

No. of 2021

**VIRGIN ISLANDS**  
**CONTRACTOR GENERAL ACT, 2021**  
**ARRANGEMENT OF SECTIONS**

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No. of 2021

Contractor General, Act, 2021

Virgin  
Islands

I Assent

Governor.

, 2021

## VIRGIN ISLANDS

No. of 2021

An Act to establish the office of the Contractor General and for the monitoring and implementation of government contracts and to provide for matters connected therewith.

[Gazetted , 2021]

ENACTED by the Legislature of the Virgin Islands as follows:

### PART I

#### PRELIMINARY

1. (1) This Act may be cited as the Contractor General, Act, 2021. Short title and commencement.
- (2) This Act shall come into force on such date as the Minister may, by notice published in the *Gazette*, appoint.
2. In this Act, unless the context otherwise requires, Interpretation.
- “Cabinet” means the Cabinet established under section 47 of the Virgin Islands Constitutional Order, 2007; U.K. S.I. 2007 No. 1678
- “Constitution” means the Virgin Islands Constitution Order, 2007;
- “contractor” includes any person, firm or entity with whom a public body enters into any agreement for the carrying out of any building or other works or for the supply of any goods or services and includes a person who carries out such works or supplies such goods or services for or on behalf of any public body pursuant to a licence, permit or other concession or authority issued or granted to that person by a public body;

“Contractor General” means the Contractor General appointed under section 3 of this Act;

“functions” includes powers and duties;

“government contract” includes any licence, permit or other concession or authority issued by a public body or agreement entered into by a public body for the carrying out of building or other works or for supply of any goods or services;

“House of Assembly” means the House of Assembly established by section 63 of the Constitution;

“Minister” means the Minister responsible for Finance;

“prescribed licence” means any licence, certificate, quota, permit or warrant issued or granted pursuant to any enactment by a public body or an officer thereof;

“principal officer” means,

- (a) in relation to a Ministry, the Permanent Secretary of that Ministry;
- (b) in relation to a Department, the Head of that Department; and
- (c) in relation to any other public body - the Chief Executive Officer, general manager, or other similar officer of that body;

“public body” means,

- (a) a Ministry, department or agency of Government;
- (b) a statutory body or authority; or
- (c) any company registered under the Companies Act, being a company in which the Government or an agency of Government holds not less than fifty-one per centum of the ordinary shares;

“public contract” means a contract awarded by a public body and includes any licence, permit or other concession or authority issued by a public body or agreement entered into by a public body for the carrying out of any building or other works or for the supply of any goods or services;

“public officer” or “public service” has the meaning assigned to it under section 2 of the Virgin Islands Constitutional Order, 2007; and

“Public Services Commission” means the Public Services Commission constituted under section 91 of the Virgin Islands Constitutional Order, 2007.

(2) The references in this Act to a Ministry, department or agency of Government include a reference to the Minister, members or officers of that Ministry, department or agency.

## PART II

### THE CONTRACTOR GENERAL

**3.** (1) For the purposes of this Act, there is hereby established an office to be known as the office of the Contractor General. The Contractor General.

(2) The Premier acting on the recommendations of the Leader of Opposition may, with the approval of Cabinet appoint on such terms and conditions as he or she thinks fit, a fit and proper person to be the Contractor General.

(3) Notwithstanding anything to the contrary contained in this Act; the office of Contractor General shall not be deemed to be an office in the public service, but shall be a body corporate to which section 21 of the Interpretation Act shall apply.

(4) The Contractor General shall be appointed on the basis of integrity and demonstrated ability in any of the following areas

- (a) accounting;
- (b) auditing;
- (c) financial analysis;
- (d) law;
- (e) management analysis;
- (f) public administration; or
- (g) project management.

**4.** In the exercise of the powers conferred upon him or her or her by this Act, the Contractor General shall not be subject to the direction or control of any other person or authority in respect of his or her duties as the Contractor General. Independence of Contractor General and immunity from suit.

Tenure of office and resignation.

5. (1) Subject to the provisions of this Act, a person appointed as Contractor General shall hold office for a period of five years and shall, at the expiration of such period, be eligible for reappointment.

(2) The Contractor General may at any time resign his or her office by giving written notice to the Minister and such resignation shall become effective upon receipt by the Minister.

(3) A person appointed as Contractor General shall, subject to the provisions of subsections (4) and (5) of this section, vacate office on attaining the age of sixty-five years.

(4) Subject to the approval of Cabinet, the Minister may permit a Contractor General who attains the age of sixty-five years if he or she is physically fit for service, to continue in office until he or she has attained such later age, not exceeding seventy years, as may be agreed between them.

(5) Notwithstanding that he or she has attained the age at which he or she is required by or under the provisions of this section to vacate his or her office, the Contractor General may continue in office for such period after attaining that age as the Minister, subject to the approval of Cabinet may specify, in order to enable the Contractor General to give his or her decision or do any other thing in relation to any investigation he or she was conducting before he or she attained that age.

(6) Nothing done by the Contractor General shall be invalid by reason only that he or she has attained the age required by this section to vacate his or her office.

Removal from office.

6. (1) The Contractor General may be removed from office only for,
- (a) inability to discharge the functions of his or her office, whether arising from infirmity of body or mind or any other cause;
  - (b) misbehaviour; or
  - (c) trading with a public body without the prior approval of Cabinet,

and shall not be so removed except in accordance with the provisions of this section.

