Code.

(5) For the purposes of subsection (4), "ISM Code" means the International Management Code for the Safe Operation of Ships and for Pollution Prevention

adopted by the Organization as may be amended from time to time, and “Company” has the same meaning as in the ISM Code.

Procedure to be adopted when the ship, including its structure, machinery and equipment, is deficient

185. (1) In any case where a surveyor determines that the condition of a ship to which this section applies, including its structure, machinery and equipment, does not correspond substantially with the particulars on one or more of the certificates referred to in this Part or is such that the ship is not fit to proceed to sea without danger to the ship or persons on board, the surveyor shall advise the owner or master of the corrective action which in his opinion is required, and shall notify the Director.

(2) If such corrective action is not taken within a reasonable period as a surveyor may specify, the surveyor, shall, at the end of that time, immediately notify the Director who may, on receipt of such notification, suspend the validity of the particular certificate issued to the ship and notice of any such suspension to the owner, and to the surveyor, who in turn shall notify the master.

(3) This section applies only to Virgin Islands ships and other ships which have been surveyed pursuant to this Part.

Issue of certificates to Virgin Islands ships engaged on international or short international voyages

186. When a survey or surveys to meet the requirements set out in this Part are satisfactorily completed the Director, or any other person authorised by him, shall issue,

- (a) in the case of a passenger ship engaged on international voyages, a Passenger Ship Safety Certificate, unless the ship is only engaged on short international voyages when a short international voyage Passenger Ship Safety Certificate shall be issued;
- (b) in the case of a cargo ship of 300 tons or over engaged on international voyages, a Cargo Ship Safety Radio Certificate;
- (c) in the case of a cargo ship of 500 tons or over engaged on international voyages, a Cargo Ship Safety Equipment Certificate; or
- (d) in the case of a cargo ship of 500 tons or over engaged on international voyages, a Cargo Ship Safety Construction Certificate.

187. When a survey or surveys, to meet the requirements set out in this Part are satisfactorily completed, the Director shall issue,

Issue of certificates to Virgin Islands ships not engaged on international voyages

- (a) in the case of a Virgin Islands passenger ship not engaged on international voyages, a Passenger Certificate appropriate to its Class; or
- (b) in the case of a Virgin Islands cargo ship of 500 tons or over not engaged on international voyages, a Cargo Ship Safety Construction Certificate.

188. (1) A Passenger Certificate shall indicate compliance with the provisions of this Act and state

Form of certificate

- (a) the limits (if any) beyond which the ship is not fit to ply;
- (b) the number of passengers which the ship is fit to carry;
- (c) any condition with which the ship has to comply.

(2) A Passenger Ship Safety Certificate, Cargo Ship Safety Radio Certificate, Cargo Ship Safety Equipment Certificate, Cargo Ship Safety Construction Certificate and Exemption Certificate shall be in the form prescribed by the Safety Convention.

189. (1) The duration of certificates issued under section 186 shall be as follows:

Duration and validity of certificates

- (a) a Passenger Ship Safety Certificate and a short international voyage Passenger Ship Safety Certificate shall be issued for a period of validity not exceeding twelve months;
- (b) a Cargo Ship Safety Radio Certificate shall be issued for a period of validity not exceeding twelve months;
- (c) a Cargo Ship Safety Equipment Certificate shall be issued for a period of validity not exceeding twenty-four months;
- (d) a Cargo Ship Safety Construction Certificate shall be issued for a period of validity not exceeding five years.

(2) The duration of certificates issued under section 187 shall be as follows:

- (a) a Passenger Certificate shall be issued for a period of validity not exceeding twelve months;
- (b) a Virgin Islands Cargo Ship Safety Construction Certificate shall be issued for a period of validity not exceeding five years.

- (3) A certificate shall cease to be valid
 - (a) if its period of validity has been exceeded and the certificate has not been extended when permitted by section 191;
 - (b) if annual and intermediate surveys have not been carried out in accordance with this Part and the certificate has not been endorsed;
 - (c) upon the transfer of a ship to the flag of another state.

Issue and duration of exemption certificates

190. (1) When an exemption is granted to a ship in accordance with the relevant provisions applicable to the ship, a certificate called an Exemption Certificate shall be issued in addition to any Certificate issued under section 186.

(2) An Exemption Certificate shall be issued for a period of validity that is not longer than the period of validity of the certificate to which it refers.

(3) An Exemption Certificate shall be subject to the same extension and other provisions as the certificates to which it refers.

(4) Where an Exemption Certificate has been issued, a statement to this effect shall be included on the certificate to which it refers.

Extension and other provisions

191. (1) If a Virgin Islands ship, at the time when a certificate issued under section 186(1)(a) or (b) expires, is not in a port in the Virgin Islands or the port in which it is to be surveyed, the Director may extend the period of validity of the certificate but this extension shall be granted only for the purpose of allowing the ship to complete its voyage to a port in the Virgin Islands or the port in which it is to be surveyed, and then only in cases where it appears proper and reasonable to do so and no certificate shall be extended for a period longer than five months, and a ship to which the extension is granted shall not, on its arrival in a port in the Virgin Islands or the port in which it is to be surveyed, be entitled by virtue of the extension to leave that port or the Virgin Islands without having obtained a new certificate.

(2) The Director may extend a certificate issued under section 186(1)(a) or (b) which has not been extended under subsection (1) for a period of grace of up to one month from the date of expiry stated on it.

(3) In the case of a Virgin Islands ship in respect of which a Passenger Ship Safety Certificate or a short international voyage Passenger Ship Safety Certificate

is in force and the total number of persons on board for a particular voyage is less than the number for which the ship's life-saving appliances provide, the Director may, at the request of the master of the ship, issue a memorandum that states the total number of persons on board for that voyage and the modifications that may be made with persons on board for that voyage and sets out the details of the modifications that may be made with respect to life-saving appliances stated on the certificate.

(4) The memorandum referred to in subsection (3) shall be attached to the certificate during the particular voyage and shall be returned to the Director at the completion of the voyage.

(5) In the case of a ship that has transferred from the registry of the government of another country to the Virgin Islands registry, the Director, subject to such survey requirements that may be considered to be necessary, may issue one or more of the certificates prescribed by sections 186 and 187 for a period to be determined by the Director, but for not longer than the period of validity of the certificate or certificates issued by or on behalf of the government of that other country if satisfied that

- (a) the ship has already been subjected to satisfactory initial, periodical, intermediate, annual and additional surveys, as appropriate;
- (b) the certificate issued by or on behalf of the Government of that country would have remained valid had the registry of the ship not been changed;
- (c) the condition of the ship, including its structure, machinery and equipment, have been maintained so as to comply with the relevant regulations applicable to the ship; and
- (d) after any of the surveys referred to in paragraph (a) have been complete, no material change has been made to the ship, including its structure, machinery and equipment, subject to such surveys, without the approval of the Administration of that other country or the Director except by direct replacement.

192. The Director may request through a proper officer or otherwise, the government of a country to which the Safety Convention applies to survey a ship other than a ro-ro passenger ship and, if satisfied that the requirements of the Convention are complied with to issue or authorise the issue to the ship the certificates referred to in section 186, and a certificate issued in accordance with

Issue and endorsement
of certificates by another
government

such a request shall contain a statement that it has been so issued and shall have the same effect as if it was issued by the Director.

Ships not registered in the Virgin Islands and to which the Safety Convention applies

193. (1) The Director may, at the request of a government of a country to which the Safety Convention applies, survey a ship registered in that country and, if satisfied that the requirements of the Convention are complied with and that a survey has been satisfactorily completed in accordance with this Part, issue to the ship one or more of the certificates referred to in section 186 and, where appropriate, endorse such certificates in accordance with the requirements of the Convention and a certificate issued in accordance with such a request shall contain a statement that it has been so issued and shall have the same effect as if it was issued by that government and not by the Director.

(2) Where a memorandum, issued by or under the authority of the government concerned, is attached to a valid Passenger Ship Safety Certificate or a valid short international voyage Passenger Ship Safety Certificate, in respect of a ship to which the Safety Convention applies, which modifies the certificate in respect of the persons that may be carried for a particular voyage, the certificate shall have effect for the purpose of the voyage as if it was modified in accordance with the memorandum.

(3) A surveyor may go on board a ship to which the Safety Convention applies for the purpose of verifying that there is in force a certificate or certificates required by this Part, that the hull, machinery and equipment correspond substantially with the particulars shown on the certificate or certificates and that the provisions of section 184 are being complied with.

Other ships which are not Virgin Islands ships

194. (1) When a survey or surveys of ships which are not Virgin Islands ships, to meet the requirements set out in this Part, are completed in accordance with this Part

- (a) the Director shall issue, in the case of a passenger ship not engaged on international voyages, a Passenger Certificate appropriate to its Class; or
- (b) the Director shall issue, in the case of a cargo ship of 500 tons or over not engaged on international voyages, a Cargo Ship Safety Construction Certificate.

(2) Such certificates shall be subject to the requirements of this Part as though they were issued under section 185.

195. (1) The Director may cancel a certificate issued to a Virgin Islands ship where he has reason to believe that

Cancellation of a certificate

- (a) the certificate was issued on false or erroneous information; or
- (b) since any survey required by this Part, the structure, equipment or machinery has sustained damage or is otherwise deficient.

(2) The Director may require that a certificate issued to a Virgin Islands ship which has expired or has been cancelled be surrendered, as directed.

(3) No person shall

- (a) intentionally alter a certificate referred to in this Part;
- (b) intentionally make a false certificate referred to in this Part;
- (c) in connection with any survey required by this Part, knowingly or recklessly furnish false information;
- (d) with intent to deceive, use, lend, or allow to be used by another, a certificate referred to in this Part; or
- (e) fail to surrender a certificate required to be surrendered under subsection (2).

196. The owner and master of every ship issued with a certificate in accordance with this Part shall ensure that it is posted up in a prominent and accessible place in the ship.

Posting up of certificates

197. (1) No Virgin Islands ship shall proceed to sea unless it has been surveyed and there is in force the following certificate or certificates:

Prohibition on proceeding to sea without the appropriate documentation

- (a) in the case of a passenger ship engaged on international voyages, a Passenger Ship Safety Certificate, or, if the ship is only engaged on short international voyages, a short international voyage Passenger Ship Safety Certificate;
 - (b) in the case of a cargo ship of 300 tons or over engaged on international voyages, a Cargo Ship Safety Radio Certificate;
 - (c) in the case of a cargo ship of 500 tons or over engaged on international voyages, a Cargo Ship Safety Equipment Certificate;
- or

(d) in the case of a cargo ship of 500 tons or over engaged on international voyages, a Cargo Ship Safety Construction Certificate.

(2) No ship registered in a country to which the safety Convention applies shall proceed to sea from a port in the Virgin Islands unless there is in force such Safety Convention certificates that would be required if the ship was a Virgin Islands ship, and the extension provisions in section 191 shall apply to such certificates as if the ship was a Virgin Islands ship and the government of the country in which the ship is registered was substituted for the Director.

(3) No cargo ship of 500 tons and over not engaged on international voyages shall proceed to sea from a port in the Virgin Islands unless it has been surveyed and there is in force a Virgin Islands Cargo Ship Safety Construction Certificate, unless there is in force a Cargo Ship Safety Construction Certificate as referred to in this Part.

(4) No ship registered in a country to which the Safety Convention does not apply shall proceed to sea from a port in the Virgin Islands unless the ship is in the possession of documentation which shows that either the ship has been surveyed for compliance with the relevant regulations applicable to the ship as though it was a Virgin Islands ship or it has been surveyed and is in compliance with the relevant regulations applicable to the ship.

(5) Where a certificate is issued subject to conditions, or specifies sea areas in which the ship is certified to operate, the owner and master shall ensure that all conditions are complied with, or, as the case may be, that the ship only operates in the specified sea areas.

(6) The master of every ship shall produce to a customs officer from whom a clearance for the ship is demanded for an international voyage the certificates or documentation referred to in this section, and a clearance shall not be granted and the ship may be detained until those certificates are produced.

Prohibition on proceeding on a voyage or excursion without the appropriate certificate

198. (1) A passenger ship of Class III or IV, shall not proceed on a voyage or excursion unless it has been surveyed and there is in force a Passenger Certificate appropriate to the ship's Class and applicable to that voyage or excursion.

(2) Where a certificate is issued subject to conditions, the ship shall not proceed on a voyage or excursion unless all the conditions are complied with.

199. The owner and master of a passenger ship shall ensure that there is not on board a greater number of passengers than that stated on the ship's passenger Ship Safety Certificate or Passenger Certificate.

Limit on the number of passengers on passenger ships

200. (1) If a ship to which this Part applies proceeds or attempts to proceed to sea or on a voyage or excursion without complying with the requirements of sections 180 to 183, the owner and master of the ship each commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale, or imprisonment for a term not exceeding two years, or both.

Offences

(2) Any contravention of section 184(1), section 197 (1) to (5) or section 198 is an offence by both the owner and master, and each commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale or, imprisonment for a term not exceeding two years, or both.

(3) Any contravention of section 195 (3) is an offence, punishable on summary conviction by a fine not exceeding level 5 on the standard scale or, imprisonment for a term not exceeding six months, or both.

(4) If a ship proceeds to sea without section 196 being complied with, the owner and master each commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) Any contravention of section 199, is an offence by both the owner and master and each commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars, or on conviction on indictment to a fine not exceeding twenty thousand dollars, or imprisonment for a term not exceeding two years, or both.

(6) Any contravention of section 197 (6) is an offence by the master and is punishable on summary conviction by a fine not exceeding level 3 on the standard scale.

(7) It shall be a defence for a person charged with an offence under this Part to prove that he took all reasonable steps to ensure that the Part was complied with.

Powers to detain 201. In any case where a ship does not comply with the requirements of this Part, the ship shall be liable to be detained.

Arbitration 202. (1) Should an owner, or any other person making application for a survey required by this Part, be dissatisfied with the outcome of the survey because the issue of a certificate has been refused or for any other reason, that person may serve notice, within twenty-one days of the completion of the survey, on the person responsible for issuing the particular certificate under section 186 or 187, that their dispute be referred to a single arbitrator appointed by agreement between the parties to be settled by him.

(2) A person shall not be qualified for appointment as an arbitrator under this section unless he is

- (a) a person holding a certificate of competency as a Class 1 Deck Officer or as a Class 1 Marine Engineer Officer, or a person holding a certificate equivalent to any such certificate;
- (b) a naval architect;
- (c) a barrister or solicitor with at least ten years experience in shipping law; or
- (d) a person with special experience of the shipping industry.

(3) In connection with his functions under this section, an arbitrator shall have the powers of inspection conferred by the relevant provisions of Part XIV.

Miscellaneous

Penalty for non-compliance with conditions of exemption certificates 203. Where an exemption certificate, issued in respect of any Virgin Islands ship, specifies conditions on which the certificate is issued and any of those conditions is not complied with, the owner and the master of the ship commits an offence and each is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Inspection of ships holding Safety Convention certificates 204. (1) Where a valid Safety Convention Certificate is produced in respect of a foreign Safety Convention ship it shall be accepted and the ship shall be exempted from surveys or inspection under this Part, unless there are clear grounds for believing that the condition of the ship or of its equipment does not correspond substantially with the particulars of the Certificate or that the ship and its equipment

are not in compliance with regulations made under this Act respecting the maintenance of conditions of the ships and their equipment after survey.

(2) Where a Certificate is not acceptable due to the circumstances referred to in subsection (1), or if a Certificate has expired or ceased to be valid, the ship shall not be granted clearance and shall be detained until it can proceed to sea or to the appropriate repair yard without causing danger to the ship or persons on board, and the following persons shall be notified in writing of the circumstances, namely,

- (a) the local Consular officer of the ship's flag state or, in his absence, the nearest diplomatic representative of the ship's flag state; and
- (b) nominated surveyors or recognised organisations responsible for the issue of the certificate referred to in subsection (1).

(3) Where any ship referred to in subsection (2) is unduly detained or delayed, it shall be entitled to compensation for any loss or damage suffered as a direct result of such undue detention or delay.

205. (1) Every Virgin Islands passenger ship, regardless of size, and every Virgin Islands cargo ship having a length of twenty-four metres and upwards, shall carry on board such information about the ship's stability as may be prescribed.

Ships to carry stability information

(2) The information, a copy of which shall be sent to the Director, shall be based on the determination of the ship's stability by means of an inclining test of the ship but the Director may allow the information to be based on a similar determination of the stability of a sister ship.

(3) Where any ship proceeds or attempts to proceed to sea without having on board the information as required by subsections (1) and (2), the owner and master commits an offence and each is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

206. (1) The Governor in Council may make regulations prescribing safety requirements and providing for the issue of local certificates in respect of

Regulations for local safety certificates including fishing vessels

- (a) fishing vessels; and
- (b) pleasure vessels.

(2) In making regulations respecting fishing vessels the Governor in Council shall have due regard to the International Convention for the Safety of Fishing Vessels, 1977, as amended by the Protocol of 1993 and the provisions of the Fisheries Act, 1997.

PART VIII

SAFETY OF SUBMERSIBLES

Interpretation and Application

Interpretation

207. In this Part, except where the context otherwise requires,

“apparatus” includes any vessel, vehicle or hovercraft, any structure, any diving plant or equipment and any other form of equipment;

“casualty” means

- (a) loss or presumed loss or abandonment of or damage to submersible craft or supporting apparatus;
- (b) loss of life or serious injury to any person occurring in the course of the launch, recovery, operation or support of a submersible craft or supporting apparatus; or
- (c) any incident involving serious danger to the life or health of any person in a submersible craft;

“diving bell” means any compression chamber which is capable of being manned and is used or designed for use under the surface of the water in supporting human life, being a chamber in which any occupant is or may be to a pressure of more than 300 millibars above atmospheric pressure during normal operation;

“owner” means the owner for the time being of any submersible craft;

“pressure hull” means the pressure resistant structure of a submersible craft which is subject to pressure differential during service conditions;

“register of submersible craft” means the register maintained by the Registrar in accordance with section 210 (1);

“submersible craft” means any description of manned mobile submersible apparatus, not being a diving bell, which is designed to maintain some or all of its occupants at or near atmospheric pressure including free, self-propelled, tethered, towed or bottom contact propelled apparatus and atmospheric diving suits;

“supporting apparatus” means any apparatus used, or designed for use, in connection with the operation of any submersible craft.

208. (1) Subject to subsection (3), this Part applies to any submersible craft Application of this Part

- (a) a majority interest in which is owned by persons each of whom is a Virgin Islands citizen or a body corporate established under the laws of the Virgin Islands and has its principal place of business in the Virgin Islands;
- (b) which is operated within waters which are adjacent to the Virgin Islands and which are within the seaward limits of the territorial seas of the Virgin Islands;
- (c) which is launched, recovered, operated or supported from a Virgin Islands ship; or
- (d) any other craft which is registered in the register of submersible craft.

(2) This Part applies to any supporting apparatus which is used in connection with a submersible craft to which this Part applies.

(3) Except as provided in this Part, the provisions of this Act and any orders, rules and regulations made under it shall not apply to any submersible craft registered in the register of submersible craft.

(4) The Director may grant exemptions from all or any of the provisions of this Part or any regulations made under it (as may be specified in the exemption) for classes of cases or individual cases on such terms (if any) as he may specify and may, subject to giving reasonable notice, alter or cancel any such exemption.

Restriction on Operation

209. (1) Every submersible craft Restriction on operation of submersible craft

- (a) in which a majority interest is owned by persons each of whom is a Virgin Islands citizen or a body corporate established under the laws of the Virgin Islands and having its principal place of business in the Virgin Islands,
- (b) which is operated within waters which are adjacent to the Virgin Islands and which are within the seaward limits of the territorial seas of the Virgin Islands, or
- (c) which is launched, recovered, operated or supported from a Virgin Islands ship,

shall be registered in the register of submersible craft pursuant to this Part and have in force in respect of it a safety certificate issued under this Part.

(2) A submersible craft which is required by virtue of subsection (1) to be registered in the register of submersible craft and to have in force in respect of it a safety certificate issued under this Part shall not be launched, recovered, operated or supported unless it is so registered and has such a safety certificate in force in respect of it.

- (3) Subject to subsection (4), a supporting apparatus shall not be
 - (a) operated within waters which are adjacent to the Virgin Islands and which are within the seaward limits of the territorial sea of the Virgin Islands; or
 - (b) launched, recovered, operated or supported from a Virgin Islands ship.

- (4) Subsection (3) shall not apply where
 - (a) the submersible craft which the supporting apparatus is used to support is registered in the register of submersible craft pursuant to this Part; and
 - (b) there is in force in respect of such submersible craft and the supporting apparatus a safety certificate issued under this Part.

Registration, Etc. of Submersible Craft

Register of submersible craft	210.	(1)	The Registrar shall maintain a register of submersible craft.
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(2) Without prejudice to the power of the Registrar to register any submersible craft in the register of submersible craft, every submersible craft to which this Part applies by virtue of paragraphs (a), (b) and (c) of section 208(1) shall be registered in accordance with this Part.

211. (1) Any person who is the owner of any submersible craft which is required to be registered in the register of submersible craft under section 210 (2) shall make an application in writing to the Registrar for the registration of the submersible craft.

Requirements for
registration of
submersible craft

(2) Subject to subsection (5), the owner of a submersible craft shall

- (a) before making an application for registration, appoint an individual or a body corporate satisfying the prescribed requirements to be the representative person in relation to the submersible craft; and
- (b) ensure that, so long as the submersible craft remains registered, an individual or body corporate satisfying those requirements is so appointed.

(3) For the purposes of subsection (2), the prescribed requirements are that the representative person is either

- (a) an individual resident in the Virgin Islands; or
- (b) a body corporate incorporated in the Virgin Islands and having its principal place of business in the Virgin Islands.

(4) The provisions of subsection (3) shall not apply if the owner of the submersible craft is either

- (a) an individual resident in the Virgin Islands; or
- (b) a body corporate incorporated in the Virgin Islands and having its principal place of business in the Virgin Islands.

(5) Any application for the registration of a submersible craft shall contain such particulars as may be prescribed by the Director and, where a representative person is required to be appointed under this Part, the name and address of the representative person.

(6) There shall be payable in respect of an application for the registration of a submersible craft such a fee as may from time to time be specified by the Director.

(7) Upon receiving an application for the registration of a submersible craft which complies with the requirements of subsections (5) and (6), the Registrar of Shipping, if satisfied that the submersible craft may properly be so registered, shall, subject to section 212, assign to the submersible craft a number and shall register it in the register of submersible craft and the particulars set out in subsection (9) shall be entered with such registration.

(8) Upon the registration of a submersible craft, the Registrar shall issue to the owner making the application for registration a certificate of registry, upon which shall be entered the particulars set out in subsection (9).

(9) The particulars to be entered in the register of submersible craft and upon the certificate of registry are the following:

- (a) the number of the certificate of registry;
- (b) the registration number assigned to the submersible craft;
- (c) the names of the owner and operator of the submersible craft; and
- (d) where registration is conditional upon the appointment of a representative person, the name and address of the representative person.

Grounds for refusing registration

212. The Registrar may refuse to register a submersible craft if the Director is satisfied that, having regard

- (a) to the condition of the submersible craft so far as relevant to its safety or to any risk of pollution, or
- (b) to the safety, health and welfare of persons employed or engaged in any capacity on board the submersible craft,

it would be inappropriate for the submersible craft to be registered.

Notification of changes affecting submersible craft and amendment of particulars

213. (1) Any person who is registered as the owner of a submersible craft to which this Part applies shall forthwith inform the Registrar in writing of

- (a) any change in the particulars contained in the certificate of registry of the submersible craft;
- (b) any change in the identity, or in the address of the representative person appointed in respect of the submersible craft; or
- (c) the destruction of the submersible craft or his intention to withdraw the submersible craft from use.

(2) The Registrar may, whenever it appears to him necessary or appropriate to do so for giving effect to this Part or for bringing up to date or otherwise correcting the particulars entered on the register of submersible craft, cause the register to be amended.

(3) Where the Registrar has been notified by the owner that the submersible craft has been destroyed or that the owner intends to withdraw the submersible craft from use, the power to amend the particulars of registration under subsection (1) shall include a power to terminate the registration of the submersible craft.

214. (1) Subject to subsection (3), where the Director is satisfied of any of the matters set out in subsection (2), he may direct the Registrar to terminate the registration of a submersible craft.

Termination of
registration

(2) The matters of which the Director must be satisfied for the purposes of subsection (1) are as follows:

- (a) that there has been a change either
 - (i) in the ownership of the submersible craft; or
 - (ii) in the identity, or the address, of the representative person appointed in respect of the submersible craft, which has not been notified to the Registrar;
- (b) that it is a condition of the registration of the submersible craft that a representative person be appointed and no person is then appointed to act in such capacity;
- (c) that having regard to the
 - (i) condition of the submersible craft so far as relevant to its safety or to any risk of pollution, or
 - (ii) safety, health and welfare of persons employed or engaged in any capacity on board the submersible craft,

it is inappropriate for the submersible craft to continue to be registered;

- (d) that any penalty imposed on the owner of the submersible craft in respect of a contravention of this Part, or any regulations made under it, has remained unpaid for a period of more than three months and no appeal against the penalty is pending;

- (e) that any summons for any such contravention has been duly served on the owner of the submersible craft and the owner has failed to appear at the time and place appointed for the trial of the information or complaint in question and a period of not less than three months has elapsed since that time; or
- (f) that the submersible craft is being operated without the registration number assigned to it by the Registrar pursuant to section 211(8) being displayed and marked in accordance with the provisions of section 215.

(3) Before exercising the power conferred by subsection (1) to direct the Registrar to terminate the registration of a submersible craft, the Director shall

- (a) serve on the owner of the submersible craft or on the person for the time being appointed as representative person in relation to the submersible craft, a notice stating
 - (i) that he is satisfied as mentioned in paragraph (a), (b), (c), (d), (e), or (f) of subsection (2); and
 - (ii) that he intends, after the end of the period of thirty days beginning with the date of service of the notice, to direct that the registration of the submersible craft in question be terminated unless he is satisfied that it would be inappropriate to do so by any representations made to him by or on behalf of the owner within that period;
- (b) have regard to any representations made to him by the owner of the submersible craft within the period of thirty days specified in subparagraph (ii) of paragraph (a).

(4) Where the registration of any submersible craft has been terminated by virtue of this section, the Director may subsequently, if he is satisfied that it would be appropriate to do so, direct the Registrar to restore the registration of the submersible craft.

Display of registration number

215. At any time when a submersible craft to which this Part applies is being operated, the registration number assigned to it under section 211(8) shall be

- (a) displayed on a metal plate permanently affixed to the internal structure of the main pressure hull of the submersible craft; and
- (b) conspicuously marked on the external structure of the submersible craft.

Regulations for Construction and Operation of Submersible Craft

216. The Governor in Council may make regulations
- Regulations for
construction, equipment,
etc. of submersible craft
- (a) specifying construction requirements for submersible craft and supporting apparatus to which this Part applies;
 - (b) specifying requirements for the carriage of equipment and stores by submersible craft and supporting apparatus to which this Part applies;
 - (c) requiring submersible craft and supporting apparatus to which this Part applies to be surveyed and providing for the making of declarations of survey;
 - (d) specifying the criteria which are to be satisfied prior to the issue of a certificate under section 217;
 - (e) prescribing obligations which any person concerned in the operation of submersible craft and supporting apparatus to which this Part applies must fulfil;
 - (f) prescribing the qualifications necessary to be held by any person concerned in the operation of a submersible craft and supporting apparatus to which this Part applies;
 - (g) imposing penalties on summary conviction in respect of a contravention of any provisions of any such regulations not exceeding, in respect of any one contravention, ten thousand dollars; and
 - (h) for detaining any submersible craft or supporting apparatus in respect of which a contravention of any such regulations has or is suspected to have occurred and, in relation to such submersible craft or supporting apparatus, for applying sections 439 and 440 subject to such modifications as may be prescribed in the regulations.
217. (1) If the Director is satisfied, on receipt of a declaration of survey in respect of a submersible craft and its supporting apparatus that they comply with regulations made under section 216, he may issue to the owner Safety Certificates in respect of the submersible craft and its supporting apparatus which shall be in such form as he may prescribe.
- Issue, duration ,
extension, suspension,
etc., of safety certificates
- (2) Safety Certificates issued under this section shall remain in force for two years or for such shorter period as may be specified in the certificates or until suspended or revoked by the Director, subject, in the case of a two year certificate,

to an annual inspection at not less than nine nor more than fifteen months after the survey for the issue of the certificate.

(3) Safety certificates may be extended by the Director without a declaration of survey for such further period, not exceeding four months, as he thinks fit.

(4) The Director may at any time suspend or revoke a safety certificate if he is satisfied that

- (a) the submersible craft or its supporting apparatus have not been surveyed in accordance with the provisions of regulations made under section 216;
- (b) the submersible craft or its supporting apparatus no longer complies with the criteria laid down in regulations made under section 216;
- (c) the submersible craft or its supporting apparatus is in a condition unfit for operation;
- (d) information supplied for the purposes of any survey of the submersible craft or its supporting apparatus was materially incorrect; or
- (e) the submersible craft or its supporting apparatus has been significantly changed from the particulars supplied at the time of any survey.

(5) While a safety certificate is in force the owner shall report to the Director any modifications or any instance of damage which affects or may affect the safety of the submersible craft or its supporting apparatus.

Inquiries and Investigations, Offences and Legal Proceedings in relation to Submersible Craft

Inquiries and investigations

218. (1) Where a casualty has occurred in respect of a submersible craft or supporting apparatus to which this Part applies, the Director

- (a) may cause a preliminary inquiry into the casualty to be held; and
- (b) may (whether or not a preliminary inquiry into the casualty has been held) cause a formal investigation into the casualty to be held in the manner provided for under Part XVII and the provisions of that Part shall apply as appropriate to any casualty referred to in this section.

(2) The Director may cause any report made following an inquiry or investigation into a casualty to be made public at such time and in such manner as he thinks fit.

219. (1) Any person who causes or permits a submersible craft to be launched, recovered, operated or supported or is otherwise concerned in the launch, recovery, operation or support of a submersible craft in contravention of section 209(2) commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars.

Offences, general

(2) Any person who causes or permits supporting apparatus to be operated or is otherwise concerned in the operation of supporting apparatus in contravention of section 209(3) commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars.

(3) Any person who contravenes sections 211(1), 211(2)(b), 213(1), 215 or 217(5) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars in respect of any one conviction.

(4) In any proceedings for an offence under this Part it shall be a defence for the person charged with the offence to prove

- (a) that he exercised all due diligence to prevent the commission of the offence; and
- (b) that the offence was committed without his consent, connivance or default.

(5) Where a body corporate commits an offence under this Part or any regulations made under it, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to, any neglect on the part of the director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of that offence and liable to be proceeded against and punished accordingly.

(6) Where the affairs of a body corporate are managed by its directors, subsection (1) shall apply in relation to the acts and defaults of a director in connection with his functions of management as if he were a director of the body corporate.

220. (1) Any document required or authorised, by virtue of any statutory provision, to be served for the purpose of the institution of, or otherwise in connection with, proceedings for an offence under this Part or regulations made under it shall, where the person to be served is the owner of a submersible craft to which this Part applies, be treated as duly served on him if

- (a) delivered to any representative person for the time being appointed in relation to the submersible craft;
- (b) sent to any such person by post at the address notified (or, as the case may be, last notified) to the Registrar under section 213(1)(b) in relation to that person; or
- (c) left for any such person at that address.

(2) In any proceedings for an offence under this Part or regulations made under it an averment in any process of the fact that anything was done or situated within waters which are adjacent to the Virgin Islands and which are within seaward limits of the territorial sea of the Virgin Islands shall, unless the contrary be proved, be sufficient evidence that the thing, if otherwise proved, was done or situated within such waters.

(3) Any proceedings for an offence under this Part or regulations made under it may be taken, and the offence be treated for all incidental purposes as having been committed, in any place in the Virgin Islands.

(4) This Part and any regulations made under it shall apply to persons, whether or not they are Virgin Islands citizens, and to companies, whether or not incorporated under the laws of the Virgin Islands.

(5) Any notice required to be served under this Part may be served by post.

(6) Any notice required to be served under this Part on the owner of any submersible craft shall, where two or more persons are shown in the register of submersible craft, be treated as duly served if served on any one of those persons.

(7) For the purpose of section 25 of the Interpretation Act (service of documents by post) a letter containing

- (a) a notice to be served on any person under subsections (5) and (6), or

- (b) a notice to be served on a representative person under subsection (1),

shall be deemed to be properly addressed if it is to be addressed to that person at the address for the time being recorded in relation to him in the register of submersible craft; and a letter containing any other notice to which subsection (1) applies shall be deemed to be properly addressed if it is addressed to the last-known address of the person to be served (whether of his residence or of a place where he carries on business).

221. (1) Any submersible craft to which this Act applies and which is launched, recovered, operated or supported in contravention of section 209(1) and any supporting apparatus operated in connection with it shall be liable to be detained.

Detention

(2) Sections 439 and 440 shall have effect in relation to a submersible craft detained under this Part and for the purpose of applying those sections

- (a) the words “submersible craft” shall be substituted for the word “ship” wherever it occurs, except when the vessel to be detained may properly be described as a ship within the meaning of this Act; and
- (b) the words “Part VIII” shall be substituted for the words “this Act” wherever they occur.

PART IX

LOAD LINES

General

222. (1) In this Part, unless the context otherwise requires, "alteration" includes deterioration;

Interpretation

"1966 Convention" means the International Convention on Load Lines, 1966 as amended;

"Convention country" and "Contracting Government" have the meanings given to them by section 251;

"non-Virgin Islands ship" means a ship which is not registered in the Virgin Islands;

"post-1966 Convention ship" means a ship whose keel is laid, or which is at a similar stage of construction, on or after the material date; and "pre-1966 Convention ship" means a ship which is not a post-1966 Convention ship;

"valid Convention certificate" has the same meaning given to it by section 234(5).

(2) For the purposes of the definitions of pre-1966 and post-1966 Convention ship the material date

- (a) in relation to a ship which is registered in or flies the flag of a Convention country other than the Virgin Islands, is the date as from which it is declared under section 251 that the government of that country has accepted or acceded to the 1966 Convention or that it is a territory to which that Convention extends, and
- (b) in relation to any other ship, is 21st July, 1968.

(3) In this Part, subject to subsection (4), "international voyage" means a voyage between

- (a) a port in the Virgin Islands and a port outside the Virgin Islands; or
- (b) a port in a Convention country (other than the Virgin Islands) and a port in any other country or territory (whether or not a Convention country) which is outside the Virgin Islands.

(4) In determining, for the purposes of subsection (3) what are the ports between which a voyage is, no account shall be taken of any deviation by a ship from its intended voyage made which is due solely to stress of weather or any other circumstances which neither the master nor the owner nor the charterer (if any) of the ship could have prevented or forestalled, and for the purposes of that subsection any colony, protectorate or other dependency, and any territory for whose international relations a government is separately responsible shall be taken to be a separate territory.

(5) Any reference in this Part to the gross tonnage of a ship shall be construed as a reference to the tonnage of the ship as ascertained in accordance with the tonnage regulations, and, where in accordance with those regulations alternative tonnages are assigned to a ship, the gross tonnage of the ship shall, for the purposes of this Part, be taken to be the larger of those tonnages.

(6) For the purposes of this Part, the length of a ship shall be ascertained in accordance with regulations made by the Governor in Council under this Part.

(7) Any reference in this Part to any provision of the 1966 Convention shall, in relation to any time after that provision has been amended in pursuance of Article 29 of that Convention, be construed as a reference to that provision as so amended.

223. This Part applies to all ships except

Ships to which Part applies

- (a) ships of war;
- (b) ships solely engaged in fishing; and
- (c) pleasure vessels not engaged in trade.

224. (1) The Governor in Council shall make regulations in accordance with the following provisions of this Part (referred to as "the load line regulations"), and in making those regulations the Governor in Council shall in particular give effect to the 1966 Convention.

Load line regulations

(2) The load line regulations shall make provision

- (a) for the surveying, and periodical inspection of ships to which this Part applies;
- (b) for determining freeboards to be assigned from time to time to such ships including timber freeboards;
- (c) for determining, in relation to any such ship, the deck which is to be taken to be the freeboard deck of the ship, and for requiring the position of that deck to be indicated on each side of the ship by a mark of a description prescribed by the regulations; and
- (d) for determining, by reference to that mark and the freeboards for the time being assigned to any such ship, the positions in which each side of the ship is to be marked with lines of a description prescribed by the regulations, indicating the various maximum

depths to which the ship may be loaded in circumstances prescribed by the regulations.

