

No. 15—2000

I assent,

[L.S.]

H. F. COOKE,
Governor-General.

21st day of November, 2000.

AN ACT to Amend the Shipping Act, 1998.

[The date notified by the Minister
bringing the Act into operation]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Shipping (Amendment) Act, 2000 and shall be read and construed as one with the Shipping Act, 1998 (hereinafter referred to as the principal Act) and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Short title,
construction
and com-
mencement.

2. Section 2 of the principal Act is amended—

(a) by deleting the definition of “Director” and substituting therefor the following—

Amendment
of section
2 of prin-
cipal Act.

“ “Director” means the Director-General of the Authority appointed under section 10,

and includes any person lawfully acting under the instructions of or on behalf of the Director-General;”;

- (b) by inserting the following definition immediately after that of “fishing vessel”—

“ “foreign maritime entity” means a business entity, other than a body corporate, established under and subject to the law of a state other than Jamaica which, pursuant to that law, is entitled to own or operate ships;”.

Amendment
of section
10 of prin-
cipal Act.

3. Section 10 of the principal Act is amended—

- (a) by deleting the marginal note and substituting therefor the word “Director-General”;
- (b) by deleting from subsection (1) the words “Director of Maritime Services” and substituting therefor the words “Director-General of the Authority”; and
- (c) by deleting from subsection (2) the words “Director of Maritime Services” and substituting therefor the word “Director-General”.

Amendment
of section
17 of prin-
cipal Act.

4. Subsection (1) of section 17 of the principal Act is amended by deleting the word “if” and substituting therefor the word “unless”.

Amendment
of section
20 of prin-
cipal Act.

5. Section 20 of the principal Act is amended—

- (a) by inserting in paragraph (c) immediately after the word “corporate” the words “or partnership”;
- (b) by renumbering paragraph (d) as paragraph (e) and inserting the following as paragraph (d)—
- “ (d) business entities established under and subject to the law of a state other than

Jamaica which, pursuant to that law,
are entitled to own or operate ships;”.

6. The principal Act is amended by inserting immediately
after section 20 the following as section 20A—

Insertion of
new section
20A in
principal
Act.

“Require-
ments for
managing
owner or
agent.

20A.—(1) The owner of a ship which is
registered as a Jamaican ship shall appoint a
person who satisfies the requirements of sub-
section (2), as managing owner or agent of
that ship, for the period during which the
ship is so registered.

(2) A person is qualified for appoint-
ment as a managing owner or agent if—

- (a) in the case of an individual, he is
resident in Jamaica;
- (b) in the case of a body corporate, it is
incorporated under the laws of
Jamaica, and has a place of business
in Jamaica; and
- (c) the person possesses such other
qualifications as may be prescribed.

(3) A document required or author-
ized, by virtue of any provision of this Act,
to be served for the purposes of the institu-
tion of, or otherwise in connection with, pro-
ceedings for an offence under this Act, or
regulations made hereunder, shall where the
person to be served is the owner of a regis-
tered Jamaican ship, be treated as duly served
on him if it is—

- (a) served on any managing owner or
agent for the time being appointed
in relation to the ship;

- (b) sent to any such person by registered post or by electronic or other appropriate means to the address notified (or, as the case may be, last notified) to the registrar under section 27 in relation to the ship; or
- (c) left for any such person at that address.

(4) In addition to the other requirements of this section, a managing owner or agent shall—

- (a) provide such information with respect to the ship and the owner thereof; and
- (b) carry out such directives with respect to the managing owner or agent's duties and responsibilities in relation to that ship or owner,

as may be required by the Director.

(5) A managing owner or agent who fails to comply with the provisions of subsection (4) commits an offence and is liable on summary conviction thereof in a Resident Magistrate's Court to a fine not exceeding five hundred thousand dollars or in default of payment thereof to imprisonment for a term not exceeding six months."

Amendment
of section
21 of prin-
cipal Act.

7. Subsection (1) of section 21 of the principal Act is amended by inserting immediately after the words "prescribed form" the words "accompanied by the prescribed fee".

8. The principal Act is amended by inserting immediately after section 24 the following as sections 24A, 24B and 24C—

Insertion of
new sections
24A, 24B
and 24C in
principal
Act.

"Registers. 24A.—(1) Separate registers shall be kept in the prescribed form in respect of—

- (a) ships;
- (b) ships under construction;
- (c) ships in respect of which a provisional Certificate of Registry is issued under section 41;
- (d) bareboat chartered ships;
- (e) pleasure craft; and
- (f) such other categories of vessels as the Registrar-General may direct.

(2) The registration of a ship registered in the register for ships under construction, shall upon completion of the construction of that ship, be transferred to another appropriate register.