(2) For the purposes of this section, a Contractor General trades with a public body if, while holding office as such, he or she becomes party to, or is a partner in a firm or a director or manager of a company which to his or her knowledge becomes a party to any contract with a public body.

**7. (1)** A public body aggrieved by a decision of the Contractor General in respect of this Act may within fourteen days of the decision file a notice of appeal against the decision to the Appeal Tribunal. Right to appeal.

(2) A notice of Appeal under subsection (1) shall be in writing addressed to the Appeal Tribunal setting out the grounds of appeal and shall be in such form as the Appeal Tribunal may determine.

(3) Upon receipt of a notice of appeal, the Appeal Tribunal shall proceed to hear the appeal on such date and time as the Appeal Tribunal may determine.

(4) In hearing an appeal under subsection (1), the Appeal Tribunal shall

- (a) adopt such rules of procedures as it may determine;
- (b) have regard to the written decision of the Contractor General and any other document that forms part of the record of appeal.

(5) The Appeal Tribunal shall, after hearing an appeal,

- (a) dismiss the appeal;
- (b) allow the appeal; or
- (c) make an order remitting the case to the Contractor General for further hearing with such directions as it may consider fit.

(6) The decision of the Appeal Tribunal on an appeal shall be final.

(7) The provisions of the Schedule 1 shall have effect as to the constitution and operation of the Tribunal and otherwise in relation thereto. Schedule 1

**8.** A person shall not be qualified for appointment to the office of Contractor General if he or she, Disqualifications for appointment.

- (a) is a member of the House of Assembly;

- (b) is an undischarged bankrupt;
- (c) has at any time been convicted of any offence involving dishonesty or moral turpitude;
- (d) is a party to, or partner in a firm, or a director or manager of a company which to his knowledge is a party to any contract with a public body; or
- (e) is found to be of unsound mind.

Restriction on employment.

**9.** A person appointed as Contractor General shall be a full-time officer and shall not be employed in any other capacity during any period in which he or she holds office as Contractor General.

Filling of vacancy.

**10. (1)** Where a vacancy arises in the office of Contractor General, the Minister with the approval of Cabinet, may designate a person to act in that office during such vacancy, until a substantive appointment is made.

(3) Where the Contractor General is ill or absent from the Territory or is for any other reason unable to perform the functions of his or her office, those functions shall, until such time as he or she resumes the functions of his or her office or another person is appointed as the Contractor General, be assumed and performed by such person as may be appointed in writing by the Minister with the approval of Cabinet to act as Contractor General.

Remuneration of Contractor General.

**11. (1)** Subject to subsection (2), the Contractor General shall receive such emoluments and be subject to such other terms and conditions of service as may be determined by Cabinet.

(2) The emoluments and terms and conditions of service of the Contractor General, other than allowances that are not taken into account in computing pension, shall not be altered to his or her disadvantage during the period of his or her appointment or reappointment, as the case may be.

(3) The emoluments for the time being payable to the Contractor General by virtue of this Act shall be charged on and paid out of the monies authorised appropriated for the purpose of the office of the Contractor General under section 27.

Pensions and Gratuities. Schedule 2

**12.** The provisions of Schedule 2 to this Act shall have effect with respect to the pension and other benefits to be paid to or in respect of a person who has held the office of Contractor General.

Appointment of officers etc.

**13. (1)** The Contractor General shall be provided with such staff as the Minister with the approval of Cabinet may appoint and employ for the purposes



of this Act, on such remuneration and on such terms and conditions as may be considered necessary for the efficient functioning and management of the office of the Contractor General and to assist in the proper performance of his or her functions under this Act.

(2) The Minister with the approval of Cabinet or the Public Service Commission, as the case may be, may, subject to such conditions as may be imposed, approve the secondment to the staff of the Contractor General, of any officer in the public service, provided that in relation to any pension, gratuity, allowances and other rights as a public officer, such officer shall be deemed to be in the public service while so employed.

**14. (1)** Every person appointed to the staff of the Contractor General shall, before he or she performs any function assigned to them under or by virtue of this Act, take and subscribe an oath to be administered by the Contractor General, that he or she will faithfully, fully, impartially and to the best of his or her ability discharge the trust and perform the duties devolving upon him or her or her, as specified in the form set out in Schedule 3 to this Act.

Oath of office.

Schedule 3

(2) The Oath referred to in subsection (1) shall be taken before a Magistrate, Additional Magistrate, Registrar of the High Court or a Justice of the Peace.

(3) The Contractor General shall keep a record of all Oaths taken pursuant to this section.

### **PART III**

#### **POWERS AND FUNCTIONS OF CONTRACTOR GENERAL**

**15. (1)** Subject to the provisions of this Act, it shall be the function of a Contractor General,

Functions of Contractor General.

- (a) to monitor the award and the implementation of government contracts with a view to ensuring that,
  - (i) such contracts are awarded impartially and on merit;
  - (ii) the circumstances in which each contract is awarded or, as the case may be, terminated, do not involve any impropriety or irregularity;

- (iii) without prejudice to the functions of any public body in relation to any contract, the implementation of each such contract conforms to the terms thereof;
- (iv) there is no fraud, corruption, mismanagement, waste or abuse in the awarding of contracts by a public body;
- (b) to investigate any such fraud, mismanagement, waste or abuse under paragraph (b)(iv);
- (c) to develop policy guidelines, evaluate programme performance and monitor actions taken by a public body with respect to the award, execution and termination of contracts; and
- (d) to monitor the grant, issue, suspension or revocation of any prescribed licence, with a view to ensuring that the circumstances of such grant, issue, suspension or revocation do not involve impropriety or irregularity and, where appropriate, to examine whether such licence is used in accordance with the terms and conditions thereof.