(3) The load line regulations shall include the following provisions:

- (a) provisions specifying such requirements in respect of the hulls, superstructures, fittings and appliances of ships to which this Part applies as appear to the Governor in Council to be relevant to the assignment of freeboards to such ships,
- (b) provisions whereby, at the time when freeboards are assigned to a ship in accordance with the load line regulations, such particulars relating to those requirements as may be determined in accordance with the regulations are to be recorded in such manner as may be so determined, and
- (c) provisions for determining by reference to those requirements and that record whether, at any time after freeboards have been so assigned to a ship and while they continue to be so assigned, the ship is for the purposes of this Part to be taken to comply, or not to comply, with the conditions of assignment,

and those provisions shall be set out separately in the load line regulations under the title of "regulations as to conditions of assignment".

(4) The load line regulations shall also include provisions requiring such information relating to the stability of any ship to which freeboards are assigned thereunder, and such information relating to the loading and ballasting of any such ship, as may be determined in accordance with the regulations to be provided for the guidance of the master of the ship in such manner as may be so determined.

(5) In relation to any matter authorised or required by this Part to be prescribed by the load line regulations, those regulations may make different provisions by reference to (or to any combination of) any of the following, that is to say, different descriptions of ships, different areas, different seasons of the year and any other different circumstances.

(6) Except in so far as the context otherwise requires, in this Part "deck-line" means such a mark as is referred to in subsection (2)(c), and "load lines" means such lines as are referred to in subsection (2)(d).

225. (1) Subject to any exemption conferred by or under this Part, no Virgin Islands ship to which this Part applies shall proceed or attempt to proceed to sea unless

Compliance with load line regulations

- (a) the ship has been surveyed in accordance with the load line regulations;
- (b) the ship is marked with a deck-line and with load lines in accordance with those regulations;
- (c) the ship complies with the conditions of assignment; and
- (d) the information required by those regulations to be provided as mentioned in section 224(4) is provided for the guidance of the master of the ship in the manner determined in accordance with the regulations.

(2) If any ship proceeds or attempts to proceed to sea in contravention of subsection (1), the owner or master of the ship commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Any ship which in contravention of subsection (1) attempts to proceed to sea without being surveyed and marked as mentioned in sub-section (1)(a) and (b) may be detained until it has been so surveyed and marked.

(4) Any such ship as is mentioned in subsection (1) which does not comply with the conditions of assignment shall be deemed to be unsafe for the purposes of Part XI.

226. (1) Where a Virgin Islands ship to which this Part applies is marked with load lines, the ship shall not be so loaded that

Submersion of load lines

- (a) if the ship is in salt water and has no list, the appropriate load line on each side of the ship is submerged; or
- (b) in any other case, the appropriate load line on each side of the ship would be submerged if the ship were in salt water and had no list.

(2) If any ship is loaded in contravention of subsection (1), the owner and master of the ship commits, subject to subsection (5), an offence and are liable on summary conviction, to a fine not exceeding ten thousand dollars and to such additional fine, not exceeding an amount calculated in accordance with subsection (3), as the Court thinks fit to impose, having regard to the extent to which the earning capacity of the ship was increased by reason of the contravention.

(3) Any additional fine imposed under subsection (2) shall not exceed one hundred thousand dollars for each complete centimetre by which

- (a) in a case falling within subsection (1)(a), the appropriate load line on each side of the ship was submerged; or
- (b) in a case falling within subsection(1)(b), the appropriate load line on each side of the ship would have been submerged as therein mentioned.

(4) If the master of a ship takes the ship to sea when it is loaded in contravention of subsection (1), or, if any other person, having reason to believe that the ship is so loaded, sends or is party to sending the ship to sea when it is loaded in contravention of that sub-section, then without prejudice to any fine to which he may be liable in respect of an offence under subsection (2) he commits an offence and is liable on summary conviction, to a fine not exceeding level 5 on the standard scale.

(5) Where a person is charged with an offence under subsection (2), it shall be a defence to prove that the contravention was due solely to deviation or delay and that the deviation or delay was caused solely by stress of weather or other circumstances which neither the master nor the owner nor the charterer, if any, could have prevented or forestalled.

(6) Without prejudice to any proceedings under the preceding provisions of this section, any ship which is loaded in contravention of subsection (1) may be detained until it ceases to be so loaded.

(7) For the purposes of the application of this section to a ship in any circumstances prescribed by the load line regulations in accordance with section 224 (2)(d) of this Part, "the appropriate load line" means the load line which, in accordance with those regulations, indicates the maximum depth to which the ship may be loaded in salt water in those circumstances.

Miscellaneous offences
in relation to marks

227. (1) Where a Virgin Islands ship to which this Part applies is marked in accordance with any requirements as to marking imposed by or under this Part, then if

- (a) the owner or master of the ship fails without reasonable excuse to keep the ship so marked, or

- (b) any person conceals, removes, alters, defaces or obliterates, or causes or permits any person under his control to conceal, remove, alter, deface or obliterate, any mark with which the ship is so marked, except where he does so under the authority of a person empowered under the load line regulations to authorise him for that purpose,

he commits an offence and is liable on summary conviction, to a fine not exceeding level 5 on the standard scale.

228. (1) Where a Virgin Islands ship to which this Part applies has been surveyed and marked in accordance with the load line regulations, the appropriate certificate shall be issued to the owner of the ship on his application.

Issue of load line certificates

(2) For the purposes of this section, the appropriate certificate,

- (a) in the case of a pre-1966 Convention ship of not less than 150 gross tonnage, and in the case of a post- 1966 Convention ship of not less than 24 meters in length, is a certificate which shall continue to be called an "International Load Line Certificate (1966)"; and
- (b) in the case of any other ship, is a certificate which shall continue to be called a "Virgin Islands load line certificate".

(3) Subject to subsection (4), any certificate required by subsection (1) to be issued shall

- (a) be issued by the Director or by a person authorised for that purpose by the Director; and
- (b) be in such form and issued in such manner, as may be prescribed by the load line regulations.

(4) The Director may request a Contracting Government to issue an International Load Line Certificate (1966) in respect of any ship to which this Part applies which is a Virgin Islands ship falling within subsection (2)(a), and the following provisions of this Part shall have effect in relation to such a certificate so issued, which contains a statement that it has been issued at the request of the Government in the Virgin Islands, as they have effect in relation to an International Load Line Certificate (1966) issued by the Director.

229. Where a certificate, issued in pursuance of section 228 and for the time being in force, is produced in respect of the ship to which the certificate relates,

Effect of load line certificate

- (a) the ship shall be deemed to have been surveyed in accordance with the load line regulations; and
- (b) if lines are marked on the ship corresponding in number and description to the deck-line and load lines as required by the load line regulations, and the positions of those lines so marked correspond to the positions of the deck-line and load lines so specified in the certificate, the ship shall be deemed to be marked as required by those regulations.

Duration, endorsement and cancellation of load line certificates

230. (1) The load line regulations shall make provision for determining the period during which any certificate issued under section 228 is to remain in force, including

- (a) provision enabling the period for which any such certificate is originally issued to be extended within such limits and in such circumstances as may be prescribed by the regulations; and
- (b) provision for cancelling any such certificate in such circumstances as may be so prescribed.

(2) While any such certificate is in force in respect of a ship, there shall be endorsed on the certificate such information relating to

- (a) periodical inspections of the ship in accordance with the load line regulations, and
- (b) any extension of the period for which the certificate was issued, as may be prescribed by the regulations.

Ships not to proceed to sea without load line certificate

231. (1) Subject to any exemption conferred by or under this Part, no Virgin Islands ship to which this Part applies shall proceed or attempt to proceed to sea unless the appropriate certificate is in force in respect of the ship.

(2) Before any such ship proceeds to sea, the master of the ship shall produce the appropriate certificate to the customs officer from whom a clearance for the ship is demanded, and a clearance shall not be granted, and the ship may be detained, until the appropriate certificate is so produced.

(3) If any ship proceeds or attempts to proceed to sea in contravention of this section, the master of the ship commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) In this section "the appropriate certificate" means the certificate which is the appropriate certificate for the purposes of section 228.

232. (1) Where a certificate is issued in respect of a ship under section 228 the owner of the ship shall forthwith on receipt of the certificate cause it to be framed and posted up in some conspicuous place on board the ship, and shall cause it to be kept so framed and posted up and legible so long as the certificate remains in force and the ship is in use.

Publication of load line certificate and entry of particulars in official log book

(2) Before any Virgin Islands ship to which this Part applies leaves any dock, wharf, harbour or other place for the purpose of proceeding to sea, the master of the ship, subject to subsection (4), shall cause a notice to be posted up in some conspicuous place on board the ship, which shall be in such form and containing such particulars relating to the depth to which the ship is for the time being loaded as may be specified in regulations made by the Governor in Council under this Part.

(3) Where a notice required by subsection (2) has been posted up, the master of the ship shall cause it to be kept posted up and legible as required by that subsection until the ship arrives at some other dock, wharf, harbour or place.

(4) If the owner or master of a ship fails to comply with any requirement of this section, commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

233. A surveyor may inspect any Virgin Islands ship to which this Part applies for the purpose of verifying that the provisions of this Part have been complied with in respect of the ship.

Inspection of ships

Non-Virgin Islands Ships

234. (1) This section applies to any non-Virgin Islands ship to which this Part applies which

Valid Convention certificates

- (a) is registered in a Convention country or not being registered in any such country or elsewhere, flies the flag of a Convention country, and

- (b) is either a pre-1966 Convention ship of not less than 150 gross tonnage or a post-1966 Convention ship of not less than 24 metres in length.

(2) The Director may, at the request of the government of a country as referred to in subsection (1), issue in respect of a ship referred to in subsection (1), a certificate in such form as may be prescribed by the load line regulations, if the Director is satisfied that he could properly issue a certificate in respect of the ship under subsection 228 (1) if the ship were a Virgin Islands ship.

(3) The load line regulations shall make such provision as appears to the Governor in Council to be appropriate for ensuring that certificates which are issued as International Load Line Certificates (1966) in respect of ships to which this section applies, and are so issued by governments other than the Government in the Virgin Islands, shall be recognised for the purposes of this Part in such circumstances as may be prescribed by the regulations.

(4) Certificates issued as mentioned in subsection (2) or (3) shall be included among the certificates called "International Load Line Certificates (1966)".

- (5) In this Part "valid Convention certificate" means a certificate which either
- (a) has been issued under subsection (2) and is for the time being in force; or
 - (b) having been issued as mentioned in subsection (3), is produced in circumstances in which it is required by the load line regulations to be recognised for the purposes of this Part.

Compliance with load line regulations

235. (1) Subject to subsection (2), and to any exemption conferred by or under this Part, no non-Virgin Islands ship to which this Part applies shall proceed or attempt to proceed to sea from any port in the Virgin Islands unless

- (a) the ship has been surveyed in accordance with the load line regulations;
- (b) the ship is marked with a deck-line and with load lines in accordance with those regulations;
- (c) the ship complies with the conditions of assignment; and
- (d) the information required by those regulations to be provided as mentioned in section 224 (4) is provided for the guidance of the

master of the ship in the manner determined in accordance with the regulations.

(2) Subsection (1) does not apply to a ship in respect of which a valid Convention certificate is produced.

(3) If any ship proceeds or attempts to proceed to sea in contravention of the preceding provisions of this section, the owner or master of the ship commits an offence and is liable on summary conviction, to a fine not exceeding level 5 on the standard scale.

(4) Any ship which in contravention of this section attempts to proceed to sea without being surveyed and marked as mentioned in subsection (1)(a) and (b) may be detained until it has been so surveyed and marked.

(5) If any such ship as is mentioned in subsection (1), not being a ship in respect of which a valid Convention certificate is produced, does not comply with the conditions of assignment it shall be deemed to be unsafe for the purposes of Part XI.

236. (1) Where a non-Virgin Islands ship to which this Part applies is within any port in the Virgin Islands, and is marked with load lines, the ship shall not be so loaded that

Submersion of load lines

- (a) if the ship is in salt water and has no list, the appropriate load line on each side of the ship is submerged, or
- (b) in any other case, the appropriate load line on each side of the ship would be submerged if the ship were in salt water and had no list.

(2) Subsections (2), (3), (5) and (6) of section 226 shall have effect for the purposes of this section as if any references in those subsections to sub-section (1) of that section, or to subsection (1)(a) or (b) of that section, were a reference to subsection (1), or (as the case may be) to the corresponding provision of subsection (1) of this section, subject, however, to subsection (3).

(3) In the case of a ship to which section 234 applies, the ship shall not be detained, and no proceedings shall be brought by virtue of subsection (2), unless the ship has been inspected by a ship surveyor or engineer surveyor in pursuance of section 239.

(4) In relation to a ship in respect of which a valid Convention certificate is produced, "load line" in sub-section (1) means a line marked on the ship in the position of a load line specified in that certificate; and for the purposes of the application of the relevant provisions to such a ship in any circumstances for which a particular load line is specified in the certificate, the " appropriate load line" means the load line which, in accordance with the certificate, indicates the maximum depth to which the ship may be loaded in salt water in those circumstances.

(5) Where a valid Convention certificate is not produced in respect of a ship, then, for the purposes of the application of the relevant provisions to that ship in any circumstances prescribed by the load line regulations in accordance with section 224 (2)(d), "the appropriate load line" means the load line which, in accordance with those regulations indicates the maximum depth to which the ship may be loaded in salt water in those circumstances.

(6) In subsections (4) and (5) "the relevant provisions" means the provisions of subsection (1) and any provisions of section 226 as applied by subsection (2).

Virgin Islands load line certificates

237. (1) Where a non-Virgin Islands ship to which this Part applies has been surveyed and marked in accordance with the load line regulations, then on the application of the owner of the ship a Virgin Islands load line certificate shall be issued to him by the Director or by a person authorised for the purpose by the Director.

(2) Subject to subsection (3), sections 229 and 230 shall have effect in relation to a certificate issued under subsection (1) as they have effect in relation to a certificate issued under section 228.

(3) Any certificate issued under sub-section (1) in respect of a ship to which section 234 applies shall be valid only so long as the ship is not plying on international voyages, and shall be cancelled by the Director if he has reason to believe that the ship is plying on international voyages.

Production of certificate to customs officer

238. (1) Subject to any exemption conferred by or under this Part, before a non-Virgin Islands ship to which this Part applies proceeds to sea from any port in the Virgin Islands, the master of the ship shall produce the appropriate certificate to the customs officer from whom a clearance for the ship is demanded, and a

clearance shall not be granted, and the ship may be detained, until the appropriate certificate is so produced.

- (2) For the purposes of this section, the appropriate certificate,
- (a) in the case of a ship to which section 234 applies, where a clearance for the ship is demanded in respect of an international voyage, is a valid Convention certificate;
 - (b) in the case of any such ship, where a clearance for the ship is demanded in respect of any other voyage, is either a valid Convention certificate or a Virgin Islands load line certificate for the time being in force in respect of the ship; and
 - (c) in any other case, is a Virgin Islands load line certificate for the time being in force in respect of the ship.

239. (1) Subject to the provisions of this section, a surveyor of ships may inspect any non-Virgin Islands ship to which this Part applies while the ship is within any port in the Virgin Islands.

Provisions as to
inspection

(2) Any such surveyor may go on board any ship to which section 234 applies, while the ship is within any port in the Virgin Islands, for the purpose of demanding production of any International Load Line Certificate (1966) or Virgin Islands load line certificate for the time being in force in respect of the ship.

(3) If on any such demand a valid Convention certificate is produced to the surveyor in respect of the ship, the powers of the surveyor under subsection (1) shall be limited to seeing

- (a) that the ship is not loaded beyond the limits allowed by the certificate;
- (b) that lines are marked on the ship in the positions of the load lines specified in the certificate;
- (c) that no material alterations have taken place in the hull or superstructures of the ship which affect the position in which any of those lines ought to be marked; and
- (d) that the fittings and appliances for the protection of openings, the guard rails, the free ports and the means of access to the crew's quarters have been maintained on the ship in as effective a condition as they were in when the certificate was issued.

(4) If on an inspection of a ship under this section the ship is found to have been so materially altered in respect of the matters referred to in subsection (3) (c) or (d) that the ship is manifestly unfit to proceed to sea without danger to human life, it shall be deemed to be unsafe for the purposes of Part XI.

(5) Where a ship is detained under the provisions of this Act as applied by subsection (4), the Director shall order the ship to be released as soon as he is satisfied that the ship is fit to proceed to sea without danger to human life.

Exemptions

Power to make exemption orders

240. (1) If in the opinion of the Director the sheltered nature and conditions of international voyages

- (a) between near neighbouring ports in the Virgin Islands and in another Convention country, or
- (b) between near neighbouring ports in any two or more countries or territories outside the Virgin Islands,

make it unreasonable or impracticable to apply the provisions of this Part to ships plying on such voyages, and the Director is satisfied that the government of the other country or territory (or, as the case may be, of each of the other countries or territories) concurs in that opinion, the Director may by order specifying those ports direct that ships plying on international voyages between those ports, or any class of such ships specified in the order, shall be exempt from the provisions of this Part.

(2) The Director may by order direct that ships under 80 tons register engaged solely in the coasting trade, or any class of such ships specified in the order, shall be exempt from the provisions of this Part while not carrying cargo, or (if the order so provides) shall exempt from the provisions of this Part whether carrying cargo or not.

(3) Any order under this section may be made subject to such conditions as the Director thinks fit, and, where any such order is made subject to conditions, the exemption conferred by that order shall not have effect in relation to a ship unless the ship complies with those conditions.

Further powers to exempt ships

241. (1) In this section any reference to exempting a ship is a reference to exempting the ship either

- (a) from all the provisions of this Part and of the load line regulations, or
- (b) from such of those provisions as are specified in the instrument conferring the exemption.

(2) On the application of the owner of a Virgin Islands ship to which this Part applies which is either a pre-1966 Convention ship of not less than 150 gross tonnage or a post-1966 Convention ship of not less than 24 meters in length, the Director may exempt the ship if in his opinion the ship embodies features of a novel kind such that, if the ship had to comply with all the requirements of this Part and of the load line regulations, the development of those features and their incorporation in ships engaged on international voyages might be seriously impeded.

(3) On the application of the owner of a Virgin Islands ship to which this Part applies which is either

- (a) a pre-1966 Convention ship of less than 150 gross tonnage or a post-1966 Convention ship of less than 24 meters in length, or
- (b) a ship not falling within paragraph (a) which does not ply on international voyages

the Director may exempt the ship.

(4) Without prejudice to subsection (3), where a Virgin Islands ship to which this Part applies which is either a pre-1966 Convention ship of not less than 150 gross tonnage or a post-1966 Convention ship of not less than 24 meters in length, does not normally ply on international voyages but is, in exceptional circumstances, required to undertake a single international voyage, the Director, on the application of the owner of the ship, specifying the international voyage in question, may exempt the ship while engaged on that voyage.

(5) Any exemption conferred under this section may be conferred subject to such conditions as the Director thinks fit, and, where any such exemption is conferred subject to conditions the exemption shall not have effect unless those conditions are complied with.

242. (1) Where the Director exempts a ship under section 241, the Director shall issue the appropriate certificate to the owner of the ship.

Issue of exemption certificates

- (2) For the purposes of this section, the appropriate certificate,
 - (a) where the exemption is conferred under subsection (2) or subsection (4) of section 241, is an "International Load Line Exemption Certificate"; and
 - (b) where the certificate is conferred under subsection (3) of that section, is a "Virgin Islands Load Line Exemption Certificate".

(3) Any certificate issued under this section shall be in such form, and shall be issued in such a manner as may be prescribed by the load line regulations.

Duration, endorsement
and termination of
certificates and
exemptions

243. (1) The load line regulations shall make provision for determining the period during which any exemption conferred under section 241, or any certificate issued under section 242, is to remain in force, including

- (a) provision enabling the period for which any exemption or certificate is originally conferred or issued to be extended within such limits and in such circumstances as may be prescribed by the regulations; and
- (b) provision for terminating any such exemption, and for cancelling any such certificate, in such circumstances as may be so prescribed.

(2) While any such certificate is in force in respect of a ship, there shall be endorsed on the certificate such information relating to

- (a) periodical inspections of the ship, in accordance with the load line regulations; and
- (b) any extension of the period for which the certificate was issued, as may be prescribed by the regulations.

International Load Line
Exemption Certificates

244. (1) The load line regulations shall make such provision as appears to the Governor in Council to be appropriate for ensuring that exemption certificates which in accordance with the 1966 Convention, are issued in respect of ships to which section 234 applies, and are so issued by governments other than the Government in the Virgin Islands, shall in such circumstances as may be prescribed by the regulations have the like effect for the purposes of this Part as if they were valid Convention certificates.

(2) Certificates issued as mentioned in subsection (1) shall be included among "International Load Line Exemption Certificates".

Subdivision Load Lines and Deck Cargo

245. (1) Where in pursuance of safety regulations a Virgin Islands passenger ship to which this Part applies is marked with subdivision load lines, and the lowest of those lines is lower than the line which, apart from this subsection, would be the appropriate load line for the purposes of section 226, then that section shall have effect as if that subdivision load line were the appropriate load line for the purposes of that section.

Subdivision load lines

(2) Where in pursuance of safety regulations a non-Virgin Islands passenger ship to which this Part applies is marked with subdivision load lines, and the lowest of those load lines is lower than the line which, apart from this subsection, would be the appropriate load line for the purposes of section 236, that section shall have effect as if that subdivision load line were the appropriate load line for the purposes of that section.

246. (1) The Governor in Council shall make regulations (in this section referred to as "the deck cargo regulations") prescribing requirements to be complied with where cargo is carried in any uncovered space on the deck of a ship to which this Part applies, and different requirements may be so prescribed in relation to different descriptions of ships, different descriptions of cargo, different voyages or classes of voyages, different seasons of the year or any other different circumstances.

Deck cargo

(2) If the load line regulations provide (either generally or in particular cases or classes of cases) for assigning special freeboards to ships which are to have effect only where a cargo of timber is so carried, then without prejudice to the generality of subsection (1), the deck cargo regulations may prescribe special requirements to be complied with in circumstances where any such special freeboard has effect.

(3) In prescribing any such special requirements as are mentioned in subsection (2), the Governor in Council shall have regard in particular to the provisions of Chapter IV of the 1966 Convention.

(4) If any provisions of the deck cargo regulations are contravened,

- (a) in the case of a Virgin Islands ship, or
- (b) in the case of any other ship while the ship is within any port in the Virgin Islands,

the master of the ship commits, subject to subsection (5), an offence and is liable on summary conviction, to a fine not exceeding ten thousand dollars.

(5) Where a person is charged with an offence under sub-section (4), it shall be a defence to prove that the contravention was due solely to deviation or delay and that the deviation or delay was caused solely by stress of weather or other circumstances which neither the master nor the owner nor the charterer (if any) could have prevented or forestalled.

(6) For the purpose of securing compliance with the deck cargo regulations, any person authorised for the purpose by the Director may inspect any ship to which this Part applies which is carrying cargo in any uncovered space on its deck.

Miscellaneous

247. (1) Where any non-Virgin Islands ship is detained under this Part and where any proceedings are taken under this Part against the master or owner of any such ship, notice shall forthwith be served on the consular officer for the country to which the ship belongs at or nearest to the port where the ship is for the time being.

Notice to consular officer of proceedings against foreign ships

(2) A notice under this section shall specify the grounds on which the ship has been detained or the proceedings have been taken.

248. (1) The Director may require any certificate which can be issued under this Part, which has expired or been cancelled, to be surrendered as he directs.

Surrender of certificates

(2) If any owner or master of a ship fails without reasonable excuse to comply with such a requirement, he commits an offence and is liable on summary conviction, to a fine not exceeding level 2 on the standard scale.

Penalty for false certificate etc.

249. If any person intentionally makes, assists in making or procures to be made, a false or fraudulent certificate which can be issued under this Part, he commits an offence and is liable on summary conviction, to a fine not exceeding ten thousand dollars.

250. Any certificate issued under this Part shall be admissible in evidence.

Admissibility of
certificates in evidence
Convention countries

251. In this Part,

"Convention country" means a country or territory which is either

- (a) a country the government of which has been declared under this paragraph to have accepted or acceded to the 1966 Convention, and has not been so declared to have denounced that Convention; or
- (b) a territory to which it has been so declared that the 1966 Convention extends, not being a territory to which it has been so declared that that Convention has ceased to extend; and

"Contracting Government" means any such Government as is referred to in paragraph (a).

252. Any order, rules or regulations made under this Part may contain such transitional or other incidental and supplementary provisions as may appear to the Governor in Council, to be appropriate.

Orders, rules and
regulations

PART X

CARRIAGE OF BULK CARGOES AND DANGEROUS CARGOES

General

253. (1) Unless expressly provided otherwise, this Part applies to all ships to which the Safety Convention applies and to cargo ships of less than 500 gross tonnage.

Application

(2) The provisions of this Part respecting carriage of dangerous goods in packaged form or in solid form in bulk do not apply to ships' stores and equipment, including ships' distress signals.

(3) The provisions of this Part and any regulations made under section 258 respecting dangerous goods, shall apply to all Virgin Islands ships and to all foreign ships while loading or discharging cargo or fuel, or embarking or disembarking passengers at any place in the Virgin Islands as they apply to Virgin Islands ships.

Interpretation

254. In this Part, “grain” includes wheat, maize, corn, oats, rye, barley, rice pulses, seeds and processed forms thereof, whose behaviour is similar to that of grain in its natural state.

Carriage of Grain and other Bulk Cargoes

Bulk cargo regulations

255. The Governor in Council may make regulations relating to

- (a) the safe carriage and stowage of bulk cargoes having due regard to the Code of Safe Practice for Bulk Cargoes issued by the Organisation and amendments thereto or replacements thereof; and
- (b) the safe carriage and stowage of grain in compliance with the Safety Convention.

Carriage of grain

256. (1) Where grain is loaded on board any Virgin Islands ship, or is loaded within any port in the Virgin Islands on board any ship, all necessary and reasonable precautions shall be taken to prevent the grain from shifting, and if such precautions are not taken the owner or the master of the ship, or any agent of the owner who was charged with the loading, or with sending the ship to sea laden with the grain, commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars, and the ship shall be deemed for the purposes of Part XI to be unsafe by reason of improper loading.

(2) Where any ship, having been loaded with grain outside the Virgin Islands without the taking of all necessary and reasonable precautions to prevent the grain from shifting, enters any port in the Virgin Islands so laden, the owner or master of the ship commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars, and the ship shall be deemed for the purposes of Part XI to be unsafe by reason of improper loading.

(3) No offence is committed under subsection (2) where the ship would not have entered any such port but for stress of weather or any other circumstance that neither the master nor the owner nor the charterer, if any, could have prevented or forestalled.

(4) For the purpose of ensuring the observance of this section, a surveyor may go on board any Virgin Islands ship, or any foreign ship which is in any port of the Virgin Islands, and inspect any grain loaded in the ship and the manner in which it is stowed.

257. On the arrival at a port in the Virgin Islands from a port outside the Virgin Islands of any ship carrying a cargo of grain, the master shall cause to be delivered to a customs officer a notice stating

Delivery of notice and offence

- (a) the draught of water and freeboard of the ship after the loading of her cargo was completed at the final port of loading; and
- (b) the following particulars of the grain carried:
 - (i) the kind of grain and the quantity thereof, stated in cubic feet, quarters bushels, of tons weight,
 - (ii) the mode in which the grain is stowed, and
 - (iii) the precautions taken to prevent the grain from shifting,

and if the master fails to deliver any notice required by this subsection, or if in any such notice he makes any statement that he knows to be false in a material particular, or recklessly makes any statement that is false in a material particular, he commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Dangerous Goods

258. (1) The Governor in Council may by regulations prescribe which goods, articles or materials to be carried in a ship are dangerous goods in accordance with the Safety Convention in relation to the carriage of dangerous goods, and such regulations shall incorporate by reference, the International Maritime Dangerous Goods (IMDG) Code of the Organisation, including amendments thereto or replacements thereof.

Dangerous Goods regulations

(2) Without restricting the generality of subsection (1), the Governor in Council may by regulations prescribe

- (a) the method of packing and stowing such goods;
- (b) the quantity of such goods which may be carried in any ship;
- (c) the place or places within a ship in which they may be carried;
- (d) the marking that is to be placed on any package or container in which goods may be placed for shipment;

- (e) the precautions to be taken with respect to the carriage of such goods and the powers of inspection to determine compliance with the provisions of the regulations.

Carriage and marking of dangerous goods

259. (1) No person shall send by or carry in a Virgin Islands ship, except in accordance with this Part and regulations made pursuant to section 258, any dangerous goods.

(2) No person shall send by or carry in a Virgin Islands ship any dangerous goods without first distinctly marking their nature on the outside of the outermost package containing the same in accordance with such regulations as the Governor in Council may make and without first giving written notice of the nature of such goods and of the name and address of the sender thereof to the master or owner of the ship.

Offences relating to dangerous goods

260. (1) Any person who contravenes any of the provisions of this Part with respect to dangerous goods, including regulations made under section 258, commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars.

(2) Where a contravention involves the marking, packing, stowing or quantity of dangerous goods within a ship, that ship shall be deemed, for the purposes of Part XI, to be unsafe by reason of improper loading.

Rejection and disposal of dangerous goods by ship

261. (1) The master or owner of any ship may refuse to take on board any package or parcel that he suspects might contain any dangerous goods and may require the package to be opened to ascertain its nature.

(2) When any dangerous goods, or any goods that, in the opinion of the master or owner of the ship, are dangerous goods, have been sent on board any ship without the marking or the written notice described in section 259, the master or owner of the ship may cause the goods, together with any package or container thereof, to be thrown overboard, and neither the master nor the owner of the ship is subject to civil or criminal liability in any Court in respect of such action.

Forfeiture of dangerous goods

262. (1) Where any dangerous goods have been sent by or carried in any ship in a manner that would constitute an offence under this Part, the Court may order the goods, and any packaging or container thereof, to be forfeited.

(2) The Court may exercise the powers conferred by subsection (1) notwithstanding that

- (a) the owner of the goods concerned has not committed any offence in respect of the goods, or is not before the Court, or has had no notice of the proceedings, and
- (b) there is no evidence to show to whom the goods belong,

but the Court may, in its discretion, require such notice as it may direct to be given to the owner or shipper of the goods before they are forfeited.

PART XI

UNSAFE SHIPS

263. (1) Where the Director has reason to believe that any ship, being in any port in the Virgin Islands, is an unsafe ship, that is to say, is by reason of any of the matters mentioned in subsection (2) unfit to proceed to sea without serious danger to human life having regard to the nature of the service for which it is intended, such ship is liable to be detained.

Power to detain unsafe ships

(2) The matters referred to in subsection (1) are

- (a) the condition, or the unsuitability for its purpose, of
 - (i) the ship or its machinery or equipment, or
 - (ii) any part of the ship or its machinery or equipment,
- (b) under manning,
- (c) overloading or unsafe or improper loading,
- (d) any other matter relevant to the safety of the ship,

and the reference in that subsection to proceeding to sea shall, in a case where the service for which the ship is intended consists of going on voyages or excursions that do not involve going to sea, be construed as a reference to going on such a voyage or excursion.

264. (1) Subject to subsection (2), where a ship is detained under the provisions of this Act or any regulations made under this Act and the owner of the ship proves to the satisfaction of the Director that there was not reasonable cause for

Power to pay compensation and require security for compensation

the detention of the ship, the Government may pay compensation to the owner of the ship for any loss or damage sustained by the owner by reason of such detention.

(2) In determining whether to pay such compensation and the amount thereof the Government shall have regard to the provisions of any international agreement signed on behalf of the Government of the United Kingdom and applicable in or extended to the Virgin Islands.

(3) Subject to subsection (4), where a complaint is made to the Minister or the Director that a Virgin Islands ship is unsafe, or otherwise does not comply with the provisions of this Act or any regulations made under this Act, the Minister acting in his discretion may, if he thinks fit, require the complainant to give security to the satisfaction of the Minister for any compensation which may become payable by the Government pursuant to subsection (1).

(4) The security referred to in subsection (3) shall not be required where the complaint is made by one fourth, being not less than three, of the seamen belonging to the ship and is not in the opinion of the Director frivolous or vexatious.

(5) Where a ship is detained in consequence of any complaint, and the circumstances are such that the Government determines to pay compensation to the owner of the ship pursuant to subsection (1), the complainant shall be liable to pay to the Government all such compensation as the Government may pay under subsection (1) in respect of the detention of the ship.

Owner and master liable
in respect of unsafe ship.

265. (1) If a ship which
- (a) is in a port in the Virgin Islands, or
 - (b) is a Virgin Islands ship and is in any other port,

is unsafe, then, subject to subsections (4) and (5), the master and the owner of the ship each commits an offence.

(2) Where, at the time when a ship is unsafe, any responsibilities of the owner with respect to the matters relevant to its safety have been assumed, whether wholly or in part, by any person or persons other than the owner, and have been so assumed by that person or, as the case may be, by each of those persons either

- (a) directly, under the terms of a charter party or management agreement made with the owner, or
- (b) indirectly, under the terms of a series of charter parties or management agreements,

the reference to the owner in subsection (1) shall be construed as a reference to that other person or, as the case may be, to each of those other persons.

(3) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding twenty thousand dollars, or imprisonment not exceeding twelve months, or both.

(4) It shall be a defence in proceedings for an offence under this section to prove that at the time of the alleged offence

- (a) arrangements had been made which were appropriate to ensure that before the ship went to sea it was made fit to do so without serious danger to human life by reason of the matters relevant to its safety which are specified in the charge; or
- (b) it was reasonable for such arrangements not to have been made.

(5) It shall also be a defence in proceedings for an offence under this section to prove

- (a) that, under the terms of one or more charter parties or management agreements entered into by the accused, the relevant responsibilities, namely,
 - (i) where the accused is the owner, his responsibilities with respect to the matters relevant to the ship's safety, or
 - (ii) where the accused is liable to proceedings under this section by virtue of subsection (2), so much of those responsibilities as had been assumed by him as mentioned in that subsection,

had at the time of the alleged offence been wholly assumed by some other person or persons party thereto, and

- (b) that in all the circumstances of the case the accused had taken such steps as it was reasonable for him to take, and exercised such diligence as it was reasonable for him to exercise, to secure the proper discharge of the relevant responsibilities during the period

during which they had been assumed by some other person or persons as mentioned in paragraph (a),

and, in determining whether the accused had done so, regard shall be had in particular to the matters mentioned in subsection (6).

(6) Those matters are

- (a) whether prior to the time of the alleged offence the accused was, or in all the circumstances ought reasonably to have been, aware of any deficiency in the discharge of the relevant responsibilities; and
- (b) the extent to which the accused was or was not able, under the terms of any such charter party or management agreement as is mentioned in subsection (5)(a)
 - (i) to terminate it, or
 - (ii) to intervene in the management of the ship,

in the event of any such deficiency, and whether it was reasonable for the accused to place himself in that position.

(7) In this section,

“management agreement”, in relation to a ship, means any agreement (other than a charter party, or a contract of employment) under which the ship is managed, either wholly or in part, by a person other than the owner (whether on behalf of the owner or on behalf of some other person); and

"relevant responsibilities" shall be construed in accordance with subsection (5).

(8) References in this section to responsibilities being assumed by a person under the terms of a charter party or management agreement are references to their being so assumed by him whether or not he has entered into a further charter party or management agreement providing for them to be assumed by some other person.

Use of unsafe lighters,
etc.

266. (1) If any person uses or causes or permits to be used in navigation any lighter, barge or like vessel when, because of

- (a) the defective condition of its hull or equipment,
- (b) overloading or improper loading, or

(c) under manning,

it is so unsafe that human life is thereby endangered, he commits an offence and is liable on summary conviction, to a fine not exceeding twenty thousand dollars.

(2) This section does not affect the liability of the owners of any lighter, barge or like vessel in respect of loss of life or personal injury caused to any person carried in the vessel.

267. (1) It shall be the duty of the owners of a ship to which this section applies to take all reasonable steps to ensure that the ship is operated in a safe manner.

Owner liable for unsafe operation of ship

(2) This section applies to

- (a) any Virgin Islands ship; and
- (b) any ship which
 - (i) is registered under the laws, or flies the flag, of any country other than the Virgin Islands, and
 - (ii) is within Virgin Islands waters while proceeding to or from a port in the Virgin Islands,

unless the ship would not be so proceeding but for weather conditions or any other unavoidable circumstances.

(3) If the owner of a ship to which this section applies fails to discharge the duty imposed on him by subsection (1), he commits an offence and is liable on summary conviction, to a fine not exceeding twenty thousand dollars, or imprisonment for a term not exceeding twelve months, or both.

(4) Where any such ship is bareboat chartered, or is managed, either wholly or in part, by a person other than the owner under the terms of a management agreement within the meaning of section 266, any reference to the owner of the ship in subsection (1) or (3) shall be construed as including a reference

- (a) to the charterer under the bareboat charter,
- (b) to any such manager as mentioned above, or
- (c) if the ship is both chartered and managed as mentioned above, to both the charterer and any such manager,

and accordingly the reference in subsection (1) to the taking of all reasonable steps shall, in relation to the owner, the charterer or any such manager, be construed as a reference to the taking of all such steps as it is reasonable for him to take in the circumstances of the case.

