



SHIPPING (AMENDMENT) ACT 2001

No. 23 of 2001

AN ACT TO AMEND THE SHIPPING ACT

I assent,
TAUFA'AHAU TUPOU IV,
11th July, 2002

[24th October, 2001]

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows: —

1.

- (1) This Act may be cited as the Shipping (Amendment) Act 2001.
- (2) The Shipping Act (Cap. 136) is in this Act referred to as the Principal Act.

2.

- (1) Section 3(2) of the Principal Act is amended by inserting the following after paragraph (e):
 - “(f) Convention on Facilitation of International Maritime Traffic (FAL) 1965 as amended from time to time;
 - (g) Convention on Limitation of Liability for Maritime Claims, (LLMC) 1976 and Protocol of 1996 as amended from time to time;

- (h) Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA) 1988 as amended from time to time;
 - (i) International Convention on Maritime Search and Rescue (SAR) 1989 as amended from time to time;
 - (j) Convention on Salvage (Salvage) 1989 as amended from time to time;
 - (k) Athens Convention relating to the Carriage of Passengers and Luggage by Sea (PAL) 1974, Protocols of 1976 and 1990 as amended from time to time;
 - (l) Convention on Maritime Liens and Mortgages 1993 (MLM) as amended from time to time;
 - (m) SOLAS Protocols of 1978 and 1988 as amended from time to time.”
- (2) Section 3(4) of the Principal Act is amended by deleting “(e)” in the second line and replacing it with “(m)”.
3. PART III of the Principal Act is deleted and replaced with the following:

“PART III - REGISTRATION OF SHIPS

7. [sic - Words missing from original]

“**Approved Person**” means a person who is a non-Tongan person or corporation approved by the Secretary to register a ship on the Tongan Registry in accordance with this Act and Regulations.

“**Bareboat Charter**” means the contract for the lease or sub-lease of a ship, for a stipulated period of time, by virtue of which the charterer shall acquire full control and complete possession of the ship, including the right to appoint his master and crew for the duration of the charter, but excluding the right to sell or mortgage the ship;

“**Bareboat Charter Registry**” means the registry of a Bareboat Charter in the Register;

“**Eligible Person**” means a person or corporation that maintains an office in Tonga that is staffed by persons at least one of whom is a Tongan subject, accountable to the Government on behalf of the charterer;

“**Particulars**” include all the features and details of the ship, its owners, charterers and mortgages as the case may be, as required in the Shipping (Registration) Regulations;

“**Qualified Person**” means an individual who is a Tongan subject or a corporation that is registered in Tonga under the Companies Act 1995;

“**Register**” means Register of Ships kept in accordance with section 9(2);

“**Underlying Registry**” means registry in the State in which the owners of a ship are registered as owners and to which jurisdiction and control will revert upon termination of the Bareboat Charter registration, and “**Underlying Register**” and “**Underlying Registry**” shall be construed accordingly.”

8 Registry of ships

- (1) Every ship, 15 metres and above in length, owned by a Qualified Person, shall be registered under this Act. A ship required to be registered and not registered shall not be recognized as a Tongan ship.
- (2) Every Bareboat Charter of a ship, 15 metres and above, chartered by an Eligible Person, shall be eligible to be registered under this Act. A ship under a Bareboat Charter that is registered under this Act is deemed to be a Tongan ship.
- (3) Every ship, owned by an Approved Person, may be registered under this Act, provided that the owner or owners and the ship comply with the conditions contained in this Part and in respect of the Register.
- (4) A ship required by this Act to be registered may be detained upon the order of the Minister until the master of the ship, if so required, produces a Certificate of Registry in respect of the ship.

9 Office of Registrar

- (1) A Registrar of Ships shall be appointed by the Minister, with the consent of Cabinet, who shall be responsible for the administration and operation of the Registry.
- (2) The Registrar of Ships shall enter the particulars of Tongan ships that are required or approved to be registered and Bareboat Charters that are eligible to be registered in the Register.
- (3) The Minister may, with the consent of Cabinet, appoint Deputy Registrars of Ships as is necessary to give effect to this Act.
- (4) Bareboat Charters of ships owned by an Approved Persons shall be registered under section 8(2) at the office of the Registrar of Ships in Nuku'alofa.
- (5) The Registrar, or any person working under his authority, shall not be liable for any loss occurring to any person by reason of any act or omission, unless through wilful neglect or gross negligence on the part of that person.

10 Prior requirements for Registry

Every ship of 15 metres and above required to be registered under section 8(1) shall, prior to registration, comply with all the appropriate provisions of this Act and the Shipping (Registration) Regulations.

11 Registry of Bareboat Charters

- (1) A ship shall be deemed to be registered as a Tongan ship under this Part, if the ship is:
 - (a) Bareboat chartered to an Eligible Person;
 - (b) not a Tongan ship at the time of application;
 - (c) not registered in another Bareboat Charter Registry; and
 - (d) the following certified documents are submitted to the Registrar:
 - (i) an Application for Registration made by the Bareboat Charterer or his authorized agent, containing such information as required by the appropriate provisions of this Act and the Shipping (Registration) Regulations;
 - (ii) a Declaration of Bareboat Charter made by the charterer, accompanied by a copy of the charterparty;
 - (iii) a copy of the Certificate of Registry in the Underlying Registry;
 - (iv) the consent in writing of the following for the registration of the Bareboat Charter of the ship in Tonga:
 - (aa) the appropriate authorities of the Underlying Registry;
 - (bb) the owners of the ship;
 - (cc) all registered mortgagees.
- (2) Any amendments or modifications to the Bareboat Charter shall be produced in writing to the Registrar by the charterer within 7 days of such amendment or modification.
- (3) Any amendments or modifications to the Underlying Registry in respect of this ship shall be produced in writing to the Registrar by the charterer within 7 days of such amendment or modification.
- (4) Reference to “certified documents” in subsection (1) means that the Registrar of the Underlying Registry has sighted the original documents and certified the copies to be true copies under his signature and seal.