(2) For the purpose of the discharge of his or her functions under this Act, the Contractor General shall be entitled,

- (a) to be advised of the award and, where applicable, the variation of any public contract by the public body responsible for such contract;
- (b) on the authority of a warrant issued in that behalf by a Magistrate
  - (i) to have access to all books, records, documents, stores or other property belonging to a public body, whether in the possession of any officer of a public body or a contractor or any other person;
  - (ii) to have access to any premises or location where work on a public contract has been, is being or is to be carried out;
  - (iii) to have access to all books, records, documents or other property used in connection with the grant, issue, suspension or revocation of any prescribed

licence whether in the possession of any public officer or any other person;

- (iv) to have access to any premises or location where he or she has reason to believe that any such books, records, documents or other property as are referred to in paragraph (d) above or any property which is the subject of a prescribed licence, may be found;
- (v) to enter any premises occupied by any person in order to make such enquiries or to inspect such document, record or property as he or she considers necessary to any matter being investigated by him or her; and
- (vi) without prejudice to the provisions of sections 18 and 19 of this Act, to retain any such document, record or other property referred to in paragraph (f) above.

(3) For the purpose of subsection (2) of this section, the Contractor General shall have power to require any public body to furnish in such manner and at such times as may be specified by the Contractor General, information with regard to the award of any contract and such other information in relation thereto as the Contractor General considers desirable.

(4) For the purposes of paragraphs subsection (2)(b)(iii) and (iv) of this section, the Contractor General shall have power to require any public officer or any other person to furnish in such manner and at such times as may be specified by the Contractor General, information with regard to the grant, issue, suspension, or revocation of any prescribed licence and such other information in relation thereto as the Contractor General considers desirable.

**16.** The Contractor General shall, where it is necessary and desirable, conduct an investigation into any or all of the following matters,

Scope of investigation.

- (a) the selection of contractors;
- (b) tender procedures relating to contracts awarded by public bodies;
- (c) the award of any public contract;
- (d) any allegation of fraud, mismanagement, waste or abuse involving public contracts;

- (e) the implementation of the terms of any public contract;
- (f) the circumstances of and the practices and procedures relating to the grant, issue, use, suspension or revocation of any prescribed licence.

Initiation of investigation

**17. (1)** An investigation pursuant to section 16 of this Act may be undertaken by the Contractor General on his or her own initiative or as a result of representations made to him or her or her, if in his or her opinion such investigation is warranted.

(2) The Contractor General may receive and investigate complaints or information from an employee of a public body concerning the possible existence of an activity constituting a violation of law, rules, or regulations; or mismanagement, gross waste of funds, fraud, corruption or other impropriety relating to the award or termination of any contract; or the grant, issue suspension or revocation of any prescribed licence.

(3) The Contractor General shall not, after receipt of a complaint or information from an employee under subsection (2) of this section, disclose the identity of the employee without the consent of the employee, unless the Contractor General determines that such disclosure is unavoidable during the course of the investigation.

Procedure in respect of investigations.

**18. (1)** The Contractor General may adopt whatever procedure he or she considers appropriate to the circumstances of a particular case and, subject to the provisions of this Act, may obtain information from such persons and in such manner and make such enquiries as he or she thinks fit.

(2) Nothing in this Act shall be construed as requiring the Contractor General to hold any hearing and no person shall be entitled as of right to comment on any allegations or to be heard by the Contractor General.

(3) Regulations made under this Act may prescribe the practice and procedure to be adopted at any hearing.

Evidence.

**19. (1)** Subject to the provisions of subsection (5) of this section and section 20(1) of this Act, the Contractor General may at any time require any officer or member of a public body or any other person who, in his or her opinion, is able to give any assistance in relation to the investigation of any matter pursuant to this Act, to furnish such information and produce any document or thing in connection with such matter as may be in the possession or under the control of that officer, member or other person.

(2) Subject as aforesaid, the Contractor General may summon before him or her or her and examine on oath,

- (a) any person who has made representations to him or her or her; or
- (b) any officer, member or employee of a public body or any other person who, in the opinion of the Contractor General, is able to furnish information relating to the investigation,

and such examination shall be deemed to be a judicial proceeding and the appropriate provisions of the Criminal Code, (relating to perjury and obstruction of public justice) shall apply to all statements made in such proceedings.

(3) For the purpose of an investigation under this Act, the Contractor General shall have the same powers as a Judge of the High Court in respect of the attendance and examination of witnesses and the production of documents.

(4) Subject to the provisions of this Act, any obligation to maintain secrecy or any restriction on the disclosure of information or the production of any document or paper or thing imposed on any person by or under any law shall not apply in relation to the disclosure of information or the production of any document or thing by that person to the Contractor General for the purpose of an investigation; and accordingly, no person shall be liable to prosecution for an offence under any such law by reason only of his or her compliance with a requirement of the Contractor General under this Act.

(5) No person shall, for the purpose of an investigation, be compelled to give any evidence or produce any document or thing which he or she could not be compelled to give or produce in proceedings in any court of law.