PART XII

WRECK AND SALVAGE

Interpretation

268. (1) In this Part,
- “damage to the environment” means a physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents;
 - “maritime casualty” means a collision of vessels, stranding or other incident of navigation or other occurrence on board a vessel or external to it, resulting in material damage or imminent threat of material damage to a vessel or cargo;
 - “payment” means any reward, remuneration or compensation due under this Part;
 - “property” means any property not permanently and intentionally attached to the shoreline and includes freight at risk, and wherever the context so requires also includes a vessel, cargo, equipment and effects;
 - “Receiver” means the Receiver of Wreck appointed under section 269;
 - “salvor” means any person rendering salvage services;
 - “salvage” includes, subject to the Salvage Convention, all expenses properly incurred by the salvor in the performance of the salvage services;

“Salvage Convention” means the International Convention on Salvage, 1989;

“ salvage operation” means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters;

“ salvage services” means services rendered in direct connection with salvage operations;

“ vessel” includes any ship or boat, or any other description of vessel used in navigation; and

“wreck” includes jetsam, flotsam, lagan and derelict found in or on the shores of the sea or any tidal water.

(2) Fishing boats or fishing gear lost or abandoned at sea and either

- (a) found or taken possession of within Virgin Islands waters, or
- (b) found or taken possession of beyond those waters and brought within those waters,

shall be treated as wreck for the purposes of this Part.

(3) A wreck found in a marine park or protected area declared as such under the Marine Parks and Protected Areas Ordinance shall, notwithstanding anything contained in this Part, not be salvaged or removed without the written authority of the Governor in Council.

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(4) Before granting an authorization under subsection (3), the Governor in Council shall consider the need to preserve the wreck for historical or other purposes, taking into account such environmental considerations as may be necessary.

(5) When the Governor in Council grants authorization under subsection (3), it may impose such terms and conditions and issue such directives as it may consider fit.

Wreck

Appointment and powers of Receiver of Wreck

269. (1) The Director shall be the Receiver of Wreck for the Virgin Islands and in that capacity shall exercise general direction and supervision over all matters relating to wreck and salvage.

(2) Sections 271, 272 and 273 apply in circumstances where any vessel is wrecked, stranded, or in distress at any place on or near the coasts of the Virgin Islands or any tidal water within Virgin Islands waters.

(3) Where any function is conferred on the Receiver by any of those sections that function may be discharged by any customs officer.

(4) An officer discharging any such functions of the Receiver shall, with respect to any goods or articles belonging to a vessel the delivery of which to the Receiver is required by any provision of this Part, be treated as the agent of the Receiver.

(5) An officer discharging any functions under subsection (4) shall not be entitled to any fees payable to the Receiver, but shall not be deprived of any right to salvage to which he would otherwise be entitled.

(6) In any of those sections “shipwrecked persons”, in relation to a vessel, means persons belonging to the vessel.

Fees of Receiver

270. (1) There shall be paid to the Receiver the expenses properly incurred by him in the performance of his duties and such fees in respect of such other matters as may be prescribed, and the Receiver shall not be entitled to any other remuneration.

(2) The Receiver shall, in addition to all other rights and remedies for the recovery of the expenses and fees referred to in subsection (1), have the same rights and remedies in respect thereof as a salvor has in respect of salvage due to him and may, if the property in respect of which any such expenses and fees are due is not under arrest in any Court, seize or detain the property until his expenses and fees are paid, or until security is given therefor to his satisfaction.

(3) Whenever any dispute arises as to the amount payable to the Receiver in respect of expenses or fees, such dispute shall be determined by the Minister, whose decision shall be final.

(4) All fees received by the Receiver in respect of any services performed by him as such Receiver, shall be paid to the Accountant General, and a separate account thereof shall be kept, and the monies arising therefrom shall be applied in defraying any expenses duly incurred in carrying this Part into effect.

271. (1) In circumstances in which this section applies by virtue of section 269 in relation to any vessel the Receiver shall, on being informed of the circumstances,

Duty of Receiver where vessel in distress

- (a) forthwith proceed to the place where the vessel is;
- (b) take command of all persons present; and
- (c) assign such duties and give such directions to each person as he thinks fit for the preservation of the vessel and of the lives of the shipwrecked persons.

(2) The Receiver shall not interfere between the master and crew of the vessel in reference to the management of the vessel unless he is requested to do so by the master.

(3) Subject to subsection (2), if any person intentionally disobeys the direction of the Receiver he commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

272. (1) In circumstances where this section applies by virtue of section 269 in relation to any vessel the receiver may, for the purpose of the preservation of shipwrecked persons or of the vessel, cargo and equipment,

Powers of Receiver in case of vessel in distress

- (a) require such persons as he thinks necessary to assist him;
- (b) require the master, or other person having the charge, of any vessel near at hand to give such assistance with his men, or vessel, as may be in his power; and
- (c) require the use of any vehicle that may be near at hand.

(2) If any person refuses, without reasonable excuse, to comply with any requirement made under subsection (1), he commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

273. (1) In circumstances where this section applies by virtue of section 269 in relation to any vessel, all persons may, subject to subsections (3) and (4), for the purpose of

Power to pass over adjoining land

- (a) rendering assistance to the vessel,
- (b) saving the lives of shipwrecked persons, or
- (c) saving the cargo or equipment of the vessel,

pass and repass over any adjoining land without being subject to interruption by the owner or occupier and deposit on the land any cargo or other article recovered from the vessel.

(2) The right of passage conferred by subsection (1) is a right of passage with or without vehicles.

(3) No right of passage is conferred by subsection (1) where there is some public road equally convenient.

(4) The rights conferred by subsection (1) shall be so exercised as to do as little damage as possible.

(5) Any damage sustained by an owner or occupier of land in consequence of the exercise of the rights conferred by this section shall be a charge on the vessel, cargo or articles in respect of, or by which, the damage is caused.

(6) Any amount payable in respect of such damage shall, in case of dispute, be determined and shall, in default of payment, be recoverable in the same manner as the amount of salvage is determined and recoverable under this Part.

(7) If the owner or occupier of any land

- (a) impedes or hinders any person in the exercise of the rights conferred by this section,
- (b) impedes or hinders the deposit on the land of any cargo or other article recovered from the vessel, or
- (c) prevents or attempts to prevent any cargo or other article recovered from the vessel from remaining deposited on the land for a reasonable time until it can be removed to a safe place of public deposit,

he commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

274. (1) If any person finds or takes possession of any wreck in Virgin Islands waters or finds or takes possession of any wreck outside Virgin Islands waters and brings it within those waters he shall,

Duties of finder, etc. of wreck

- (a) if he is the owner of it, give notice to the Receiver stating that he has found or taken possession of it and describing the marks by which it may be recognised; or
- (b) if he is not the owner of it, give notice to the Receiver that he has found or taken possession of it and, as directed by the Receiver, either hold it to the Receiver's order or deliver it to the Receiver.

(2) If any person fails, without reasonable excuse, to comply with subsection (1), he commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale, and if he is not the owner of the wreck he shall also

- (a) forfeit any claim to salvage; and
- (b) be liable to pay twice the value of the wreck
 - (i) if it is claimed, to the owner of it; or
 - (ii) if it is unclaimed, to the person entitled to the wreck.

(3) Any sum payable under subsection (2)(b) to the owner of the wreck or to the persons entitled to the wreck may be recovered summarily as a civil debt.

275. (1) Where a vessel is wrecked, stranded, or in distress at any place on or near the coasts of the Virgin Islands, any cargo or other articles belonging to or separated from the vessel which are washed on shore or otherwise lost or taken from the vessel shall be delivered to the Receiver.

Provisions as respects cargo, etc.

(2) If any person (whether the owner or not)

- (a) conceals or keeps possession of any such cargo or article, or
- (b) refuses to deliver any such cargo or article to the Receiver or to any person authorised by the Receiver to require delivery,

he commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) The Receiver or any person authorised by him may take any such cargo or article (if necessary by force) from any person who refuses to deliver it.

Receiver to give notice
of wreck

276. (1) Where the Receiver takes possession of any wreck he shall, within forty-eight hours,

- (a) make a record describing the wreck and any marks by which it is distinguished; and
- (b) if in his opinion the value of the wreck exceeds ten thousand dollars, also transmit a similar description to the Director.

(2) The record made by the Receiver under subsection (1)(a) shall be kept by him available for inspection by any person during official working hours without charge.

Claims of owners to
wreck

277. (1) The owner of any wreck in the possession of the Receiver who establishes his claim to the wreck to the satisfaction of the Receiver within one year from the time when the wreck came into the Receiver's possession shall, on paying the salvage, fees and expenses due, be entitled to have the wreck delivered or the proceeds of sale paid to him.

(2) Where

- (a) a foreign ship has been wrecked on or near the coasts of the Virgin Islands, or
- (b) any articles belonging to or forming part of or of the cargo of a foreign ship which has been wrecked on or near the coasts of the Virgin Islands are found on or near the coast or are brought into any port,

the appropriate consular officer shall, in the absence of the owner and of the master or other agent of the owner, be treated as the agent of the owner for the purposes of the custody and disposal of the wreck and such articles.

(3) In subsection (2), "the appropriate consular officer", in relation to a foreign ship, means the consul general of the country to which the ship or, as the case may be, the owners of the cargo, may have belonged or any consular officer of that country authorised for the purpose by any treaty or arrangement with that country.

Immediate sale of wreck
in certain cases

278. (1) The Receiver may at any time sell any wreck in his possession if, in his opinion

- (a) it is under the value of ten thousand dollars;

- (b) it is so much damaged or of so perishable a nature that it cannot with advantage be kept; or
- (c) it is not of sufficient value to pay for storage.

(2) The proceeds of sale shall, after defraying the expenses of the sale, be held by the Receiver for the same purposes and subject to the same claims, rights and liabilities as if the wreck had remained unsold.

279. The Government is entitled to all unclaimed wrecks found in the Virgin Islands or in Virgin Islands waters.

Right of Government to unclaimed wreck

280. (1) Any person who is entitled to an unclaimed wreck found at any place in the Virgin Islands or in Virgin Islands waters shall give the Receiver a statement containing the particulars of his entitlement and specifying an address to which notices may be sent.

Notice of unclaimed wreck to be given to persons entitled

(2) Where a statement has been given to the Receiver under subsection (1) and the entitlement is proved to the satisfaction of the Receiver, the Receiver shall, on taking possession of any wreck found at a place to which the statement refers, within forty-eight hours, send to the specified address a description of the wreck and of any marks distinguishing it.

281. (1) Where, as respects any wreck found in the Virgin Islands or in Virgin Islands waters and in the possession of the Receiver, no owner establishes a claim to it within one year after it came into the Receiver's possession, the wreck shall be dealt with as provided in this section.

Disposal of unclaimed wreck

(2) If the wreck is claimed by any person who has delivered the statement required by section 280 and has proved to the satisfaction of the Receiver his entitlement to receive unclaimed wreck found at the place where the wreck was found, the wreck shall, on payment of all expenses, costs, fees and salvage due in respect of it, be delivered to that person.

(3) If the wreck is not claimed by any person in accordance with section 280, the Receiver shall sell the wreck and pay the proceeds as directed by subsection (6), after making the deductions required by subsection (4) and paying to the salvors the amount of salvage determined under subsection (5).

(4) The amounts to be deducted by the Receiver are

- (a) the expenses of the sale;
- (b) any other expenses incurred by him; and
- (c) his fees.

(5) The amount of salvage to be paid by the Receiver to the salvors shall be such amount as the Minister directs generally or in the particular case.

(6) The proceeds of sale, after making those deductions and salvage payments, shall be paid by the Receiver to the Accountant General.

Effect of delivery of wreck, etc. under this Part

282. (1) Delivery of wreck or payment of the proceeds of sale of wreck by the Receiver under this Part shall discharge the Receiver from all liability in respect of the delivery or payment.

(2) Delivery of wreck by the Receiver under this Part shall not, however, prejudice or affect any question which may be raised by third parties concerning the right or title to the wreck or concerning the title to the soil of the place at which the wreck was found.

Offence for taking wreck to foreign port

283. (1) A person commits an offence if he takes into a foreign port and sells

- (a) any vessel stranded, derelict or otherwise in distress found on or near the coasts of the Virgin Islands or any tidal water within Virgin Islands waters;
- (b) any part of the cargo or equipment of, or anything belonging to, such a vessel; or
- (c) any wreck found within the waters referred to in paragraph (a).

(2) A person who commits an offence under this section is liable on conviction on indictment to a fine not exceeding one hundred thousand dollars, or to imprisonment for a term not exceeding five years, or both.

Offence for interfering with wrecked vessel or wreck

284. (1) Subject to subsection (2), a person commits an offence if, without the permission of the master, he boards or attempts to board any vessel which is wrecked, stranded or in distress.

(2) No offence is committed under subsection (1) if the person is the Receiver or a person lawfully acting as the Receiver or if he acts by command of the Receiver or a person so acting.

(3) A person commits an offence if

- (a) he impedes or hinders or attempts to impede or hinder the saving of
 - (i) any vessel stranded or in danger of being stranded, or otherwise in distress, on or near any coast or tidal water;
 - (ii) any part of the cargo or equipment of any such vessel; or
 - (iii) any wreck;
- (b) he conceals any wreck;
- (c) he defaces or obliterates any mark on a vessel; or
- (d) he wrongfully carries away or removes
 - (i) any part of any vessel stranded or in danger of being stranded, or otherwise in distress, on or near any coast or tidal water;
 - (ii) any part of the cargo or equipment of any such vessel; or
 - (iii) any wreck.

(4) The master of a vessel may forcibly repel any person committing or attempting to commit an offence under subsection (1).

(5) A person who commits an offence under this section is liable on summary conviction,

- (a) in the case of an offence under subsection (1), to a fine not exceeding level 3 on the standard scale;
- (b) in the case of an offence under subsection (3), to a fine not exceeding level 4 on the standard scale.

285. (1) Where the Receiver has reason to believe that

Powers of entry, etc.

- (a) any wreck is being concealed by or is in the possession of some person who is not the owner of it, or
- (b) any wreck is being otherwise improperly dealt with,

he may apply to the Court for a search warrant.

(2) Where a search warrant is granted under subsection (1) to the Receiver, he may, by virtue of the warrant,

- (a) enter any house, or other place wherever situated, or any vessel; and
- (b) search for, seize and detain any wreck found there.

(3) If any seizure of wreck is made under this section in consequence of information given by any person to the Receiver, the person giving the information shall be entitled, by way of salvage, to such sum, not exceeding two hundred dollars, as the Receiver may allow.

Release of goods from
customs control

286. (1) The Comptroller of Customs shall, subject to taking security for the protection of the revenue in respect of the goods, permit all goods saved from any ship stranded or wrecked

- (a) on its homeward voyage to be forwarded to the port of its original destination; and

- (b) on its outward voyage to be returned to the port at which the goods were shipped.

(2) In this section, "goods" includes wares and merchandise.

Powers of Ports
Authority in relation to
wrecks

287. (1) Where any vessel is sunk, stranded or abandoned in, or near any approach to, any port, harbour or tidal water under the control of the British Virgin Islands Ports Authority in such a manner as, in the opinion of the Authority, to be, or be likely to become, an obstruction or danger to navigation or to lifeboats engaged in lifeboat service in that port, harbour or water or approaches thereto, the Authority may exercise any of the powers in subsection (2).

(2) The powers referred to in subsection (1) are

- (a) to take possession of, and raise, remove or destroy the whole or any part of the vessel and any other property to which the power extends;
- (b) to light or buoy the vessel or part of the vessel and any such other property until it is raised, removed or destroyed;
- (c) subject to subsections (5) and (6), to sell, in such manner as the Authority think fit, the vessel or part of the vessel so raised or removed and any other property recovered in the exercise of the powers conferred by paragraph (a) or (b);

- (d) to reimburse itself, out of the proceeds of the sale, for the expenses incurred by it in relation to the sale; and
- (e) where the proceeds of a sale under paragraph (c) are less than the expenses incurred, to recover the balance in civil proceedings as a debt due to the Authority.

(3) The other property to which the powers conferred by subsection (2) extend is every article or thing or collection of things being or forming part of the equipment, cargo, stores or ballast of the vessel.

(4) Any surplus of the proceeds of a sale under subsection (2)(c) shall be held by the Authority in trust for the persons entitled thereto.

(5) Except in the case of property which is of a perishable nature or which would deteriorate in value by delay, no sale shall be made under subsection (2)(c) until at least seven days' notice of the intended sale has been given by advertisement in a local newspaper circulating in the Virgin Islands.

(6) At any time before any property is sold under subsection (2)(c), the owner of the property shall be entitled to have it delivered to him on payment of its fair market value.

(7) The market value of property for the purposes of subsection (6) shall be that agreed to between the Authority and the owner or, failing agreement, that determined by a person appointed for the purpose by the Minister.

(8) The sum paid to the Authority in respect of any property under subsection (6) shall, for the purposes of this section, be treated as the proceeds of sale of the property.

(9) Any proceeds of sale arising under subsection (2)(c) from the sale of a vessel and any other property recovered from the vessel shall be treated as a common fund.

(10) An order of the court is not necessary for the taking of possession and sale of a vessel under this section and no liability attaches to the Crown, the Authority or any person acting under the authorisation of the Authority for any act performed under section (2).

(11) This section is without prejudice to any other powers of the British Virgin Islands Ports Authority or the Managing Director of the Authority, under the British Virgin Islands Ports Authority Act, 1990 or any other enactment relating to wrecks.

Act No. 12 of 1990

Salvage

288. Sections 290 to 323 shall not apply to fixed or floating platforms or to mobile off-shore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed mineral resources.

Non-application to platforms and drilling units

289. (1) Sections 290 to 323 shall not apply to warships or other non-commercial vessels owned or operated by a foreign state and entitled at the time of salvage operations, to sovereign immunity under generally recognised principles of international law unless that state has decided to apply the Salvage Convention to such ships or vessels.

Non-application to foreign state-owned vessels

(2) For the purposes of any proceedings under this Act, a certificate signed by the Secretary General of the Organisation, setting out a state's decision to apply the Convention to ships and vessels referred to in subsection (1) and the terms and conditions of such application, shall be *prima facie* evidence of the facts stated therein.

Life salvage

290. (1) Where services are rendered

- (a) wholly or in part in Virgin Islands waters in saving life from any vessel, or
- (b) outside Virgin Islands waters in saving life from any Virgin Islands vessel,

the owner of the vessel, cargo or equipment saved shall pay to the salvor a reasonable amount of salvage to be determined in the manner set out in this Part.

(2) Salvage in respect of the preservation of life, when payable by the owner of a vessel, shall have priority over all other claims for salvage.

(3) Under no circumstances shall salvage be due from a person whose life has been saved.

291. (1) Where any vessel is wrecked, stranded or in distress in Virgin Islands waters or on the shores of the Virgin Islands and services are rendered Salvage of cargo

(a) by any person assisting the vessel or saving the cargo or equipment of the vessel or any part thereof,

(b) by any person other than the Receiver in saving any wreck,

the owner of the vessel, cargo, equipment or wreck shall pay to the salvor, a reasonable amount of salvage, to be determined in the manner set out in this Part.

(2) A salvor of human life, who has participated in services rendered in the event of a maritime casualty giving rise to salvage shall be entitled to a fair share of the remuneration awarded to the salvor for salvaging the vessel or other property or preventing or minimising damage to the environment.

292. Nothing in this Part shall entitle any person to salvage remuneration Services excluded from salvage remuneration

(a) in respect of salvage services rendered contrary to any express and reasonable prohibition of such services on the part of the vessel or aircraft or by the owner of property to which such services are rendered;

(b) in respect of services rendered by a tug to, or in respect of, the vessel or aircraft which it is towing or the cargo thereof, except where such services are of an exceptional character such as are outside the scope of the contract of towage;

(c) if he has caused the distress giving rise to the salvage, either intentionally or through negligence;

(d) if and to such extent as it appears that he has concealed or unlawfully disposed of any property salvaged.

293. (1) Except as otherwise provided in section 302, no remuneration shall be due under this Act if the salvage operations had no useful result. Conditions for salvage remuneration

(2) A salvor shall be entitled to remuneration under this Part notwithstanding that the vessel performing the salvage operation and the vessel, cargo or other property salvaged belong to the same owner.

Salvage contracts	<p>294. (1) Sections 290 to 320 shall apply to any salvage operation unless a contract expressly or by implication provides otherwise.</p> <p>(2) The master of a Virgin Islands vessel shall have the authority to conclude contracts for salvage operations on behalf of the owner of the vessel, and the master and the owner of a Virgin Islands vessel shall have the authority to conclude contracts on behalf of the owner of property on board the vessel.</p> <p>(3) Nothing in this section shall affect the application of section 295 or the duties to prevent or minimise damage to the environment provided in paragraph (b) of section 296 and paragraph (b) of section 297.</p>
Annulment or modification of contracts	<p>295. Any contract relating to salvage or any terms thereof may be annulled or modified by the Court, where it appears to the Court that</p> <ul style="list-style-type: none"> (a) the contract had been entered into under undue influence or the influence of danger and its terms are inequitable; or (b) the payment under the contract is too large or too small for the services actually rendered.
Duties of salvor	<p>296. The salvor shall owe a duty to the owner of the vessel or other property in danger to</p> <ul style="list-style-type: none"> (a) carry out the salvage operation with due care; (b) exercise due care to prevent or minimise damage to the environment in performing the duty specified in paragraph (a); (c) seek assistance from other salvors whenever the circumstances reasonably so require; and (d) accept the intervention of other salvors when reasonably requested to do so by the owner or master of the vessel or the owner of other property in danger, provided that the amount of his reward shall not be prejudiced where he proves that such a request was unreasonable.
Duties of owner and master	<p>297. The owner and master of the vessel or the owner of other property in danger shall owe a duty to the salvor</p> <ul style="list-style-type: none"> (a) to co-operate fully with him during the course of the salvage operations;

- (b) in performing the duty specified in paragraph (a), to exercise due care to prevent or minimise damage to the environment; and
- (c) when the vessel or other property has been brought to a place of safety, to accept redelivery when reasonably requested to do so by the salvor.

298. (1) The Director may

Powers of Director

- (a) give directions in relation to any salvage operation; and
- (b) take measures in accordance with generally recognised principles of international law to protect the environment from pollution following a maritime casualty or acts relating to such casualty which may reasonably be expected to result in harmful consequences.

(2) The Director shall, in giving directions and taking measures under subsection (1), take into account the need for co-operation between salvors, other interested parties and the public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general.

(3) Any public officer or other person acting under directions as referred to in this section shall be under a duty to exercise due care in preventing or minimising damage to the environment.

(4) Any public authority or an officer thereof who is reasonably within the vicinity of a vessel or person in distress or danger of being lost at sea shall render assistance to save the vessel and life by co-operating in

- (a) the procurement and provision of facilities to salvors;
- (b) the admittance to the port of vessels in distress;
- (c) ensuring the efficient and successful performance of the salvage operation for the purpose of salvaging life or property; and
- (d) preventing or minimising damage to the environment.

299. Salvage rewards shall be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are listed:

Criteria for fixing salvage awards.

- (a) the salvaged value of the vessel and other property;
- (b) the skill and efforts of the salvors in preventing or minimising damage to the environment;

- (c) the measure of success achieved by the salvor;
- (d) the nature and degree of the danger;
- (e) the skill and efforts of the salvors in salvaging the vessel, other property and life;
- (f) the time used and the expenses and losses incurred by the salvors;
- (g) the risk of liability and other risks run by the salvors or their equipment;
- (h) the promptness of the services rendered;
- (i) the availability and use of vessels or other equipment intended for salvage operations; and
- (j) the state of readiness and efficiency of the salvor's equipment and the value thereof.

Responsibility for payment of award

300. (1) Payment of a reward fixed in accordance with section 299 shall be made by all of the owners of the vessel and other property interests in proportion to their respective salvaged values.

(2) For expediency, the ship owner shall pay the reward on behalf of all interests referred to in subsection (1) subject to his retaining the right to be reimbursed by these other interests.

(3) The ship owner who makes the payment under sub-section (2), may require the other interests to provide security not exceeding the values of their respective salvaged interests until he has been fully reimbursed.

Quantum of reward

301. The salvage reward, excluding any interest and recoverable legal costs that may be payable thereon, shall not exceed the salvaged value of the vessel and other property salvaged.

Special compensation

302. (1) Where a salvor has carried out salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment and has failed to earn a reward under this Part equivalent at least to the special compensation assessable under sub-section (2), he shall be entitled to special compensation from the owner of that vessel equivalent to his expenses as defined in subsection (3).

(2) Where, in the circumstances set out in subsection (1), the salvor by his salvage operations has prevented or minimised damage to the environment, the special compensation payable by the owner to the salvor under sub-section (1) may

be increased up to a maximum of thirty percent of the expenses incurred by the salvor, and the Court or person determining the award may, where it or he deems it fair and just, increase such special compensation further, bearing in mind the criteria set out in section 299, but in no event shall the total increase be more than one hundred per cent of the expenses incurred by the salvor.

(3) For the purposes of sub-sections (1) and (2), "salvor's expenses" means the out of pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in paragraphs (h), (i) and (j) of section 299.

(4) The total special compensation assessable under this section shall be paid only if and to the extent that such compensation is greater than any reward recoverable under section 299.

(5) Where the salvor, in carrying out the salvage operations, has acted negligently and has thereby failed to prevent or minimise damage to the environment, he may be deprived of the whole or a part of any special compensation payable under this section.

(6) Nothing in this section shall affect any right of recourse available to the owner of the vessel.

303. No payment is due under this Part unless the services rendered exceed what can be reasonably considered as due performance of a contract entered into before the danger giving rise to the salvage operations arose.

Services rendered under existing contract

304. (1) The apportionment between salvors of a reward fixed under section 299 shall be made on the basis of the criteria listed in that section.

Apportionment between salvors

(2) The apportionment between the owner, master and other persons in the service of each salving vessel shall be determined by the law of the State in which the vessel is registered.

(3) Where the salvage referred to in sub-section (1) has not been carried out from a vessel, the apportionment shall be determined by the law governing the contract between the salvor and his servant, and in the absence of formal contract,

the Court or person determining the apportionment and disbursement shall apply general principles of law and equity according to the merits of the case in order to reach a just and equitable decision.

Salvor's misconduct,
and offences

305. (1) A salvor may be deprived of the whole or part of the payment due to him under this Part to the extent that the salvage operation has become necessary or more difficult because of fault or neglect on his part or if the salvor has been guilty of fraud or other dishonest conduct.

(2) Any person who, for the purpose of obtaining salvage or for any other purpose,

(a) wilfully sets any vessel adrift, or

(b) cuts, breaks or unfastens the moorings of any vessel with intent to set the vessel adrift,

commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months, or both.

Maritime lien

306. Nothing in this Part shall affect the salvor's maritime lien under any law of the Virgin Islands, provided however that the salvor may not enforce his maritime lien when reasonable security for his claim, including interest and costs, has been tendered or provided.

Duty to provide security

307. (1) A person liable for a payment under this Part shall, upon the request of the salvor, give security to the satisfaction of the salvor for the claim, including interest and costs of the salvor.

(2) Without prejudice to subsection (1), the owner of the salvaged vessel shall take all reasonable steps to ensure that the owner of the cargo provides security to

the satisfaction of such owner of the vessel or of the salvor for the claims against them, including interest and costs, before the cargo is released.

(3) The salvaged vessel and property shall not, without the consent of the salvor, be removed from the port or place at which they first arrive after the completion of

the salvage operation, until security to the satisfaction of the salvor has been put up for the salvor's claim against the relevant vessel or property.

(4) In the event of any dispute between the salvor and a person liable for a payment under this Part, or between the owner of the vessel and the owner of the cargo referred to in sub-section (2), relating to the security to be provided under this section, the tribunal having jurisdiction over the salvors' claim may, upon the application of any such party in that behalf, decide the amount and the terms of such security.

308. (1) The Court or person adjudicating the claim of the salvor may, upon the application of the salvor, make an interim order for payment to the salvor of such amount as the Court or person may deem fair and just, and on such terms, including terms as to security where appropriate, as may be fair and just in the circumstances of the case.

Interim payment

(2) In the event of any interim payment under sub-section (1), the security provided under section 307 shall be reduced accordingly.

309. Non-commercial cargoes owned by a state and entitled, at the time of salvage operations, to sovereign immunity under generally recognised principles of international law, shall not be subject to seizure, arrest or detention by any legal process, or to any *in rem* proceedings, without the express consent of the state owner of such cargo.

State-owned cargoes

310. No humanitarian cargoes donated by a state shall be subject to seizure, arrest or detention, where such state has agreed to pay for salvage service rendered in respect of such humanitarian cargoes.

Humanitarian cargoes

311. (1) Disputes as to the amounts of salvage, whether rendered within or outside the Virgin Islands arising between the salvor and the owners of any vessel, cargo, apparel or wreck shall, if not settled by agreement, arbitration or otherwise, be determined by the Court in any case where all of the following conditions are met, namely,

Determination of salvage dispute

- (a) the parties to the dispute consent;
- (b) the value of the property salvaged does not exceed twenty-five thousand dollars;

(c) the amount claimed does not exceed ten thousand dollars.

(2) Subject to subsection (1), disputes as to salvage shall be determined by the Court, but if the claimant does not recover in the Court more than ten thousand dollars, he shall not be entitled to recover any costs, charges or expenses incurred by him in the prosecution of his claim unless the Court certifies that the case is a fit one to be tried by the Court.

(3) A dispute relating to salvage may be determined on the application either of the salvor or of the owner of the property salvaged, or of their respective agents.

(4) The Court or the arbitrators to whom a dispute as to salvage is referred for determination may for the purpose of determining any such dispute call to their assistance, as an assessor, any person knowledgeable in maritime affairs and there shall be paid as part of the costs of the proceedings to every such assessor in respect of his services such sum as may be prescribed.

Appeal in cases of salvage dispute

312. Where a dispute relating to salvage has been determined by the Court or by arbitration, any party aggrieved by the decision may appeal therefrom, in like manner as in the case of any other judgement.

Valuation of property salvaged

313. (1) Where any dispute relating to salvage arises, the Receiver may, on the application of either party, appoint a valuer to value the property, and when the valuation has been made, shall give copies thereof to both parties.

(2) A copy of the valuation purporting to be signed by the valuer and certified as a true copy by the Receiver, shall be admissible as evidence in any subsequent proceedings.

(3) Such fee as the Director may direct shall be paid in respect of any valuation made under this section by the person applying for such valuation.

Detention of property liable to salvage

314. (1) Where salvage is due to any person under this Part, the Receiver shall,

(a) where the salvage is due in respect of services rendered in assisting any vessel or in saving life therefrom or in saving the cargo or equipment thereof, detain the vessel or cargo or equipment; and

(b) where the salvage is due in respect of the saving of any wreck, and the wreck is not sold as unclaimed under this Part, detain the wreck.

(2) Subject to subsection (3), the Receiver shall detain the vessel and the cargo and equipment or the wreck, as the case may be, until payment is made for salvage or process is issued for the arrest or detention of the property by the Court.

(3) The Receiver may release any property detained under subsection (2) where security is given to his satisfaction, or, where the claim for salvage exceeds ten thousand dollars, and any question is raised as to the sufficiency of the security to the satisfaction of the Court.

(4) Any security given for salvage in pursuance of this section to an amount exceeding ten thousand dollars may be enforced by the Court in the same manner as if bail had been granted in that Court.

315. (1) The Receiver may sell any detained property if the persons liable to pay the salvage in respect of which the property is detained are aware of the detention, in the following circumstances:

Sale of detained property

- (a) where the amount is not disputed and payment of the amount due is not made within twenty days after it has become due;
- (b) where the amount is disputed but no appeal lies from the decision of the first Court to which the dispute was referred, and payment is not made within twenty days after the decision of the Court;
- (c) where the amount is disputed and an appeal lies from the decision of the first Court to which the dispute is referred, and within thirty days after the decision of the first Court neither payment of the sum due is made nor proceedings are commenced for an appeal.

(2) The proceeds of sale of detained property shall, after payment of the expenses of the sale, be applied by the Receiver in payment of the expenses, fees and salvage and any excess shall be paid to the owners of the property, or any other persons entitled to it or in the absence of any such owners or person, into the Consolidated Fund.

(3) In this section "detained property" means property detained by the Receiver under section 314 (2).

316. (1) Where the aggregate amount of salvage payable in respect of salvage services rendered in the Virgin Islands has been finally determined either by the Court in the manner provided by this Part or by agreement, and does not exceed ten thousand dollars, but a dispute arises as to the apportionment thereof among several claimants, the person liable to pay such amount may apply to the Receiver for leave to pay it to him.

(2) The Receiver shall, if he thinks fit, receive the amount referred to in subsection (1) and if he does, he shall give to the person paying it, a certificate stating the amount paid and the services in respect of which it is paid.

(3) A certificate granted under subsection (2) shall be a full discharge and indemnity to the person by whom the amount was paid and to his vessel, cargo, equipment and effects, against the claims of all persons in respect of the services mentioned in the certificate.

(4) The Receiver shall promptly distribute any amount received by him under this section among the persons entitled thereto on such evidence and in such shares and proportions as he thinks fit, and may retain any money which appears to him to be payable to any person who is absent.

(5) Any decision by the Receiver under subsection (4) shall be made on the basis of the criteria set out in section 299.

(6) A distribution of any amount made by the Receiver in pursuance of this section shall be final and conclusive as against all persons claiming to be entitled to any portion of the amount distributed.

317. (1) Whenever the aggregate amount of salvage payable in respect of salvage services rendered in the Virgin Islands has been finally determined and exceeds ten thousand dollars, or whenever the aggregate amount of salvage payable in respect of salvage services rendered outside the Virgin Islands has been finally determined, but in either case any delay or dispute arises as to the apportionment thereof, the Court may

- (a) cause such amount to be apportioned among the persons entitled thereto in such manner as it thinks just, and may for that purpose, if

it thinks fit, appoint any person to carry that apportionment into effect;

- (b) compel any person in whose hands or under whose control the amount may be to distribute such amount or to bring it into Court to be dealt with as the Court directs; and
- (c) issue such process as it thinks fit.

(2) Any decision of the Court under this section shall be made on the basis of the criteria set out in section 299.

318. A salvor shall be entitled to be paid interest on any payment due to him under this Part, and the amount of such interest shall be at the discretion of the Court or person adjudicating the case. Salvor's right to interest

319. (1) Where civil salvage services are rendered by or on behalf of the Government, or with the aid of Government property, the Government shall, subject to any regulations made under this section, be entitled to claim salvage in respect of those services to the same extent, and shall have the same rights and remedies as any other salvor. Application to the Government

(2) Subject to the provisions of any Act for the time being in force relating to proceedings against the Government, and of any regulations made under this section, the provisions of this Part, except and to such extent as may be prescribed, shall apply in relation to salvage services rendered in assisting any ship of the Government, or in saving life therefrom, or in saving any cargo or equipment belonging to the Government, in the same manner as if the ship, cargo or equipment belonged to a private person.

320. The Governor in Council may make regulations providing for the application or modification of the provisions of this Part to ships referred to in subsection (2) of section 319, and in relation to the services referred to in subsection (1) of that section. Regulations

321. (1) No action shall be instituted in respect of any salvage services unless proceedings therein are commenced within two years after the date on which the salvage operations were terminated, but the Court may extend any such period to such extent and on such conditions as it considers fit. Time limit for salvage proceedings

(2) An action for indemnity by a person liable under this Part may be instituted within two years after the date of termination of the salvage operations, but the Court may extend the limitation period to such extent and on such conditions as it considers fit.

The common understanding regarding the reward and special compensation

322. In fixing a reward under sections 299, 300 and 301, and assessing special compensation under section 302, the Court or arbitrator is under no duty to fix a reward under sections 299, 300 and 301, up to the maximum salvaged value of the vessel and other property before assessing the special compensation to be paid under section 302.

Recourse for life salvage payment

323. (1) This section applies where

- (a) services are rendered wholly or in part in Virgin Islands waters in saving life from a vessel of any nationality or elsewhere in saving life from any Virgin Islands ship; and
- (b) either
 - (i) the vessel and other property are destroyed; or
 - (ii) the sum to which the salvor is entitled under section 291 (2) is less than a reasonable amount for the services rendered in saving life.

(2) Where this section applies, the Minister may, if he thinks fit, cause to be paid to the salvor such sum or, as the case may be, such additional sum as he thinks fit in respect of the services rendered in saving life.

