

**VIRGIN ISLANDS**

**VIRGIN ISLANDS RECOVERY AND DEVELOPMENT  
AGENCY ACT, 2018**

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I Assent  
(Sgd.) Augustus J. U. Jaspert,  
Governor.  
12<sup>th</sup> April, 2018

**VIRGIN ISLANDS**

**No. 1 of 2018**

An Act to provide for the establishment of the Virgin Islands Recovery and Development Agency and for other connected matters.

[Gazetted 16<sup>th</sup> April, 2018]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and  
commencement.

1. (1) This Act may be cited as the Virgin Islands Recovery and Development Agency Act, 2018.

(2) The provisions of this Act shall come into force on such date as the Minister may, by Notice published in the *Gazette*, appoint.

Interpretation.

2. In this Act, unless the context otherwise requires,

“Board” means the Virgin Islands Recovery and Development Board established under section 7;

“Chairperson” means a person appointed as such under section 8 and includes a person who temporarily acts in that capacity;

“Internet Site” means [www.bvirecovery.vg](http://www.bvirecovery.vg) or any successor internet site used by the Agency for informing the public of the affairs of the Agency;

“Minister” means the Premier or any other Minister to whom the subject for recovery and development is assigned;

“Plan” means the Virgin Islands Recovery and Development Plan developed pursuant to section 3;

“property” includes money;

“Trust” means the Virgin Islands Recovery Trust established pursuant to section 15.

3. (1) The Minister with the approval of Cabinet shall, consistent with the purposes of this Act, be responsible for developing and further reviewing the Virgin Islands Recovery and Development Plan which Plan is for the recovery and development of the Virgin Islands following the disasters affecting the Territory in August and September, 2017. Role of the Cabinet.

(2) The development of the Plan shall be based on a consultative process involving consultations with a wide sector of stakeholders whether within the Virgin Islands or outside.

(3) The Plan shall seek to make provision for matters dealing with, but not limited to, the following:

- (a) governance;
- (b) security, justice and disaster management;
- (c) infrastructure;
- (d) health and social development;
- (e) education;
- (f) business and economy;
- (g) natural resources and climate change.

(4) The Minister shall with the approval of Cabinet cause a copy of the Plan to be laid before the House of Assembly.

(5) The Plan referred to in subsection (4), shall be laid before the House of Assembly within 60 days following its approval by Cabinet and, it shall be subject to an affirmative resolution of the House.

(6) For purposes of subsection (1), a review of the Plan shall include

- (a) the addition to the Plan of new projects; or
- (b) the removal of existing projects from the Plan; or
- (c) the modification of projects in the Plan.

(7) For the removal of doubt, this section shall not be construed so as to affect in any manner the undertaking of development projects by the Government.

Establishment of the Agency.

**4. (1)** There is hereby established a body to be known as the Virgin Islands Recovery and Development Agency (referred to in this Act as the “Agency”), to perform the functions conferred on it by or under this Act.

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(2) The Agency shall be a body corporate to which section 21 of the Interpretation Act shall apply.

(3) The Agency shall have a seal which shall

- (a) be kept in the custody of the Secretary to the Board; and
- (b) be affixed to all documents issued by the Board in the presence of at least one other member of the Board and shall be authenticated by the signatures of the Chairperson and that member.

Functions of the Agency.

**5. (1)** The functions of the Agency shall be to

- (a) ensure the timely and proper implementation and execution of the Plan;
- (b) review business case options and full business cases for all potential investments in the Plan and in so doing, the Agency will seek to incorporate all available evidence and where necessary commission research to inform its submissions to the Board;
- (c) administer the procurement of services or goods required to implement projects under the Plan to ensure that projects under the Plan are executed in a manner that provides the greatest benefit relative to the cost;
- (d) conduct an assessment to determine the best source of expertise to implement specific projects;
- (e) set the specification to be captured in invitations to tender for Projects under the Plan based on the statement of requirement and the business developed for an investment;
- (f) manage the tendering process including evaluating bids and making recommendation on same to the Board;