**20.** (1) Where the Secretary to the Cabinet at the direction of Cabinet certifies that the giving of any information or the answering of any question or production of any document or thing, would,

Restriction on the disclosure of certain matters.

- (a) involve the disclosure of the deliberations or proceedings of the Cabinet, or any committee thereof, relating to matters of a secret or confidential nature and is likely to be injurious to the public interest;
- (b) prejudice the relations of the Virgin Islands with the Government of any other country or with any international organisation;
- (c) prejudice the detection of indictable offences; or
- (d) prejudice the security or defence of the Virgin Islands,

the Contractor General shall not further require such information or answer to be given or such document or thing to be produced.

(2) Except as provided in subsection (1) of this section, no law which authorises or requires the refusal to answer any question or the withholding of any information or document or thing on the ground that the answering of the question or the disclosure of the information, document or thing would be injurious to the public interest, shall apply in respect of any investigation by or proceedings before the Contractor General.

Procedure after investigation.

**21.** (1) After conducting an investigation under this Act, the Contractor General shall, in writing, inform the principal officer of the public body concerned and the Minister having responsibility therefore, of the result of that investigation and make such recommendations as he or she considers necessary in respect of the matter which was investigated.

(2) Where the Contractor General makes an adverse finding against any person, the Contractor General shall, so far as practicable, inform that person of the substance of the report.

(3) Where the Contractor General has made a recommendation under subsection (1) and within the time specified or a reasonable time thereafter, and he or she is of the opinion that no adequate action has been taken in pursuance of his or her recommendation shall present such findings before Cabinet.

Disciplinary action against officers.

**22.** (1) Subject to subsection (2) where the Contractor General finds, during the course of his or her investigation or on the conclusion thereof, that there is evidence of a breach of duty or misconduct, irregularity, impropriety, breach of trust or criminal offence on the part of an officer or member of a public body, he or she shall refer the matter to the person or persons competent to take such disciplinary or other proceeding as may be appropriate against that officer or member and a report of such matters shall be laid before Cabinet.

(2) In every case where the Contractor General finds that there is evidence of the commission of a criminal offence he or she shall, in addition to taking action as prescribed in subsection (1) of this section, refer the matter to the Director of Public Prosecutions.

Power of Contractor General to investigate notwithstanding Complaints Commissioner. No. 6 of 2003

**23.** (1) Notwithstanding the investigative powers conferred upon the Complaints Commissioner under the Complaints Commissioner Act, 2003 and the powers conferred upon the Auditor General under the Audit Act, 2003, the Contractor General shall have power to investigate any allegation of fraud, corruption, mismanagement, waste, abuse or other impropriety or irregularity in the award, execution or termination of any contract; or in the grant, issue, suspension or revocation of any prescribed licence.

(2) In carrying out his or her investigations, duties and responsibilities under this Act, the Contractor General shall have particular regard to the activities and functions of the Complaints Commissioner with respect to investigations under the Complaints Commissioner Act, 2003 and the Auditor General with respect to investigations under the Audit Act, 2003, with a view to avoiding duplication of functions and ensuring effective coordination and cooperation between his or her office and that of the Complaints Commissioner.

(3) In this section, reference to the

- (a) "Complaints Commissioner" means the Complaints Commissioner appointed under section 110 of the Virgin Islands Constitution Order, 2007; U.K.S.I. 2007 No.1678
- (b) "Auditor General" means the Auditor General appointed under section 109 of the Virgin Islands Constitution Order, 2007.

**24.** The proceedings of the Contractor General shall not be rendered void for want of form. Proceedings of Contractor General not to be void for want of form.

**25. (1)** Except in the case of proceedings for an offence under section 30 (c) of this Act, no proceedings whatsoever shall lie against the Contractor General or any person concerned with the administration of this Act, for anything he or she may do or report or say or for anything done or omitted to be done in good faith in the performance, discharge or purported discharge of any functions, duties or powers conferred or imposed by this Act. Privilege.

(2) Anything said or information supplied or any document or thing produced by any person for the purpose or in the course of any investigation by or proceedings before the Contractor General under this Act, shall be absolutely privileged in the same manner as if the investigation or proceedings were proceedings in a court of law.

(3) For the purposes of the Libel and Defamation any report made by the Contractor General under this Act and any fair and accurate comment thereon shall be deemed to be privileged.

## PART IV

### MISCELLANEOUS

Secrecy of information.

**26. (1)** The Contractor General and every person concerned with the administration of this Act shall regard as secret and confidential all documents, information and things disclosed to them in the execution of any of the provisions of this Act, except that no disclosure,

- (a) made by the Contractor General or any person aforesaid in proceedings for an offence under section 31 of this Act or under the appropriate provisions of the Criminal Code (relating to perjury and obstruction of public justice) by virtue of section 19(2) of this Act; or
- (b) which the Contractor General thinks necessary to make in the discharge of his or her functions or for the purpose of executing any of the provisions of sections 21, 22 and 30 of this Act,

shall be deemed inconsistent with any duty imposed by this subsection.

(2) Neither the Contractor General nor any such person aforesaid shall be called upon to give evidence in respect of, or produce, any document, information, or thing, aforesaid in any proceedings other than proceedings mentioned in subsection (1) of this section.

(3) Nothing in this section shall prevent disclosure by any person of information furnished to him or her pursuant to section 21 of this Act.

Performance of functions of Contractor General by members of staff.