PART XIII

CONTROL OF, AND RETURNS AS TO, PERSONS ON SHIPS

Offences in connection with passenger ships

324. (1) A person commits an offence if, in relation to a ship to which this section applies, he does any of the following things:

- (a) if, being drunk or disorderly, he has been on that account refused admission to the ship by the owner or any person in the employment of the owner, and, after having the amount of his fare (if he has paid it) returned or tendered to him, nevertheless persists in attempting to enter the ship,

- (b) if, being drunk or disorderly on board the ship, he is requested by the owner or any person in the employment of the owner to leave the ship at any place in the Virgin Islands at which he can conveniently do so, and, after having the amount of his fare (if he has paid it) returned or tendered to him, does not comply with the request,
- (c) if, on board the ship, after warning by the master or other officer thereof, he molests or continues to molest any passenger,
- (d) if, after having been refused admission to the ship by the owner or any person in the employment of the owner on account of the ship being full, and having had the amount of his fare (if he has paid it) returned or tendered to him, he nevertheless persists in attempting to enter the ship,
- (e) if, having gone on board the ship at any place, and being requested, on account of the ship being full, by the owner or any person in the employment of the owner to leave the ship before it has left that place, and having had the amount of his fare (if he has paid it) returned or tendered to him, he does not comply with that request,
- (f) if, on arriving in the ship at a place to which he has paid his fare, he knowingly and intentionally refuses or neglects to leave the ship,
- (g) if, on board the ship he fails, when requested by the master or other officer thereof, either to pay his fare or show such ticket or other receipt, if any, showing the payment of his fare, as is usually given to persons travelling by and paying their fare for the ship,

but his liability in respect of any such offence shall not prejudice the recovery of any fare payable by him.

(2) A person commits an offence if, on board any ship to which this section applies, he intentionally does or causes to be done anything in such a manner as to

- (a) obstruct or damage any part of the machinery or equipment of the ship; or
- (b) obstruct, impede or molest the crew, or any of them, in the navigation or management of the ship, or otherwise in the execution of their duty on or about the ship.

(3) The master or other officer of any ship to which this section applies, and all persons called by him to his assistance, may, without any warrant, detain any person who commits any offence under subsection (1) or (2) and whose name and

address are unknown to the master or officer, and deliver that person to a police officer.

(4) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(5) If any person commits an offence under subsection (1) or (2) and on the application of the master of the ship, or any other person in the employment of the owner thereof, refuses to give his name and address, or gives a false name or address, that person is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(6) This section applies to a ship for which there is in force a Passenger Ship Safety Certificate, issued under or recognised by this Act.

Power to exclude
drunken passengers from
certain passenger ships

325. The master of any passenger ship may refuse to receive on board any person who by reason of drunkenness or otherwise is in such a state, or misconducts himself in such a manner, as to cause annoyance or injury to passengers on board, and if any such person is on board, may put him on shore at any convenient place.

Stowaways

326. (1) If a person, without the consent of the master or of any other person authorised to give it, goes to sea or attempts to go to sea in a Virgin Islands ship, he commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Nothing in section 436 shall be taken to limit the jurisdiction of any court in the Virgin Islands to deal with an offence under this section which has been committed in a country outside the Virgin Islands by a person who is not a Virgin Islands citizen.

Unauthorised presence
on board

327. Where a Virgin Islands ship or a ship registered in any other country is in a port in the Virgin Islands and a person who is neither in the service of the Government of the Virgin Islands nor authorised by law to do so

- (a) goes on board the ship without the consent of the master or of any other person authorised to give it, or

- (b) remains on board the ship after being requested to leave by the master, a police officer, an officer authorised by the Director or a customs officer,

he commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

328. The master of any Virgin Islands ship may cause any person on board the ship to be put under restraint if and for so long as it appears to him necessary or expedient in the interest of safety or for the preservation of order or discipline on board the ship.

Master's power of arrest

329. (1) Where a person goes to sea in a ship without the consent of the master or of any other person authorised to give it or is conveyed in a ship in pursuance of section 137 (5)(b), sections 122 and 123 shall apply as if he were a seaman employed in the ship.

Unauthorised persons:
offences relating to
safety

(2) Subsection (1) shall, in its application to section 122 so far as that section applies to ships which are not sea-going ships, have effect

- (a) with the omission of the words "goes to sea in a ship"; and
- (b) with the insertion, after the words "to give it", of the words "is on board a ship while it is on a voyage or excursion".

330. (1) The master of every ship, whether or not a Virgin Islands ship, which carries any passenger to a place in the Virgin Islands from any place out of the Virgin Islands, or from any place in the Virgin Islands to any place out of the Virgin Islands, shall furnish to such person and in such manner as the Director directs, a return giving the total number of any passengers so carried, distinguishing, if so directed by the Director, the total number of any class of passengers so carried, and giving, if the Director so directs, such particulars with respect to passengers as may be for the time being required by the Director.

Passenger returns to be
made by master

(2) Any passenger shall furnish the master of the ship with any information required by the master for the purpose of the return.

(3) If

- (a) the master of a ship fails to make a return as required by this section, or makes a false return,

- (b) any passenger refuses to give any information required by the master of the ship for the purpose of the return required by this section, or, for that purpose, gives to the master information which he knows to be false or recklessly gives to him information which is false,

the master or (as the case may be) passenger commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale in the case of a failure or refusal and level 3 on the standard scale in the case of a false return or false information.

Returns of births and deaths in ships, etc.

331. (1) The Governor in Council may make regulations under the following provisions of this section in relation to births and deaths in the circumstances specified in those provisions.

(2) Regulations under this section may require the master of any Virgin Islands ship to make a return to the Superintendent or proper officer of

- (a) the birth or death of any person occurring in the ship, and
- (b) the death of any person employed in the ship, wherever occurring outside the Virgin Islands,

and to notify any such death to such person (if any) as the deceased may have named to him as his next of kin.

(3) Regulations under this section may require the master of any ship not registered in the Virgin Islands which calls at a port in the Virgin Islands in the course of or at the end of a voyage to make a return to the Superintendent of any birth or death of a Virgin Islands citizen which has occurred in the ship during the voyage.

(4) The returns referred to in subsections (2) and (3) shall be for transmission to the Superintendent.

(5) Regulations under this section may require the Superintendent to record such information as may be specified in the regulations about such a death as is referred to in subsection (2) in a case where

- (a) it appears to him that the master of the ship cannot perform his duty under that subsection because he has himself died or is incapacitated or missing; and
 - (b) any of the circumstances specified in subsection (6) exist.
- (6) Those circumstances are that
- (a) the death in question has been the subject of
 - (i) an inquest held by a coroner, or
 - (ii) an inquiry held in pursuance of section 429,

and the findings of the inquest or inquiry include a finding that the death occurred; and
 - (b) the deceased's body has been the subject of a post-mortem examination and in consequence the coroner is satisfied that an inquest is unnecessary.
- (7) Regulations under this section may require the Superintendent to send a certified copy of any return or record made thereunder to the Registrar.
- (8) The Registrar to whom any such certified copies are sent
- (a) shall record the information contained therein in the marine register; and
 - (b) may record in the marine register such additional information as appears to him desirable for the purpose of ensuring the completeness and correctness of the register.
- (9) Regulations under this section may make a contravention of any provision thereof an offence punishable on summary conviction with a fine not exceeding level 4 on the standard scale.
- (10) Regulations under this section may contain provisions authorising the registration of the following births and deaths occurring outside the Virgin Islands in circumstances where no return is required to be made under the preceding provisions of this section:

- (a) any birth or death of a Virgin Islands citizen which occurs in a ship not registered in the Virgin Islands;
- (b) any death of any such citizen who has been employed in a ship not registered in the Virgin Islands which occurs elsewhere than in the ship; and
- (c) any death of a person who has been employed in a Virgin Islands ship which occurs elsewhere than in the ship.

(11) References in this section to deaths occurring in a ship include references to deaths occurring in a ship's boat.

PART XIV

LIABILITY AND COMPENSATION FOR OIL POLLUTION DAMAGE

CHAPTER I

LIABILITY FOR OIL POLLUTION

Interpretation

332. (1) In this Chapter,
- “damage” includes loss;
- “oil” means persistent hydrocarbon mineral oil;
- “owner” means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship, except that, in relation to a ship owned by a state which is operated by a person registered as the ship’s operator, it means the person registered as its operator;
- “relevant threat of contamination” shall be construed in accordance with section 333 (2) or 334 (2); and
- “ship”, subject to section 334 (4), means any sea-going vessel or sea-borne craft of any type whatsoever.

(2) In relation to any damage or cost resulting from the discharge or escape of any oil from a ship, or from a relevant threat of contamination, references in this Chapter to the owner of the ship are references to the owner at the time of the occurrence or first of the occurrences resulting in the discharge or escape or, as the case may be, in the threat of contamination.

Liability

333. (1) Where, as a result of any occurrence, any oil is discharged or escapes from a ship to which this section applies, then (except as otherwise provided by this Chapter) the owner of the ship shall be liable

Liability for oil pollution
in case of tankers

- (a) for any damage caused outside the ship in the territory of the Virgin Islands by contamination resulting from the discharge or escape;
- (b) for the cost of any measures reasonably taken after the discharge or escape for the purpose of preventing or minimising any damage so caused in the territory of the Virgin Islands by contamination resulting from the discharge or escape; and
- (c) for any damage caused in the territory of the Virgin Islands by any measures so taken.

(2) Where, as a result of any occurrence, there arises a grave and imminent threat of damage being caused outside a ship to which this section applies by the contamination that might result if there were a discharge or escape of oil from the ship, then (except as otherwise provided by this Chapter) the owner of the ship shall be liable

- (a) for the cost of any measures reasonably taken for the purpose of preventing or minimising any such damage in the territory of the Virgin Islands, and
- (b) for any damage caused outside the ship in the territory of the Virgin Islands by any measures taken,

and in this Chapter any such threat is referred to as a “relevant threat of contamination.”

(3) Subject to subsection (4), this section applies to any ship constructed or adapted for carrying oil in bulk as cargo.

(4) Where any ship so constructed or adapted is capable of carrying other cargoes besides oil, this section shall apply to any other ship

- (a) while it is carrying oil in bulk as cargo, and
- (b) unless it is proved that no residues from the carriage of any such oil remain in the ship, while it is on any voyage following the carriage of any such oil,

but not otherwise.

(5) Where a person incurs a liability under subsection (1) or (2), he shall also be liable for any damage or cost for which he would be liable under that subsection if the references in it to the territory of the Virgin Islands included the territory of any other Liability Convention country.

(6) Where

- (a) as a result of any occurrence, a liability is incurred under this section by the owner of each of two or more ships, but
- (b) the damage or cost for which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable,

each of the owners shall be liable, jointly with the other or others, for the whole of the damage or cost for which the owners together would be liable under this section.

(7) For the purposes of this Chapter,

- (a) references to a discharge or escape of oil from a ship are references to such a discharge or escape wherever it may occur, and whether it is of oil carried in a cargo tank or of oil carried in a bunker fuel tank;
- (b) where more than one discharge or escape results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one, but any measures taken after the first of them shall be deemed to have been taken after the discharge or escape; and
- (c) where a relevant threat of contamination results from a series of occurrences having the same origin, they shall be treated as a single occurrence.

334. (1) Where, as a result of any occurrence, any oil is discharged or escapes from a ship other than a ship to which section 333 applies, then (except as otherwise provided by this Chapter) the owner of the ship shall be liable

- (a) for any damage caused outside the ship in the territory of the Virgin Islands by contamination resulting from the discharge or escape;
- (b) for the cost of any measures reasonably taken after the discharge or escape for the purpose of preventing or minimising any damage so caused in the territory of the Virgin Islands by contamination resulting from the discharge or escape; and
- (c) for any damage so caused in the territory of the Virgin Islands by any measures so taken.

(2) Where as a result of any occurrence, there arises a grave and imminent threat of damage being caused outside a ship other than a ship to which section 333 applies by the contamination which might result if there were a discharge or escape of oil from the ship, then (except as otherwise provided by this Chapter) the owner of the ship shall be liable

- (a) for the cost of any measures reasonably taken for the purpose of preventing or minimising any such damage in the territory of the Virgin Islands, and
- (b) for any damage caused outside the ship in the territory of the Virgin Islands by any measures so taken,

and in the subsequent provisions of this Chapter any such threat is referred to as a “relevant threat of contamination.”

(3) Where

- (a) as a result of any occurrence, a liability is incurred under this section by the owner of each of two or more ships, but
- (b) the damage or cost for which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable,

each of the owners shall be liable, jointly with the other or others, for the whole of the damage or cost for which the owners together would be liable under this section.

(4) In this section “ship” includes a vessel which is not seagoing.

Exceptions from liability
under sections 333 and
334

335. No liability shall be incurred by the owner of a ship under section 333 or 334 by reason of any discharge or escape of oil from the ship, or by reason of any relevant threat of contamination, if he proves that the discharge or escape, or (as the case may be) the threat of contamination

- (a) resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon;
- (b) was due wholly to anything done or omitted to be done by another person, not being a servant or agent of the owner, with intent to do damage; or
- (c) was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible.

Restriction of liability
for oil pollution

336. (1) Where, as a result of any occurrence,
(a) any oil is discharged or escapes from a ship (whether one to which section 333 or one to which section 334 applies), or
(b) there arises a relevant threat of contamination,

then, whether or not the owner of the ship in question incurs a liability under section 333 or 334

- (i) he shall not be liable otherwise than under that section for any such damage or cost as is mentioned in it, and
- (ii) no person to whom this paragraph applies shall be liable for any such damage or cost unless it resulted from anything done or omitted to be done by him either with intent to cause any such damage or cost or recklessly and in the knowledge that any such damage or cost would probably result.

(2) Subsection (1) (a) and (b) (ii) applies to

- (a) any servant or agent of the owner of the ship;
- (b) any person not falling within paragraph (a) but employed or engaged in any capacity on board the ship or to perform any service for the ship;
- (c) any charterer of the ship (however described and including a bareboat charterer), and any manager or operator of the ship;

- (d) any person performing salvage operations with the consent of the owner of the ship or on the instructions of a competent public authority;
 - (e) any person taking any such measures as are mentioned in subsection (1)(b) or (2)(a) of section 333 or 334; or
 - (f) any servant or agent of a person falling within paragraph (c), or (e).
- (3) The liability of the owner of a ship under section 333 or 334 for any impairment of the environment shall be taken to be a liability only in respect of
- (a) any resulting loss of profits, and
 - (b) the cost of any reasonable measures of reinstatement actually taken or to be taken.

Limitation of Liability

337. (1) Where, as a result of any occurrence, the owner of a ship incurs liability under section 333 by reason of a discharge or escape or by reason of any relevant threat of contamination, then, subject to subsection (3),

Limitation of Liability
under section 333

- (a) he may limit that liability in accordance with the provisions of this Chapter, and
- (b) if he does so, his liability (being the aggregate of his liabilities under section 333 resulting from the occurrence) shall not exceed the relevant amount.

(2) In subsection (1), “the relevant amount” means

- (a) in relation to a ship not exceeding 5,000 tons, 3,000,000 special drawing rights,
- (b) in relation to a ship exceeding 5,000 tons, 3,000,000 special drawing rights together with an additional 420 special drawing rights for each ton of its tonnage in excess of 5,000 tons up to a maximum amount of 59,700,000 special drawing rights,

but the Governor in Council may by Order make such amendments to paragraphs (a) and (b) as may be appropriate for the purpose of implementing any amendment in force for the Virgin Islands of the limits of liability laid down in paragraph 1 of Article V of the Liability Convention.

(3) Subsection (1) shall not apply in a case where it is proved that the discharge or escape, or (as the case may be) the relevant threat of contamination, resulted from anything done or omitted to be done by the owner either with intent to cause any such damage or cost as is mentioned in section 333 or recklessly and in the knowledge that any such damage or cost would probably result.

(4) For the purposes of this section, a ship's tonnage shall be its gross tonnage calculated in accordance with the Tonnage Regulations.

Limitation actions

338. (1) Where the owner of a ship has or is alleged to have incurred a liability under section 333, he may apply to the Court for the limitation of that liability to an amount determined in accordance with section 337.

(2) If on such an application the Court finds that the applicant has incurred such a liability and is entitled to limit it, the Court shall, after determining the limit of the liability and directing payment into Court of the amount of that limit,

- (a) determine the amounts that would, apart from the limit, be due in respect of the liability to the several persons making claims in the proceedings; and
- (b) direct the distribution of the amount paid into Court (or, as the case may be, so much of it as does not exceed the liability) among those persons in proportion to their claims, subject to the following provisions of this section.

(3) Where

(a) a distribution is made under subsection (2) (b) without the Court having found that the applicant is entitled to limit his liability, and

(b) the Court subsequently finds that the applicant is not so entitled

the making of the distribution is not to be regarded as affecting the applicant's liability in excess of the amount distributed.

(4) A payment into Court of the amount of a limit determined in pursuance of this section shall be made in the currency of the United States dollars, and

- (a) for the purpose of converting such an amount from special drawing rights into dollars one special drawing right shall be treated as equal to such a sum in dollars as the International Monetary Fund have fixed as being the equivalent of one special drawing right for
 - (i) the day on which the determination is made; or
 - (ii) if no sum has been so fixed for that day, the last day before that day for which a sum has been so fixed;
- (b) a certificate given by or on behalf of the Minister stating
 - (i) that a particular sum in dollars has been so fixed for the day on which the determination was made, or
 - (ii) that no sum has been fixed for that day and that a particular sum in dollars has been so fixed for a day which is the last day for which a sum has been so fixed before the day on which the determination was made, shall be conclusive evidence of those matters for the purposes of this Chapter;
- (c) a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

(5) No claim shall be admitted in proceedings under this section unless it is made within such time as the Court may direct or such further time as the Court may allow.

(6) Where any sum has been paid in or towards satisfaction of any claim in respect of the damage or cost to which the liability extends

- (a) by the owner or the persons referred to in section 345 as “the insurer”, or
- (b) by a person who has or is alleged to have incurred a liability, otherwise than under section 333, for the damage or cost and who is

entitled to limit his liability in connection with the ship by virtue of Chapter II of Part XV,

the person who paid the sum shall, to the extent of that sum, be in the same position with respect to any distribution made in proceedings under this section as the person to whom it was paid would have been.

(7) Where the person who incurred the liability has voluntarily made any reasonable sacrifice or taken any other reasonable measures to prevent or reduce damage to which the liability extends or might have extended, he shall be in the same position with respect to any distribution made in proceedings under this section as if he had a claim in respect of the liability equal to the cost of the sacrifice or other measures.

(8) The Court may, if it thinks fit, postpone the distribution of such part of the amount to be distributed as it deems appropriate having regard to any claims that may later be established before a court of any country outside the Virgin Islands.

(9) No lien or other right in respect of any ship or other property shall affect the proportions in which any amount is distributed in accordance with subsection (2) (b).

Restriction on enforcement after establishment of limitation fund

339. Where the Court has found that a person who has incurred a liability under section 333 is entitled to limit that liability to any amount and he has paid into Court a sum not less than that amount,

- (a) the Court shall order the release of any ship or other property arrested in connection with a claim in respect of that liability or any security given to prevent or obtain release from such an arrest, and
- (b) no judgement or decree for any such claim shall be enforced, except so far as it is for costs,

if the sum paid into Court, or such part thereof as corresponds to the claim, will be actually available to the claimant or would have been available to him if the proper steps in the proceedings under section 338 had been taken.

Concurrent liabilities of owners and others

340. Where, as a result of any discharge or escape of oil from a ship or as a result of any relevant threat of contamination, the owner of the ship incurs a liability

under section 333 and any other person incurs a liability, otherwise than under that section, for any such damage or cost as is mentioned in subsection (1) or (2) of that section then, if

- (a) the owner has been found, in proceedings under section 338 to be entitled to limit his liability to any amount and has paid into Court a sum not less than that amount, and
- (b) the other person is entitled to limit his liability in connection with the other ship by virtue of Chapter II of Part XV,

no proceedings shall be taken against the other person in respect of his liability, and if any such proceedings were commenced before the owner paid the sum into court, no further steps shall be taken in the proceedings except in relation to costs.

341. Where the events resulting in the liability of any person under section 333 also resulted in a corresponding liability under the law of another Liability Convention Country, sections 339 and 340 shall apply as if the references to sections 333 and 338 included references to the corresponding provisions of that law and the references to sums paid into Court included references to any sums secured under those provisions in respect of the liability.

Establishment of
limitation fund outside
the Virgin Islands

342. No action to enforce a claim in respect of a liability incurred under section 333 or 334 shall be entertained by a Court in the Virgin Islands unless the action is commenced not later than three years after the claim arose nor later than six years after the occurrence or first of the occurrences resulting in the discharge or escape, or, as the case may be, in the relevant threat of contamination, by reason of which the liability was incurred.

Extinguishment of
claims

Compulsory Insurance

343. (1) Subject to the provisions of this Chapter relating to Government ships, subsection (2) shall apply to any ship carrying in bulk a cargo of more than 2,000 tons of oil of a description specified in regulations made by the Governor in Council.

Compulsory insurance
against liability for
pollution

(2) The ship shall not enter or leave a port in the Virgin Islands or arrive at or leave a terminal in the territorial sea of the Virgin Islands nor, if the ship is a Virgin Islands ship, a port in any other country or a terminal in the territorial sea of any

other country, unless there is in force a certificate complying with the provisions of subsection (3) and showing that there is in force in respect of the ship a contract of insurance or other security satisfying the requirements of Article VII of the Liability Convention (cover for owner's liability).

(3) The certificate must be,

- (a) if the ship is a Virgin Islands ship, a certificate issued by the Director;
- (b) if the ship is registered in a Liability Convention Country other than the Virgin Islands, a certificate issued by or under the authority of the government of the other Liability Convention Country; and
- (c) if the ship is registered in a country which is not a Liability Convention Country, a certificate issued by the Director or by or under the authority of the government of any Liability Convention Country other than the Virgin Islands.

(4) Any certificate required by this section to be in force in respect of a ship shall be carried in the ship and shall, on demand, be produced by the master to any customs officer, the Director or any surveyor authorised by the Director for the purpose and, if the ship is a Virgin Islands ship, to any proper officer.

(5) If a ship enters or leaves, or attempts to enter or leave, a port or arrives at or leaves, or attempts to arrive at or leave, a terminal in contravention of subsection (2), the master or owner commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars.

(6) If a ship fails to carry, or the master of a ship fails to produce, a certificate as required by subsection (4), the master commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(7) If a ship attempts to leave a port in the Virgin Islands in contravention of this section the ship may be detained.

Issue of certificate by
Director

344. (1) Subject to subsection (2), if the Director is satisfied, on the application for such a certificate as is mentioned in section 343 in respect of a Virgin Islands ship or a ship registered in any country which is not a Liability

Convention Country, that there will be in force in respect of the ship, throughout the period for which the certificate is to be issued, a contract of insurance or other security satisfying the requirements of Article VII of the Liability Convention, the Director shall issue such a certificate to the owner.

(2) If the Director is of opinion that there is a doubt whether the person providing the insurance or other security will be able to meet his obligations thereunder, or whether the insurance or other security will cover the owner's liability under section 333 in all circumstances, he may refuse the certificate.

(3) The Governor in Council may make regulations providing for the cancellation and surrender of a certificate under this section in such circumstances as may be prescribed by the regulations.

(4) If a person required by regulations under subsection (3) to surrender a certificate fails to do so he commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(5) The Director shall make available for public inspection a copy of any certificate issued by him under this section in respect of a Virgin Islands ship.

345. (1) Where it is alleged that the owner of a ship has incurred a liability under section 333 as a result of any discharge or escape of oil occurring, or as a result of any relevant threat of contamination arising, while there was in force a contract of insurance or other security to which such a certificate as is mentioned in section 343 related, proceedings to enforce a claim in respect of the liability may be brought against the person who provided the insurance or other security (in the following provisions of this section referred to as "the insurer").

Rights of third parties
against insurers

(2) In any proceedings brought against the insurer by virtue of this section it shall be a defence in addition to any defence affecting the owner's liability, to prove that the discharge or escape, or, as the case may be, the threat of contamination, was due to the wilful misconduct of the owner himself.

(3) The insurer may limit his liability in respect of claims made against him by virtue of this section in like manner and to the same extent as the owner may limit his liability but the insurer may do so whether or not the discharge or escape, or, as

the case may be, the threat of contamination, resulted from anything done or omitted to be done by the owner as mentioned in section 337(3).

(4) Where the owner and the insurer each apply to the Court for the limitation of his liability, any sum paid into Court in pursuance of either application shall be treated as paid also in pursuance of the other.

Supplemental

Jurisdiction of Virgin Islands Court and registration of foreign judgements

346. (1) Where
- (a) any oil is discharged or escapes from a ship but does not result in any damage caused by contamination in the territory of the Virgin Islands and no measures are reasonably taken to prevent or minimise such damage in that territory, or
 - (b) any relevant threat of contamination arises but no measures are reasonably taken to prevent or minimise such damage in the territory of the Virgin Islands,

no Court in the Virgin Islands shall entertain any action, whether *in rem* or *in personam*, to enforce a claim arising from any relevant damage or cost

- (i) against the owner of the ship, or
- (ii) against any person to whom section 336(1) (a) and (b) (ii) applies, unless any such damage or cost resulted from anything done or omitted to be done as mentioned in that provision.

(2) In subsection (2), “relevant damage or cost” means,

- (a) in relation to any such discharge or escape as is mentioned in paragraph (a) of that subsection, any damage caused in the territory of another Liability Convention Country by contamination resulting from the discharge or escape, or any cost incurred in taking measures to prevent or minimise such damage in the territory of another Liability Convention Country,
- (b) in relation to any such threat of contamination as is mentioned in paragraph (b) of that subsection, any cost incurred in taking

measures to prevent or minimise such damage in the territory of another Liability Convention Country, or

- (c) any damage caused by any measures taken as mentioned in paragraph (a) or (b),

and section 336 (2) (e) shall have effect for the purpose of subsection (1) (a) and (b) (ii) as if it referred to any person taking any such measures as are mentioned in paragraph (a) or (b).

(3) Any judgement given by a court in a Liability Convention Country in respect of a liability incurred under any provision corresponding to section 333 shall be enforceable by the Court.

347. (1) Nothing in the preceding provisions of this Chapter applies in relation to any warship or any ship for the time being used by the government of any state for other than commercial purposes.

Government ships

(2) In relation to a ship owned by a state and for the time being used for commercial purposes it shall be a sufficient compliance with section 343(2) if there is in force a certificate issued by the government of that state and showing that the ship is owned by that state and that any liability for pollution damage as defined in Article I of the Liability Convention will be met up to the limit prescribed by Article V of the Convention.

(3) Every Liability Convention State shall, for the purposes of any proceedings brought in the Court in the Virgin Islands to enforce a claim in respect of a liability incurred under section 333 be deemed to have submitted to the jurisdiction of the Court, and accordingly rules of Court may provide for the manner in which such proceedings are to be commenced and carried on, but nothing in this subsection shall authorise the issue of execution against the property of any state.

348. For the purposes of Chapter II of Part XV, any liability incurred under section 334 shall be deemed to be a liability to damages in respect of such damage to property as is mentioned in subsection 1 (a) of section 391.

Limitation of liability under section 334

Saving for recourse actions

349. Nothing in this Chapter shall prejudice any claim, or the enforcement of any claim, a person incurring any liability under this Chapter may have against another person in respect of that liability.

Meaning of “the Liability Convention” and related expressions

350. (1) In this Chapter,

“the Liability Convention” means the International Convention on Civil Liability for Oil Pollution Damage 1992;

“Liability Convention Country” means a country in respect of which the Liability Convention is in force; and

“Liability Convention State” means a State which is a party to the Convention.

(2) If Her Majesty by Order declares that any State specified in the Order is a party to the Liability Convention in respect of any country so specified the Order shall, while in force, for the purposes of this Part, be conclusive evidence that that State is a party to the Liability Convention in respect of that country.

(3) References in this Chapter to the territory of any country includes the territorial sea of that country, and in the case of the Virgin Islands and any Liability Convention Country, the exclusive economic zone thereof established in accordance with international law, or, if such a zone has not been established, such area adjacent to the territorial sea thereof and extending not more than 200 nautical miles from the baselines from which the breadth of that sea is measured as may have been determined by the State in question in accordance with international law.

(4) During the period that the application of the 1969 Liability Convention remains extended to the Virgin Islands by virtue of the United Kingdom remaining a party to that Convention, references in sections 343 and 344 to the “Liability Convention” shall in respect of ships registered in a State Party to the 1969 Liability Convention but not to the Liability Convention, be references to the 1969 Liability Convention.

(5) For the purpose of subsection (4) and its application to sections 343 and 344, “the 1969 Liability Convention” means the International Convention on Civil Liability for Oil Pollution Damage signed in Brussels in 1969, as amended by the Protocol signed in London in 1976.

CHAPTER II

INTERNATIONAL OIL POLLUTION COMPENSATION FUND

351. (1) In this Chapter, unless the context otherwise requires,

Interpretation

“damage” includes loss;

“discharge or escape”, in relation to pollution damage, means the discharge or escape of oil from the ship;

“guarantor” means any person providing insurance or other financial security to cover the owner’s liability of the kind described in section 343;

“incident” means any occurrence, or series of occurrences having the same origin, resulting in a discharge or escape of oil from a ship or in a relevant threat of contamination;

“oil”, except in sections 352 and 353, means persistent hydrocarbon mineral oil;

“owner” means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship, except that, in relation to a ship owned by a State which is operated by a person registered as the ship’s operator, it means the person registered as its operator;

“pollution damage” means

- (a) damage caused outside a ship by contamination resulting from a discharge or escape of oil from the ship,
- (b) the cost of preventive measures, and
- (c) further damage caused by preventive measures,

but does not include any damage attributable to any impairment of the environment except to the extent that any such damage consists of

- (i) any loss of profits, or
- (ii) the cost of any reasonable measures of reinstatement actually taken or to be taken;

“preventive measures” means any reasonable measures taken by any person to prevent or minimise pollution damage, being measures taken

- (a) after an incident has occurred, or
- (b) in the case of an incident consisting of a series of occurrences, after the first of those occurrences;

“relevant threat of contamination” means a grave and imminent threat of damage being caused outside a ship by contamination resulting from a discharge or escape of oil from the ship; and

“ship” means any ship (within the meaning of Chapter I of this Part) to which section 333 applies.

(2) For the purposes of this Chapter,

- (a) references to a discharge or escape of oil from a ship are references to such a discharge or escape wherever it may occur, and whether it is of oil carried in a cargo tank or of oil carried in a bunker fuel tank; and
- (b) where more than one discharge or escape results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one.

(3) References in this Chapter to the territory of any country shall be construed in accordance with section 350 (3) reading the reference to a Liability Convention Country as a reference to a Fund Convention country.

Contributions to Fund

Contributions by
importers of oil and
others

352. (1) Contributions shall be payable to the Fund in respect of oil carried by sea to ports or terminal installations in the Virgin Islands otherwise than on a voyage only within its national waters.

(2) Subsection (1) applies whether or not the oil is being imported, and applies even if contributions are payable in respect of carriage of the same oil on a previous voyage.

(3) Contributions shall also be payable to the Fund in respect of oil when first received in any installation in the Virgin Islands after having been carried by sea and discharged in a port or terminal installation in a country which is not a Fund Convention country.

(4) The person liable to pay contributions is

- (a) in the case of oil which is being imported into the Virgin Islands, the importer, and
- (b) otherwise, the person by whom the oil is received.

(5) A person shall not be liable to make contributions in respect of the oil imported or received by him in any year if the oil so imported or received in the year does not exceed 150,000 tons.

(6) For the purpose of subsection (5),

- (a) all the members of a group of companies shall be treated as a single person, and
- (b) any two or more companies which have been amalgamated into a single company shall be treated as the same person as that single company.

(7) The contributions payable by a person for any year shall

- (a) be of such amount as may be determined by the Director of the Fund under Article 12 subject to Article 36 of the Fund Convention and notified to that person by the Fund, and
- (b) be payable in such instalments, becoming due at such times, as may be so notified to him,

and if any amount due from him remains unpaid after the date on which it became due, it shall from then on bear interest, at a rate determined from time to time by the Assembly of the Fund, until it is paid.

(8) The Governor in Council may by regulations impose on persons who are or may be liable to pay contributions under this section obligations to give security for payment to the Minister, or the Fund.

(9) Regulations under subsection (8) may

- (a) contain such supplemental or incidental provisions as appear to the Governor in Council expedient; and
- (b) impose penalties for contravention of the regulations punishable on summary conviction by a fine not exceeding level 5 on the standard scale, or such lower limit as may be specified in the regulations.

(10) In this section and in section 353, unless the context otherwise requires,

“company” means a body incorporated under the laws of the Virgin Islands or of any other country;

“group”, in relation to companies, means a holding company and its subsidiaries subject, in the case of a company incorporated outside the Virgin Islands, to any necessary modifications of those definitions;

“importer” means the person by whom or on whose behalf the oil in question is entered for customs or excise purposes on importation, and “import” shall be construed accordingly;

“oil” means crude oil and fuel oil, and

- (a) “crude oil” means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation, and includes
 - (i) crude oils from which distillate fractions have been removed; and
 - (ii) crude oils to which distillate fractions have been added;
- (b) “fuel oil” means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the

“American Society for Testing and Materials Specification for Number Four Fuel Oil (Designation D396-96)”, or heavier;

“terminal installation” means any site for the storage of oil in bulk which is capable of receiving oil from waterborne transportation, including any facility situated offshore and linked to any such site.

353. (1) For the purpose of transmitting to the Fund the names and addresses of the persons who under section 352 are liable to make contributions to the Fund for any year, and the quantity of oil in respect of which they are so liable, the Director may by notice require any person engaged in producing, treating, distributing or transporting oil to furnish such information as may be specified in the notice.

Power to obtain information

(2) A notice under this section may require a company to give such information as may be required to ascertain whether its liability is affected by section 352 (6).

(3) A notice under this section may specify the way in which, and the time within which, it is to be complied with.

(4) In proceedings by the Fund against any person to recover any amount due under section 352, particulars contained in any list transmitted by the Director to the Fund shall, so far as those particulars are based on information obtained under this section, be admissible as evidence of the facts stated in the list; and so far as particulars which are so admissible are based on information given by the person against whom the proceedings are brought, those particulars shall be presumed to be accurate until the contrary is proved.

(5) If a person discloses any information which has been furnished to or obtained by him under this section, or in connection with the execution of this section, then, unless the disclosure is made

- (a) with the consent of the person from whom the information was obtained,
- (b) in connection with the execution of this section, or

- (c) for the purposes of any legal proceedings arising out of this section or of any report of such proceedings,

he commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) A person who

- (a) refuses or wilfully neglects to comply with a notice under this section, or
- (b) in furnishing any information in compliance with a notice under this section makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular,

commits an offence and is liable

- (i) on summary conviction, to a fine not exceeding level 4 on the standard scale in the case of an offence under paragraph (a) and not exceeding level 5 on the standard scale in the case of an offence under paragraph (b); and
- (ii) on conviction on indictment, to a fine not exceeding fifteen thousand dollars, or imprisonment for a term not exceeding twelve months, or both.

Compensation for Persons Suffering Pollution Damage

Liability of the Fund

354. (1) The Fund shall be liable for pollution damage in the territory of the Virgin Islands if the person suffering the damage has been unable to obtain full compensation under section 333

- (a) because the discharge or escape, or the relevant threat of contamination, by reason of which the damage was caused
 - (i) resulted from an exceptional, inevitable and irresistible phenomenon,

- (ii) was due wholly to anything done or omitted to be done by another person, not being a servant or agent of the owner, with intent to do damage, or
 - (iii) was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible, and because liability is accordingly wholly displaced by section 335;
- (b) because the owner or guarantor liable for the damage cannot meet his obligations in full; or
 - (c) because the damage exceeds the liability under section 333 as limited by section 337.

(2) Subsection (1) shall apply with the substitution for the words “the Virgin Islands” for the words “a Fund Convention country” where the incident has caused pollution damage in the territory of the Virgin Islands and of another Fund Convention country, and proceedings under the Liability Convention for compensation for the pollution damage have been brought in a country which is not a Fund Convention country or in the Virgin Islands.

(3) Where the incident has caused pollution damage in the territory of the Virgin Islands and of another country in respect of which the Liability Convention is in force, references in this section to the provisions of Chapter I of this Part shall include references to the corresponding provisions of the law of any country giving effect to the Liability Convention.

(4) For the purposes of this section, an owner or guarantor is to be treated as incapable of meeting his obligations if the obligations have not been met after all reasonable steps to pursue the legal remedies available have been taken.

(5) Expenses reasonably incurred, and sacrifices reasonably made, by the owner voluntarily to prevent or minimise pollution damage shall be treated as pollution damage for the purposes of this section, and accordingly he shall be in the same position with respect to claims against the Fund under this section as if he had a claim in respect of liability under section 333.