- (g) prepare and publish the monthly progress and performance reports and submit same to the Board for onward transmission to the Minister;
- (h) provide administrative support to the Board;
- (i) provide internal audit reports to the Board;
- (j) provide policy advice, research, analysis and technical assistance to the Ministries when requested;
- (k) in collaboration with Ministries and other implementation agencies, prepare business cases for recovery, reconstruction and development projects including costs and scope of same;
- (l) undertake procurement functions or appoint external agencies to do so;
- (m) monitor and report, including establishing performance monitoring framework, on individual project implementation and procurement;
- (n) coordinate and provide support and advice to technical advisors and contractors;
- (o) recommend recovery timeframes for all activities;
- (p) apply for, or undertake work in relation to applications for planning permissions or approvals or licenses as required to deliver the projects in the Plan;
- (q) recommend standards to be used in the recovery process consistent with the law and internationally accepted standards;
- (r) assess the effectiveness of the implementation of projects;
- (s) establish public grievance redress system through online and offline options;
- (t) appoint, remunerate, make pension provision for staff and, shall have power to dismiss Agency staff;
- (u) build capacity in skill sets required to execute the Plan by assisting Virgin Islanders to take advantage of business and

employment opportunities in diverse areas arising out of the implementation of the Plan and generally widening the skills base of persons in the community so that they can respond to the needs of the Territory during recovery and development and beyond;

- (v) to make recommendations to Cabinet on such amendments or revisions to legislation as the Agency considers necessary or appropriate to facilitate or promote the execution of the Plan;
- (w) carry out such other functions as may be necessary for the execution of the Plan.

(2) The Agency shall have all such powers as are reasonably necessary to enable it in the performance of its functions.

(3) The Agency may, with the consent of the Board, enter into arrangements with other persons to perform on behalf of the Agency such of its functions as the Agency considers necessary.

(4) In carrying out its functions under this Act, the Agency shall comply with and meet international anti-corruption standards.

(5) The Minister shall, within 60 days after receiving a copy of a report pursuant to subsection (1) (h), cause the copy to be laid before the House of Assembly.

**6. (1)** There shall be a Board of the Agency to be known as the Virgin Islands Recovery and Development Board (hereinafter referred to as the “Board”) which shall be the governing body of the Agency.

(2) The functions of the Board are to

- (a) administer the procurement procedures made in accordance with regulations;
- (b) develop the procurement procedures for submission of and approval of options and business cases for implementation;
- (c) approve business cases;
- (d) approve procurement contracts which in its opinion, comply with the procurement procedures;
- (e) ensure good governance and that projects under the Plan

Establishment  
and functions of  
the Board.

are executed in a manner that provides the greatest benefit relative to cost;

- (f) assure the independence of the Agency in accordance with this Act;
- (g) protect and oversee the independent delivery of the Plan;
- (h) be responsible for all procurement and to approve allocation of the property of the Trust based on the Plan and based on the recommendations from the Agency;
- (i) discharge such other functions as may be properly discharged under this Act.

(3) In carrying out its functions under this Act, the Board shall seek to ensure the proper implementation of the Plan.

7. (1) The Board shall comprise not less than seven and not more than nine persons appointed as follows:

Composition of the Board.

- (a) a chairperson, by the Governor in agreement with the Premier who shall first consult the Leader of the Opposition;
- (b) a deputy chairperson, by the Governor in agreement with the Premier after a joint selection process from a list of candidates;
- (c) by the Governor:
  - (i) one person from the Sister Islands selected by the Premier;
  - (ii) one person selected by the Governor;
  - (iii) one person selected by the United Kingdom Government;
  - (iv) one person, who shall be between the age of 18 and 35 years selected by the Leader of the Opposition;
  - (v) one donor representative;
  - (vi) one person representing civil society jointly selected by the Cabinet and the Governor;
  - (vii) one person representing the private sector jointly

selected by the Cabinet and the Governor.

(2) A person referred to in subsection (1) (a) shall be a person who belong to the Virgin Islands within the meaning of section 2 (2) of the Virgin Islands Constitution Order, 2007.

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Disqualification for  
membership.