(3) The registration of a provisionally registered ship may, where appropriate, be transferred to another register.

(4) The registers shall be maintained by registrars in accordance with this Part, any registration regulations made hereunder, and any directions given by the Director.

Entries in
registers.

24B. Entries in the registers shall be made in accordance with the following provisions—

- (a) the property in a ship is deemed to be divided into sixty-four shares;
- (b) subject to the provisions of this Part with respect to joint owners or

owners by transmission, at no time shall more than sixty-four persons be registered as owners of any one ship; but this provision shall not affect the beneficial title of any number of individuals or bodies corporate represented by or claiming under or through any registered or joint owner;

- (c) except as provided in paragraph (e), a person may not be registered as the 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 any share therein;
- (d) joint owners shall be regarded 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 any share therein in respect of which they are registered;
- (e) in the case of a ship wholly or partly owned by a foreign maritime entity, a person who is a member of that entity may be registered as owner of a fractional part of a share in the ship if the sum of all the shares in the ship is sixty-four.

Certain
restrictions
on registra-
tion.

24C. The registrar shall not register any ship purchased or otherwise acquired where any bill of sale or other document under or by virtue of which the ship became vested in the applicant for registry contains any

provisions, express, implied or constructive, restricting the use of the ship or imputing any measure of continued control thereof by the government of a foreign state.”.

9. Section 25 of the principal Act is amended by—

- (a) deleting the marginal note and substituting therefor the following—

Amendment
of section
25 of prin-
cipal Act.

“Certificate of registry and records.”;

- (b) deleting subsections (2), (3) and (5).

10. Subsections (1), (2) and (3) of section 27 of the principal Act are amended by inserting immediately after the words “managing owner” wherever they appear, the words “or agent”.

Amendment
of section
27 of prin-
cipal Act.

11. Subsection 1 (b) of section 29 of the principal Act is amended by—

Amendment
of section
29 of prin-
cipal Act.

- (a) deleting the word “tonnage”;

- (b) deleting the words “2 years” and substituting therefor the words “1 year”.

12. Section 32 of the principal Act is repealed and the following substituted therefor—

Repeal and
replacement
of section
32 of prin-
cipal Act.

“Port of
registry.

32. The Minister may by order published in the *Gazette* declare any port of Jamaica as a port of registry for the registration of ships.”.

13. Section 38 of the principal Act is amended—

Amendment
of section
38 of prin-
cipal Act.

- (a) by deleting the full stop at the end of paragraph (e) and substituting therefor a semicolon;

- (b) by adding thereto next after paragraph (e) the following as paragraph (f)—

“(f) the registration of ships and mortgages, referred to in this Act as “registration regulations”.”.

Amendment
of section
64 of prin-
cipal Act.

14. Subsection (2) of section 64 of the principal Act is deleted.

Repeal and
replacement
of section
66 of prin-
cipal Act.

15. Section 66 of the principal Act is repealed and the following substituted therefor—

“Ship liable
to de-
registration
upon trans-
mission.

66. Where the property in a registered Jamaican ship is transmitted on bankruptcy, death or otherwise and the ship no longer meets the requirements of this Act for registration as a Jamaican ship, the ship so transmitted shall thereupon be liable to be de-registered.”.

Amendment
of section
69 of prin-
cipal Act.

16. Section 69 of the principal Act is amended by inserting next after subsection (6) the following as subsections (7), (8), (9) and (10)—

“ (7) A mortgage may be registered in the appropriate register in respect of a provisionally registered ship, and where a mortgage is so registered, the provisions of this Act relating to mortgages and the registration regulations shall apply, with such modifications as may be necessary, to provisionally registered ships.

(8) A mortgage registered pursuant to subsection (7) shall continue to be a registered mortgage until it is discharged, notwithstanding that the provisional registration of the ship to which the mortgage relates, ceases to be effective.

(9) A mortgage in respect of a ship under construction shall be registered in the appropriate register, so, however, that upon the registration of such a ship being transferred to another register, the entries relating to the mortgage shall, unless the mortgage is discharged, be transferred in like manner to that other register.

(10) A mortgage in respect of a ship under construction shall, for the purposes of determining priority under this Act or any other law, and in all other

respects, be treated as a registered ship mortgage and shall continue to be treated as such until it is discharged, notwithstanding that the ship ceases to be registered under this Act; and a ship under construction shall, for the purposes of a mortgage thereon under this Act or any other law, be treated as maritime property.”.

17. Section 81 of the principal Act is amended by deleting the words “paragraphs (d) and (e)” and substituting therefor the words “paragraph (d)”.

Amendment
of section
81 of prin-
cipal Act.

18. Section 82 of the principal Act is repealed and the following substituted therefor—

Repeal
and replace-
ment of
section 82
of prin-
cipal Act.

