

REPUBLIC OF KIRIBATI
(No. 10 of 2001)

I assent,

Beretitenti.
2001

AN ACT TO AMEND THE SHIPPING ACT 1990
(No 6 of 1990)

Commencement:
2001

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti.

Short title

1. This Act may be cited as the Shipping (Amendment) Act 2001.

Amendment of section 2

2. Section 2 of the Shipping Act 1990 (as amended by the Shipping (Amendment) Act 1998 (No 3 of 1998) is further amended by inserting a new definition between the definition of “Near Coastal Voyage” and “Unlimited Voyage” as follows -

“registered” –

- (a) in relation to or in respect of a vessel registered in Kiribati, means registered in Kiribati under the Merchant Shipping Act 1983 (No 4 of 1983); and
- (b) in relation to or in respect of a vessel “registered outside Kiribati” means registered outside Kiribati under any other country’s Merchant Shipping Act or any other similar Shipping Registration Act;

Amendment of section 16(1)

3. Section 16(1) of the Shipping Act 1990 (as amended by the Shipping (Amendment) Act 1998 (No 3 of 1998) is further amended as follows –

- (a) by inserting between “Minister” and “may” the following -

“acting in accordance with the advice of the Cabinet”; and

- (b) by inserting a new paragraph (vi) between paragraph (v) and the existing paragraph (vi) as follows –
 - “(vi)(aa) the prerequisites, qualifications, registration and reporting requirements and terms and conditions of a licence of an agent for a vessel; and
 - (bb) the requirements, terms and conditions and procedures for the provision and cancellation of a security under section 37; and”
- (c) by renumbering –
 - (i) the existing paragraph (vi) as paragraph (vii)”; and
 - (ii) the existing “paragraph (vii)” as “paragraph (viii)”.
- (d) In this sub-paragraph “agent” has the same meaning assigned in Part XI; and
 “vessel” have the same meaning assigned in Part XI.

Insertion of new Part XI

- 4. The Shipping Act 1990 (as amended by the Shipping (Amendment) Act 1998 (No 3 of 1998) is amended by the insertion of a new Part XI as follows: -

PART XI - AGENTS

- 34. In this Part –

“agent” means an agent who is licensed under this Part, for a vessel; and

“vessel” means a vessel registered in or outside Kiribati.

Licensing of agents

- 35. (1) The Minister may, on the application of any person, license such person to be an agent for a vessel for transacting business relating to the entry or clearance or any other related matters of any vessel in Kiribati waters.
- (2) The Minister may, at any time, limit the number of persons to be licensed under subsection (1).
- (3) The Minister may, by order, revoke the licence issued to any person –
 - (a) if that person has been guilty of fraud or misconduct as agent;
 - (b) if that person, being a natural person, is unable efficiently to act as agent by reason of mental or physical incapacity; or

- (c) for any other reasonable cause.

Licence

36. The licence referred to in section 35 shall -

- (a) be in such form as may be prescribed;
- (b) authorise the person named therein to operate as agent from the place of business and at the ports named in the licence;
- (c) be subject to the payment of the prescribed fee;
- (d) expire on 31 December in each year;
- (e) be personal to the licensee named therein;
- (f) not be transferable.

Security

- 37. (1) No licence shall be issued under this Act until the applicant has furnished to the Minister a security in such form and/or amount as may be prescribed for the due and proper performance of the duties and obligations of an agent under this Act.
- (2) The prescribed amount of the security under this Act shall be maintained and replenished at all times by the holder of a licence under this Act whenever any payment out of such security is made in accordance with this Act.
- (3) Where a licence issued under this Act is revoked pursuant to section 38, then the security provided under this section will accordingly be automatically cancelled and returned in due course to the holder of the licence who had provided the security under this Act.

Revocation of licence

- 38. Whenever a copy of an order made by the Minister setting forth the reason for which a licence is revoked is delivered to the person concerned to his usual place of abode or business, such licence shall cease to have effect.