**27. (1)** Without prejudice to the provisions of section 10(2) of this Act, the functions of the Contractor General, except those under sections 21, 22, 29(2) and 29 of this Act, may be performed by any member of his or her staff authorised for that purpose by the Contractor General.

(2) Nothing in subsection (1), shall be construed as affecting the responsibility of the Contractor General for functions performed on his or her behalf pursuant to subsection (1) of this section.

Funding.

**28.** The funds of the office of Contractor General shall consist of,

- (a) sums as may from time to time be appropriated by the House of Assembly for the purposes of the office of Contractor General; and
- (b) all other moneys which may in any manner become payable to or vested in the Contractor General in respect of any matter incidental to his or her functions.

Accounts etc.



**29.** (1) The accounts and financial transactions of the office of Contractor General shall be audited annually by the Auditor General and a statement of accounts so audited shall form part of the annual report referred to in section 30 of this Act.

(2) The Contractor General shall, before a date specified by the Minister,

- (a) submit to the Minister a statement of accounts in a form satisfactory to the Minister and audited in accordance with the provisions of subsection (1) of this section;
- (b) submit to the Minister for approval, estimates of revenue and expenditure for the ensuing financial year.

**30.** (1) The Contractor General may at any time be required by the Cabinet to submit a report thereto in respect of any matter being investigated by him or her. Reports.

(2) The Contractor General shall submit to the Cabinet an annual report relating generally to the execution of his or her functions and may at any time submit a report relating to any particular matter or matters investigated, or being investigated by him or her or her.

(3) Reports under this section shall be submitted to the Minister who shall, as soon as possible, have them laid before the House of Assembly.

(4) The Contractor General may, in the public interest, from time to time publish in such manner as he or she thinks fit, reports relating to such matters as are mentioned in subsection (2) of this section and any case which is the subject of a special report under section 22 of this Act, but no such report shall be published until after it has been laid before the House of Assembly pursuant to subsection (3) of this section.

**31.** Any person who,

Offences.

- (a) wilfully makes any false statement to mislead, or misleads or attempts to mislead the Contractor General or any other person in the execution of his or her functions under this Act; or
- (b) without lawful justification or excuse,
  - (i) obstructs, hinders or resists the Contractor General or any other person in the execution of his or her functions under this Act; or

- (ii) fails to comply with any lawful requirement of the Contractor General or any other person under this Act;
- (c) deals with documents, information or things mentioned in subsection (1) of section 26 of this Act, in a manner inconsistent with his or her duty under that subsection; or
- (d) otherwise than in the course of his or her duty, directly or indirectly, by himself or herself or by any other person, in any manner whatsoever, wilfully influences or attempts to influence the decision of the Contractor General with regard to any complaint made to him or her or to any investigation made by him or her,

commits an offence and shall be liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment.

Remedy under any other provision of law unaffected.

**32.** (1) Nothing in this Act shall be construed as limiting or affecting any remedy or right of appeal or objection given to any person by any other law.

(2) The Contractor General may initiate or continue any investigation and report thereon pursuant to this Act notwithstanding any legal proceedings relating to the subject matter of the investigation.

Power to amend Schedule.

**33.** The Minister may amend the Schedule to this Act by Order published in the *Gazette*.

Regulations.

**34.** (1) Cabinet on the advice of the Contractor General may make regulations to provide for any matter in respect of which it may be necessary or desirable to make regulations for the better carrying into effect of the provisions of this Act, and, without prejudice to the generality of the foregoing, such regulations may provide for,

- (a) any matter required by this Act to be prescribed; and
- (b) the circumstances in which and the manner in which information relating to public contracts shall be furnished to the Contractor General.

(2) All regulations made by Cabinet on the advice of the Contractor General under this section shall be laid before the House of Assembly as soon as may be after the making thereof and shall be subject to negative resolution.

**35.** Before entering upon his or her duties under this Act, the Contractor General shall take and subscribe the oath of allegiance that he or she shall faithfully and impartially exercise the functions of his or her office Oath of allegiance.

(2) The Oath referred to in subsection (1) shall be taken before a Magistrate, Additional Magistrate, Registrar of the High Court or a Justice of the Peace.

## SCHEDULE 1

[Section 7(7)]

### APPEALS TRIBUNAL

Constitution and procedure of appeals tribunal appointment of members.  
Temporary Appointment.

**1.**(1) The Appeals Tribunal shall consist of at least five members appointed by the Cabinet.

**2.** The tribunal shall be presided over by a Chairperson who shall be a retired judge or a senior lawyer of at least twenty years practice as a legal practitioner.

**3.** If the chairperson or other member of the Appeals Tribunal is absent temporarily or unable to act, the Cabinet may appoint another person to act temporarily as chairman or such other member.

Appointment period.

**4.**(1) Subject to the provisions of this Schedule, a member of the Appeals Tribunal shall hold office for such period, not exceeding two years, as may be specified in the instrument of appointment.

(2) Every member of the Appeals Tribunal shall be eligible for reappointment, but no such member shall be appointed for more than six consecutive years.

(3) If any vacancy occurs in the membership of the Appeals Tribunal, the vacancy shall be filled by the making of another such appointment; however, the member so appointed shall, subject to the provisions of this Schedule, hold office for the remainder of the period for which the previous member was appointed.

(4) Cabinet may, at any time, revoke the appointment of the chairperson or any other member if it thinks it expedient so to do.

Resignation.