**8.** (1) A person shall not be qualified to be appointed to the Board unless that person is a fit and proper person.

(2) A person shall not be appointed as a member of the Board if that person

- (a) is a member of the House of Assembly;
- (b) is an un-rehabilitated insolvent;
- (c) has been convicted of an offence involving fraud or dishonesty; or
- (d) has been convicted of an offence under any other written law and sentenced to a term of imprisonment of not less than six months, without the option of a fine.

Tenure of office  
and vacancy.

**9.** (1) A member of the Board, including the Chairperson and Deputy Chairperson, shall be appointed for a term not exceeding three years and shall be eligible for re-appointment for one further term.

(2) On the expiration of the period for which a member is appointed, the member shall continue to hold office until the successor to the member is appointed, but in no case shall such further period exceed three months.

(3) The office of a member shall become vacant

- (a) upon resignation;
- (b) upon the death of the member;
- (c) if that member is unable to perform the functions of a member arising from infirmity of body;
- (d) if that member without good cause or approval of the Chairperson is absent from three consecutive meetings of the Board of which that member had notice;
- (e) if that member becomes insolvent;

- (f) if the member is party to or participates in the profits of any contract with the Agency;
- (g) if that member is declared to be of unsound mind; or
- (h) if that member is convicted of an offence and sentenced to a term of imprisonment for a period exceeding six months without the option of a fine or is convicted of any offence involving dishonesty.

(4) A member may resign from office by giving three months notice in writing to the authority which appointed that member and such resignation becomes effective upon receipt of the notice by that authority.

(5) Whenever the office of a member becomes vacant before the expiry of the term of office, the authority which appointed that member may, in the same manner, appoint another member in place of the member who vacates office and such member shall hold office only for the unexpired term.

**10. (1)** Where at a meeting of the Board any matter arises relating to an arrangement to which the Agency is a party or a proposed such arrangement, or a contract or other agreement with the Agency or a proposed such contract or other agreement, then, any member of the Board present at the meeting who otherwise than in his or her capacity as such a member has an interest in the matter shall

Disclosure by members of certain interests.

- (a) at the meeting disclose the fact of such interest and the nature thereof;
- (b) neither influence nor seek to influence, either prior to or during the meeting, a decision to be made in relation to the matter;
- (c) absent himself or herself from the meeting or that part of the meeting during which the matter is discussed;
- (d) take no part in any deliberation of the Board relating to the matter, and
- (e) not vote on a decision relating to the matter.

(2) Where an interest is disclosed pursuant to this section, the disclosure shall be recorded in the minutes of the meeting concerned and, for so long as the matter to which the disclosure relates is being considered or discussed by the meeting, the member by whom the disclosure is made shall not be counted in the quorum for the meeting.

(3) Where at a meeting of the Board a question arises as to whether or not a course of conduct, if pursued by a member of the Board, would constitute a failure by him or her to comply with the requirements of subsection (1), the question may be determined by the Board, whose decision shall be final, and where such a question is so determined, particulars of the determination shall be recorded in the minutes of the meeting.

(4) Where the Chairperson is satisfied that a member of the Board has failed to comply with subsection (1), the Chairperson may if he or she thinks fit, recommend to the authority which appointed that member, the removal of that member from office or take such other action as he or she considers appropriate and, in the case of a person removed from office pursuant to this subsection, he or she shall thereafter be disqualified from membership of the Board.

(5) For the purposes of this section, a person shall not be regarded as having an interest in any matter by reason only of an interest of that person, or of any company in which he or she has an interest, which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a person in considering, discussing or in voting on, any question relating to the matter, or in performing any function in relation to that matter.

Procedure of the Board.  
Schedule

**11.** The provisions of the Schedule shall apply to the proceedings of the Board.

Committees of the Board.

**12. (1)** The Board may establish committees to advise it on matters relating to any of its functions and may determine the terms of reference and regulate the procedure of any such committee.

(2) A committee established under this section may include persons who are not members of the Board.

(3) A member of a committee established under this section may be removed at any time from membership of the committee by the Board.

(4) The Board may at any time dissolve a committee established under this section.

(5) The Board may appoint a person to be chairperson of a committee established under this section.

(6) There may be paid by the Board to members of a committee established under this section such reimbursement of expenses incurred by them as the Board may, with the consent of the Cabinet, determine.