- (6) The Fund shall incur no obligation under this section if
- (a) it proves that the pollution damage
 - (i) resulted from an act of war, hostilities, civil war or insurrection; or
 - (ii) was caused by oil which has escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of the occurrence, only on Government non-commercial service; or
 - (b) the claimant cannot prove that the damage resulted from an occurrence involving a ship identified by him, or involving two or more ships one of which is identified by him.
- (7) If the Fund proves that the pollution damage resulted wholly or partly
- (a) from anything done or omitted to be done with intent to cause damage by the person who suffered the damage, or
 - (b) from the negligence of that person

the Fund may, subject to subsection (9), be exonerated wholly or partly from its obligations to pay compensation to that person.

(8) Where the liability under section 333 in respect of the pollution damage is limited to any extent by subsection (8) of that section, the Fund shall, subject to subsection (9), be exonerated to the same extent.

(9) Subsections (7) and (8) shall not apply where the pollution damage consists of the costs of preventive measures or any damage caused by such measures.

Limitation of Fund's
liability under section
354

355. (1) The Fund's liability under section 354 shall be subject to the limits imposed by paragraphs 4 and 5 of Article 4 of the Fund Convention which impose an overall limit on the liabilities of the Fund and the text of which is set out in Part I of Schedule 4, and in those provisions references to the Liability Convention are references to the Liability Convention within the meaning of this Chapter.

(2) A certificate given by the Director of the Fund stating that subparagraph (c) of paragraph 4 of Article 4 of the Fund Convention is applicable to any claim under section 354 shall be conclusive evidence for the purposes of this Chapter that it is so applicable.

(3) For the purpose of giving effect to paragraphs 4 and 5 of Article 4 of the Fund Convention, the Court giving judgement against the Fund in proceedings under section 354 shall notify the Fund, and

- (a) no steps shall be taken to enforce the judgement unless and until the Court gives leave to enforce it;
- (b) that leave shall not be given unless and until the Fund notifies the Court either that the amount of the claim is not to be reduced under those paragraphs, or that it is to be reduced to a specified amount, and
- (c) in the latter case the judgement shall be enforceable only for the reduced amount.

(4) Any steps taken to obtain payment of an amount or a reduced amount in pursuance of such a judgement as is mentioned in subsection (3) shall be steps to obtain payment in the currency of the United States dollars, and

- (a) for the purpose of converting such an amount from special drawing rights into dollars one special drawing right shall be treated as equal to such a sum in dollars as the International Monetary Fund have fixed as being the equivalent of one special drawing right for
 - (i) the relevant day, namely the day on which the Assembly of the Fund decide the date for the first payment of compensation in respect of the incident, or
 - (ii) if no sum has been fixed for the relevant day, the last day before that day for which a sum has been so fixed; and
- (b) a certificate given by or on behalf of the Minister stating
 - (i) that a particular sum in dollars has been so fixed for the relevant day, or
 - (ii) that no sum has been so fixed for the relevant day and that a particular sum in dollars has been so fixed for a day which is the last day for which a sum has been so fixed before the relevant day,

shall be conclusive evidence of those matters for the purposes of this Chapter.

(5) The Governor in Council may by Order make such amendments to this section and Part I of Schedule 4 as may be appropriate for the purpose of implementing any amendment in force of the provisions set out in that Schedule.

(6) Any document purporting to be such a certificate as is mentioned in subsection (2) or (4) (b) shall, in any legal proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

(7) An order made under subsection (5) is subject to a negative resolution of the Legislative Council.

Supplemental

Jurisdiction and effect of judgements

356. (1) Where in accordance with rules of court made for the purposes of this subsection the Fund has been given notice of proceedings brought against an owner or guarantor in respect of liability under section 333, any judgement given in the proceedings shall, after it has become final and enforceable, become binding upon the Fund in the sense that the facts and evidence in the judgement may not be disputed by the Fund even if the Fund has not intervened in the proceedings.

(2) Where a person incurs a liability under the law of a Fund Convention country corresponding to Chapter I of this Part for damage which is partly in the territory of the Virgin Islands, subsection (1) shall, for the purpose of proceedings under this Chapter, apply with any necessary modifications to a judgement in proceedings under that law of the said country.

(3) Subject to subsection (4), any judgement given by a Court in a Fund Convention country to enforce a claim in respect of liability incurred under any provision corresponding to section 354 shall be enforceable by the Court in the Virgin Islands.

(4) No steps shall be taken to enforce such a judgement unless and until the Fund notifies the Court either that the amount of the claim is not to be reduced under paragraph 4 of Article 4 of the Fund Convention (as set out in Part I of Schedule 4) or that it is to be reduced to a specified amount;

Schedule 4

and in the latter case, the judgement shall be enforceable only for the reduced amount.

357. (1) No action to enforce a claim against the Fund under this Chapter shall be entertained by the Court in the Virgin Islands unless Extinguishment of claims

- (a) the action is commenced, or
- (b) a third party notice of an action to enforce a claim against the owner or his guarantor in respect of the same damage is given to the Fund, not later than three years after the claim against the Fund arose.

(2) In subsection (1), “third party notice” means a notice of the kind described in section 356 (1) and (2).

(3) No action to enforce a claim against the Fund under this Chapter shall be entertained by the Court in the Virgin Islands unless the action is commenced not later than six years after the occurrence, or first of the occurrences, resulting in the discharge or escape, or, as the case may be, in the relevant threat of contamination, by reason of which the claim against the Fund arose.

358. (1) In respect of any sum paid by the Fund as compensation for pollution damage the Fund shall acquire by subrogation any rights in respect of the damage which the recipient has, or, but for the payment would have, against any other person. Subrogation

(2) In respect of any sum paid by a public authority in the Virgin Islands as compensation for pollution damage, that authority shall acquire by subrogation any rights which the recipient has against the Fund under this Chapter.

359. (1) Any proceedings by or against the Fund may either be instituted by or against the Fund in its own name or be instituted by or against the Director of the Fund as the Fund’s representative. Supplementary provisions as to proceedings involving the Fund

(2) Evidence of any instrument issued by any organ of the Fund or of any document in the custody of the Fund, or any entry in or extract from such a document, may be given in any legal proceedings by production of a copy certified as a true copy by an official of the Fund, and any document purporting to be such a copy shall, in any such proceedings, be received in evidence without proof of the official position or handwriting of the person signing the certificate.

Meaning of “the Liability Convention”, “the Fund Convention” and related expressions

360. (1) In this Chapter,
- (a) “the Liability Convention” has the same meaning as in Chapter I of this Part;
 - (b) “the Fund Convention” means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992;
 - (c) “the Fund” means the International Fund established by the Fund Convention; and
 - (d) “Fund Convention country” means a country in respect of which the Fund Convention is in force.

(2) If Her Majesty by Order declares that any State specified in the Order is a party to the Fund Convention in respect of any country so specified, the Order shall, while in force, for the purposes of this Part be conclusive evidence that that State is a party to that Convention in respect of that country.

CHAPTER III

TRANSITIONAL PROVISIONS

Interpretation

361. In this Chapter, unless the context otherwise requires,
- “the 1969 Liability Convention” means the International Convention on Civil Liability for Oil Pollution Damage signed in Brussels in 1969, as amended by the Protocol signed in London in 1976;
 - “the 1992 Liability Convention” has the same meaning as “the Liability Convention” in Chapter I of this Part;
 - “the 1971 Fund Convention” means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage opened for signature in Brussels on 18th December 1971, as amended by the Protocol signed in London in 1976;
 - “the 1992 Fund Convention” has the same meaning as “the Fund Convention” in Chapter II of this Part.

362. The following transitional provisions shall apply in reference to Article XII bis of the 1992 Liability Convention when at the time of an incident both the 1992 Liability Convention and the 1969 Liability Convention, are applicable to the Virgin Islands, namely,

Re Art XII bis of the
1992 Liability
Convention

- (a) where an incident has caused pollution damage within the scope of sections 332 to 350 liability under sections 332 to 350 shall be deemed to be discharged if, and to the extent that, it also arises under sections 332 to 350 in Schedule 2;
Schedule 2;
- (b) where an incident has caused pollution damage within the scope of sections 332 to 350 and both the 1992 Liability Convention and the 1971 Fund Convention are applicable to the Virgin Islands, liability remaining to be discharged after the application of paragraph (a) shall arise under sections 332 to 350 only to the extent that pollution damage remains uncompensated after application of sections 351 to 360 in Schedule 2;
- (c) subsection (1) (a) and (b) (i) of section 336 refers to liability under section 333 or under section 333 in Schedule 2, as appropriate and subsection (1) (a) and (b) (ii) of section 336 applies to the persons referred to in section 336(2) or section 336(3) in Schedule 2, as appropriate;
- (d) in the application of section 338, the total sum of the fund to be constituted shall be reduced by the amount by which liability has been deemed to be discharged in accordance with paragraph (a) of this section.

363. The following transitional provisions shall apply in reference to Article 36 bis of the 1992 Fund Convention until that Article ceases to have effect, namely,

Re Article 36 bis of the
1992 Fund Convention

- (a) in the application of section 354, the reference therein to “full compensation under section 333” shall be construed as including compensation payable under the 1969 Liability Convention as well as the 1971 Fund Convention ;
- (b) where an incident has caused pollution damage within the scope of sections 351 to 360, the Fund shall pay compensation to any person suffering pollution damage only if, and to the extent that, such person has been unable to obtain full and adequate compensation for the damage under the terms of sections 332 to 350, and sections 332 to 360 of Schedule 2, provided that, in respect of a state which

is a party to the 1992 Fund Convention but is not a party to the 1971 Fund Convention, the Fund shall pay compensation to any person suffering pollution damage only if, and to the extent that, such person would have been unable to obtain full and adequate compensation had that state been party to each of the 1969 Liability Convention, the 1992 Liability Convention and the 1971 Fund Convention;

Schedule 3

(c) in the application of Part I of Schedule 3, the amount to be taken into account in determining the aggregate amount of compensation payable by the Fund shall also include the amount of compensation actually paid under sections 332 to 350 of

Schedule 2

Schedule 2, if any, and the amount of compensation actually paid or deemed to have been paid under sections 351 to 360 of Schedule 2;

(d) section 358 (1) shall also apply to the rights enjoyed under sections 332 to 350 as set out in Schedule 2.

Application of provisions of Sch.2 and Part II of Sch. 4

364. The provisions of Schedule 2 and Part II of Schedule 3 shall have effect for the purposes of sections 362 and 363.

PART XV

LIABILITY OF SHIP OWNERS AND OTHERS

CHAPTER 1

CARRIAGE OF PASSENGERS AND LUGGAGE BY SEA

Interpretation

365. (1) In this Chapter, unless the context otherwise requires,

"cabin luggage" means luggage which the passenger has in his cabin or is otherwise in his possession, custody or control, and includes, except for the purposes of subsection (2) and section 372, luggage which the passenger has in or on his vehicle;

"carriage" has the meaning assigned to it in subsection (2);

"carrier" means a person by or on behalf of whom a contract of carriage has been concluded, whether the carriage is actually performed by him or by a performing carrier;

"contract of carriage" means a contract made by or on behalf of a carrier for the carriage by sea of a passenger or of a passenger and his luggage, as the case may be, but does not include a contract of carriage which is not for reward;

"Convention" means the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974 as amended;

"international carriage" means any carriage in which, according to the contract of carriage, the place of departure and the place of destination are situated in two different states, or in a single state if, according to the contract of carriage or the scheduled itinerary, there is an intermediate port of call in another state;

"loss of or damage to luggage" includes pecuniary loss resulting from the luggage not having been redelivered to the passenger within a reasonable time after the arrival of the ship on which the luggage has been or should have been carried, but does not include delays resulting from labour disputes;

"luggage" means any article or vehicle carried by the carrier under a contract of carriage, but does not include

- (a) articles and vehicles carried under a charter party, bill of lading or other contract primarily concerned with the carriage of goods; and
- (b) live animals;

"passenger" means any person carried in a ship

- (a) under a contract of carriage; or
- (b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by any contract for the carriage of goods;

"performing carrier" means a person other than the carrier, being the owner, charterer or operator of a ship, who actually performs the whole or a part of the carriage;

"ship" means a sea-going vessel, but does not include an air-cushion vehicle;

(2) For the purposes of this Part, "carriage" covers the following periods:

- (a) with regard to the passenger and his cabin luggage, the period during which the passenger and his cabin luggage are on board the ship or in the course of embarkation or disembarkation, and the period during which the passenger and his cabin luggage are transported by water between land and ship, if the cost of such transportation is included in the fare or if the vessel used for the purpose of auxiliary transportation has been put at the disposal of the passenger by the carrier;
- (b) with regard to the passenger, the period referred to in paragraph (a) but not including the period during which the passenger is in a marine terminal or station or on a quay or in or on any other port installation;
- (c) with regard to cabin luggage, the period referred to in paragraph (a) as well as the period during which the passenger is in a marine terminal or station or on a quay or in or on any other port installation if that luggage has been taken over by the carrier or his servant or agent and has not been redelivered to the passenger; and
- (d) with regard to luggage other than cabin luggage, the period from the time it is taken over by the carrier or his servant or agent ashore or on board until the time it is redelivered by the carrier or his servant or agent.

Application

366. (1) Subject to subsection (2), where a dispute concerning the carriage of passengers and their luggage by sea is brought before the Court, this Chapter shall apply to any international carriage if

- (a) the ship is flying the flag of or is registered in a state party to the Convention;
- (b) the contract of carriage has been made in a state party to the Convention; or
- (c) the place of departure or destination according to the contract of carriage, is in a state party to the Convention.

(2) This Part shall not be applicable where the carriage is subject to the provisions of any other international convention concerning civil liability with

respect to the carriage of passengers or luggage by another mode of transportation, in so far as those provisions have mandatory application to carriage by sea.

(3) For the purposes of subsection (2), provisions of such an international convention as is mentioned in that subsection which do not have mandatory application to carriage by sea shall be treated as having mandatory application to carriage by sea if it is stated in the contract of carriage for the carriage in question that those provisions are to apply in connection with the carriage.

367. (1) The carrier shall be liable for the damage suffered as a result of the death of or personal injury to a passenger and the loss of or damage to luggage if the incident which caused the damage so suffered occurred in the course of the carriage and was due to the fault or neglect of the carrier or of his servants or agents acting within the scope of their employment.

Liability of the carrier

(2) Subject to subsections (3) and (4), the claimant shall carry the burden of proving

- (a) that the incident which caused the loss or damage occurred in the course of the carriage, and the extent of such loss or damage;
- (b) fault or neglect on the part of the carrier or of his servants or agents acting within the scope of their employment.

(3) Where the death of or personal injury to the passenger, or the loss of or damage to cabin luggage arose from or in connection with the shipwreck, collision, stranding, explosion or fire, or defect in the ship, there shall be a presumption of fault or neglect on the part of the carrier or his servants or agents acting within the scope of their employment, unless there is proof to the contrary.

(4) In respect of loss of or damage to luggage other than cabin luggage, there shall be a presumption of fault or neglect on the part of the carrier or his servants or agents acting within the scope of their employment, irrespective of the nature of the incident which caused the loss or damage, unless there is proof to the contrary.

368. Where the performance of the carriage or part thereof has been entrusted to a performing carrier, the following rules shall apply:

Performing carrier

- (a) subject to paragraphs (b), (c), (d) and (e), the carrier shall be liable under this Chapter for the entire carriage, and in relation to the

carriage performed by the performing carrier, shall be liable for the acts and omissions of the performing carrier and of his servants and agents acting within the scope of their employment;

- (b) subject to paragraphs (a), (c), (d) and (e), the performing carrier shall be subject and entitled to the provisions of this Chapter for the part of the carriage performed by him;
- (c) any special agreement, under which the carrier assumes obligations not imposed by this Chapter or any waiver of rights conferred by this Part, shall not affect the performing carrier unless the performing carrier so agrees expressly and in writing;
- (d) where, and to the extent that, both the carrier and the performing carrier are liable, their liability shall be joint and several; and
- (e) nothing in this section shall prejudice any right of recourse as between the carrier and the performing carrier.

Valuables

369. The carrier shall not be liable for the loss of or damage to monies, negotiable securities, gold, silverware, jewellery, ornaments, works of art, or other valuables, except where such valuables have been deposited with the carrier for the agreed purpose of safe-keeping in which case the carrier shall be liable up to the limit provided for in section 372.

Contributory fault

370. Where the carrier proves that the death of or personal injury to a passenger, or the loss of or damage to his luggage was caused or contributed to by the fault or neglect of the passenger, the carrier may be exonerated wholly or partly from liability in accordance with the laws of the Virgin Islands.

Limits of liability for death or personal injury

371. (1) With respect to limits of liability of the carrier for death or personal injury, the following rules shall apply:

- (a) subject to paragraphs (b), (c) and (d), liability for the death of or personal injury to a passenger shall not exceed 46,666 special drawing rights per carriage;
- (b) where damages are awarded in the form of periodical income payments, the equivalent capital value of those payments shall not exceed the limits prescribed in paragraph (a);
- (c) interest on damages and legal costs shall not be included in the limits of liability prescribed in paragraphs (a) and (b); and

- (d) the carrier and the passenger may agree, expressly and in writing, to limits of liability higher than those prescribed in paragraphs (a) and (b).

(2) Notwithstanding subsection (1)(a), the Governor in Council may by Order provide for a limit of liability higher than that provided for in subsection (1)(a) for a carrier whose principal place of business is in the Virgin Islands.

372. With respect to limits of liability of the carrier for the loss of or damage to luggage, the following rules shall apply:

Limits of liability for loss of or damage to luggage

- (a) subject to paragraphs (b) and (c), the liability of the carrier shall not exceed the limits herein prescribed, that is to say,
 - (i) for the loss of or damage to cabin luggage, 833 special drawing rights per passenger, per carriage;
 - (ii) for the loss of or damage to vehicles including all luggage carried in or on the vehicle, 3,333 special drawing rights per vehicle, per carriage;
 - (iii) for the loss of or damage to luggage other than those mentioned in subparagraphs (i) and (ii), 1,200 special drawing rights per passenger, per carriage;
- (b) the carrier and the passenger may agree
 - (i) that the liability of the carrier shall be subject to a deduction not exceeding 117 special drawing rights in the case of damage to a vehicle, and not exceeding 13 special drawing rights per passenger in the case of loss of or damage to other luggage, such sum to be deducted from the loss or damage;
 - (ii) expressly and in writing, to limits of liability higher than those prescribed in paragraph (a); and
- (c) interest on damages and legal costs shall not be included in the limits of liability prescribed in paragraph (a).

373. (1) For the purpose of converting from special drawing rights into dollars, the amounts mentioned in sections 371 and 372 in respect of which a judgement is given, one special drawing right shall be treated as equal to such a sum in dollars as the International Monetary Fund have fixed as being the equivalent of one special drawing right for

Special drawing right and conversion

- (a) the day on which the judgement is given; or

- (b) if no sum has been so fixed for that day, the last day before that day for which a sum has been so fixed.

(2) A certificate given by or on behalf of the Minister stating

- (a) that a particular sum in dollars has been fixed as mentioned in subsection (1) for a particular day, or
- (b) that no sum has been so fixed for that day and a particular sum in dollars has been so fixed for a day which is the last day for which a sum has been so fixed before the particular day,

shall be conclusive evidence of those matters for the purposes of sections 371 and 372 and a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

Defences and limits for carriers, servants

374. If an action is brought against a servant or agent of the carrier or of the performing carrier arising out of damage covered by this Part, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the defences and limits of liability which the carrier or the performing carrier is entitled to invoke under this Chapter.

Aggregation of claims

375. (1) Where the limits of liability prescribed in sections 371 and 372 take effect, they shall apply to the aggregate of the amounts recoverable in all claims arising out of the death of or personal injury to any one passenger or the loss of or damage to his luggage.

(2) In relation to the carriage performed by a performing carrier, the aggregate of the amounts recoverable from the carrier and the performing carrier and from their servants and agents acting within the scope of their employment shall not exceed the highest amount which could be awarded against either the carrier or the performing carrier under this Part, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.

(3) In any case where a servant or agent of the carrier or of the performing carrier is entitled under section 374 to avail himself of the limits of liability prescribed in sections 371 and 372, the aggregate of the amounts recoverable from the carrier, or the performing carrier, as the case may be, and from that servant or agent, shall not exceed those limits.

(4) For the avoidance of doubt, it is hereby declared that the limitations on liability mentioned in this section in respect of a passenger or his luggage apply to the aggregate liabilities of the persons in question in all proceedings for enforcing the liabilities or any of them which may be brought whether in the Virgin Islands or elsewhere.

376. (1) The carrier shall not be entitled to the benefit of the limits of liability prescribed in sections 371 and 372, if it is proved that the damage resulted from an act or omission of the carrier done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

Loss of right to limit liability.

(2) The servant or agent of the carrier or of the performing carrier shall not be entitled to the benefit of those limits if it is proved that the damage resulted from an act or omission of that servant or agent done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

377. No action for damages for the death of or personal injury to a passenger, or for the loss of or damage to luggage, shall be brought against a carrier or performing carrier otherwise than in accordance with this Chapter.

Basis for claim

378. (1) The passenger shall give written notice to the carrier or his agent,

- (a) in the case of apparent damage to luggage
 - (i) for cabin luggage, before or at the time of disembarkation of the passenger;
 - (ii) for all other luggage, before or at the time of its re-delivery;
- (b) in the case of damage to luggage which is not apparent, or loss of luggage, within fifteen days from the date of disembarkation or re-delivery or from the time when such re-delivery should have taken place.

Notice of loss or damage to luggage

(2) If the passenger fails to comply with this section, he shall be presumed, unless the contrary is proved, to have received the luggage undamaged.

(3) The notice in writing need not be given if the condition of the luggage has at the time of its receipt been the subject of joint survey or inspection.

Time-bar for actions

379. (1) Subject to subsections (2), (3) and (4), any action for damages arising out of the death of or personal injury to a passenger, or for the loss of or damage to luggage, shall be time-barred after a period of two years.

(2) The limitation period shall be calculated as follows:

- (a) in the case of personal injury, from the date of disembarkation of the passenger;
- (b) in the case of death occurring during carriage, from the date when the passenger should have disembarked, and in the case of personal injury occurring during carriage and resulting in the death of the passenger after disembarkation, from the date of death, provided that this period shall not exceed three years from the date of disembarkation; and
- (c) in the case of loss of or damage to luggage, from the date of disembarkation or from the date when disembarkation should have taken place, whichever is later.

(3) The Court may at its discretion determine the suspension and interruption of limitation periods, but in no case shall an action under this Chapter be brought after the expiration of a period of three years from the date of disembarkation of the passenger or from the date when disembarkation should have taken place, whichever is later.

(4) Notwithstanding subsections (1), (2) and (3), the period of limitation may be extended by a declaration in writing of the carrier or by agreement in writing of the parties after the cause of action has arisen.

Competent jurisdiction

380. (1) Proceedings under this Chapter may be brought before the Court by a claimant if

- (a) the permanent residence or principal place of business of the claimant or the defendant is situated in the Virgin Islands;
- (b) the place of departure or destination according to the contract of carriage is in the Virgin Islands; or
- (c) the contract of carriage was entered into in the Virgin Islands and the defendant has a place of business in, and is subject to, the jurisdiction of the Virgin Islands.

(2) After the occurrence of the incident causing the damage, subject to agreement by the parties, the claim for damages may be submitted to arbitration, and section 379 shall, in such case, apply to an arbitration as it applies to an action.

(3) The Court before which proceedings are brought in pursuance of subsection (1) to enforce a liability which is limited by virtue of section 375 may, at any stage of the proceedings, make such orders as appear to the Court to be just and equitable in view of the provisions of section 375 and of any other proceedings which have been or are likely to be begun in the Virgin Islands or elsewhere to enforce the liability in whole or in part.

(4) Without prejudice to the generality of the provisions of subsection (3), the Court shall, where the liability is or may be partly enforceable in other proceedings in the Virgin Islands or elsewhere, have jurisdiction to award an amount less than the Court would have awarded if the limitation applied solely to the proceedings before the Court or to make any part of its award conditional on the results of any other proceedings.

381. Any contractual provisions concluded before the occurrence of the incident which has caused the death of or personal injury to a passenger or the loss of or damage to his luggage, purporting to relieve the carrier of his liability towards the passenger or to prescribe a lower limit of liability than that fixed in this Chapter, except as provided in sub-paragraph (b)(i) of section 372, and any such provision purporting to shift the burden of proof which rests on the carrier, or having the effect of restricting the application of subsection (1) of section 380, shall be null and void, but the nullity of that provision shall not render void the contract of carriage which shall remain subject to the provisions of this Chapter.

Invalidity of contractual provisions

382. This Chapter shall not modify the rights or duties of the carrier, the performing carrier and their servants or agents provided for in international conventions applicable to the Virgin Islands or any other law of the Virgin Islands relating to the limitation of liability of owners of sea-going ships.

Application of other limitation regimes

383. No liability shall arise under this Chapter for damage caused by a nuclear incident if liability arises under an international convention relating to nuclear damage applicable to the Virgin Islands, or any other law of the Virgin Islands relating to nuclear damage.

Nuclear damage

Commercial carriage by state-owned ships	384. This Chapter shall apply to commercial carriage undertaken by ships owned by the Government or a public authority under contracts of carriage within the meaning of section 365.
States party to Convention	385. If Her Majesty by Order declares that any State specified in the Order is a party to the Convention in respect of a particular country the Order shall, subject to the provisions of any subsequent Order made by virtue of this section, be conclusive evidence for the purposes of this Chapter that the State is a party to the Convention in respect of that country.
Carrier's obligation to give notice to passengers	386. The Governor in Council may by Order make provision for <ul style="list-style-type: none"> (a) requiring a person who is the carrier in relation to a passenger to give to the passenger, in a manner specified in the Order, notice of such of the provisions of this Chapter as are so specified; (b) a person who fails to comply with a requirement imposed on him by the Order to be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale or not exceeding a lesser amount.
Application of section 412(4)	387. Nothing in this Chapter affects the operation of section 412(4) which limits a shipowner's liability in certain cases of loss of life, injury or damage.
Limitation of section 413	388. Nothing in section 413 which, among other things, limits a shipowner's liability for the loss of or damage to goods in certain cases, shall relieve a person of any liability imposed on him by this Chapter.

CHAPTER II

LIMITATION AND DIVISION OF LIABILITY FOR MARITIME CLAIMS

Interpretation	389. In this Chapter, unless the context otherwise requires,
Act No. 12 of 1990	“Ports Authority” means the British Virgin Islands Ports Authority established under the British Virgin Islands Ports Authority Act, 1990;

“ship” includes any structure (whether completed or in the course of completion) launched and intended for use in navigation as a ship or part of a ship;

“shipowner” includes charterer, manager or operator of a ship;

“salvage services” means services rendered in direct connection with salvage operations;

“salvor” means any person rendering salvage services;

“salvage operation” includes the operations referred to in paragraphs (d), (e) and (f) of section 391 (1).

390. (1) Shipowners and salvors may limit their liabilities in accordance with this Chapter.

Persons entitled to limit liability

(2) An insurer of liability for claims subject to limitation under this Chapter shall be entitled to the benefit of limitation to the same extent as the assured.

(3) A person for whose act, neglect or default the shipowner or salvor is responsible may limit his liability under this Chapter.

391. (1) Subject to sections 392 and 393, the following claims shall be subject to limitation of liability regardless of the basis of liability:

Claims subject to limitation

- (a) claims in respect of loss of life or personal injury or loss of or damage to property, including damage to harbour works, basins and waterways and aids to navigation, occurring on board or in direct connection with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;
- (b) claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;
- (c) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or salvage operations;
- (d) claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship;

- (e) claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship; and
- (f) claims of a person other than the person liable in respect of measures taken in order to avert or minimise loss for which the person liable may limit his liability in accordance with this Chapter, and further loss caused by such measures.

(2) The claims referred to in subsection (1) shall be subject to limitation of liability even if brought by way of recourse or for indemnity under a contract or otherwise, but the claims referred to in paragraphs (d), (e) and (f) of subsection (1) shall not be subject to limitation to the extent that they relate to remuneration under a contract with the person liable.

(3) Subsection 1 (d) shall not apply unless provision has been made by an Order of the Governor in Council for the setting up and management of a fund to be used for the making to the Ports Authority of payments needed to compensate it for the reduction, in consequence of subsection (1) (d), of amounts recoverable by dues or levies collected by the Ports Authority in respect of vessels in like manner as other sums raised by it.

(4) Any Order under subsection (3) may contain such incidental and supplemental provisions as appear to the Governor in Council to be necessary or expedient.

Invoking limitation not an admission of liability

392. For the purposes of this Chapter, the liability of a shipowner shall include liability in an action against his ship, and the act of invoking limitation shall not constitute an admission of liability.

Claims excepted from limitation

393. Limitation of liability under this Chapter shall not apply to the following claims:

- (a) claims for salvage under section 302 and corresponding claims under a contract;
- (b) claims for contribution in general average;
- (c) claims by servants of the shipowner or salvor whose duties are connected with the ship or the salvage operations, including claims of their heirs, dependants or other persons entitled to make such claims, if under the contract of service between the shipowner or salvor and such servants the shipowner or salvor is not entitled to

limit his liability in respect of such claims, or if he is under such contract only permitted to limit his liability to an amount greater than that provided for in section 396;

- (d) claims for oil pollution damage in respect of any liability incurred under section 333;
- (e) claims subject to any law applicable in the Virgin Islands governing or prohibiting limitation of liability for nuclear damage; and
- (f) claims against the shipowner of a nuclear ship for nuclear damage.

394. A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

Conduct barring
limitation

395. Where a person entitled to limitation of liability under this Chapter has a claim against the claimant arising out of the same occurrence, their respective claims shall be set off against each other and the provisions of this Chapter shall only apply to the balance, if any.

Counter claims

396. The limits of liability for claims other than those provided for in section 401, arising on any distinct occasion, shall be calculated as follows:

Limitation calculations

- (a) in respect of claims for loss of life or personal injury,
 - (i) 166,667 special drawing rights for a ship with a tonnage not exceeding 300 tons;
 - (ii) 333,000 special drawing rights for a ship with a tonnage from 301 tons to 500 tons; or
 - (iii) for a ship with a tonnage in excess of 500 tons, the following amount in addition to that mentioned in sub-paragraph (ii):
 - (aa) for each ton from 501 to 3,000 tons, 500 special drawing rights;
 - (bb) for each ton from 3,001 to 30,000 tons, 333 special drawing rights;
 - (cc) for each ton from 30,001 to 70,000 tons, 250 special drawing rights; and
 - (dd) for each ton in excess of 70,000 tons, 167 special drawing rights.,
- (b) in respect of any other claims,

- (i) 83,333 special drawing rights for a ship with a tonnage not exceeding 300 tons;
- (ii) 167,000 special drawing rights for a ship with a tonnage from 301 tons to 500 tons;
- (iii) for a ship with a tonnage in excess of 500 tons, the following amount in addition to that mentioned in sub-paragraph (ii):
 - (aa) for each ton from 501 to 30,000 tons, 167 special drawing rights;
 - (bb) for each ton from 30,001 to 70,000 tons, 125 special drawing rights; and
 - (cc) for each ton in excess of 70,000 tons, 83 special drawing rights.

Limits of liability for salvors

397. The limits of liability for any salvor not operating from any ship or for any salvor operating solely on the ship to, or in respect of, which he is rendering salvage services, shall be calculated according to a tonnage of 1,500 tons.

Limitation calculations for fixed claims

398. Where the amount calculated in accordance with paragraph (a) of section 396 is insufficient to pay the claims mentioned therein in full, the amount calculated in accordance with paragraph (b) of section 396 shall be available for payment of the unpaid balance of claims under paragraph (a) of section 396 and such unpaid balance shall rank rateably with claims mentioned under paragraph (b) of section 396.

Measurement of ship's tonnage

399. For the purposes of this Chapter, a ship's tonnage shall be her gross tonnage calculated in accordance with the Tonnage Regulations made under section 50.

Limitation of liability of dock owners and the British Virgin Islands Ports Authority

400. (1) This section applies in relation to the Ports Authority and the owners of any dock.

(2) The liability of the Ports Authority or any person to which this section applies for any loss or damage caused to any ship, or to any goods, merchandise or other things on board any ship shall be limited in accordance with subsection (5) by reference to the tonnage of the largest Virgin Islands ship which, at the time of the loss or damage is, or within the preceding five years has been, within the area over which the Ports Authority or person discharges any functions.

(3) The limitation of liability under this section relates to the whole of any loss and damage which may arise on any one distinct occasion, although such loss and damage may be sustained by more than one person, and shall apply whether the liability arises at common law or under any enactment, and notwithstanding anything contained therein.

(4) This section does not exclude the liability of the Ports Authority or any person to which it applies for any loss or damage resulting from any such personal act or omission of the Ports Authority or person as is mentioned in section 394.

(5) The limit of liability shall be ascertained by applying to the ship by reference to which the liability is to be determined, the method of calculation specified in section 396 (b) read with section 399.

(6) Sections 404 and 405 shall apply for the purposes of this section.

(7) For the purposes of subsection (2), a ship shall not be treated as having been within the area over which the Ports Authority discharges any functions by reason only that it has been built or fitted out within the area, or that it has taken shelter within or passed through the area on a voyage between two places both situated outside that area, or that it has loaded or unloaded mail or passengers within the area.

(8) Nothing in this section imposes any liability for any loss or damage where no liability exists apart from this section.

(9) In this section,

“dock” includes wet docks and basins, tidal docks and basins, locks, cuts, entrances, dry docks, graving docks, slips, quays, wharves, piers, stages, landing places and jetties; and

“owners of any dock” includes any authority or person having the control and management of any dock.

401. (1) In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner thereof shall be an amount of 46,666 special drawing rights multiplied by the number of

Limits for passenger claims

passengers which the ship is authorised to carry according to the ship's certificate, but not exceeding 25,000,000 special drawing rights.

(2) For the purpose of this section, "claims for loss of life or personal injury to passengers of a ship" shall mean any such claims brought by or on behalf of any person carried in that ship

- (a) under a contract of passenger carriage; or
- (b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods.

(3) In the case of a ship for which there is in force a Passenger Ship Safety Certificate or Passenger Certificate, as the case may be, issued under or recognised by this Act, the ship's certificate mentioned in subsection (1) shall be that certificate.

Conversion of special drawing rights

402. (1) For the purpose of converting the amounts mentioned in sections 396, 397, 398 and 401 from special drawing rights into dollars, one special drawing right shall be treated as equal to such a sum in dollars as the International Monetary Fund have fixed as being the equivalent of one special drawing right for

- (a) the date the limitation fund shall have been constituted, payment is made, or security is given under section 404; or
- (b) if no sum has been so fixed for that date, the last preceding date for which a sum has been so fixed.

(2) A certificate given by or on behalf of the Minister stating

- (a) that a particular sum in dollars has been fixed as mentioned in subsection (1) for a particular date, or
- (b) that no sum has been so fixed for that date and that a particular sum in dollars has been so fixed for a date which is the last preceding date for which a sum has been so fixed,

shall be conclusive evidence of those matters for the purposes of those sections and a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

Aggregation of claims

403. (1) The limits of liability determined in accordance with sections 396, 397 and 398 shall apply to the aggregate of all claims which arise on any distinct occasion

- (a) against the shipowner and any person for whose act, neglect or default he or they are responsible;
- (b) against the shipowner of a ship rendering salvage services from that ship and the salvor or salvors operating from such ship and any person for whose act, neglect or default he or they are responsible;
or
- (c) against the salvor or salvors who are not operating from a ship or who are operating solely on the ship to, or in respect of which, the salvage services are rendered and any person for whose act, neglect or default he or they are responsible.

(2) The limits of liability determined in accordance with section 401 shall apply to the aggregate of all claims subject thereto which may arise on any distinct occasion against the shipowner in respect of the ship referred to in section 401 and any person for whose act, neglect or default he may be responsible.

404. (1) Any person alleged to be liable and seeking to limit his liability under this Part may constitute a fund by depositing with the Court an amount at least equivalent to the limit provided for in section 396 or section 401 as appropriate, or by producing a guarantee acceptable by the Court, together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund, and the fund so constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.

Constitution of
limitation fund

(2) A fund constituted by one of the persons mentioned in paragraph (a), (b) or (c) of section 403 (1) or his insurer, or by a person or his insurer in respect of section 403 (2), shall be deemed to have been constituted by all persons mentioned in paragraph (a), (b) or (c) of section 403 (1), or all persons in respect of section 403 (2), as the case may be.

(3) The Minister may determine the rate of interest to be applied for the purposes of subsection (1).

(4) Where a fund is constituted with the Court in accordance with this section for the payment of claims arising out of any occurrence, the Court may stay any proceedings relating to any claim arising out of that occurrence which are pending against the person by whom the fund has been constituted.