**5.**(1) Any member of the Appeals Tribunal other than the chairperson may, at any time, resign his or her office by instrument in writing addressed to the Cabinet and transmitted through the chairperson and from the date of the receipt by the Cabinet of such instrument such member shall cease to be a member of the Appeals Tribunal.

(2) The chairperson may, at any time, resign his or her office by instrument in writing addressed to the Cabinet and such resignation shall take effect as from the date of the receipt of such instrument by the Minister.

Publication of membership.

**6.** The names of the members of the Appeals Tribunal as first

constituted and every change in membership thereof shall be published in the *Gazette*.

**7.** All documents made by, and all decisions of the Appeals Tribunal may be signified under the hand of the chairman or any member of the Appeals Tribunal authorised to act in that behalf. Authentication of documents.

**8. (1)** The Appeals Tribunal shall meet at such times as may be necessary or expedient for the transaction of business and such meetings shall be held at such places and times and on such days as the Appeals Tribunal may determine. Procedure.

(2) The chairperson or any other person appointed to act temporarily as chairman shall preside at meetings of the Appeals Tribunal.

(3) Subject to sub-paragraph 1, the decisions of the Appeals Tribunal shall be by a majority of votes of the members and, in addition to an original vote, the chairman shall, having a casting vote in any case in which the voting is equal.

(4) The Appeals Tribunal, with the approval of the Cabinet, may make rules to regulate its own proceedings.

(5) Proper records of all proceedings of the Appeals Tribunal shall be kept.

**9.** There shall be paid to the chairperson and other members or the Appeals Tribunal such remuneration (whether by way of honorarium, salary or fees) and such allowances as the Minister may determine. Remuneration of members.

**10.** No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Appeals Tribunal in respect of an act done bonafide in pursuance or execution or intended execution of the provisions of this Act. Protection of members.

**11.** A member of the Appeal Tribunal who has any direct or indirect personal, professional, business or pecuniary interest in any matter which is the subject of appeal before the Appeal Tribunal shall, as soon as reasonably practicable, Declaration of interest.

(a) declare his interest in writing stating the nature of the interest; and

(b) recuse himself from participating in the hearing of, or discussing any matter relating to, the appeal concerned.

(2) A member of the Appeal Tribunal who fails to declare an interest as required under subsection (1) shall, without prejudice be liable to be removed as a member of the Appeal Board.

## SCHEDULE 2

[Section 11]

### PENSIONABLE EMOLUMENTS OF CONTRACTOR GENERAL

1. In this Schedule,

Interpretation.

“pensionable emoluments” has the same meaning as in the Pensions Act, Cap. 30;

“the Act” means the Contractor General Act.

2.(1) Where a person holding the office of Contractor General retires in pensionable circumstances, he or she shall be paid pension and gratuity in accordance with this Schedule.

Entitlement of pensions and gratuities in respect of service as Contractor General.

(2) For the purposes of this paragraph and paragraph 4 of this Schedule, a person retires in pensionable circumstances if he or she retires,

- (a) on or after the expiration of five years from the date of his or her appointment to the office of Contractor General;
- (b) by reason of ill-health prior to such expiration;
- (c) on his or her attaining the age at which he or she is required by or under the provisions of section 5 of this Act to vacate office.

(3) For the purposes of this Act, a person retires from the office of Contractor General on the ground of ill-health where,

- (a) he or she retires on medical evidence, that he or she is incapable by reason of any infirmity of mind or body of discharging the duties of his or her office, and that such infirmity is likely to be permanent; or
- (b) he or she is removed from office, in accordance with section 6(4) of this Act for inability, arising from infirmity of mind or body, to perform the functions of his or her office.

(4) A person who, pursuant to section 6 of this Act, is removed from the office of Contractor General for misbehaviour or for any cause other than inability arising from infirmity of mind or body or who retired otherwise than in pensionable circumstances may be granted by Cabinet such pension and gratuity as Cabinet thinks fit not exceeding the pension and gratuity to which he or she

would have been entitled had he or she retired in pensionable circumstances from such office and for the purposes of subparagraph (5) of this paragraph, the date of such removal from office or retirement shall be deemed to be the date of retirement in pensionable circumstances.

- (5) Pension payable in accordance with this paragraph shall,
  - (a) be charged on and payable out of the Consolidated Fund; and
  - (b) be paid monthly in arrears with effect, subject to paragraph 4;
  - (c) if this Schedule, from the date of retirement in pensionable circumstances and shall, subject to the provisions of this Act, continue to be paid during the lifetime of the person entitled thereto.

Rate of pension.

**3.** The rate of pension payable pursuant to paragraph 2 of this Schedule to any person shall,

- (a) if the person has retired after completing not less than five years' service as Contractor General or, at any time, on the ground of ill-health, be at an annual rate equivalent to his or her pensionable emoluments at retirement; and
- (b) in any other case, be an annual rate equivalent to the sum of one-half of his or her pensionable emoluments at the date of retirement and one three hundred and sixtieth of such pensionable emoluments in respect of each month of service as Contractor General,

provided that the rate of pension shall not exceed the annual rate of such pensionable emoluments.

Special provision where Contractor General retires before attaining age 65.