Agents for principals

- 39. In this Part, the expression “agents” include agents for vessels entering or clearing vessels of their principals in the discharge of their duties as agents or proxies.

Liability of agents for vessels debts

40. Agents shall be liable for any costs incurred by a vessel for which they are an agent while it is in port in Kiribati, and shall be liable for all outstanding financial obligations of the owner and master of the vessel after the vessel has left Kiribati waters.

Authority of agent or sub-agent may be required

41. Whenever a person makes an application to an officer to enable such person to transact business on behalf of any other person, it shall be lawful for that officer to require the person so applying to produce a copy of his licence issued under this Act or a written authority from the person on whose behalf the application is made and in default of the production of such licence or authority, to reject the application.

Liability of licensed agent

42. (1) Subject to subsection (2), a licensed agent who performs any act on behalf of the owner or master of a vessel, for the purposes of this Act, be deemed to be the owner or master of such vessel and shall accordingly be personally liable for the payment of any moneys to which such vessel is liable and for the performance of all acts in respect of such vessel which the owner or master thereof is required to perform under this Act.
- (2) (a) Nothing contained in this section shall relieve the owner or master of such vessel from any such liability; and
- (b) the liability of the agent under this section shall not extend to the payment of any such moneys, which become payable, or the performance of any such act which falls to be performed, after the agent has ceased, in respect of that vessel, to be the agent of such vessel.

Liability of owner for acts of licensed agent

43. (1) Subject to subsection (2), an owner or master of a vessel who authorises a licensed agent to act for him in relation to such vessel for any of the purposes of this Act shall be liable for the acts and declarations of such duly authorised agent and may accordingly be prosecuted for an offence committed by such agent in relation to such vessel as if such owner or master had himself committed the offence.
- (2) (a) An owner or master of a vessel shall not be sentenced to imprisonment for any offence committed by his duly authorised agent unless such owner or master of such vessel actually consented to the commission of the offence; and
- (b) Nothing herein contained shall relieve the duly authorised agent from any liability to prosecution in respect of any such offence.

Delegation

44. The Minister may in writing delegate any of his powers under this Act to be performed by the Director of Marines.”

THE SHIPPING (AMENDMENT) ACT 2001

EXPLANATORY MEMORANDUM

1. This Act seeks to amend the Shipping Act (No 6 of 1990) with a view to widening the regulatory ambit of this Act to include also the regulation of agents for vessels whilst they are in Kiribati waters. Vessels or ships which this Act is concerned with are both Kiribati and foreign registered ships (see Section 2).
2. It is therefore intended in this Act that any person who wishes to become an agent in Kiribati should be licensed in accordance with the requirements of this Act. In this respect such person must apply to the Minister for the licence, pay a fee for such licence and provide a security for the due performance of the duties and obligations of an agent under this Act (see Sections 35 and 37).
3. Under Sections 35, 37 and 38, it is intended that a licence issued under this Act can be revoked by the Minister and once a copy of the order for revocation is delivered then the licence is cancelled and shall cease to have effect and likewise the security is cancelled.
4. It is further proposed that an agent for a vessel is liable for any costs incurred by a vessel for which he is agent and is also liable for all outstanding financial obligations of the owner or master of the vessel if the vessel is outside Kiribati waters (Section 40).
5. Again an agent is intended to be personally liable for the payment of any moneys for which such vessel is liable for, and for the performance of all acts in respect of such vessel which the owner or master is required to perform under this Act (See Section 42).
6. Also, the owner or master of a vessel will be liable for all acts of a licensed agent which are authorised by such owner or master of the vessel (Section 43).
7. It is also proposed that the Minister be empowered under the Act to be able to delegate any of his powers under the Act (see Section 44).
8. Finally, it is also intended that the Minister and the Cabinet be the authority together to formulate and make regulations under the Act (see Section 2).

Michael N. Takabwebwe
Attorney General
2 May 2001