Chief Executive Officer and other staff.

**13.** (1) The day to day management of the Agency shall be headed by a Chief Executive Officer to be appointed by the Board in concurrence with Cabinet upon such terms and conditions as the Board may determine.

(2) The Chief Executive Officer shall be assisted by

- (a) a Chief Financial Officer who shall be appointed by the Board in concurrence with Cabinet on such terms and conditions as the Board may determine; and
- (b) such other staff, including senior managers and technical experts, as may be necessary to enable the Agency to exercise its functions.

(3) The persons referred to in subsection (2) (b) shall be appointed by the Board on the recommendation of the Chief Executive Officer and shall be appointed on such terms and conditions as the Board determines.

(4) The persons referred to in subsection (2) (b) shall have such functions as the Chief Executive Officer may determine.

(5) In addition to the provisions of subsection (1), the functions of the Chief Executive Officer shall be to

- (a) coordinate and monitor activities relating to the implementation and execution of the Plan, including capacity-building;
- (b) implement, or cause to be implemented, the directions and decisions of the Board;
- (c) prepare and submit drafts of the Agency's policies and plans relating to reconstruction submitted to the Board for approval;
- (d) prepare and submit monthly reports to the Board on the activities undertaken by the Agency;
- (e) ensure that funds are used as prescribed by the Board;
- (f) make recommendations on staffing of the Agency to the Board;
- (g) be responsible for the recruitment process and performance of the Agency's staff;

- (h) dismiss, with the approval of the Board, junior staff of the Agency based on fair and due procedure that includes full disclosure of the reasons for dismissal;
- (i) proactively pursue financial investment to support the Virgin Islands recovery and development efforts;
- (j) perform, or cause to be performed, such other functions relating to the recovery effort as may be prescribed.

(6) In addition to the provisions of subsection (4), the functions of the Chief Financial Officer shall be to

- (a) serve as the accountable officer to the Chief Executive Officer and Board for the financial reporting and financial management of the Agency;
- (b) ensure that there are annual externally audited accounts for all Agency expenditure and that these are published within three months of the end of the financial year which shall run from 1 January to 31 December in any given year.

Disclosure by staff of Agency, etc., of certain interests.

**14. (1)** Where a member of staff of the Agency or a committee, or a consultant or adviser engaged by the Agency under this Act, has an interest, otherwise than in his or her capacity as such in any, or any proposed contract, agreement or arrangement, to which the Agency is or is proposed to be a party, that person

- (a) shall disclose to the Agency his or her interest and the nature thereof;
- (b) shall take no part in the negotiation of the contract, agreement or arrangement or in any deliberation by the Agency or members of staff of the Agency in relation thereto;
- (c) shall not influence or seek to influence a decision to be made in the matter; and
- (d) shall not make any recommendation in relation to the contract, agreement or arrangement.

(2) The provisions of subsection (1) do not apply to a person as regards a contract or proposed contract of employment of that person as a member of staff of the Agency.

(3) In this section “member of staff” includes the Chief Executive Officer.

(4) Where a person to whom subsection (1) applies fails to comply with a requirement of this section, the Board shall decide the appropriate action (including removal from office or termination of contract) to be taken.

**15** The Government shall establish a trust, to be known as the Virgin Islands Recovery Trust for the purpose of receiving all contributions from diverse sources for the recovery and development efforts pursuant to the Plan including

Establishment of the Trust.

- (a) gifts and bequests;
- (b) donations;
- (c) proceeds from loans and other arrangements negotiated by the Government;
- (d) such monies as may be appropriated by the House of Assembly for the purposes of the Plan.

**16. (1)** The property of the Trust shall be applied in accordance with the terms of the Trust.

Application of property of the Trust.

(2) The Trust shall principally finance projects and programmes under the Plan.

(3) The property of the Trust shall not be used to support the operational costs of the Government.

(4) No part of the earnings of the Trust shall inure to the benefit of any person or group of persons except in accordance with the terms of the Trust.

**17.** The Agency shall only be able to access the property of the Trust required for the implementation of the Plan.

Access to property of the Trust by Agency.