“Priority of
maritime
liens.

82. The maritime liens in relation to the claims specified in section 80(a) shall take priority over any preferential rights arising under the law of bankruptcy, and except as provided in section 89(2)(a) and (b), no other claim shall take priority over them.”.

19. Section 83 of the principal Act is amended by—

Amendment
of section
83 of prin-
cipal Act.

- (a) deleting from paragraph (a) the letter “(c)” and substituting therefor the letter “(b)”;
- (b) deleting from paragraph (b) the words “(a), (b), (d) and (e)” and substituting therefor the words “(a), (c) and (d)”;
- (c) deleting from paragraph (c) the letter “(c)” and substituting therefor the letter “(d)”.

20. Section 84 of the principal Act is amended—

Amendment
of section
84 of prin-
cipal Act.

- (a) by deleting subsection (1) and substituting therefor the following—

“ (1) Where a lien or right of retention arises in respect of a ship in the possession of—

- (a) a shipbuilder, in order to secure claims for the building of the ship;
- or

(b) a ship repairer, in order to secure claims for the repair (including reconstruction) of the ship, effected during such possession,

such right shall be postponed to all maritime liens set out in section 80 and, subject to subsection (2), shall take precedence over any registered mortgage or other preferential rights.”;

(b) by inserting in subsection (2) immediately after the words “the claims of” the words “holders of mortgages registered under this Act and”.

Insertion of new section 84A in principal Act.

21. The principal Act is amended by inserting immediately after section 84 the following as section 84A—

“Priority of registered mortgages. 84A. The claims of holders of mortgages registered under this Act shall take priority over maritime liens securing any of the claims set out in section 80(b), (c) and (d).”.

Amendment of section 89 of principal Act.

22. Subsection (2) of section 89 of the principal Act is amended by deleting sub-paragraphs (i), (ii) and (iii) of paragraph (c) and substituting therefor the following—

- “
- (i) the holders of maritime liens securing any claim under section 80(a);
 - (ii) the holders of mortgages registered under this Act;
 - (iii) the holders of maritime liens securing any claim under section 80(b), (c) and (d);
 - (iv) the holders of rights under section 84;
 - (v) the holders of other preferential rights.”.

Repeal of section 109 of principal Act.

23. Section 109 of the principal Act is repealed.

24. The principal Act is amended by inserting immediately after Part IV the following as Part IVA—

Insertion of
new Part
IVA in prin-
cipal Act.

“ PART IVA. *Taxation and Other Concessions*

Interpreta-
tion.

101A. In this Part—

“exempted seafarer” means a seafarer
serving on board an exempted ship;

“exempted ship” means a ship which has
been declared to be an exempted
ship under section 101C;

“foreign-going trade” means—

- (a) trade to or from Jamaica;
- (b) trade between ports out-
side Jamaica;

“operation”, in respect of an exempted
ship, means the operation of that
ship by the owner thereof and in-
cludes the operation of that ship
under charter;

“shipping entity” means a partnership,
foreign maritime entity, body cor-
porate or other business entity that
is qualified to own a Jamaican ship
and owns, operates or is a bareboat
charterer of a Jamaican ship.

Application
for exempt
status.

101B.—(1) A shipping entity which intends
to own or operate an exempted ship shall sub-
mit an application in writing in the prescribed
form to the Director containing the following
particulars—

- (a) the name of the shipping entity;
- (b) the name and tonnage of the ship
which it wishes to own or operate as
an exempted ship;

- (c) the address of the registered office of the shipping entity and of the managing owner or agent;
- (d) such other particulars as may be prescribed,

and shall notify the Director in writing from time to time of any changes to such particulars.

(2) A ship shall not be eligible to be declared an exempted ship unless—

- (a) it is a registered Jamaican ship owned or operated by the shipping entity concerned;
- (b) it is engaged in foreign-going trade;
- (c) all fees payable under this Act in respect thereof have been duly paid; and
- (d) except in the case of a ship of under twenty-four metres in length, it is engaged in the carriage of goods or passengers.

(3) The Director shall, not later than three days after receiving the application submit the application, accompanied by his recommendations thereon to the Minister.

Declaration
of exempted
ship

101C. The Minister may, after consideration of an application and recommendations under section 101B and, subject to such conditions as he may deem appropriate—

- (a) by order published in the *Gazette*, declare the ship concerned to be an exempted ship; or

(b) refuse the application.

Eligibility
for benefits.