**4.** Where in accordance with paragraph 2 of this Schedule, a person retires in pensionable circumstances before he or she has attained the age of sixty-five years,

- (a) the date with effect from which any pension due to him or her or her under this Act shall be payable, shall be the date on which he or she attains that age, but, if he or she elects pursuant to paragraph 5 of this Schedule to take a reduced pension and commuted pension gratuity, nothing in this paragraph shall prevent payment of the commuted pension gratuity at any time prior to the attainment of that age; and



- (b) if he or she dies before attaining that age, and he has not made an election to receive a reduced pension gratuity as aforesaid, he or she shall for the purpose of paragraph 6 of this Schedule be deemed to have died while holding the office of Contractor General.

5. (1) Any person to whom a pension (in this paragraph referred to as “the original pension”) is payable pursuant to paragraph 2 of this Schedule may, at his or her option exercisable at his or her retirement in pensionable circumstances or within such period prior or subsequent to his or her retirement as Cabinet may allow, be paid, in lieu of the original pension, a reduced pension at the rate of three-fourths of the annual rate of the original pension together with a gratuity (in this Act referred to as a “commuted pension gratuity”) equal to twelve and one-half times one quarter of the original pension.

Reducing pension.

(2) The option referred to in subparagraph (1) above shall be irrevocable unless Cabinet on such terms as he or she considers reasonable, otherwise permits.

6. (1) Where a person dies while holding the office of Contractor General there shall be paid to his or her legal personal representatives, a gratuity of an amount equivalent to,

Gratuity on death.

- (a) one year’s pensionable emoluments;
- (b) the commuted pension gratuity for which the person aforesaid had a right to opt pursuant to paragraph 5 of this Schedule on the assumption that he or she retired in pensionable circumstances at the date of his or her death, whichever is the greater.

(2) Where a person dies while in receipt of a pension pursuant to paragraph 2 of this Schedule, there shall be paid to his or her legal personal representatives a gratuity of an amount equivalent to one year’s pensionable emoluments of that person at the date of his or her retirement or removal from office.

7. Where a person holding the office of Contractor General dies as a result of injuries received,

Pension to dependents when a Contractor General dies as a result of injuries received etc.

- (a) in the actual discharge of his or her duties;
- (b) in circumstances in which the injury is not wholly or mainly due to or seriously aggravated by his or her own serious and culpable negligence or misconduct; and

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- (c) on account of circumstances specifically attributable to the nature of his or her duty, while serving in that office, it shall be lawful for Cabinet to grant to the deceased Contractor General's widow, children, parents or other dependents such awards as would have been made under the Pensions Act, if the office of Contractor General were a pensionable office for the purposes of that Act.

Retirement consequent upon injury or disease.

**8.** Where a Contractor General,

- (a) is permanently injured in the actual discharge of his or her duty by some injury specifically attributable to the nature of his or her duty which is not wholly or mainly due to, or seriously aggravated by, his or her own serious and culpable negligence or misconduct;
- (b) contracts a disease to which he or she is exposed specifically by the nature of his or her duty, not being a disease wholly or mainly due to, or seriously aggravated by, his own serious and culpable negligence or misconduct;
- (c) is permanently injured as a result of an accident or damage to an aircraft while travelling by air in pursuance of official instructions and the injury was not wholly or mainly due to, or seriously aggravated by, his or her own serious and culpable negligence or misconduct;
- (d) while proceeding by a route approved by Cabinet to or from the Virgin Islands at the commencement or termination of his or her service therein, or of a period of secondment, duty leave, or leave therefrom, is permanently injured as the result of damage or any act of violence to the vessel, aircraft or vehicle in which he or she is travelling, if Cabinet is satisfied that that damage or act is attributable to circumstances arising out of any war in which Virgin Islands is engaged, then, for the purpose of calculating any pension under this Act, any period of service as the Contractor General shall be deemed to be increased by twenty per centum.

Pension etc., not to be assigned.

**9.** A pension or gratuity payable under this Act shall not be assignable or transferable except for the purpose of satisfying,

- (a) a debt due to the Government;

- (b) an order of the court for the payment of periodical sums of money towards the maintenance of the wife, or former wife or minor children, of the person to whom the pension or gratuity is payable, and shall not be liable to be attached, sequestered or levied upon, for or in respect of any debt due or claim whatever except a debt or claim due to the Government.

**10. (1)** Where a person dies while holding the office of Contractor General or while entitled to a pension under paragraph 2, there shall be paid to his or her widow a pension at an annual rate equivalent to one-fifth of the pensionable emoluments of the person aforesaid at the date of his or her death or, if at that date he or she was entitled to receive a pension under paragraph 2, at the date of his retirement or, as the case may be, removal from office in accordance with this Act.

Pension to widow.

(2) Pension payable to a widow pursuant to subparagraph (1) above shall,

- (a) be charged on and paid out of the Consolidated Fund;
- (b) be paid monthly in arrears with effect from the date of her husband's death and shall, subject to the provisions of this Act, continue to be paid during her lifetime.

(3) In paragraph 7 of this Schedule and subparagraphs (1) and (2) of this paragraph, references to a widow shall, in the case of a female appointed Contractor General, be deemed to include references to a widower and cognate expressions shall be construed accordingly, and similarly, references to a husband shall be deemed to include references to a wife.

**SCHEDULE 3**

[Section 13]

**OATH OF OFFICE OF ASSIST CONTRACTOR GENERAL**

I .....do swear (or solemnly and sincerely affirm and declare) that I will faithfully perform any functions assigned to me under the Contractor General Act, No. of 2021, and I will not, on any account, at any time whatsoever, except in so far as provisions of the Act authorise, directly or indirectly, reveal or make known any information or the nature or contents of any documents communicated to me in the performance of any functions assigned to me by virtue of the Act.