**18.** The Board shall establish, with one or more authorised deposit-taking institutions, such accounts as it thinks appropriate for the money received from the Trust or any other source.

Agency to establish accounts.

**19. (1)** The Chief Financial Officer, following the agreement of the Chief Executive Officer, shall submit estimates of income and expenditure to the Board in such form, in respect of such periods and at such times, as may be required by the Board and shall furnish to the Board any information which the Board may require in relation to such estimates, including proposals and future plans relating to the discharge by the Agency of its functions over a period of years, as required.

Accounts and audit.

(2) The Chief Financial Officer, under the direction of the Board, shall cause to be kept, on a continuous basis and in either or both a legible and a machine readable form, all proper books and records of account of all income and expenditure of the Agency, and of the sources of such income and the subject matter of such expenditure, and of the property, assets and liabilities of the Agency and shall keep and shall account to the Board for all such special accounts as the Board or the Agency, with the consent of the Board, may from time to time direct should be kept.

(3) The Agency, the Chief Financial Officer and any relevant member of the staff of the Agency shall, whenever so requested by the Board, permit any person appointed by the Board to examine the records of account, books or other records of the Agency in respect of any financial year or other period and shall facilitate any such examination, and the Agency shall pay such fee therefor as may be fixed by the Board.

(4) In this subsection “relevant member of the staff of the Agency” means a member of the staff of the Agency in respect of whom there have been duly assigned duties which relate to any of the records referred to in subsection (3).

(5) The accounts of the Agency for each financial year shall be kept in such a form and manner as may be specified by the Board and be prepared by the Chief Financial Officer and approved by the Board as soon as practicable but not later than 3 months after the end of the financial year to which they relate.

(6) A copy of the accounts referred to in subsection (5) and the report of the person referred to in subsection (3), shall as soon as practicable be presented to the Cabinet by the Board and the Cabinet shall cause a copy of the accounts to be laid before the House of Assembly.

(7) A copy of the estimates of operating expenditure of the Agency shall as soon as practicable be submitted by the Board, through the Minister for onward transmission to the Cabinet for approval.

(8) The Cabinet shall as soon as practicable, consider the estimates of operating expenditure of the Agency with a view to

- (a) approving them, with or without modification; or
- (b) remitting them back to the Board without approval.

(9) Where Cabinet remits the estimates of operating expenditure of the Agency to the Board, it shall provide the Board with the reasons for its non-

approval of the estimates of the operating expenditure, including any specific recommendations for modifications.

(10) Where the estimates of the operating expenditure of the Agency are approved by Cabinet, Cabinet shall within three months of the approval cause a copy of same to be laid before the House of Assembly.

(11) The Board shall, through the Minister, at the request of Cabinet provide Cabinet with the information on projects, together with all financial implications thereof, to be undertaken during the financial year.

(12) The financial year of the Agency shall run from 1 January to 31 December in any given year.

**20.** The Board shall, not later than the first day of September in each year, prepare a budget for the next fiscal year which sets forth Annual budget.

- (a) projected revenue of the Trust from all sources;
- (b) costs for Agency administration; and
- (c) costs of grants and other financial commitments to projects consistent with the Agency's purpose.

**21. (1)** As soon as practicable after the 30 June in each year, and in any event no later than the last business day in October of each year, the Agency shall prepare and deliver to the Board a report of the activities of the Agency during the financial year of the Agency. Annual report.

(2) The report prepared pursuant to subsection (1) shall include copies of the audited financial statements and accounts of the Agency for the financial year to which the report relates and the auditor's report on the statements and accounts prepared by the auditor.

(3) The Board shall forward the report delivered pursuant to subsection (1) to the Minister for the consideration of the Cabinet and the Cabinet shall cause a copy to be laid before the House of Assembly within 60 days.

(4) The first report prepared pursuant to this section shall contain a report on the activities of the Agency from the date of commencement of this Act to the end of the first fiscal year immediately following that date.

**22.** The Agency shall be dissolved at the end of five years unless it is otherwise determined by the Cabinet with the approval of the House of Assembly. Dissolution of Agency.

Dissolution of the Trust.

**23.** The Trust shall be dissolved in accordance with the terms of the Trust.

Prohibition on unauthorised disclosure of confidential information.