101D.—(1) A shipping entity which owns or operates exempted ships (in this Part called an approved shipping entity) shall, during the concession period, be eligible for the benefits conferred under this Part if it is regarded as being engaged solely in the business of owning or operating exempted ships, and it shall be so regarded notwithstanding—

- (a) that it has power to engage in and has engaged in operations incidental to the ownership or operation of exempted ships; or
- (b) the investment of the profits derived from such ownership or operation in other assets,

if the principal business of the shipping entity remains that of owning or operating exempted ships.

(2) In this section “concession period” in relation to the ownership or operation of an exempted ship by an approved shipping entity means, subject to subsection (3), the period of ten years beginning on the commencement date of the relevant order under section 101C.

(3) An approved shipping entity may prior to the expiration of the ten-year period under subsection (2), make an application in the prescribed form for an extension of the concession period.

(4) The provisions of this Part shall, with such modifications as may be

necessary, apply to an application under subsection (3) and the extended period as they apply in relation to the original application and concession period.

Termination
of benefits.

101E. Subject to the provisions of this Part, the status of a ship as an exempted ship and the benefits conferred under this Part, shall terminate upon the occurrence of any circumstance specified in section 29 (1).

Exemption
from income
tax.

101F.—(1) The following shall be exempt from income tax—

- (a) the income of an approved shipping entity, in respect of gains or profits derived from the ownership or operation by the entity of an exempted ship;
- (b) any dividend paid to shareholders or, as the case may be, profits paid to partners of such shipping entity out of income exempted from income tax under paragraph (a);
- (c) where such a shareholder is a company any dividend paid to the shareholders of that company to the extent that such dividend is paid out of gains or profits derived from the ownership or operation of an exempted ship or out of that company's share in such profits.

(2) There shall be exempt from income tax, any interest or other income payable to a person by an approved shipping entity in respect of any loan raised or other

debt due by such shipping entity for the purpose of—

- (a) acquiring the ownership of an exempted ship; or
- (b) the operation of an exempted ship.

(3) Nothing in this section shall exempt an approved shipping entity from its obligation under the Income Tax Act—

- (a) to deduct and account to the Commissioner of Taxpayer Audit and Assessment for income tax required to be withheld from emoluments payable to its employees; or
- (b) to render to that Commissioner returns and information.

Exemption
from trans-
fer tax.

101G. The transfer of shares in an approved shipping entity shall be exempt from tax under the Transfer Tax Act.

Exemption
from other
taxes, duties
and fees.

101H.—(1) An approved shipping entity shall be exempt from that portion of stamp duty which would otherwise be payable by it in respect of any instrument executed by it or on its behalf.

(2) No customs duty, tax payable under the General Consumption Tax Act, or other similar impost shall be payable upon any article imported into Jamaica, or taken out of bond in Jamaica by an approved shipping entity and shown to the satisfaction of the Commissioner of Customs to be required for the use of the entity in the operation of an exempted ship.

Validity of
crew agree-
ment of an
exempted
ship.

101I. An approved shipping entity and an exempted seafarer may enter into a crew agreement based on the mutual consent or act of the parties thereto and, notwithstanding section 122, such agreement shall be valid and enforceable in law.

Special
provisions
for
expediting
registration.

101J. Notwithstanding any other provisions of this Act, the Minister may, for the purposes of this Part, as he deems necessary waive any requirement of the Act in order to facilitate the expedition of any matter in relation to the registration of ships in Jamaica.”.

Amendment
of section
48 of prin-
cipal Act.

25. Section 418 of the principal Act is amended—

- (a) by deleting from subsection (1) the words “and, at the time it occurs, the ship or ship’s boat was in Jamaican waters”;
- (b) renumbering subsection (2) as subsection (3) and inserting therein immediately after subsection (1) the following as subsection (2)—

“ (2) This section shall apply—

- (a) to a Jamaican ship wherever the casualty occurs; and
- (b) to a foreign ship if at the time of the casualty, the ship or ship’s boat was in Jamaican waters.”.

Amendment
of section
49 of prin-
cipal Act.

26. Subsection (1)(a) of section 449 is amended by deleting the words “transmitting or” and adding immediately after the words “registered post” the words “or by electronic or other appropriate means”

27. Section 455 of the principal Act is repealed and the following substituted therefor—

Repeal and replacement of section 455 of principal Act.

“Regulations subject to negative resolution. 455.—(1) Regulations made under this Act, other than for matters specified in subsection (2), shall be subject to negative resolution of the House of Representatives.

(2) The matters referred to in subsection (1) are—

- (a) the measurement of ship tonnage;
- (b) the safety of shipping as regards the construction and equipping of ships and load lines;
- (c) navigation of ships and the prevention of collisions.”.

28. Paragraph 1(a) of the First Schedule to the principal Act is amended by deleting the words “Director of Maritime Services” and substituting therefor the word “Director”.

Amendment of First Schedule to principal Act.