Distribution of fund

405. (1) Subject to sections 396, 398, and 401, the fund shall be distributed among the claimants in proportion to their established claims against the fund.

(2) The Court may proceed in such manner as to the exclusion of any claimants who do not come in within a certain time and as to payment of costs, as the Court thinks just.

(3) No lien or other right in respect of any ship or property shall affect the proportions in which any amount is distributed among several claimants.

(4) All sums paid for or on account of any loss or damage in respect whereof the liability of owners is limited under the provisions of this Chapter and all costs incurred in relation thereto may be brought into account among part owners of the same ship in the same manner as money disbursed for the use thereof.

(5) If, before the fund is distributed, the person liable, or his insurer, has settled the claim, such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Chapter.

(6) In making any distribution in accordance with this section the Court may, if it thinks fit, postpone the distribution of such part of the amount to be distributed as it deems appropriate having regard to any claims, subrogated or otherwise, that may be established later.

Bar to other actions

406. (1) Where a limitation fund has been constituted in accordance with section 404, any person having made a claim against the fund shall be barred from exercising any right in respect of such claim against any other assets of a person by or on behalf of whom the fund has been constituted.

(2) Where a ship or other property is attached or arrested in connection with a claim which appears to the Court to be founded on liability to which limitation is applicable under this Chapter, and in respect of which a fund has been constituted or a security or guarantee has been deposited, the Court shall order the release of the ship or property if the limitation fund has been constituted in the Virgin Islands or at

(a) the port where the occurrence took place, or, if it took place out of port, at the first port of call thereafter,

- (b) the port of disembarkation in respect of claims for loss of life or personal injury, or
- (c) the port of discharge in respect of damage to cargo,

but where the release is ordered, the person on whose application it is ordered shall be deemed to have submitted to the jurisdiction of the Court to adjudicate on the claim for which the ship or property was arrested or attached.

(3) Subsections (1) and (2) shall apply only if the claimant brings a claim before the Court and the limitation fund is actually available and freely transferable in respect of that claim.

407. Where a limitation fund is constituted in the Virgin Islands, the rules relating to its constitution and distribution, and all rules of procedure in connection therewith, shall be governed by the law of the Virgin Islands.

Governing law

408. (1) Where, by the fault of two or more ships, damage or loss is caused to one or more of those ships, to their cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each ship was at fault.

Apportionment of liability for damage or loss

(2) If, in any such case, having regard to all the circumstances, it is not possible to establish different degrees of fault, the liability shall be apportioned equally.

(3) This section applies to persons other than the owners of a ship who are responsible for the fault of the ship, as well as to the owners of a ship and where, by virtue of any charter or demise, or for any other reason, the owners are not responsible for the navigation and management of the ship, this section applies to the charterers or other persons for the time being so responsible instead of the owners.

(4) Nothing in this section shall operate so as to render any ship liable for any loss or damage to which the fault of the ship has not contributed.

(5) Nothing in this section shall affect the liability of any person under a contract of carriage or any contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of

law, or as affecting the right of any person to limit his liability in the manner provided by law.

(6) In this section “freight” includes passage money and hire.

(7) In this section references to damage or loss caused by the fault of a ship include references to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages.

Loss of life or personal injuries: joint and several liability

409. (1) Where loss of life or personal injuries are suffered by any person on board a ship owing to the fault of that ship and of any other ship or ships, the liability of the owners of the ships shall be joint and several.

(2) Subsection (3) of section 408 applies to this section.

(3) Nothing in this section shall be construed as depriving any person of any right of defence on which, apart from this section, he might have relied in an action brought against him by the person injured, or any person or persons entitled to sue in respect of such loss of life, or shall affect the right of any person to limit his liability in the manner provided by law.

(4) Subsection (7) of section 408 applies for the interpretation of this section.

Right of contribution for loss of life or personal injuries

410. (1) Where loss of life or personal injuries are suffered by any person on board a ship owing to the fault of that ship and any other ship or ships, and a proportion of the damages is recovered against the owners of one of the ships which exceeds the proportion in which the ship was in fault, they may recover by way of contribution the amount of the excess from the owners of the other ship or ships to the extent to which those ships were respectively at fault.

(2) Subsection (3) of section 408 applies to this section.

(3) Nothing in this section authorises the recovery of any amount which could not, by reason of any statutory or contractual limitation of, or exemption from, liability, or which could not for any other reason, have been recovered in the first instance as damages by the persons entitled to sue therefor.

(4) In addition to any other remedy provided by law, the persons entitled to any contribution recoverable under this section shall, for the purposes of recovering it, have the same rights and powers as the persons entitled to sue for damages in the first instance.

411. (1) This section applies to any proceedings to enforce any claim or lien against a ship or her owners

Time limit for proceedings against owners or ship

- (a) in respect of damage or loss caused by the fault of that ship to another ship, its cargo or freight or any property on board it; or
- (b) for damages for loss of life or personal injury caused by the fault of that ship to any person on board another ship.

(2) The extent of the fault is immaterial for the purposes of this section.

(3) Subject to subsections (5) and (6), no proceedings to which this section applies shall be brought after the period of two years from the date when

- (a) the damage or loss was caused; or
- (b) the loss of life or injury was suffered.

(4) Subject to subsections (5) and (6), no proceedings under any of sections 408 to 410 to enforce any contribution in respect of any overpaid proportion of any damages for loss of life or personal injury shall be brought after the period of one year from the date of payment.

(5) The Court may, in accordance with the rules of court, extend the period allowed for bringing proceedings to such extent and on such conditions as it thinks fit.

(6) The Court, if satisfied that there has not been during any period allowed for bringing proceedings, any reasonable opportunity of arresting the defendant ship within

- (a) the jurisdiction of the Court, or
- (b) the territorial sea of the country to which the plaintiff's ship belongs or in which the plaintiff resides or has his principal place of business,

shall extend the period allowed for bringing proceedings to an extent sufficient to give a reasonable opportunity of so arresting the ship.

Scope of application of Chapter

412. (1) Subject to subsection (3), this Chapter shall apply whenever any person referred to in section 390 seeks to limit his liability before the Court or seeks to procure the release of a ship or other property, or the discharge of any security given within the jurisdiction of the Virgin Islands.

(2) This Chapter shall apply in relation to Government ships as it applies in relation to other ships.

(3) In this section, "Government ships" means

- (a) ships of which the beneficial interest is vested in the Government;
- (b) ships which are registered as Government ships;
- (c) ships which are for the time being demised or sub-demised to or in the exclusive possession of the Government.

(4) This Chapter shall not apply to any liability in respect of loss of life or personal injury caused to, or loss of or damage to, any property of a person who is on board the ship in question or employed in connection with that ship, or with the salvage operations in question, if he is so on board or employed under a contract of service governed by the law of the Virgin Islands.

Exclusion of liability

413. (1) Subject to subsection (3), the owner of a Virgin Islands ship shall not be liable for any loss or damage in the following cases:

- (a) where any property on board the ship is lost or damaged by reason of fire on board the ship; or
- (b) where any gold, silver, watches, jewels or precious stones on board the ship are lost or damaged by reason of theft, robbery or other dishonest conduct and their nature and value were not at the time of shipment declared by their owner or shipper to the owner or master of the ship in the bill of lading or otherwise in writing.

(2) Subject to subsection (3), where the loss or damage arises from anything done or omitted by any person in his capacity as master or member of the crew or (otherwise than in that capacity) in the course of his employment as a servant of the owner of the ship, subsection (1) shall also exclude the liability of

- (a) the master, member of the crew or servant; and
- (b) in a case where the master or member of the crew is the servant of a person whose liability would not be excluded by that subsection apart from this paragraph, the person whose servant he is.

(3) This section does not exclude the liability of any person for any loss or damage resulting from any such personal act or omission of his as is mentioned in section 394.

(4) In this section “owner”, in relation to a ship, includes any part owner and any charterer, manager or operator of the ship.

PART XVI

ENFORCEMENT OFFICERS AND POWERS

Enforcement Officers

414. (1) The Governor shall appoint

- (a) the Director and may, in this regard, appoint different Directors (not exceeding two) for the purposes of the different Parts of this Act or any Regulations made thereunder; and
- (b) such other officers as surveyors of ships in connection with surveys of ships and other matters incidental thereto as he thinks fit.

Appointment of
Director, surveyors and
inspectors

(2) Subject to such conditions as the Director may impose, surveys and inspections of ships under this Act may be carried out by any corporation or society for the survey and classification of ships authorised by the Director, and in such instances the terms “surveyor” and “surveyor of ships” shall be construed to include such corporation or society.

(3) A surveyor of ships may be appointed as

- (a) a nautical surveyor;
- (b) a ship surveyor;
- (c) an engineer surveyor; or
- (d) any combination of (a), (b) and (c)

(4) Surveyors of ships may be appointed either generally or for any particular case or purpose.

(5) The Director may, if he thinks fit, appoint any person as an inspector

- (a) to report to him

- (i) upon the nature and causes of any accident or damage which any ship has or is alleged to have sustained or caused;
 - (ii) whether any requirements, restrictions or prohibitions imposed by or under this Act have been complied with or, as the case may be, contravened;
 - (iii) whether the hull and machinery of a ship are sufficient and in good condition;
- (b) for the purposes of sections 419 and 424.

(6) A surveyor appointed under this section may act as an inspector.

(7) In this Act, “surveyor of ships” means a surveyor appointed under this section, and the reference to requirements, restrictions or prohibitions under this Act includes any such requirements, restrictions or prohibitions constituting the terms of any approval, licence, consent or exemption given in any document issued under this Act.

Inspection, etc. Powers

Powers to require
production of ship's
documents

415. (1) The powers conferred by this section are conferred in relation to Virgin Islands ships and are available to

- (a) the Director,
- (b) a surveyor of ships,
- (c) any British consular officer,
- (d) the Registrar,
- (e) any customs officer,
- (f) the Superintendent,
- (g) a commissioned naval officer,

whenever the officer has reason to suspect that this Act or any law for the time being in force relating to merchant seamen or navigation is not complied with.

(2) Those powers are

- (a) to require the owner, master, or any member of the crew to produce any official log books or other documents relating to the crew or any member of the crew in their possession or control;

- (b) to require the master to produce a list of all persons on board his ship, and take copies of or extracts from the official log books or other such documents;
- (c) to muster the crew; and
- (d) to require the master to appear and give any explanation concerning the ship or her crew or the official log books or documents produced or required to be produced.

(3) If any person, on being duly required by an officer under this section to produce a log book or any document, fails without reasonable excuse to produce the log book or document, he commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) If any person, on being duly required by any officer under this section

- (a) to produce a log book or document, refuses to allow the log book or document to be inspected or copied,
- (b) to muster the crew, impedes the muster, or
- (c) to give any explanation, refuses or neglects to give the explanation or knowingly misleads or deceives the officer,

he commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

416. (1) For the purpose of seeing that the provisions of this Act and of regulations made under this Act or that the terms of any approval, licence, consent, direction or exemption given by virtue of such regulations are duly complied with, a surveyor of ships or the Superintendent may at all reasonable times go on board a ship and inspect the ship and its equipment or any part thereof, any articles on board and any document carried in the ship in pursuance of this Act, or regulations made under this Act.

Power to inspect ships
and their equipment

(2) The powers conferred by subsection (1) are, if the ship is a Virgin Islands ship, also exercisable outside the Virgin Islands and may be so exercised by a proper officer as well as the persons mentioned in that subsection.

(3) A person exercising powers under this section shall not unnecessarily detain or delay a ship but may, if he considers it necessary in consequence of an accident or for any other reason, require a ship to be taken into dock for a survey of its hull or machinery.

(4) Where any such person as is mentioned in subsection (1) has reasonable grounds for believing that there are on any premises provisions or water intended for supply to a Virgin Islands ship which, if provided on the ship, would not be in accordance with safety regulations containing requirements as to provisions and water to be provided on ships, he may enter the premises and inspect the provisions or water for the purpose of ascertaining whether they would be in accordance with the regulations.

(5) If any person obstructs a person in the exercise of his powers under this section, or fails to comply with a requirement made under subsection (3), he commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Powers of inspectors in relation to premises and ships

417. (1) The powers conferred by this section are conferred in relation to

- (a) any premises in the Virgin Islands, or
- (b) any Virgin Islands ship wherever it may be and any other ship which is present in the Virgin Islands or in Virgin Islands waters,

and are available to any inspector appointed under section 414 (6) or any surveyor acting as an inspector under section 414 (7), for the purpose of performing his functions.

(2) Such an inspector may

- (a) at any reasonable time or, in a situation which in his opinion is or may be dangerous, at any time
 - (i) enter any premises, or
 - (ii) board any ship,

if he has reason to believe that it is necessary for him to do so;

- (b) on entering any premises by virtue of paragraph (a) or on boarding a ship by virtue of that paragraph, take with him any other person authorised for the purpose by the Director, and any equipment or materials he requires;
- (c) make such examination and investigation as he considers necessary;
- (d) give a direction requiring that the premises or ship or any part of the premises or ship or any thing in the premises or ship or such a part shall be left undisturbed, whether generally or in particular respects, for so long as is reasonably necessary for the purposes of any examination or investigation under paragraph (c);

- (e) take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under paragraph (c);
- (f) take samples of any articles or substances found in the premises or ship and of the atmosphere in or in the vicinity of the premises or ship;
- (g) in the case of any article or substance which he finds in the premises or ship and which appears to him to have caused or to be likely to cause danger to health or safety, cause it to be dismantled or subjected to any process or test, but not so as to damage or destroy it unless that is in the circumstances necessary;
- (h) in the case of any such article or substance as is mentioned in paragraph (g), take possession of it and detain it for so long as is necessary for all or any of the following purposes:
 - (i) to examine it and do to it anything which he has power to do under that paragraph;
 - (ii) to ensure that it is not tampered with before his examination of it is completed;
 - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under this Act or any instrument made under it;
- (i) require any person who he has reasonable cause to believe is able to give any information relevant to any examination or investigation under paragraph (c),
 - (i) to attend at a place and time specified by the inspector;
 - (ii) to answer, in the absence of persons other than any persons whom the inspector may allow to be present and a person nominated to be present by the person on whom the requirement is imposed, such questions as the inspector thinks fit to ask; and
 - (iii) to sign a declaration of the truth of his answers;
- (j) require the production of, and inspect and take copies of, or of any entry in,
 - (i) any books or documents which by virtue of any provision of this Act are required to be kept; and
 - (ii) any other books or documents which he considers it necessary for him to see for the purposes of any examination or investigation under paragraph (c);

- (k) require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as the inspector considers are necessary to enable him to exercise any of the powers conferred on him by this subsection.

(3) Nothing in the preceding provisions of this section authorises a person unnecessarily to prevent a ship from proceeding on a voyage.

(4) The Governor in Council may by regulations make provision as to the procedure to be followed in connection with the taking of samples under subsection (2) (f) and subsection (7) and provision as to the way in which samples that have been so taken are to be dealt with.

(5) Where an inspector proposes to exercise the power conferred by subsection (2)(g) in the case of an article or substance found in any premises or ship, he shall, if so requested by a person who at the time is present in, and has responsibilities in relation to, the premises or ship, cause anything which is to be done by virtue of that power to be done in the presence of that person unless the inspector considers that its being done in that person's presence would be prejudicial to the safety of that person.

(6) Before exercising the power conferred by subsection (2)(g), an inspector shall consult such persons as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do under that power.

(7) Where under the power conferred by subsection (2)(h), an inspector takes possession of any article or substance found in any premises or ship, he shall leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that article or substance sufficient to identify it and stating that he has taken possession of it under that power, and before taking possession of any such substance under that power an inspector shall, if it is practicable for him to do so, take a sample of the substance and give to a responsible person at the premises or on board the ship a portion of the sample marked in a manner sufficient to identify it.

(8) No answer given by a person in pursuance of a requirement imposed under subsection (2) (i) shall be admissible in evidence against that person or the husband

or wife of that person in any proceedings except proceedings in pursuance of subsection (1)(c) of section 418 in respect of a statement in or a declaration relating to the answer, and a person nominated as mentioned in subsection (2)(i) shall be entitled, on the occasion on which the questions there mentioned are asked, to make representations to the inspector on behalf of the person who nominated him.

418. (1) A person who

Provisions
supplementary to section
417

- (a) intentionally obstructs an inspector in the exercise of any power available to him under section 417,
- (b) without reasonable excuse, does not comply with a requirement imposed in pursuance of section 417 or prevents another person from complying with such a requirement, or
- (c) without prejudice to the generality of paragraph (b), makes a statement or signs a declaration which he knows is false, or recklessly makes a statement or signs a declaration which is false, in purported compliance with a requirement made in pursuance of subsection (2)(i) of section 417,

commits an offence and is liable

- (i) on summary conviction to a fine not exceeding ten thousand dollars; or
- (ii) on conviction on indictment to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding one year, or both.

(2) Nothing in section 417 shall be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the Court.

(3) A person who complies with a requirement imposed on him in pursuance of paragraph (i), (j) or (k) of subsection (2) of section 417 shall be entitled to recover from the person who imposed the requirement such sums in respect of the expenses incurred in complying with the requirement as may be prescribed.

(4) Any payments under subsection (3) shall be made out of monies provided by the Legislative Council.

Improvement Notices and Prohibition Notices

Improvement notices

419. (1) If an inspector appointed under section 414 (6) or any surveyor acting as an inspector under section 414 (7) is of the opinion that a person

- (a) is contravening one or more of the relevant statutory provisions, or
- (b) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated,

he may serve on that person a notice under this section, (referred to in the following sections of this Part as an “improvement notice”).

(2) An improvement notice shall

- (a) state that the inspector is of the opinion referred to in subsection (1), specify the provision or provisions as to which he is of that opinion, and give particulars of the reasons why he is of that opinion; and
- (b) require the person on whom the notice is served to remedy the contravention in question or, as the case may be, the matters occasioning it within such period as may be specified in the notice.

(3) The period specified in pursuance of subsection (2)(b) shall not expire before the end of the period within which a notice can be given under section 422 requiring questions relating to the improvement notice to be referred to arbitration.

(4) In this and the following sections of this Part "the relevant statutory provisions" means

- (a) the appropriate provisions of Parts VI to XI of this Act; and
- (b) the provisions of any instrument of a legislative character having effect under any of those provisions.

Prohibition notices

420. (1) If, as regards any relevant activities which are being or are likely to be carried out on board any ship by or under the control of any person, an inspector appointed under section 414 (6) or any surveyor acting as an inspector under section 414 (7), is of the opinion that, as so carried on or as likely to be carried on, the activities involve or, as the case may be, will involve the risk of serious personal

injury to any person, whether on board the ship or not, the inspector may serve on the first-mentioned person a notice under this section (referred to in the following sections of this Part as a “prohibition notice”).

(2) In subsection (1), "relevant activities" means activities to or in relation to which any of the relevant statutory provisions apply or will, if the activities are carried on as mentioned in that subsection, apply.

(3) A prohibition notice shall

- (a) state that the inspector is of the opinion referred to in subsection (1);
- (b) specify the matters which in his opinion give or, as the case may be, will give rise to the risk referred to in that subsection;
- (c) where in his opinion any of those matters involve or, as the case may be, will involve a contravention of any of the relevant statutory provisions, state that he is of that opinion, specify the provision or provisions as to which he is of that opinion, and give particulars of the reasons why he is of that opinion; and
- (d) direct
 - (i) that the activities to which the notice relates shall not be carried on by or under the control of the person on whom the notice is served, or
 - (ii) that the ship shall not go to sea,

(or both of those things), unless the matters specified in the notice in pursuance of paragraph (b), and any associated contravention of any provision so specified in pursuance of paragraph (c), have been remedied.

(4) A direction contained in a prohibition notice in pursuance of subsection (3)(d) shall take effect

- (a) at the end of a period specified in the notice; or
- (b) if the direction is given in pursuance of subsection (3)(d)(ii) or the notice so declares, immediately.

421. (1) An improvement notice or a prohibition notice may (but need not) include directions as to the measures to be taken to remedy any contravention or matter to which the notice relates, and any such directions may be framed so as to

Provisions
supplementary to
sections 419 and 420

afford the person on whom the notice is served a choice between different ways of remedying the contravention or matter.

(2) An improvement notice or a prohibition notice shall not direct any measures to be taken to remedy the contravention of any of the relevant statutory provisions that are more onerous than those necessary to secure compliance with that provision.

(3) Where an improvement notice or a prohibition notice that is not to take immediate effect has been served,

- (a) the notice may be withdrawn by an inspector at any time before the end of the period specified in it in pursuance of section 419 (2)(b) or, as the case may be, section 420; and
- (b) the period so specified may be extended or further extended by an inspector at any time when a reference to arbitration in respect of the notice is not pending under section 422.

References of notices to arbitration

422.

- (1) Any question
 - (a) as to whether any of the reasons or matters specified in an improvement notice or a prohibition notice in pursuance of section 419(2)(a) or 420(3)(b) or (c) in connection with any opinion formed by the inspector constituted a valid basis for that opinion, or
 - (b) as to whether directions included in the notice in pursuance of section 421 (1) were reasonable,

shall, if the person on whom the notice was served so requires by a notice given to the inspector within twenty-one days from the service of the notice, be referred to a single arbitrator appointed by agreement between the parties for that question to be decided by him.

(2) Where a notice is given by a person in accordance with subsection (1), then,

- (a) in the case of an improvement notice, the giving of the notice shall have the effect of suspending the operation of the improvement notice until the decision of the arbitrator is published to the parties or the reference is abandoned by that person;
- (b) in the case of a prohibition notice, the giving of the notice shall have the effect of so suspending the operation of the prohibition

notice if, but only if, on the application of that person the arbitrator so directs, and then only from the giving of the direction.

(3) Where, on a reference under this section the arbitrator decides as respects any reason, matter or direction to which the reference relates, that in all the circumstances

- (a) the reason or matter did not constitute a valid basis for the inspector's opinion, or
- (b) the direction was unreasonable,

he shall either cancel the notice or affirm it with such modifications as he may in the circumstances think fit, and in any other case the arbitrator shall affirm the notice in its original form.

(4) A person shall not be qualified for appointment as an arbitrator under this section unless he is

- (a) a person holding a certificate of competency as a master mariner or as a marine engineer officer class 1, or a person holding a certificate equivalent to any such certificate;
- (b) a naval architect with at least five years post-qualification experience;
- (c) a person with at least ten years standing as a Barrister-at-Law or Solicitor in the Virgin Islands or in any other Commonwealth jurisdiction;
- (d) a person with special experience of shipping matters, or of activities carried on in ports.

(5) In connection with his functions under this section, an arbitrator shall have the powers conferred on an inspector by section 417.

423. (1) If, on a reference under section 422 relating to a prohibition notice,

- (a) the arbitrator decides that any reason or matter did not constitute a valid basis for the inspector's opinion, and
- (b) it appears to him that there were no reasonable grounds for the inspector to form that opinion,

Compensation in connection with invalid prohibition notices

the arbitrator may, subject to subsection (3), award the person on whom the notice was served such compensation in respect of any loss suffered by him in consequence of the service of the notice as the arbitrator thinks fit.

(2) If on any such reference the arbitrator decides that any direction included in the notice was unreasonable, the arbitrator may, subject to subsection (3), award the person on whom the notice was served such compensation in respect of any loss suffered by him in consequence of the direction as the arbitrator thinks fit.

(3) An arbitrator shall not award any compensation under subsection (1) or (2) in the case of any prohibition notice unless

- (a) it appears to him that the direction given in pursuance of section 420 (3)(d) contained any such requirement as is mentioned in subparagraph (ii) of that provision; or
- (b) it appears to him that
 - (i) the inspector was of the opinion that there would be such a risk of injury as is referred to in the notice if the ship went to sea; and
 - (ii) the effect of the direction given in pursuance of section 420 (3)(d) was to prohibit the departure of the ship unless the matters, or, as the case may be, the matters and contraventions referred to in the direction were remedied.

(4) Any compensation awarded under this section shall be payable out of monies provided by the Legislative Council.

Offences

424. (1) Any person who contravenes any requirement imposed by an improvement notice commits an offence and is liable

- (a) on summary conviction to a fine not exceeding level 5 on the standard scale; or
- (b) on conviction on indictment to a fine not exceeding fifteen thousand dollars.

(2) Any person who contravenes any prohibition imposed by a prohibition notice commits an offence and is liable

- (a) on summary conviction to a fine not exceeding level 5 on the standard scale; or

- (b) on conviction on indictment to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding two years, or both.

(3) It shall be a defence for a person charged with an offence under this section to prove that he exercised all due diligence to avoid a contravention of the requirement or prohibition in question.

(4) In this section, any reference to an improvement notice or a prohibition notice includes a reference to any such notice as modified under section 422.

PART XVII

INQUIRIES AND INVESTIGATIONS INTO MARINE CASUALTIES

425. (1) Where any of the following casualties occur, that is to say,
- (a) the loss or presumed loss, stranding, grounding, abandonment of, or damage to, a ship,
 - (b) a loss of life or serious injury to any person, caused by fire on board, or by any accident to a ship or ship's boat, or by any accident occurring on board a ship or ship's boat, or
 - (c) any damage caused by a ship,

Investigation of shipping casualties

and, at the time it occurs, the ship was a Virgin Islands ship or the ship or ship's boat was in Virgin Islands waters, the Minister may cause a preliminary inquiry into the casualty to be held by a person appointed for the purpose by the Minister as an inspector of marine casualties who shall have the powers conferred on an inspector by section 417.

(2) Whether or not a preliminary inquiry into the casualty has been held under subsection (1), the Minister may cause a formal investigation to be held by a board appointed for that purpose.

426. (1) A board holding a formal investigation into a shipping casualty under section 425 shall consist of a Judge of the Court or a Magistrate who shall be

Formal investigation

assisted by one or more assessors appointed by the Minister, such assessors being persons with requisite skills and knowledge in maritime matters.

(2) Where in any investigation, any question as to the cancellation or suspension of the certificate issued to an officer in pursuance of any regulations made under section 111 is likely to arise, there shall be not less than two assessors.

(3) If as a result of the investigation the board is satisfied, with respect to any officer, or any of the matters mentioned in paragraphs (a) to (c) of section 125 (1) and, if it is a matter mentioned in paragraph (a) or (b) of that section, is further satisfied that it caused or contributed to the accident, the Director may cancel, or suspend any certificate issued to the officer under regulations made pursuant to section 111 or censure him, and if he cancels or suspends the certificate the officer shall deliver it forthwith to him.

(4) If a person fails to deliver a certificate as required under subsection (3) he commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) Where a certificate has been cancelled or suspended under this section, the Director, if of the opinion that the justice of the case requires it, may re-issue the certificate or, as the case may be, reduce the period of suspension and return the certificate, or may grant a new certificate of the same or a lower grade in place of the cancelled or suspended certificate.

(6) The board may make such awards as it thinks just with regard to the costs or, as the case may be, expenses of the investigation, and with regard to the parties by whom those costs or expenses are to be paid, and any such award of the board may, on the application of any party named in it, be made an order of the Court.

(7) Subsections (2), (3) and (4) shall apply to endorsements of certificates in the same manner as they apply to certificates.

(8) The board shall make a report on the investigation to the Minister.

Rehearings and appeals

427. (1) Where a formal investigation has been held under section 426, the Minister may order the whole or part of the case to be reheard and shall do so if

- (a) new and important evidence which could not have been produced at the inquiry or investigation has been discovered; or
- (b) it appears to the Minister that there are other grounds for suspecting that a miscarriage of justice may have occurred.

(2) An order under subsection (1) may provide for the rehearing to be made by the board which held the investigation or by the Court.

(3) Any rehearing under this section shall be conducted in accordance with rules made under section 428, and section 426 shall apply in relation to a rehearing of an investigation by a board as it applies in relation to the holding of an investigation.

(4) Where the board holding the investigation has decided to cancel or suspend the certificate of any person issued pursuant to any regulations made under section 111, or has found any person at fault, then if no application for an order under subsection (1) has been made, or if such application has been refused, that person or any other person who, having an interest in the investigation has appeared at the hearing and is affected by the decision or finding, may appeal to the Court.

428. (1) The Minister may make rules for the conduct of inquiries under section 425, for formal investigations under section 426 and for the conduct of any rehearing under section 427 which is not held by the Court.

Rules relating to
inquiries and
investigations

(2) Without prejudice to the generality of subsection (1), rules under this section may provide for the appointment and summoning of assessors, the manner in which any facts may be proved, the persons allowed to appear, and the notices to be given to persons affected.

(3) Rules of court made for the purpose of rehearings under section 427 which are held by the Court, or of appeals to the Court, may require the Court, subject to such exceptions, if any, as may be allowed by the rules, to hold such a rehearing or hear such an appeal with the assistance of one or more assessors.

429. (1) Subject to subsection (6), where

- (a) any person dies in a Virgin Islands ship or in a boat or life-raft from such a ship, or

Inquiries into and
reports on deaths and
injuries

- (b) the master of, or a seaman employed in, such a ship dies in a country outside the Virgin Islands,

an inquiry into the cause of the death shall be held by the Superintendent or a proper officer at the next port where the ship calls after the death, or at such other place as the Director may direct.

(2) Subject to subsection (6), where it appears to the Director that

- (a) in consequence of an injury sustained or a disease contracted by a person when he was the master of, or a seaman employed in, a Virgin Islands ship, he ceased to be employed in the ship and subsequently died, and
- (b) the death occurred in a country outside the Virgin Islands during the period of one year beginning with the day on which he so ceased,

the Director may arrange for an inquiry into the cause of the death to be held by the Superintendent or a proper officer.

(3) Subject to subsection (6), where it appears to the Director that a person may

- (a) have died in a Virgin Islands ship or in a boat or life-raft from such a ship, or
- (b) have been lost from such a ship, boat or life-raft and have died in consequence of being so lost,

the Director may arrange for an inquiry to be held by the Superintendent or a proper officer into whether the person died as mentioned above and, if the Superintendent, or proper officer finds that he did, into the cause of the death.

(4) The Superintendent or proper officer holding the inquiry shall for the purpose of the inquiry have the powers conferred on an inspector by section 417.

(5) The person holding the inquiry shall make a report of his findings to the Director who shall make the report available,

- (a) if the person to whom the report relates was employed in the ship and a person was named as his next of kin in the crew agreement or list of the crew in which the name of the person to whom the report relates last appeared, to the person so named;

- (b) in any case, to any person requesting it who appears to the Director to be interested.

(6) No inquiry shall be held under this section where a coroner's inquest is to be held.

430. Where

Transmission of particulars of certain deaths on ships

- (a) an inquest is held into a death or a post mortem examination is made of a dead body as a result of which the coroner is satisfied that an inquest is unnecessary, and
- (b) it appears to the coroner that the death in question is such as is mentioned in section 331 (2),

it shall be the duty of the coroner to send to the Registrar, particulars in respect of the deceased of a kind prescribed by regulations made by the Governor in Council.

PART XVIII

LEGAL PROCEEDINGS

Prosecution of Offences

431. (1) Subject to subsections (2) and (3), no person shall be convicted of an offence under this Act in summary proceedings unless

Time limit for summary offences

- (a) the proceedings were commenced within six months beginning with the date on which the offence was committed; or
- (b) in a case where the accused happens during that period to be out of the Virgin Islands, the proceedings were commenced within two months after he first happens to arrive within the Virgin Islands and before the expiration of three years beginning with the date on which the offence was committed.

(2) Nothing in subsection (1) shall apply in relation to any indictable offence.

(3) Subsection (1) shall not prevent a conviction for an offence in summary proceedings begun before the expiration of three years beginning with the date on which the offence was committed and before

- (a) the expiration of the period of six months beginning with the day when evidence which the Attorney General considers is sufficient to justify a prosecution for the offence came to his knowledge; or
- (b) the expiration of two months beginning with the day when the accused was first present in the Virgin Islands after the expiration of the period mentioned in paragraph (a), if throughout that period the accused was absent from the Virgin Islands.

(4) For the purpose of subsection (3),

- (a) a certificate of the Attorney General stating that evidence came to his knowledge on a particular day shall be conclusive evidence of that fact; and
- (b) a document purporting to be a certificate of the Attorney General and to be signed on his behalf shall be presumed to be such certificate unless the contrary is proved.

Time limit for summary orders

432. No order for the payment of money shall be made under this Act in proceedings before a Magistrate's Court unless

- (a) the proceedings were commenced within six months beginning with the date on which the matter of complaint arose; or
- (b) in a case where both or either of the parties to the proceedings happen during that period to be out of the Virgin Islands, the proceedings were commenced within six months after they both first happen to arrive, or to be at one time, within the Virgin Islands.

Offences by officers of bodies corporate

433. (1) Where a body corporate commits an offence under this Act or any instrument made under it, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in such a capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Any document required or authorised, by virtue of any statutory provision, to be served on a company not registered in the Virgin Islands for the purposes of the institution of, or otherwise in connection with, proceedings for an offence under this Act alleged to have been committed by the company as the owner of a ship, shall be treated as duly served on that company if the document is served on the master of the ship, and any person authorised to serve any document for the purposes of the institution of, or otherwise in connection with proceedings for an offence under this Act (whether or not in pursuance of the foregoing provisions of this subsection) shall, for that purpose, have the right to go on board the ship in question.

Jurisdiction

434. (1) For the purpose of conferring jurisdiction, any offence under this Act shall be deemed to have been committed in any place in the Virgin Islands where the offender may be for the time being .

Jurisdiction in relation to offences

(2) For the same purpose, any matter of complaint under this Act shall be deemed to have arisen in any place in the Virgin Islands where the person complained against may be for the time being .

(3) The jurisdiction under subsections (1) and (2) shall be in addition to, and not in derogation of, any jurisdiction or power of the Court under any other enactment.

435. Where the area within which the Court has jurisdiction is situated on the coast of the sea or abuts on or projects into any bay, channel, or other navigable water, the Court shall have jurisdiction as respects offences under this Act over any vessel being on, or lying or passing off, that coast or being in or near that bay, channel, or navigable water and over all persons on board that vessel or for the time being belonging to it.

Jurisdiction over ships lying off coasts

Jurisdiction in case of offences on board ship

436. Where any person is charged with having committed any offence under this Act, the person,

- (a) if he is a Virgin Islands citizen and is charged with having committed it
 - (i) on board any Virgin Islands ship on the high seas,
 - (ii) in any foreign port or harbour, or
 - (iii) on board any foreign ship to which he does not belong, or
- (b) if he is not a Virgin Islands citizen and is charged with having committed it on board any Virgin Islands ship on the high seas,

and he is found within the jurisdiction of the Court in the Virgin Islands which would have had jurisdiction in relation to the offence if it had been committed on board a Virgin Islands ship within the limits of its ordinary jurisdiction to try the offence, the Court shall have jurisdiction to try the offence as if it had been so committed.

Offences committed by Virgin Islands seamen

437. (1) Any act in relation to property or person done in or at any place, ashore or afloat, outside the Virgin Islands by any master or seaman who at the time is employed in a Virgin Islands ship, which, if done in any part of the Virgin Islands would be an offence under the law of any part of the Virgin Islands, shall

- (a) be an offence under that law; and
- (b) be treated for the purposes of jurisdiction and trial, as if it had been done within the jurisdiction of the Court.

(2) Subsection (1) also applies in relation to a person who had been so employed within the period of three months expiring with the time when the act was done.

(3) Subsections (1) and (2) apply to omissions as they apply to acts.

Return of offenders

438. (1) The powers conferred on a British consular officer by subsection (2) are exercisable in the event of any complaint being made to him

- (a) that any offence against property or persons has been committed at any place, ashore or afloat, outside the Virgin Islands by any master or seaman who at the time when the offence was committed, or within three months before that time, was employed in a Virgin Islands ship;

(b) that any offence on the high seas has been committed by any master or seaman belonging to any Virgin Islands ship.

(2) Those powers are

- (a) to inquire into the case upon oath; and
- (b) if the case so requires, to take any steps in his power for the purpose of placing the offender under the necessary restraint and sending him by a Virgin Islands ship as soon as practicable in safe custody to the Virgin Islands for proceedings to be taken against him.

(3) The consular officer may, subject to subsections (4) and (5), order the master of any Virgin Islands ship bound for the Virgin Islands to receive and carry the offender and the witnesses to the Virgin Islands, and the officer shall endorse upon the agreement of the ship such particulars with respect to them as the Director requires.

(4) A consular officer shall not exercise the power conferred by subsection (3) unless no more convenient means of transport is available or it is available only at disproportionate expense.

(5) No master of a ship may be required under subsection (3) to receive more than one offender for every 100 tons of his ship's gross tonnage, or more than one witness for every 50 tons of his ship's gross tonnage.

(6) The master of any ship to whose charge an offender has been committed under subsection (3) shall, on his ship's arrival in the Virgin Islands, deliver the offender into the custody of a police officer.