**24.** (1) Save as otherwise provided by law, a person shall not, without the consent of the Agency, disclose confidential information obtained by him or her while performing, or as a result of having performed, duties as

- (a) the member of the Board;
- (b) a member of staff of the Agency;
- (c) a member of a committee formed under this Act, or
- (d) a consultant or adviser or an employee of such person engaged by the Agency under this Act, unless he or she is duly authorised to do so.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on summary conviction to a fine not exceeding five thousand dollars.

(3) Nothing in subsection (1) shall prohibit the disclosure of information by means of a report made

- (a) to the Agency; or
- (b) by or on behalf of the Agency to the Cabinet or the House of Assembly.

(4) In this section “confidential information” includes

- (a) information that is expressed by the Agency or a committee, as the case may be, to be confidential either as regards particular information or as regards information of a particular class or description;
- (b) commercial information in relation to contractors, consultants, providers of finance, or any other person, and
- (c) proposals of a commercial nature or tenders submitted to the Agency by contractors, consultants, or any other person.

Power to amend the Schedule.

**25.** The Minister may, on the advice of the Board, amend the Schedule by Order published in the *Gazette*.

Regulations.

**26.** (1) The Cabinet, on the advice of the Board, may make regulations, not inconsistent with this Act, for or with respect to any matter that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), regulations may, in conformity with international best practice, provide for

- (a) the guidelines and criteria for applications for funding;
- (b) the framework for interaction, responsibilities and exchange of information between the Ministries and the Agency relating to projects under the Plan;
- (c) guidelines and procedures for procurement of services and goods under the Plan;
- (d) guidelines for capacity building during recovery and development for the immediate and long term benefit of the Territory;
- (e) investment of the Trust monies;
- (f) prescribing anything that is required to be prescribed by this Act.

(3) Any regulations made under this section shall be subject to an affirmative resolution of the House of Assembly.

## SCHEDULE

[Section 12]

### PROCEEDINGS OF THE BOARD.

1. Subject to the provisions of this Act, the Board may regulate its own proceedings.

2. The Board shall hold its first meeting on such date, place and time as the Chairperson may determine and in any event no later than 2 weeks after there are sufficient members to make a quorum and thereafter the Board shall meet (in person or by telephone) for the transaction of business at such places and at such times as the Chairperson may determine.

3. The Chairperson may, upon giving notice of not less than fourteen days, call a meeting of the Board and shall call a special meeting to be held within fourteen days of receipt of a written request to the Chairperson by at least three members.

4. If the urgency of any particular matter does not permit the giving of such notice as is required under subparagraph (3), a special meeting may be called by the Chairperson upon giving a shorter notice.

5. Five members, not including the Chief Executive Officer, shall form a quorum at any meeting of the Board.

6. There shall preside at any meeting of the Board

(a) the Chairperson;

(b) the Deputy Chairperson in the absence of the Chairperson;  
or

(c) in the absence of both the Chairperson and the Deputy Chairperson, any member as the members present may elect to be Chairperson for the purposes of that meeting.

7. A decision of the Board on any question shall be by a majority of the members present and voting at the meeting and in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to the deliberative vote.

8. The validity of any proceedings, act or decision of the Board shall not be affected by any vacancy in the membership of the Board or any defect in the appointment of any member or by reason that any person not entitled to do so took part in the proceedings.

**9.** Notwithstanding anything contained in this Schedule, the Chairperson may, in any matter he or she considers exceptional, make arrangements for a decision of the Board to be taken with notice to all members on such matter through a process of consultation recorded in written resolutions without the need for an actual meeting.

**10.** The Board shall cause minutes of all proceedings of and decisions taken at every meeting of the Board to be entered in books kept for the purpose.

**11.** The Board shall cause such minutes of all proceedings of and decisions taken at every meeting of the Board to be published on the Internet Site within fourteen days of each meeting.

Passed by the House of Assembly this 27<sup>th</sup> day of March, 2018.

(Sgd.)Ingrid Moses-Scatliffe,  
Speaker.

Phyllis Evans,  
(Sgd.)Clerk of the House of Assembly.