SO HELP ME GOD. (omit if affirming)

Sworn/ Affirmed before me a Magistrate/Additional Magistrate/ Registrar of the High Court/Justice of the Peace\* this , day of ,

\_\_\_\_\_  
Name of person swearing/affirming

\*Delete as appropriate.

Passed by the House of Assembly on this day of , 2021.

Speaker.

Clerk of the House of Assembly.

## **OBJECTS AND REASONS**

This Bill seeks to establish the office of the Contractor General and for the monitoring and implementation of government contracts and to provide for matters.

The Bill is divided into four parts.

Part I (sections 1-2) would provide for preliminary matters.

Clause 1 sets out the short title and commencement and clause 2 would introduce definition of terms used in the Bill.

Part II (sections 3-13) provides for the establishment of the office of Contractor General.

Clause 3 would provide for the appointment of the Contractor General on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration or project management.

Clause 4 would provide for the independence of the Contractor General and immunity from suit. whereby the Contractor General shall not be subject to the direction or control of any other person or authority in respect of his or her duties as the Contractor General.

Clause 5 would provide for tenure of office and resignation of the Contractor General and Contractor General shall hold the office for a period of five years and shall be eligible for reappointment upon expiration.

Clause 6 would provide the removal from office and where the question of removing the Contractor General from his or her office would arise and ought to be investigated, the matter would be referred to a Tribunal.

Clause 7 would provide for a public body who have been aggrieved by a decision of the Contractor General in respect of this Act may within fourteen days of the decision file a notice of appeal against the decision to the Appeal Tribunal.

Clause 8 would provide for the disqualifications for appointment of the Contractor General and clause 8 would provide for the restrictions on employment and the person appointed as Contractor General shall be a full-time officer and shall not be employed in any other capacity during any period in which he or she holds office as Contractor General.

Clause 10 would provide for filling of vacancy in the event that a vacancy arises in the office of Contractor General, Minister with the approval of Cabinet,

designate a person to act in that office during such vacancy, until a substantive appointment is made.

Clauses 11 to 12 would provide for the remuneration, pensions and gratuities of the Contractor General and clause 13 would provide for the appointment of officers on such terms and conditions necessary for the efficient functioning and management of the office of the Contractor General.

Clause 14 would provide for the oaths of office and every person appointed to the staff of the Contractor General shall, before he or she performs any function assigned to them shall take and subscribe an oath to be administered by the Contractor General, taken before a Magistrate, Additional Magistrate, Registrar of the High Court or a Justice of the Peace.

Part III (sections 15-25) provides for the powers and functions of the Contractor General.

Clause 15 would provide for the functions of the Contractor General such as to monitor the award and the implementation of government contracts and to develop policy guidelines, evaluate programme performance and monitor actions taken by a public body with respect to the award, execution and termination of contracts.

Clause 16 would provide for the scope of investigations and clause 17 would state that the Contractor General may receive and investigate complaints or information from an employee of a public body. The Contractor General would not, after receipt of a complaint or information from an employee disclose the identity of the employee without the consent of the employee.

Clauses 18 and 19 would provide for the procedure after investigations and evidence to furnish information and produce any document or thing in connection with the matter under investigation.

Clause 20 would provide for the restriction on disclosure on certain matters, while clause 21 would provide for the procedure after an investigation the Contractor General shall, in writing, inform the principal officer of the public body concerned and the Minister having responsibility therefore, of the result of that investigation and make such recommendations in respect of the matter which was investigated.

Clause 22 would provide for the disciplinary actions against officers in the event that there is evidence of a breach of duty or misconduct, irregularity, impropriety, breach of trust or criminal offence on the part of an officer or member of a public body.

Clause 23 would provide for the powers of the Contractor General to investigate notwithstanding any allegation of fraud, corruption, mismanagement, waste, abuse or other impropriety or irregularity in the award, execution or termination of any contract; or in the grant, issue, suspension or revocation of any prescribed licence notwithstanding Complaints Commissioner.

Clause 24 would provide for the proceedings of the Contractor General not to be rendered void for want of form. Clause 25 would provide for the purposes of the Libel and Defamation any report made by the Contractor-General under this Act and any fair and accurate comment thereon shall be deemed to be privileged.

Part IV (sections 26-35) provides for the miscellaneous provisions.

Clause 26 would concern that every person within the administration of this Act would regard as secret and confidential all documents, information and things disclosed to them in the execution of any of the provisions of this Act.

Clauses 27 and 28 would provide for the performance of the Contractor General by members of staff and funding report relating generally to the execution.

Clauses 29 and 30 would provide for the accounts and financial transactions of the office of Contractor General to be audited annually by the Auditor General and clause 31 would provide for reports and the Contractor General would submit annual reports to the Minister which would be laid before the House of Assembly.

Clauses 32 to 33 would provide for offences, remedy under any other provision of law unaffected and giving the Minister the power to amend the Schedules of this Act by Order published in the *Gazette*.

Clause 34 would provide for Cabinet on the advice of the Contractor General to make regulations to provide for any matter in respect of which it may be necessary or desirable for the better carrying into effect of the provisions of this Act.

Clause 35 would provide for the oath of allegiance and office.

Schedule 1 provides for the appeals of Tribunal.

Schedule 2 would provide for pensionable emoluments of the Contractor General.

Schedule 3 would provide for oath of office to assist the Contractor General.

Premier.