(7) If any master of a ship, when required under subsection (3), to receive and carry any offender or witness in his ship

- (a) fails to do so, or
- (b) in the case of an offender, fails to deliver him as required by subsection (6),

he commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

(8) The expense of imprisoning any such offender and of carrying him and witnesses to the Virgin Islands otherwise than in the ship to which they respectively belong, shall be paid out of monies provided by the Legislative Council.

(9) References in this section to carrying a person in a ship include affording him subsistence during the voyage.

Detention of Ship and Distress on Ship

Enforcing detention of
ship

439. (1) Where under this Act a ship is to be detained, any of the following officers may issue an order for detention and detain the ship:

- (a) the Director,
- (b) any surveyor of ships authorised by the Director for the purpose,
- (c) any customs officer,
- (d) any British consular officer,
- (e) any commissioned naval officer, and
- (f) any police officer,

and a copy of the order shall be provided to the proper customs officer at the port at which the ship seeks clearance.

(2) If a ship which has been detained or as respects which, notice of detention or an order for detention has been served on the master proceeds to sea before it is released by a competent authority, the master of the ship commits an offence and is liable

- (a) on summary conviction to a fine not exceeding twenty thousand dollars; or
- (b) on conviction on indictment to a fine not exceeding fifty thousand dollars.

(3) The owner of a ship, and any person who sends to sea a ship, as respects which an offence is committed under subsection (2) is, if party or privy to the offence, also guilty of an offence under that subsection and is liable accordingly.

(4) Where a ship proceeding to sea in contravention of subsection (2) takes to sea any officer authorised by subsection (1) to detain the ship, who is on board the ship in the execution of his duty, the owner and master of the ship

- (a) shall each be liable to pay all expenses of, and incidental to, the officer being so taken to sea; and
 - (b) each commits an offence.
- (5) A person who commits an offence under subsection (4), is liable
 - (a) on summary conviction to a fine not exceeding level 5 on the standard scale; or
 - (b) on conviction on indictment to a fine not exceeding ten thousand dollars.
- (6) Where under this Act a ship is to be detained, a customs officer shall, and where under this Act a ship may be detained, a customs officer may, refuse to clear the ship outwards.
- (7) When any provision of this Act provides that a ship may be detained until any document is produced to a customs officer, the officer able to grant a clearance of the ship is, unless the context otherwise requires, that officer.
- (8) Any reference in this section to proceeding to sea includes a reference to going on a voyage or excursion that does not involve going to sea, and references to sending or taking to sea shall be construed accordingly.
- (9) Subject to subsection (12), where proceedings are to be instituted in respect of an alleged contravention of this Act, a person exercising the power of detention shall immediately release the ship if
 - (a) no proceedings for the offence in question are instituted within seven days beginning with the day on which the ship is detained;
 - (b) such proceedings, having been instituted through exercise of the power conferred by subsection (1) within that period, are concluded without the master or owner being convicted;
 - (c) either
 - (i) the sum of one hundred thousand dollars is paid to the Accountant General by way of security; or
 - (ii) security which, in the opinion of the Accountant General, is satisfactory and is for an amount not less than one hundred thousand dollars is paid to the Accountant General by or on behalf of the master or owner;

- (d) where the master or owner is convicted of the offence, any costs or expenses ordered to be paid by him, and any fine imposed on him, have been paid; or
- (e) the release is ordered by a court or tribunal referred to in Article 292 of the United Nations Convention on the Law of the Sea 1982, and any bond or other financial security ordered by such a court or tribunal is posted.

(10) The Minister shall cause to be repaid any sum paid in pursuance of subsection (9) (c) or have released any security so given

- (a) if no proceedings for the offence in question are instituted within seven days beginning with the day on which the sum is paid; or
- (b) if such proceedings, having been instituted within that period, are concluded without the master or owner being convicted.

(11) Where a sum has been paid, or security has been given, by any person in pursuance of subsection (9) (c) and the master or owner is convicted of the offence in question, the sum so paid or the amount made available under the security shall be applied as follows:

- (a) first in payment of any costs or expenses ordered by the Court to be paid by the master or owner, and
- (b) next in payment of any fine imposed by the Court,

and the balance shall be repaid to the person paying the sum, or giving the security.

(12) Notwithstanding subsection (9), where a ship is detained under section 263, it shall not be released until the deficiency for which the ship was detained is rectified to the satisfaction of the Director or any person authorised by the Director.

(13) Where a ship detained under this Act is to be released, an order for release shall be issued by one of the persons referred to in subsection (1) as may be appropriate in the particular case, and such person shall provide a copy of the order to the proper customs officer of the port at which the ship is to be cleared outwards.

(14) Where the Director is satisfied that, by reason of any impending hurricane or other threatening signs of turbulent weather, it would be unsafe to

allow any ship in a harbour to be put to sea, he may direct the owner or master not to put it to sea, and an owner or master who puts a ship to sea contrary to such direction commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

440. (1) Where the Court makes an order directing payment to be made of any seaman's wages, fines or other sums of money, then, if the person directed to pay is the master or owner of the ship and the money directed to be paid is not paid in accordance with the order, the Court which made the order may direct the amount remaining unpaid to be levied by distress.

Sums ordered to be paid
leviable by distress on
the ship

(2) Where a fine imposed by a court in proceedings against the owner or master of a ship for an offence under this Act is not paid, or any costs or expenses ordered to be paid by him are not paid at the time ordered by the Court, the Court shall, in addition to any other powers for enforcing payment, have power to direct the amount remaining unpaid to be levied by distress or arrestment and sale of the ship, her tackle, furniture and apparel.

(3) Where a person is convicted of an offence under this Act and the Court imposes a fine in respect of the offence, then if it appears to the Court that any person has incurred, or will incur, expenses in making good any damage which is attributable to the offence, the Court may order the whole or part of the fine to be paid to that person for or towards defraying those expenses.

Special Evidentiary Provisions

441. (1) If the evidence of any person is required in the course of any legal proceeding before a judge or magistrate in relation to the subject matter of the proceeding and it is proved that that person cannot be found in the Virgin Islands, any deposition that he may have previously made at a place outside the Virgin Islands in relation to the same subject matter shall, subject to subsection (2), be admissible in evidence in that proceeding.

Depositions of persons
abroad admissible

(2) For a deposition to be admissible under subsection (1) in any proceedings, the deposition

(a) must have been taken on oath,

- (b) must have been taken before a Justice of the Peace or magistrate in any British Colony or a British consular officer in any other place,
- (c) must be authenticated by the signature of the Justice of the Peace, magistrate or officer taking it, and
- (d) must, if the proceedings are criminal proceedings, have been taken in the presence of the accused,

and, in a case falling within paragraph (d), the deposition shall be certified by the Justice of the Peace, magistrate or officer taking it to have been taken in the presence of the accused.

(3) No proof need be given of the signature or official character of the person appearing to have signed any such deposition and, in any criminal proceedings, a certificate stating that the deposition was taken in the presence of the accused shall, unless the contrary is proved, be evidence of that fact.

(4) This section also applies to proceedings before any person authorised by law or consent of the parties to receive evidence.

(5) Nothing in this section affects the admissibility in evidence of depositions under any other enactment or the practice of the Court.

Admissibility in
evidence and inspection
of certain documents

442. (1) The following documents shall be admissible in evidence and, when in the custody of the Director, shall be open to public inspection:

- (a) documents purporting to be submissions to or decisions by the Superintendent or proper officers under section 97;
- (b) the official log book of any ship kept under section 141 and, without prejudice to section 443 (2), any document purporting to be a copy of an entry therein and to be certified as a true copy by the master of the ship;
- (c) crew agreements, lists of crews made under section 142 and notices given under Part V of additions to or changes in crew agreements and lists of crews;
- (d) returns or reports under section 331; and
- (e) documents transmitted to the Director under section 451.

(2) A certificate issued under regulations made pursuant to section 111 shall be admissible in evidence.

443. (1) Where a document is by this Act declared to be admissible in evidence, the document shall, on its production from proper custody,

Admissibility of documents in evidence

- (a) be admissible in evidence in any court or before any person having by law or consent of parties authority to receive evidence; and
- (b) subject to all just exceptions, be evidence of the matters stated in the document.

(2) A copy of, or extract from, any document so made admissible in evidence shall, subject to subsection (3), also be admissible in evidence and evidence of the matters stated in the document.

(3) A copy of, or extract from, a document shall not be admissible by virtue of subsection (2), unless

- (a) it is proved to be an examined copy or extract, or
- (b) it purports to be signed and certified as a true copy or extract by the officer to whose custody the original document was entrusted,

and that officer shall furnish the certified copy or extract to any person who applies for it at a reasonable time and pays such reasonable price as the Director determines.

(4) A person shall, on payment of such reasonable price as the Director determines, be entitled to have a certified copy of any declaration or document a copy of which is made evidence by this Act.

(5) If any officer having duties of certification under subsection (3) in relation to any document intentionally certifies any document as being a true copy or extract knowing that the copy or extract is not a true copy or extract, he commits an offence and is liable

- (a) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale; or
- (b) on conviction on indictment to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years, or both.

444. (1) Where under any enactment a document is open to public inspection when in custody of the Director,

Inspection and admissibility in evidence of copies of certain documents

- (a) there may be supplied for public inspection a copy or other reproduction of the document instead of the original; but
- (b) the original shall nevertheless be made available for public inspection if the copy or other reproduction is illegible.

(2) Where the Director destroys any document which has been sent to him under or by virtue of any enactment and keeps a copy or other reproduction of that document, then

- (a) any enactment providing for that document to be admissible in evidence or open to public inspection, and
- (b) in the case of a document falling within subsection (1), that subsection,

shall apply to the copy or other reproduction as if it were the original.

(3) For the purposes of this section, and of section 443 (2) in its application to documents in the custody of the Director, a copy is to be taken to be the copy of a document notwithstanding that it is taken from a copy or other reproduction of the original .

Proof, etc. of exemptions

445. (1) Where any exception, exemption, excuse or qualification applies in relation to an offence under this Act,

- (a) it may be proved by the defendant, but
- (b) need not be specified or negatived in any information or complaint,

and, if so specified or negatived, shall not require to be proved by the informant or complainant.

(2) This section applies in relation to an offence whether or not the exception, exemption, excuse or qualification is contained in the section creating the offence.

Service of documents

446. (1) Any notice or document authorised or required to be served on any person may be served on that person

- (a) by delivering it to him;
- (b) by leaving it at his proper address; or
- (c) by sending it by post to him at his proper address.

(2) Any such notice or document required to be served on the master of a ship may be served,

- (a) where there is a master, by leaving it for him on board the ship with the person appearing to be in command or charge of the ship; and
- (b) where there is no master, on
 - (i) the managing owner of the ship;
 - (ii) if there is no managing owner, on any agent of the owner; or
 - (iii) where no such agent is known or can be found, by leaving a copy of the notice or document fixed to the mast of the ship.

(3) Subject to subsection (4), any notice or document authorised or required to be served on any person may,

- (a) in the case of a body corporate, be served on the secretary or clerk of that body; or
- (b) in the case of a partnership, be served on a partner or a person having the control or management of the partnership business .

(4) Any notice or document required or authorised by or under any enactment to be served on the registered owner of a Virgin Islands ship shall, where there are two or more registered owners, be treated as duly served, if served on any one of the registered owners.

(5) Any notice or document authorised by section 419, 420, 421 or 422 to be given to an inspector may be given by delivering it to him or by leaving it at, or sending it by post to, his office.

(6) For the purposes of this section, the proper address of any person on whom any notice or document is to be served shall be his last known address, except that subject to subsection (7),

- (a) in the case of a body corporate or their secretary or clerk, it shall be the address of the registered or principal office of that body, or
- (b) in the case of a partnership or a person having the control or management of the partnership business, it shall be the principal office of the partnership,

and for the purposes of this subsection, the principal office of a company registered outside the Virgin Islands shall be its principal office in the Virgin Islands.

(7) For the purposes of section 25 of the Interpretation Act, a letter containing,

- (a) a notice or document to be served on any person in pursuance of subsection (4), or
- (b) a notice or document required or authorised to be served under this Act on a representative person within the meaning of this Act,

shall be deemed to be properly addressed if it is addressed to that person at the address for the time being recorded in relation to him in the register, and a letter containing any other notice or document to which subsection (1)(c) applies shall be deemed to be properly addressed if it is addressed to the last known address of the person to be served, whether of his residence or of a place where he carries on business.

(8) Subject to subsection (7), if the person to be served with any notice has specified an address in the Virgin Islands other than his proper address within the meaning of subsection (6), as the one at which he or someone on his behalf will accept notices of the same description as that notice or document, that address shall also be treated for the purposes of this section as his proper address.

PART XIX

SUPPLEMENTAL

Administration

General functions of
Minister and Director

447. (1) The Minister shall have the general superintendence of all matters relating to merchant shipping and seamen and is authorised to carry into execution

the provisions of this Act except as provided in subsection (2) and of all laws relating to merchant shipping and seamen for the time being in force, except where otherwise provided or so far as relating to revenue.

(2) The provisions in this Act

- (a) concerning revenue and matters related thereto shall be administered by the Director; and
- (b) concerning the British Virgin Islands Ports Authority and the Managing Director of the Ports Authority shall be administered by the Minister responsible for the British Virgin Islands Ports Authority for the time being.

(3) The Director shall be the head of the Virgin Islands Shipping Registry and may act in the capacity of the Registrar, the Superintendent, and in such other capacity as the Governor in Council may direct.

448. (1) The Director may, and upon such conditions, if any, as the Director thinks fit to impose, exempt any ship from any specified requirement of, or prescribed under, this Act, or dispense with the observance of any such requirement in the case of any ship, if he is satisfied, as respects that requirement, of the matters specified in subsection (2).

General power to dispense

(2) Those matters are

- (a) that the requirement has been substantially complied with in the case of that ship or that compliance with it is unnecessary in the circumstances; and
- (b) that the action taken or provision made as respects the subject-matter of the requirement in the case of the ship is as effective as, or more effective than, actual compliance with the requirement.

(3) The Minister shall annually lay before the Legislative Council a special report stating

- (a) the cases in which the Director has exercised his powers under this section during the preceding year; and
- (b) the grounds upon which the Director has acted in each case.

Registrar of Shipping
and Seamen and
Superintendent

449. (1) There shall be an officer known as the Registrar of Shipping and Seamen who shall be appointed by the Governor.

(2) The Governor may appoint an Assistant Registrar of Shipping who may, in the absence of the Registrar, act as the Registrar for the purposes of this Act.

(3) The Registrar shall exercise such functions as are conferred on him by this Act and keep such records and perform such other duties as the Director may direct.

(4) There shall be an officer known as the Superintendent who shall be appointed by the Governor.

(5) The Superintendent shall exercise the functions conferred on him by this Act and perform such other duties as the Director may direct.

Nautical assessors

450. There shall be paid to any assessor appointed under this Act such remuneration, out of monies provided by the Legislative Council, as the Minister may determine.

Transmission of
documents to Director

451. (1) The following duties are imposed on the Superintendent and all customs officers as respects all documents which are delivered or transmitted to or retained by them in pursuance of this Act.

(2) They shall take charge of the documents and keep them for such time, if any, as may be necessary for the purpose of settling any business arising at the place where the documents come into their hands, or for any other proper purpose.

(3) They shall, if required, produce them for any of those purposes, and shall then transmit them to the Director.

(4) The Director shall record and preserve all documents transmitted to him in pursuance of this section.

Returns, etc. to Director

452. (1) The Superintendent shall make and send to the Director such returns or reports on any matter relating to Virgin Islands seamen as he may require.

(2) The Superintendent shall, when required by the Director, produce to the Director or to his officers all official log-books and other documents which are delivered to him under this Act.

453. (1) The Director may prepare and approve forms for any book, instrument or paper required under this Act and may alter such forms as he thinks fit. Forms

(2) The Director shall cause every such form to be marked with the distinguishing mark of the Virgin Islands Shipping Registry and, before finally issuing any form or making any alteration in a form, shall cause public notice thereof to be given in such manner as he thinks requisite in order to avoid inconvenience.

(3) The Director shall cause such forms to be supplied at offices of the Customs and the Virgin Islands Shipping Registry, free of charge or at such reasonable prices as he may fix.

(4) Every such book, instrument or paper shall be made in the form, if any, approved by the Director, or as near as circumstances permit, and unless so made shall not be admissible in evidence in any civil proceedings on the part of the owner or master of any ship.

(5) Every such book, instrument or paper, if made in a form purporting to be the proper form and to be marked in accordance with subsection (2) shall be deemed to be in the form required by this Act, unless the contrary is proved.

(6) The provisions of subsections (1) to (5) do not apply where special provision is made by this Act.

(7) If any person prints, sells or uses any document purporting to be a form approved by the Director knowing that the document is not the form approved for the time being or that the document has not been prepared or issued by the Director, that person commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

454. (1) There is established a body to be known as the Maritime Advisory Board.

Establishment of a
Maritime Advisory
Board

(2) The Constitution, functions and procedures of the Maritime Advisory Board shall be as provided in Schedule 4.

Financial Provisions

Fees and Fines

455. (1) The Governor in Council may make regulations prescribing fees to be charged in respect of

- (a) the issue or recording in pursuance of this Act of any certificate, licence or other document; or
- (b) the doing of any thing in pursuance of this Act.

(2) In the case of fees for the measurement of a ship's tonnage the fees may be prescribed as maximum fees.

(3) All fees and fines paid under this Act shall be paid into the Consolidated Fund.

Schedule 5

(4) The standard scale of fines shall be as provided in Schedule 5.

(5) The Governor in Council may by Order vary the standard scale of fines taking into account the rate of inflation in the Virgin Islands for the time being.

Expenses of Customs

456. (1) All expenses incurred by the Customs in the conduct of proceedings or otherwise in carrying into effect the provisions of this Act shall be treated as expenses relating to the revenue of Customs and shall be paid accordingly.

(2) The Minister may cause to be repaid all or any part of such of the expenses paid in accordance with subsection (1) as are chargeable under this Act on monies provided by the Legislative Council.

Expenses charged on monies provided by the Legislative Council

457. The following expenses and other amounts shall be payable out of monies provided by the Legislative Council:

- (a) the expenses of obtaining depositions, reports and returns respecting wrecks and casualties;
- (b) such sums as the Minister may, in his discretion, think fit to pay in respect of claims on account of the proceeds of wreck;
- (c) the expenses incurred in respect of the Receiver of Wreck and the performance of his duties;
- (d) such expenses as the Minister directs for
 - (i) establishing and maintaining on the coasts of the Virgin Islands proper lifeboats with the necessary crews and equipment;
 - (ii) affording assistance towards the preservation of life and property in cases of shipwreck and distress at sea; or
 - (iii) rewarding the preservation of life in such cases;
- (e) any other amounts which are by virtue of any provision of this Act payable out of monies provided by the Legislative Council.

458. (1) The following sums shall be paid into the Consolidated Fund:

Payments to be made into Consolidated Fund

- (a) all fees, charges and expenses payable in respect of the survey and measurement of ships;
- (b) any fees received by the Receiver of Wreck;
- (c) any sums which are, by any provision of this Act, required to be paid into the Consolidated Fund.

(2) All fees mentioned in this section shall be paid at such time and in such manner as the Minister directs.

Subordinate Legislation

459. (1) Without prejudice to any other provision of this Act, the Governor in Council may make regulations making such provisions as the Council considers appropriate for all or any of the following purposes:

Regulations, etc.

- (a) for securing the safety of ships registered in the Virgin Islands or other ships plying the Virgin Islands waters and persons on them and for protecting the health of persons on Virgin Islands ships or such other ships;
- (b) for adopting the provisions of any regional treaty, or any instrument made pursuant to such treaty, on the safety of ships or the protection of the marine environment;

- (c) for giving effect to any provisions of an international agreement adopted by the United Kingdom and ratified or acceded to on behalf of, or extended to the Virgin Islands so far as the agreement relates to the safety of other ships or persons on them, or to the protection of the health of persons on other ships;
- (d) for securing the safety of other ships and persons on them while they are within a port in the Virgin Islands;
- (e) for any other matters relating to load lines in addition to those referred to in section 224, including
 - (i) the issue of Certificates and forms thereof;
 - (ii) the determination and assignment of load lines to Virgin Islands ships to which the Load Line Convention does not apply; and
 - (iii) requirements with respect to the carriage of cargo in any uncovered space on the deck of a ship;
- (f) for prescribing anything that under this Act is to be prescribed.

(2) The power conferred by subsection (1) to make provision for giving effect to an agreement, includes power to provide for the provision to come into force although the agreement has not come into force.

(3) Regulations made under subsection (1) may

- (a) make different provisions for different circumstances and, in particular, make provision for an individual case;
- (b) be made so as to apply only in such circumstances as are prescribed by the regulations;
- (c) be made so as to extend outside the Virgin Islands;
- (d) contain such incidental and transitional provisions as the Governor in Council considers appropriate.

(4) Any direction, notice, order or authorisation under this Act, given or made by the Minister or Director shall be in writing.

Application of Act to Certain Descriptions of Ships, etc.

460. (1) The Governor in Council may make regulations specifying any description of non-Virgin Islands ships and directing that such of the provisions of this Act and of instruments under this Act as may be specified in the regulations shall extend

Application of Act to non-Virgin Islands ships

- (a) to non-Virgin Islands ships of that description and to masters and seamen employed in them; or
- (b) in such circumstances as may be so specified, with such modifications, if any, as may be so specified.

(2) Regulations under this section may contain such transitional, supplementary and consequential provisions as appear to the Governor in Council to be expedient.

(3) In this section, “non-Virgin Islands ships” means ships that are not registered in the Virgin Islands.

461. (1) Subject to any other provision of it, this Act shall not apply to ships belonging to the Government.

Application of Act to Government ships

(2) The Governor in Council may make an Order with respect to the manner in which Government ships may be registered as Virgin Islands ships under Part II, and this Act, subject to any exceptions and modifications which the Council may make, either generally or as respects any special class of Government ships, shall apply to Government ships registered in accordance with the Order as if they were registered in accordance with Part II.

(3) Any Order under subsection (2) shall be laid before the Legislative Council after being made.

462. (1) This section applies to a ship if for the time being

Application of Act to ships bareboat chartered to the Government

- (a) the ship is
 - (i) registered in the Virgin Islands; and
 - (ii) in the services of the Government by reason of a bareboat charter to the Government; and
- (b) there is in force under section 461 (2) any Order providing for the registration of Government ships.

(2) Where this section applies to any ship, the following statutory provisions, namely,

- (a) the provisions of the Order referred to in subsection (1)(b) (excluding those relating to registration under the Order), and
- (b) the provisions of this Act, (as they apply by virtue of section 461 (2), and that order,

shall, subject to subsections (3) and (4), have the same effect in relation to that ship as they have in relation to a Government ship, whether referred to as such or as such a ship registered in pursuance of that Order.

(3) Subject to subsection (4), Part II shall have effect in relation to a ship to which this section applies in like manner as if it were not, for the purpose of this Act, a ship belonging to the Government.

(4) The Governor in Council may make an Order to provide that any statutory provision falling within subsection (2) or (3), and specified in the Order shall

- (a) not have effect in accordance with that subsection in relation to a ship to which this section applies; or
- (b) have effect in relation to such a ship, but subject to such modifications as are specified in the Order.

(5) In the application of any provision of this Act, other than a provision of Part II, in relation to a ship to which this section applies, any reference to the owner of the ship shall be construed as a reference to the Government.

(6) An Order under this section may make such transitional, incidental or supplementary provisions as appear to the Governor in Council to be necessary or expedient.

Application of Act to certain structures, etc.

463. (1) The Governor in Council may by Order provide that a thing designed or adapted for use at sea and described in the Order is or is not to be

treated as a ship for the purposes of any specified provision of this Act or of an instrument made thereunder.

- (2) An Order under this section may
 - (a) make different provisions in relation to different occasions;
 - (b) if it provides that a thing is to be treated as a ship for the purposes of a specified provision, provide that the provision shall have effect in relation to the thing with such modifications as are specified.
- (3) In this section “specified” means specified in the Order.

Application of United Kingdom Enactment

464. (1) The Governor in Council may, after consultation with the Secretary of State for Transport of the United Kingdom, by Order apply to the Virgin Islands as part of the law of the Virgin Islands, subject to such exceptions, adaptations and modifications as may be specified in the Order, any enactment of the United Kingdom to which this section applies.

Application of United Kingdom Enactment

(2) An Order under subsection (1) may include provisions repealing or amending any provision of any enactment, other than this section, including an enactment which applies or enables the application of any enactment of the United Kingdom relating to merchant shipping, which is inconsistent with, or is unnecessary or requires modification in consequence of this section, the Order or any enactment of the United Kingdom applied to the Virgin Islands by the Order.

(3) The Minister shall, as soon as is practicable after the coming into operation of an Order under subsection (1), cause a text to be prepared of the enactment of the United Kingdom applied by the Order incorporating the exceptions, adaptations and modifications specified in the Order.

465. Any Order, rules or regulations made under this Act shall be made after consultation with the Secretary of State for Transport of the United Kingdom.

Consultation with Secretary of State

Final Provisions

Repeals and savings.
Schedule 6

466. (1) The enactments specified in the second column of Schedule 6 are repealed to the extent specified in the third column of that Schedule.

(2) Notwithstanding subsection (1), any licence, certificate, permit, directive or notice issued, and any Regulations, Rules or Orders made, under any of the enactments specified in Schedule 6 shall, to the extent that they are not inconsistent with the provisions of this Act, continue to have effect until their expiration or revocation, as the case may be, as if they were issued or made under this Act.

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(3) The statutory instruments of the United Kingdom specified in Schedule 2 of the Merchant Shipping (Adoption of United Kingdom Legislation) Act, 1994 shall, so far as they are not repealed in the United Kingdom, continue to have force in the Virgin Islands until revoked.

(4) Any designation or appointment made under any of the enactments specified in Schedule 6 shall, if in force on the date of the coming into force of this Act, continue to be valid until substituted under this Act.

(5) Where, prior to the coming into force of this Act, any legal proceedings had been commenced under any of the enactments specified in Schedule 6, those proceedings shall continue in accordance with those enactments as if this Act had not been passed.

Regulations subject to
negative Resolution.

467. Regulations made by the Governor in Council under this Act shall be subject to negative resolution of the Legislative Council.

SCHEDULE 1

INSTRUMENTS AND DOCUMENTS FOR WHICH FORMS ARE TO BE PRESCRIBED

[Section 60]

1. Certificate of survey.
2. Declaration of ownership by individual owner.
3. Declaration of ownership on behalf of a corporation as owner.
4. Certificate of registry.
5. Declaration of ownership by individual transferee.
6. Provisional certificate.
7. Declaration of owner taking by transmission.
8. Declaration of mortgagee taking by transmission.
9. Bill of Sale.
10. Mortgage to secure principal sum and interest.
11. Mortgage to secure account current, etc. (individuals or joint owners).
12. Transfer of mortgage by individual or joint owners.
13. Transfer of mortgage by body corporate.

SCHEDULE 2

PREVENTION OF OIL POLLUTION: TRANSITORY PROVISIONS

[Sections 362, 363 and 364]

CHAPTER 1

LIABILITY FOR OIL POLLUTION

Interpretation

332. (1) In this Chapter,

“damage” includes loss;

“owner”, in relation to a registered ship, means the person registered as its owner, except that in relation to a ship owned by a State which is operated by a person registered as the ship’s operator, it means the person registered as its operator; and

“relevant threat of contamination” shall be construed in accordance with section 334.

(2) In relation to any damage or cost resulting from the discharge or escape of any oil carried in a ship, or from a relevant threat of contamination, references in this Chapter to the owner of the ship are references to the owner at the time of the occurrence or first of the occurrence resulting in the discharge or escape or (as the case may be) in the threat of contamination.

(3) References in this Chapter to the territory of any country include the territorial sea of that country.

Liability

333. (1) Where, as a result of any occurrence taking place while a ship is carrying a cargo of persistent oil in bulk, any persistent oil carried by a ship (whether as part of the cargo or otherwise) is discharged or escapes from the ship, the owner of the ship shall be liable, (except as otherwise provided by this Chapter),

Liability for oil pollution
in case of tankers

- (a) for any damage caused in the territory of the Virgin Islands by contamination resulting from the discharge or escape;
- (b) for the cost of any measures reasonably taken after the discharge or escape for the purpose of preventing or reducing any such damage in the territory of the Virgin Islands; and
- (c) for any damage caused in the territory of the Virgin Islands by any measures so taken.

(2) Where a person incurs a liability under subsection (1), he shall also be liable for any damage or cost for which he would be liable under that subsection if the references therein to the territory of the Virgin Islands included the territory of any Liability Convention Country.

(3) Where persistent oil is discharged or escapes from two or more ships and

- (a) a liability is incurred under this section by the owner of each of them, but
- (b) the damage or cost for which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable,

each of the owners shall be liable, jointly with the other or others, for the whole of the damage or cost for which the owners together would be liable under this section.

(4) For the purposes of this Chapter, where more than one discharge or escape results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one, but any measures taken after the first of them shall be deemed to have been taken after the discharge or escape.

334. (1) Where, as a result of any occurrence, any persistent oil is discharged or escapes from a ship other than a ship to which section 333 applies, then (except as otherwise provided by this Chapter) the owner of the ship shall be liable

- (a) for any damage caused outside the ship in the territory of the Virgin Islands by contamination resulting from the discharge or escape;
- (b) for the cost of any measures reasonably taken after the discharge or escape for the purpose of preventing or minimizing any damage so caused in the territory of the Virgin Islands by contamination resulting from the discharge or escape; and
- (c) for any damage so caused in the territory of the Virgin Islands by any measures so taken.

(2) Where, as a result of any occurrence, there arises a grave and imminent threat of damage being caused outside a ship other than a ship to which section 333 applies by the contamination which might result if there were a discharge or escape of persistent oil from a ship, then, (except as otherwise provided by this Chapter) the owner of the ship shall be liable

- (a) for the cost of any measures reasonably taken for the purpose of preventing or minimising any such damage in the territory of the Virgin Islands, and
- (b) for any damage caused outside the ship in the territory of the Virgin Islands by any measures so taken,

and in the subsequent provisions of this Chapter any such threat is referred to as a relevant threat of contamination.

(3) Where

- (a) as a result of any occurrence, a liability is incurred under this section by the owner of each of two or more ships, but
- (b) the damage or cost for which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable,

each of the owners shall be liable, jointly with other or others, for the whole of the damage or cost for which the owners together would be liable under this section.

(4) In this section, “ship” includes a vessel which is not sea-going.

335. (1) The owner of a ship from which persistent oil has been discharged or has escaped shall not incur any liability under section 333 if he proves that the discharge or escape

Exceptions from liability under sections 333 and 334

- (a) resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon;
- (b) was due wholly to anything done or left undone by another person, not being a servant or agent of the owner, with intent to do damage; or
- (c) was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible.

(2) No liability shall be incurred by the owner of a ship under section 334 by reason of any discharge or escape of persistent oil from the ship, or by reason of any relevant threat of contamination, if he proves that the discharge or escape, or (as the case may be) the threat of contamination

- (a) resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon;
- (b) was due wholly to anything done or omitted to be done by another person, not being a servant or agent of the owner, with intent to do damage; or
- (c) was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible.

336. (1) Where, as a result of any occurrence taking place while a ship is carrying a cargo of persistent oil in bulk, any persistent oil carried by the ship is discharged or escapes then, whether or not the owner incurs a liability under section 333

Restriction of liability for oil pollution

- (a) he shall not be liable otherwise than under that section for any such damage or cost as is mentioned in it, and

- (b) no servant or agent of the owner nor any person performing salvage operations with the agreement of the owner shall be liable for any such damage or cost.

(2) Where, as a result of any occurrence,

- (a) any persistent oil is discharged or escapes from a ship to which section 334 applies, or
- (b) there arises a relevant threat of contamination,

then, whether or not the owner of the ship in question incurs a liability under section 334

- (i) he shall not be liable otherwise than under that section for any such damage or cost as is mentioned in it; and
- (ii) no person to whom this paragraph applies shall be liable for any such damage or cost unless it resulted from anything done or omitted to be done by him either with intent by him to cause any such damage or cost or recklessly and in the knowledge that any such damage or cost would probably result.

(3) Subsection (2) (ii) of this section applies to

- (a) any servant or agent of the owner of the ship;
- (b) any person not falling within paragraph (a) but employed or engaged in any capacity on board the ship or to perform any service for the ship;
- (c) any charterer of the ship (however described and including a bareboat charterer), and any manager or operator of the ship;
- (d) any person performing salvage operations with the consent of the owner of the ship or on the instructions of a competent public authority;
- (e) any person taking any such measures as are mentioned in subsection (1) (b) or (2) (a) of section 334;
- (f) any servant or agent of a person falling within paragraph (c), (d) or (e).

(4) The liability of the owner of a ship under section 334 for any impairment of the environment shall be taken to be a liability only in respect of

- (a) any resulting loss of profits; and
- (b) the cost of any reasonable measures of reinstatement actually taken or to be taken.

LIMITATION OF LIABILITY

337. (1) Where the owner of a ship incurs liability under section 333 by reason of a discharge or escape which has occurred without his actual fault or privity then

Limitation of liability
under section 333

- (a) he may limit that liability in accordance with the provisions of this Chapter; and
- (b) if he limits his liability under paragraph (a), his liability (that is to say, the aggregate of his liabilities under section 333 resulting from the discharge or escape) shall not exceed 133 special drawing rights for each ton of the ship's tonnage nor (where that tonnage would result in a greater amount) 14 million special drawing rights.

(2) For the purposes of this section, the tonnage of a ship shall be ascertained as follows:

- (a) where the registered tonnage of the ship has been or can be ascertained in accordance with the tonnage regulations, the ship's tonnage shall be the registered tonnage of the ship as so ascertained but without making any deduction required by those regulations of any tonnage allowance for propelling machinery space;
- (b) where the ship is of a description with respect to which no provision is for the time being made by the tonnage regulations, the tonnage of the ship shall be taken to be 40 per cent of the weight (expressed in tons of 2,240 lbs) of oil which the ship is capable of carrying;
- (c) where the tonnage of the ship cannot be ascertained in accordance with either paragraph (a) or paragraph (b), a surveyor of ships shall, if so directed by the Court, certify what, on the evidence specified in the direction, would in his opinion be the tonnage of the ship as ascertained in

accordance with paragraph (a) or (as the case may be) paragraph (b) if the ship could be duly measured for the purpose, and the tonnage stated in his certificate shall be taken to be the tonnage of the ship.

Limitation actions

338. (1) Where the owner of a ship has or is alleged to have incurred a liability under section 333, he may apply to the Court for the limitation of that liability to an amount determined in accordance with section 337.

(2) If on such an application the Court finds that the applicant has incurred such a liability and is entitled to limit it, the Court shall, after determining the limit of the liability and directing payment into the Court of the amount of that limit,

- (a) determine the amounts that would, apart from the limit, be due in respect of the liability to the several persons making claims in the proceedings; and
- (b) direct the distribution of the amount paid into Court (or, as the case may be, so much of it as does not exceed the liability) among those persons in proportion to their claims, subject to subsections (7) and (10).

(3) Where

- (a) a distribution is made under subsection (2) (b) without the Court having found that the applicant is entitled to limit his liability, and
- (b) the Court subsequently finds that the applicant is not so entitled,

the making of the distribution is not to be regarded as affecting the applicant's liability in excess of the amount distributed.

(4) A payment into Court of the amount of a limit determined in pursuance of this section shall be made in the currency of the United States dollars in accordance with subsection (5).

(5) For the purpose of converting such an amount from special drawing rights into the currency of the United States dollars, one special drawing right shall be treated as equal to such a sum in dollars as the International Monetary Fund have fixed as being the equivalent of one special drawing right

- (a) the day on which the determination is made; or
 - (b) if no sum has been so fixed for that day, the last day before that day for which a sum has been so fixed.
- (6) A certificate given by or on behalf of the Minister stating
- (a) that a particular sum in dollars has been fixed by the International Monetary Fund for the day on which the determination was made, or
 - (b) that no sum has been so fixed for that day and that a particular sum in dollars has been so fixed for a day which is the last day for which a sum has been so fixed before the day on which the determination was made,

shall be conclusive evidence of those matters for the purposes of this Chapter.

(7) A document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

(8) No claim shall be admitted in proceedings under this section unless it is made within such time as the Court may direct or such further time as the Court may allow.

(9) Where any sum has been paid in or towards satisfaction of any claim in respect of the damage or cost to which the liability extends

- (a) by the owner or the person referred to in section 345 as “the insurer”, or
- (b) by a person who has or is alleged to have incurred a liability, otherwise than under section 333, for the damage or cost and who is entitled to limit his liability in connection with the ship by virtue of Chapter II of Part XV,

the person who paid the sum shall, to the extent of that sum, be in the same position with respect to any distribution made in proceedings under this section as the person to whom it was paid would have been.

(10) Where the person who incurred the liability has voluntarily made any reasonable sacrifice or taken any other reasonable measures to prevent or

reduce damage to which the liability extends or might have extended, he shall be in the same position with respect to any distribution made in proceedings under this section as if he had a claim in respect of the liability equal to the cost of the sacrifice or other measures.

(11) The Court may, if it thinks fit, postpone the distribution of such part of the amount to be distributed as it deems appropriate having regard to any claims that may later be established before a court or any country outside the Virgin Islands.

Restriction on enforcement after establishment of limitation fund

339. Where the Court has found that a person who has incurred a liability under section 333 is entitled to limit that liability to any amount and he has paid into Court a sum not less than that amount,

- (a) the Court shall order the release of any ship or other property arrested in connection with a claim in respect of that liability or any security given to prevent or obtain release from such an arrest, and
- (b) no judgement or decree for any such claim shall be enforced, except so far as it is for costs,

if the sum paid into Court, or such part thereof as corresponds to the claim, will be actually available to the claimant or would have been available to him if the proper steps in the proceedings under section 338 had been taken.

Concurrent liabilities of owners and others

340. Where, as a result of any discharge or escape of persistent oil from a ship, the owner of the ship incurs a liability under section 333 and any other person incurs a liability, otherwise than under that section, for any such damage or cost as is mentioned in subsection (1) of that section then, if

- (a) the owner has been found, in proceedings under section 338, to be entitled to limit his liability to any amount and has been paid into Court a sum not less than that amount, and
- (b) the other person is entitled to limit his liability in connection with the ship by virtue of Chapter II of Part XV,

no proceedings shall be taken against the other person in respect of his liability, and if any such proceedings were commenced before the owner paid the sum into Court, no further steps shall be taken in the proceedings except in relation to cost.

341. Where the events resulting in the liability of any person under section 333 also resulted in a corresponding liability under the law of another Liability Convention Country, sections 339 and 340 shall apply as if the references to sections 333 and 338 included references to the corresponding provisions of that law and the references to sums paid into Court included references to any sums secured under those provisions in respect of the liability.

Establishment of
limitation fund outside
the Virgin Islands

342. No action to enforce a claim in respect of a liability incurred under section 333 or 334 shall be entertained by the Court unless the action is commenced not later than three years after the claim arose nor later than six years after the occurrence or first of the occurrences resulting in the discharge or escape by reason of which the liability was incurred.

Extinguishment of
claims

Compulsory Insurance

343. (1) Subject to the provisions of this Chapter relating to Government ships, subsection (2) shall apply to any ship carrying in bulk a cargo of more than 2,000 tons of persistent oil of a description specified in regulations made by the Governor in Council.

Compulsory insurance
against liability for
pollution

(2) The ship shall not enter or leave a port in the Virgin Islands or arrive at or a leave terminal in the territorial sea of the Virgin Islands nor, if the ship is a Virgin Islands ship, a port in any other country or a terminal in the territorial sea of any other country, unless there is in force a certificate complying with the provisions of subsection (3) and showing that there is in force in respect of the ship a contract of insurance or other security satisfying the requirements of Article VII of the Liability Convention (cover for owner's liability) and for the purposes of this subsection, the reference in Article VII to Article V of the Liability Convention shall be construed as a reference to Article II of the Protocol dated 19th November, 1976 to the Liability Convention.

- (3) The certificate must be,
- (a) if the ship is a Virgin Islands ship, a certificate issued by the Minister;
 - (b) if the ship is registered in a Liability Convention Country other than the Virgin Islands, a certificate issued by or under

the authority of the government of the other Liability Convention Country; and

- (c) if the ship is registered in a country which is not a Liability Convention Country, a certificate issued by the Minister or under the authority of the government of any Liability Convention Country other than the Virgin Islands.

(4) Any certificate required by this section to be in force in respect of a ship shall be carried in the ship and shall, on demand, be produced by the master to any customs officer or to the Minister and, if the ship is a Virgin Islands ship, to any proper officer.

(5) If a ship enters or leaves, or attempts to enter or leave a port, or arrives at or leaves, or attempts to arrive at or leave, a terminal in contravention of subsection (2), the master or owner commits an offence and is liable on summary conviction, to a fine not exceeding fifty thousand dollars.

(6) If a ship fails to carry or the master of a ship, fails to produce, a certificate as required by subsection (4), the master commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(7) If a ship attempts to leave a port in the Virgin Islands in contravention of this section the ship may be detained.

Issue of certificate by
Minister

344. (1) Subject to subsection (3), if the Minister is satisfied on an application for such a certificate as is mentioned in section 343 in respect of a Virgin Islands ship or a ship registered in any country which is not a Liability Convention Country, that there will be in force in respect of the ship, throughout the period for which the certificate is to be issued, a contract of insurance or other security satisfying the requirements of Article VII of the Liability Convention, the Minister shall issue such a certificate to the owner.

(2) For the purposes of subsection (1), the reference in Article VII to Article V of the Liability Convention shall be construed as a reference to Article V as amended by Article II of the Protocol dated 19th November, 1976 to the Liability Convention.

(3) If the Minister is of opinion that there is a doubt whether the person providing the insurance or other security will be able to meet its obligations thereunder, or whether the insurance or other security will cover the owner's liability under section 333 in all circumstances, he may refuse the certificates.

(4) The Governor in Council may make regulations providing for the cancellation and delivery of a certificate under this section in such circumstances as may be prescribed by the regulations.

(5) If a person required by regulations made under subsection (4) to deliver up a certificate fails to do so, he commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(6) The Minister shall send a copy of any certificate issued by him under this section in respect of a Virgin Islands ship to the Director, and the Director shall make the copy available for public inspection.

345. (1) Where it is alleged that the owner of a ship has incurred a liability under section 333 as a result of any discharge or escape of oil occurring while there was in force a contract of insurance or other security to which a certificate as is mentioned in section 343 related, proceedings to enforce a claim in respect of the liability may be brought against the person who provided the insurance or other security (in the following provisions of this section referred to as "the insurer").

Rights of third parties
against insurers

(2) In any proceedings brought against the insurer by virtue of this section it shall be a defence (in addition to any defence affecting the owner's liability) to prove that the discharge or escape was due to the wilful misconduct of the owner himself.

(3) The insurer may limit his liability in respect of claims made against him by virtue of this section in like manner and to the same extent as the owner may limit his liability but the insurer may do so whether or not the discharge or escape occurred without the owner's fault or privity.

(4) Where the owner and the insurer each apply to the Court for the limitation of his liability, any sum paid into Court in pursuance of either application shall be treated as paid also in pursuance of the other.

346. (1) Where any persistent oil is discharged or escapes from a ship but does not result in any damage caused by contamination in the territory of the Virgin Islands and no measures are reasonably taken to prevent or reduce such damage in that territory, no court in the Virgin Islands shall entertain an action (whether in rem or in personam) to enforce a claim arising from

- (a) any damage caused in the territory of another Liability Convention Country by contamination resulting from the discharge or escape;
- (b) any cost incurred in taking measures to prevent reduce such damage in the territory of another Liability Convention Country; or
- (c) any damage caused by any measures so taken.

(2) Any judgement given by a court in a Liability Convention Country to enforce a claim in respect of a liability incurred under any provision corresponding to section 333 shall be enforceable by a competent court in the Virgin Islands.

347. (1) Nothing in the preceding provisions of this Chapter applies in relation to any warship or any ship for the time being used by the government of any State for other than commercial purposes.

(2) In relation to a ship owned by a State and for the time being used for commercial purposes it shall be a sufficient compliance with section 343 (2) if there is in force a certificate issued by the government of that State and showing that the ship is owned by that State and that any liability for pollution damage as defined in Article 1 of the Liability Convention will be met up to the limit prescribed by Article V of the Liability Convention as amended by Article II of the Protocol dated 19th November, 1976 to the Liability Convention.

(3) Every Liability Convention State shall, for the purposes of any proceedings brought in a court in the Virgin Islands to enforce a claim in respect of a liability incurred under section 333, be deemed to have submitted to the jurisdiction of that court, and accordingly rules of court may provide for the manner in which such proceedings are to be commenced and carried on; but nothing in this subsection shall authorise the issue of the execution, against the property of any State.

348. For the purposes of Chapter II of Part XV, any liability incurred under section 334 shall be deemed to be a liability to damages in respect of such damage to property as is mentioned in sub-section (1) (a) of section 391.

Limitation of liability under section 334

349. Nothing in this Chapter shall prejudice any claim, or the enforcement of any claim, a person incurring any liability under this chapter may have against another person in respect of that liability.

Saving for recourse actions

350. (1) In this Chapter,
“the Liability Convention” means the International Convention on Civil Liability for Oil Pollution Damage signed in Brussels in 1969:

Meaning of “the Liability Convention” and related expressions

“Liability Convention Country” means a country in respect of which the Liability Convention is in force; and

“Liability Convention State” means a State which is a party to the Convention.

(2) If Her Majesty by Order in Council declares that any State specified in the Order is a party to the Liability Convention in respect of any country specified the Order shall, while in force, for the purposes of this Part be conclusive evidence that that State is a party to the Liability Convention in respect of that country.

CHAPTER II

INTERNATIONAL OIL POLLUTION

COMPENSATION FUND

Preliminary

351. (1) In this Chapter, unless the context otherwise requires,

Interpretation

“damage” includes loss;

“discharge or escape”, in relation to pollution damage, means the discharge or escape of oil carried by the ship;

“guarantor” means any person providing insurance or other financial security to cover the owner’s liability of the kind described in section 343;

“oil”, except in section 352 and 353, means persistent hydrocarbon mineral oil;

“owner” means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship, except that, in relation to a ship owned by a State which is operated by a person registered as the ship’s operator, it means the person registered as its operator;

“pollution damage” means damage caused outside the ship carrying oil by contamination resulting from the escape or discharge of oil from the ship, wherever the escape or discharge may occur, and includes the cost of preventive measures and further damage caused by preventive measures;

“preventive measures” means any reasonable measures taken by any person after the occurrence to prevent or minimise pollution damage; and

“ship” means any sea-going ship and any seaborne craft of any type whatsoever carrying oil in bulk as cargo.

(2) References in this Chapter to the territory of any country include the territorial sea of that country, and references to pollution damage in the Virgin Islands shall be construed accordingly.

(3) For the purposes of this Chapter, a ship’s tonnage shall be the net tonnage of the ship with the addition of the amount deducted from the gross tonnage on account of engine room space for the purpose of ascertaining the net tonnage.

(4) If the ship cannot be measured in accordance with the normal rules, its tonnage shall be deemed to be 40 per cent of the weight in tons (of 2,240 lbs) of oil which the ship is capable of carrying.

(5) For the purposes of this Chapter, where more than one discharge or escape results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one.

Contributions to Fund

352. (1) Contributions shall be payable to the Fund in respect of oil carried by sea ports or terminal installations in the Virgin Islands otherwise than on a voyage only within its national waters.

Contributions by
importers of oil and
others

(2) Subsection (1) applies whether or not the oil is being imported, and applies even if contributions are payable in respect of carriage of the same oil on a previous voyage.

(3) Contributions shall also be payable to the Fund in respect of oil when first received in any installation in the Virgin Islands after having been carried by sea and discharged in a port or terminal installation in a country which is not a Fund Convention Country.

(4) The person liable to pay contributions is,

- (a) in the case of oil which is being imported into the Virgin Islands, the importer; and
- (b) otherwise, the person by whom the oil is received.

(5) A person shall not be liable to make contributions in respect of the oil imported or received by him in any year if the oil so imported or received in the year does not exceed 150,000 tonnes.

(6) For the purpose of subsection (5),

- (a) all the members of a group of companies shall be treated as a single person; and

(b) any two or more companies which have amalgamated into a single company shall be treated as the same person as that single company.

(7) The contributions payable by a person for any year shall

(a) be of such amount as may be determined by the Assembly of the Fund under articles 11 and 12 of the Fund Convention (as amended by article III of the Protocol dated 19th November, 1976 to that Convention) and notified to that person by the Fund,

(b) be payable in such instalments, becoming due at such times, as may be so notified to him,

and if any amount due from him remains unpaid after the date on which it became due, it shall from then on bear interest, at a rate determined from time to time by the Assembly of the Fund, until it is paid.

(8) The Governor in Council may by regulations impose on persons who are or may be liable to pay contributions under this section obligations to give security for payment to the Accountant General, or the Fund.

(9) Regulations made under subsection (8) may

(a) contain such supplemental or incidental provisions as appear to the Governor in Council expedient; and

(b) impose penalties for contravention of the regulations punishable on summary conviction by a fine not exceeding level 5 on the standard scale, or such lower limit as may be specified in the regulations.

(10) In this section and in section 353, unless the context otherwise requires,

“company” means a body incorporated under the laws of the Virgin Islands, or of any other country;

“group”, in relation to companies, means a holding company and its subsidiaries subject, in the case of a company incorporated outside the Virgin Islands, to any necessary modifications of those definitions;

“importer” means the person by whom or on whose behalf the oil in question is entered for customs or excise purposes on importation, and “import” shall be construed accordingly;

“oil” means crude oil and fuel oil, and

- (a) “crude oil” means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation, and includes
 - (i) crude oils from which distillate fractions have been removed; and
 - (ii) crude oils to which distillate fractions have been added;
- (b) “fuel oil” means heavy distillates or residues from crude oil or blends of such material intended for use as a fuel for the production of heat or power of a quality equivalent to the “American Society for Testing and Materials Specification for Number Four Fuel Oil (Designation D396-69)”, or heavier;

“terminal installation” means any site for the storage of oil in bulk which is capable of receiving oil from waterborne transportation, including any facility situated offshore and linked to any such site.

353. (1) For the purpose of transmitting to the Fund the names and addresses of the persons who under section 352 are liable to make contributions to the Fund for any year, and the quantity of oil in respect of which they are so liable, the Minister may by notice require any person engaged in producing, treating, distributing or transporting oil to furnish such information as may be specified in the notice.

Power to obtain information

(2) A notice under this section may require a company to give such information as may be required to ascertain whether its liability is affected by section 352.

(3) A notice under this section may specify the way in which, and any time within which, it is to be complied with.

(4) In proceedings by the Fund against any person to recover any amount due under section 352, particulars in any list transmitted by the Minister to the Fund shall, so far as those particulars are based on information obtained under this section, be admissible as evidence of the facts stated in the list; and so far as particulars which are admissible are based on information given by the person against whom the proceedings are brought, those particulars shall be presumed to be accurate until the contrary is proved.

(5) If a person discloses any information which has been furnished to or obtained by him under this section, or in connection with the execution of this section, then, unless the disclosure is made

- (a) with the consent of the person from whom the information was obtained,
- (b) in connection with the execution of this section, or for the purposes of any legal proceedings arising out of this section or any report of such proceedings,

he commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) A person who

- (a) refuses or intentionally neglects to comply with a notice under this section, or
- (b) in furnishing any information in compliance with a notice under this section makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular,

commits an offence and is liable

- (i) on summary conviction, to a fine not exceeding level 4 on the standard scale in the case of an offence under paragraph (a) and not exceeding level 5 on the standard scale in the case of an offence under paragraph (b); and
- (ii) on conviction on indictment, to a fine not exceeding fifteen thousand dollars, or

imprisonment for a term not exceeding twelve months, or both

*Compensation for persons suffering
pollution damage*

354. (1) The Fund shall be liable for pollution damage in the territory of the Virgin Islands if the person suffering the damage has been unable to obtain full compensation under section 333 because Liability of the Fund

- (a) the discharge or escape causing the damage
 - (i) resulted from an exceptional, inevitable and irresistible phenomenon,
 - (ii) was due wholly to anything done or left undone by another person (not being a servant or agent of the owner) with intent to do damage, or
 - (iii) was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible,
(and because liability is accordingly wholly displaced by section 335);
- (b) the owner or guarantor liable for the damage cannot meet his obligations in full; or
- (c) the damage exceeds the liability under section 333 as limited by section 337.

(2) Subsection (1) shall apply with the substitution for the words “the Virgin Islands” of the words “a Fund Convention Country” where the incident has caused pollution damage in the territory of the Virgin Islands and of another Fund Convention Country, and proceedings under the Liability Convention for compensation for the pollution damage have been brought in a country which is not a Fund Convention country or in the Virgin Islands.

(3) Where the incident has caused pollution damage in the territory of the Virgin Islands and of another country in respect of which the Liability

Convention is in force, references in this section to the provisions of Chapter I shall include references to the corresponding provisions of the law of any country giving effect to the Liability Convention.

(4) For the purposes of this section, an owner or guarantor is to be treated as incapable of meeting his obligations if the obligations have not been met after all reasonable steps to pursue the legal remedies available have been taken.

(5) Expenses reasonably incurred, and sacrifices reasonably made, by the owner voluntarily to prevent or minimise pollution damage shall be treated as pollution damage for the purposes of this section, and accordingly he shall be in the same position with respect to claims against the Fund under this section as if he had a claim in respect of liability under section 333.

(6) The Fund shall incur no obligation under this section if

- (a) it proves that the pollution damage
 - (i) resulted from an act of war, hostilities, civil war or insurrection; or
 - (ii) was caused by oil which has escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of the occurrence, only on government non-commercial service; or
- (b) the claimant cannot prove that the damage resulted from an occurrence involving a ship identified by him, or involving two or more ships one of which is identified by him.

(7) Subject to subsection (8), if the Fund proves that the pollution damage resulted wholly or partly from

- (a) an act or omission done with intent to cause damage by the person who suffered the damage, or
- (b) the negligence of that person,

the Fund may be exonerated wholly or partly from its obligation to pay compensation to that person.

(8) Subsection (7) does not apply to a claim in respect of expenses or sacrifices made voluntarily to prevent or minimise pollution damage.

(9) Where the liability under section 333 is limited to any extent by subsection (5) of that section, the Fund shall be exonerated to the same extent.

355. (1) The Fund's liability under section 354 shall be subject to the limits imposed by paragraphs 4, 5 and 6 of Article 4 of the Fund Convention (as amended by Article III of the Protocol dated 19th November, 1976 to that Convention) which impose an overall limit on the liabilities of the owner and of the Fund, and the text of which is set out in Part II of Schedule 3.

Limitation of Fund's
liability under section
354

(2) Evidence of any instrument issued by any organ of the Fund or of any document in the custody of the Fund, or any entry in or extract from such a document may be given in any legal proceedings by production of a copy certified as a true copy by an official of the Fund, and any document purporting to be such a copy shall be received in evidence without proof of the official position or handwriting of the person signing the certificate.

(3) For the purpose of giving effect to paragraphs 4, 5 and 6 of Article 4 of the Fund Convention, a court giving judgement against the Fund in proceedings under section 354 shall notify the Fund, and

- (a) no steps shall be taken to enforce the judgement unless and until the court gives leave to enforce it;
- (b) that leave shall not be given unless and until the Fund notifies the court either that the amount of the claim is not to be reduced under those paragraphs, or that it is to be reduced to a specified amount; and
- (c) in the latter case the judgement shall be enforceable only for the reduced amount.

(4) Any steps taken to obtain payment of an amount or a reduced amount in pursuance of such a judgement as is mentioned in subsection (3) shall be steps to obtain payment in the currency of the United States dollars, and for the purpose of converting such an amount from special drawing rights into dollars one special drawing right shall be treated as equal to such a sum in dollars as the International Monetary Fund have fixed as being the equivalent of one special drawing right for

- (a) the day on which the judgement is given; or
- (b) if no sum has been so fixed for that day, the last day before that day for which a sum has been so fixed.

(5) A certificate given by or on behalf of the Minister stating

- (a) that a particular sum in dollars has been so fixed for the day on which the judgement was given, or
- (b) that no sum has been fixed for that day and that a particular sum in dollars has been so fixed for a day which is the last day for which a sum has been so fixed before the day on which the judgement was given,

shall be conclusive evidence of those matters for the purposes of this Chapter.

(6) A document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

Indemnification of shipowners

355A. (1) Where a liability is incurred under section 333 in respect of a ship registered in a Fund Convention Country, the Fund shall indemnify the owner and his guarantor for that portion of the aggregate amount of the liability which

Indemnification where
damage is caused by
ship registered in Fund
Convention Country

- (a) is in excess of an amount equivalent to 100 special drawing rights for each ton of the ship's tonnage or of an amount of 8,333,000 special drawing rights, whichever is the less; and

- (b) is not in excess of an amount equivalent to 133 special drawing rights for each ton of the said tonnage or an amount of 14 million special drawing rights, whichever is the less.

(2) Where proceedings under the Liability Convention for compensation for pollution damage have been brought in a country which is not a Fund Convention Country (but is a country in respect of which the Liability Convention is in force), and the incident has caused pollution damage in the territory of the Virgin Islands (as well as in the territory of that other country), subsection (1) shall apply with the omission of the words “under section 333”.

(3) The Fund shall not incur an obligation under this section where the pollution damage resulted from the wilful misconduct of the owner.

(4) In proceedings to enforce the Fund’s obligation under this section the court may exonerate the Fund wholly or partly if it is proved that, as a result of the actual fault or privity of the owner

- (a) the ship did not comply with such requirements as the Governor in Council may by Order prescribe for the purposes of this section; and
- (b) the occurrence or damage was caused wholly or partly by that non-compliance.

(5) The requirements referred to in subsection (4) are such requirements as appear to the Governor in Council appropriate to implement the provisions of

- (a) Article 5 (3) of the Fund Convention (marine safety conventions); and
- (b) Article 5 (4) of the Fund Convention (which enables the Assembly of the Fund to substitute new conventions).

(6) An Order made under subsection (4) may contain such transitional and other supplemental provisions as appear to the Governor in Council to be expedient.

(7) Expenses reasonably incurred, and sacrifices reasonably made, by the owner voluntarily to prevent or minimise the pollution damage shall be treated as included in the owner's liability for the purposes of this section.

(8) For the purpose of converting into the currency of the United States dollars the amount in special drawing rights adjudged to be payable by the Fund by way of indemnity in such proceedings as are mentioned in subsection (4), subsections (4) to (6) of section 355 shall have effect

- (a) if the liability in question has been limited in pursuance of section 338, as if
 - (i) for the reference in that subsection (4) to the amount there mentioned there were substituted a reference to the amount adjudged as aforesaid; and
 - (ii) for any reference to the day on which the judgement is or was given there were substituted a reference to the day on which the determination of the limit was made in pursuance of section 338; and
- (b) if the liability in question has not been so limited, with the modification made by paragraph (a) (i) and as if for any reference to the day on which the judgement is or was given there were substituted a reference to the day on which the said amount was so adjudged.

Supplemental

Jurisdiction and effect of judgements

356. (1) Where in accordance with rules of court made for the purposes of this subsection, the Fund has been given notice of proceedings brought against an owner or guarantor in respect of liability under section 333, any judgements given in the proceedings shall, after it has become final and enforceable, become binding upon the Fund in the sense that the facts and evidence in the judgement may not be disputed by the Fund even if the Fund has not intervened in the proceedings.

(2) Where a person incurs a liability under the law of a Fund Convention Country corresponding to Chapter I for damage which is partly in the

territory of the Virgin Islands, subsection (1) shall, for the purpose of proceedings under this Chapter, apply with any necessary modifications to a judgement in proceedings under that law of the said country.

(3) Subject to subsection (4), any judgement given by a court in a Fund Convention Country to enforce a claim in respect of liability incurred under any provision corresponding to section 354 or 355A shall be enforceable by a competent court in the Virgin Islands.

(4) No steps shall be taken to enforce such a judgement unless and until the Fund notifies the court either that the amount of the claim is not to be reduced under paragraph 4 of article 4 of the Fund Convention (as set out in Part II of Schedule 3) or that it is to be reduced to a specified amount, and in the latter case, the judgement shall be enforceable only for the reduced amount.

357. (1) No action to enforce a claim against the Fund under this Chapter shall be entertained by a court in the Virgin Islands unless

Extinguishment of claims

- (a) the action is commenced, or
- (b) a third notice of an action to enforce a claim against the owner or his guarantor in respect of the same damage is given to the Fund,

not later than three years after the claim against the Fund arose.

In this subsection “third party notice” means a notice of the kind described in section 356 (2) and (3).

(2) No action to enforce a claim against the Fund under this Chapter shall be entertained by a court in the Virgin Islands unless the action is commenced not later than six years after the occurrence, or first of the occurrences, resulting in the discharge or escape by reason of which the claim against the Fund arose.

(3) Notwithstanding subsections (1) and (2), a person’s right to bring an action under section 355A shall not be extinguished before six months from the date when that person first acquired knowledge of the bringing of an action against him under Chapter I, or under the corresponding provisions of the law of any country outside the Virgin Islands giving effect to the Liability Convention.

Subrogation

358. (1) In respect of any sum paid by the Fund as compensation for pollution damage the Fund shall acquire by subrogation any rights in respect of the damage which the recipient has (or but for the payment would have) against any other person.

(2) The right of the Fund under subsection (1) is subject to any obligation of the Fund under section 355A to indemnify the owner or guarantor for any part of the liability on which he has defaulted.

(3) In respect of any sum paid by a public authority in the Virgin Islands as compensation for pollution damage, that authority shall acquire by subrogation any rights which the recipient has against the Fund under this Chapter

Supplementary provisions as to proceedings involving the Fund

359. (1) Any proceedings by or against the Fund may either be instituted by or against the Fund in its own name or be instituted by or against the Director of the Fund as the Fund's representative.

(2) Evidence of any instrument issued by any organ of the Fund or of any document in the custody of the Fund, or any entry in or extract from such a document, may be given in any legal proceedings by production of a copy certified as a true copy by an official of the Fund, and any document purporting to be such a copy shall, in any such proceedings, be received in evidence without proof of the official position or handwriting of the person signing the certificate.

Meaning of "the Liability Convention", "the Fund Convention" and related expressions

360. (1) In this Chapter,

- (a) "the Liability Convention" has the same meaning as in Chapter I;
- (b) "the Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage opened for signature in Brussels on 18th December, 1971;
- (c) "the Fund" means the International Fund established by the Fund Convention; and
- (d) "Fund Convention Country" means a country in respect of which the Fund Convention is in force.

(2) If Her Majesty by Order in Council declares that any State specified in the Order is a party to the Fund Convention in respect of any country so specified the Order shall, while in force, be for the purposes of this Part conclusive evidence that that State is a party to that Convention in respect of that country.

SCHEDULE 3

OVERALL LIMIT ON LIABILITY OF FUND

PART I

[Section 364]

Permanent Provision

Article 4 – paragraphs 4 and 5

4. (a) Except as otherwise provided in sub-paragraphs (b) and (c) of this paragraph, the aggregate amount of compensation payable by the Fund under this Article shall in respect of any one incident be limited, so that the total sum of that amount and the amount of compensation actually paid under the Liability Convention for pollution damage within the scope of application of this Convention as defined in Article 3 shall not exceed 135 million units of account.
- (b) Except as otherwise provided in sub-paragraph (c), the aggregate amount of compensation payable by the Fund under this Article for pollution damage resulting from a natural phenomenon of an exceptional, inevitable and irresistible character shall not exceed 135 million units of account.
- (c) The maximum amount of compensation referred to in sub-paragraphs (a) and (b) shall be 200 million units of account with respect to any incident occurring during any period when there are three parties to this Convention in respect of which the combined relevant quantity of contributing oil received by persons in the territories of such parties, during the preceding calendar year, equalled or exceeded 600 million tons.
- (d) Interest accrued on a fund constituted in accordance with Article V, paragraph 3, of the Liability Convention, if any,

shall not be taken into account for the computation of the maximum compensation payable by the Fund under this Article.

- (e) The amounts mentioned in this Article shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the decision of the Assembly of the Fund as to the first date of payment of compensation.

5. Where the amount of established claims against the Fund exceeds the aggregate amount of compensation payable under paragraph 4, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this Convention shall be the same for all claimants.

Part II

Transitory Provision

Article 4 – paragraphs 4, 5 and 6

- 4. (a) Except as otherwise provided in sub-paragraph (b) of this paragraph, the aggregate amount of compensation payable by the Fund under this Article shall in respect of any one incident be limited, so that the total sum of that amount and the amount of compensation actually paid under the Liability Convention for pollution damage caused in the territory of the Contracting States, including any sums in respect of which the Fund is under an obligation to indemnify the owner pursuant to Article 5, paragraph 1, of the Convention, shall not exceed 30 million special drawing rights.
- (b) The aggregate amount of compensation payable by the Fund under this Article for pollution damage resulting from a natural phenomenon of an exceptional, inevitable and irresistible character shall not exceed 30 million special drawing rights.

5. Where the amount of established claims against the Fund exceeds the aggregate amount of compensation payable under paragraph 4, the amount available shall be distributed in such manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under the Liability Convention and this Convention shall be the same for all claimants.

6. The Assembly of the Fund may, having regard to the experience of incidents which have occurred and in particular the amount of damage resulting therefrom and to changes in the monetary values, decide that the amount of 30 million special drawing rights referred to in paragraph 4, subparagraphs (a) and (b), shall be changed; provided, however, that this amount shall in no case exceed 60 million special drawing rights or be lower than 30 million special drawing rights. The changed amount shall apply to incidents which occur after the date of the decision effecting the change.

SCHEDULE 4

[Section 454]

PROVISIONS HAVING EFFECT AS TO THE CONSTITUTION, FUNCTIONS AND PROCEDURE OF THE MARITIME ADVISORY BOARD

1. (1) The members of the Maritime Advisory Board (hereinafter referred to as “the Board”) shall comprise Constitution of the Board

- (a) a Chairman;
- (b) the Director, and where two Directors are appointed under the Act, both Directors;
- (c) the Registrar of Shipping and Seamen;
- (d) the Managing Director of the British Virgin Islands Ports Authority;
- (e) the Chief Conservation and Fisheries Officer;
- (f) the Comptroller of Customs;
- (g) one representative of the British Virgin Islands Chamber of Commerce and Hotel Association, nominated by that Association;
- (h) one representative of the British Virgin Islands Bar Association, nominated by that Association;
- (i) one representative of the Association of Registered Agents, nominated by that Association; and
- (j) two persons with knowledge and experience in maritime matters.

(2) The persons referred to under subparagraph (1) (a) and (j) shall be appointed by the Governor in Council.

(3) The members of the Board shall be appointed by instrument by the Governor in Council.

(4) The Governor in Council shall appoint a public officer from the Ministry of Finance or the Ministry of Communications and Works to be Secretary of the Board.

(5) The functions of the Secretary shall be such as the Board may determine.

Functions of the Board

2. The functions of the Board are

- (a) to advise the Governor in Council on matters relating to the making or amendment of any regulations or rules made under this Act and any other matter relating to this Act as the Governor in Council may request;
- (b) to advise the Minister on such matters relating to his duties under this Act as the Minister may request;
- (c) to perform such other tasks as the Governor in Council may determine and report to the Governor in Council at such times as the Governor in Council requires.

Meetings of the Board

3. (1) The Board shall meet at such place and time as the Chairman may determine.

(2) At every meeting of the Board the Chairman shall preside, and in his absence the members present shall elect one of their numbers to preside.

(3) The Chairman may at any time, and shall, at the written request of at least five members, convene a special meeting of the Board.

(4) The quorum at every meeting of the Board shall be six.

(5) The Board shall take its decisions by a majority vote of the members present and where there is an equality of votes the Chairman shall have a casting vote.

(6) In the conduct of its meetings the Board shall adopt its own rules of procedure.

4. (1) Every member of the Board shall hold office for a period not exceeding two years from the date of his appointment and shall be eligible for re-appointment. Tenure of office

(2) A member of the Board may, by writing under his hand addressed to the Governor in Council, resign his office.

(3) A member ceases to be a member of the Board if

- (a) he resigns;
- (b) he is adjudged a bankrupt and has not been discharged;
- (c) he is of unsound mind or is certified by a medical practitioner to be of such ill-health as not to be able to properly discharge his functions under this Act;
- (d) he, being a nominee of an association under paragraph 1(1) (g), (h) and (i), ceases to be a member of such Association; or
- (e) the Governor in Council, for any good reason (to be stated in writing), removes such member.

(4) Where a member of the Board ceases to be a member under this section before the expiration of his term, the Governor in Council may appoint another person to replace such member for the unexpired period of that member's tenure.

(5) Where the member of the Board who ceases to be a member is a nominee of an Association under paragraph 1 (1) (g), (h), or (i), the Governor in Council shall request the Association concerned to nominate another representative to be appointed by the Governor in Council.

5. (1) The Board may, in the performance of its functions, Power of the Board to co-opt and delegate

- (a) co-opt any person in the Virgin Islands with a special skill into the Board for the purpose of that person assisting the Board in dealing with a specific subject; and
- (b) delegate any of its functions to a committee of the Board.

(2) A person co-opted under sub-paragraph (1) (a) shall not have a voting right or exercise any of the powers of a member of the Board.

(3) The delegation of functions under sub-paragraph (1) (b) shall not prevent the Board from performing those functions.

6. (1) The board shall, in the performance of its functions, prepare and keep record of its proceedings.

(2) The Board shall, within three months of the end of each financial year, prepare and submit a report to the Governor in Council on the performance of its functions for the preceding year and the Governor in Council shall cause the report to be laid before the Legislative Council within three months after receipt of the report.

Remuneration

7. The Governor in Council shall

- (a) determine the remuneration to be paid to the members of the Board;
- (b) at his discretion, approve payment to a person who is co-opted by the Board pursuant to paragraph 5 (1) (a).

SCHEDULE 5

Standard Scale of Fines

[Section 455 (4)]

Level 1 -	\$1,000
Level 2 -	\$2,000
Level 3 -	\$3,000
Level 4 -	\$4,000
Level 5 -	\$5,000

SCHEDULE 6

ENACTMENTS REPEALED

[Section 466]

No.	Enactment	Extent of Repeal
1.	Carriage of Goods by Sea Ordinance (Cap. 255)	Section 6 is repealed and substituted as follows: “Saving. 6. Nothing in this Ordinance shall affect the provisions of the Merchant Shipping Act, 2000 limiting the liability of the owners of ships.”.
2.	Foreign Merchant Shipping (Agreements) Act (Cap. 256)	The whole Act.
3.	Merchant Shipping (Agreements) Act (Cap. 258)	The whole Act.
4.	Merchant Shipping (Registry) Act (Cap. 259)	The whole Act.
5.	Prevention of Collisions at Sea Act (Cap. 262)	The whole Act, except the First Schedule.
6.	Receivers of Wreck (Cap. 263) Wrecks Inquiries Act (Cap. 264)	The whole Act.

7.		The whole Act.
8.	Registrar of Ships (Designation) Act, 1992 (No. 13 of 1992)	The whole Act.
9.	Merchant Shipping (Adoption of United Kingdom Legislation) Act, 1994 (No. 1 of 1994).	The whole Act, except Schedule 2.
10.	British Virgin Islands Ports Authority Act, 1990 (No. 12 of 1990)	Section 5 is amended by repealing paragraph (k) and substituting therefor the following:

No.	Enactment	Extent of Repeal
		<p>“(k) establish and maintain on and off the coast of the Territory and other areas specified by the Minister such lights and other means for the guidance and protection of vessels as are necessary for navigation in and out of the specified ports or other areas; and”.</p> <p>Section 24 is amended</p> <p>(a) in subsection (1) by deleting the words “All vessels” and substituting therefore the words “Subject to the Merchant Shipping Act, 2000, all”; and</p> <p>(b) in subsection (2)</p> <p>(i) by substituting a full-stop for the semi-colon at the end of paragraph (c) and deleting the word</p>

		<p>“and”; and (ii) by repealing paragraph (d).</p> <p>Section 25 is amended (a) in subsection (3) by deleting “\$2,000” and substituting therefore “\$20,000”; and (b) by repealing subsection (6).</p> <p>Section 26 is repealed.</p> <p>Section 27 is amended in the closing paragraph of subsection (1) by deleting the words “subsections (2) to (7) of section 26” and substituting therefor the words “section 287 of the Merchant Shipping Act, 2000”.</p>
No.	Enactment	Extent of Repeal
		<p>Section 29 is repealed.</p> <p>Section 30 is repealed.</p> <p>Section 31 is amended (a) in the opening paragraph of subsection (1) by deleting the words “The owner” and substituting therefore the words “Without prejudice to the provisions of the Merchant Shipping Act, 2000 and any Regulations made thereunder, the owner”; and (b) in subsection (3) by inserting between “available to” and “the</p>

		<p>Crown” the words “the Authority; or”.</p> <p>Sections 32 to 38 are repealed.</p> <p>Section 51 is amended by inserting between “a copy of” and “this Act” the words “the Merchant Shipping Act, 2000 and”.</p> <p>Section 94 is amended in subsection (1) by repealing paragraphs (1) and (v).</p>
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Passed by the Legislative Council this 7th day of December, 2001.

REUBEN VANTERPOOL,
Speaker.

OLEANVINE MAYNARD,
Ag. Clerk of the Legislative Council.