12 Registry of Ships by Approved Persons

- (1) A ship owned by an Approved Person may be entered in the Registry as a Tongan ship under this Part, if the ship:
 - (a) is not registered in any other Flag State;
 - (b) is not a Tongan ship at the time of application.
- (2) The Minister shall determine the criteria for a person to be designated an Approved Person.
- (3) On the basis of the criteria established, the Secretary may determine whether a person should be designated an Approved Person.
- (4) A ship that is unseaworthy shall not be entered in the Registry.

13 Register

The Registrar shall cause to be kept a book to be called the Register and entries in the Register shall be made in accordance with the provisions of the Shipping (Registration) Regulations.

14 Port of Registry

- (1) The Port of Registry for ships required to be registered under section 8(1) shall be the port of Nuku'alofa and such other ports in the Kingdom of Tonga as the Minister may, by notice in the Gazette, declare to be ports of registry under this Act.
- (2) The Port of Registry for Bareboat Charters eligible for registration under section 8(2) shall be the port of Nuku'alofa.
- (3) The Port of Registry for ships owned by an Approved Person permitted to be registered under section 8(3) shall be the port of Nuku'alofa.

15 Applications for Registry

- (1) Applications for Registry shall be made in accordance with the Forms prescribed in the Shipping (Registration) Regulations.
- (2) An Application for Registry for every ship required to be registered under section 8(1) shall be made by the Qualified Person or by their authorised agent.
- (3) An Application for the registry of a Bareboat Charter under section 8(2) shall be made by an Eligible Person.
- (4) An Application for the registry of ship under section 8(3) shall be made by an Approved Person.

16 Tonnage Measurement

- (1) When an application is made for the registry of any ship required to be registered under this Act, the applicant shall cause the ship to be surveyed by a surveyor acceptable to the Secretary and the tonnage of the ship shall be ascertained in the manner prescribed in the Tonnage Convention and the Shipping (Registration) Regulations.
- (2) The surveyor shall, upon making the survey, issue a surveyor's certificate of tonnage specifying the ship's tonnage and other particulars descriptive of the identity of the ship in the manner prescribed in the Tonnage Convention and the Shipping (Registration) Regulations, and such certificate shall be delivered to the Registrar.
- (3) Where a ship required to be registered under this Act is an existing ship and the tonnage of the ship has been ascertained in accordance with the Tonnage Convention and the Shipping (Registration) Regulations, the Secretary may at his discretion waive the requirements in subsections (1) and (2).
- (4) The tonnage of a ship the Bareboat Charter of which is to be registered under the Bareboat Charter Registry shall be ascertained in accordance with the Tonnage Convention and the Shipping (Registration) Regulations, provided that the Secretary may at his discretion accept the tonnage recorded in the Underlying Registry if he is satisfied it was ascertained in the manner prescribed in the Tonnage Convention.
- (5) The tonnage of a ship to be registered under the Registry other than a Bareboat charter shall be in accordance with the Tonnage Convention and Shipping (Registration) Regulations, provided that the Secretary may at his discretion accept the tonnage recorded on the former International Tonnage Certificate if he is satisfied that it was ascertained in the manner prescribed in the Tonnage Convention.

17 Marking of ships

- (1) Every ship in respect of which an application for registry is made shall, before registry, be marked permanently and conspicuously in accordance with the Shipping (Registration) Regulations.
- (2) Subject to any other provision contained in this Act and in the Shipping (Registration) Regulations, the owner, charterer or the master of the ship shall take all reasonable steps to ensure that the ship remains marked as required by this Act, and the owner, charterer or master shall not cause or permit any alteration of such marks to be made.
- (3) If an owner, charterer or master of a Tongan ship fails to maintain the marks as required, or if any person conceals, removes, alters, defaces, or

obliterates any of the marks, the owner, charterer or master shall for each offence be liable upon conviction to a fine not exceeding \$10,000, and if the ship is marked insufficiently or inaccurately, it may be detained by the Secretary until the insufficiency or inaccuracy has been remedied.

18 Name of ship entered on the Bareboat Charter Registry

- (1) Subject to subsection (2), a ship registered on the Bareboat Charter Registry shall be entered by the name under which it is the registered in the Underlying Registry.
- (2) The name of a ship to be entered on the Bareboat Charter Registry shall be changed prior to registry if the name is the same or similar to that of a ship already entered or fails to comply with the Shipping (Registration) Regulations, provided that the Registrar has received consent in writing of the appropriate authorities of the Underlying Registry, the owners, and any registered mortgages.

19 Entries of Particulars in the Register

When the Registrar is satisfied all requirements for registration of a ship set out in this Part and the Shipping (Registration) Regulations have been complied with, including the payment of any fees, he shall —

- (a) enter in the Register the particulars of the ship required by the Shipping (Registration) Regulations;
- (b) retain any documents required by the Shipping (Registration) Regulations;
- (c) issue a Certificate of Registry in the Form prescribed in the Shipping (Registration) Regulations.

20 Bareboat Charter Registry

The Registrar, if satisfied that all requirements for Bareboat Charter Registry specified in this Part and the Shipping (Registration) Regulations have been complied with, and on payment of the prescribed fee, shall —

- (a) enter in the Register —
 - (i) all particulars of the ship and its Underlying Registry;
 - (ii) the names of owners and charterers and their particulars; and
 - (iii) the expiry date of the charter;
- (b) inform the appropriate authorities of the Underlying Registry of the Bareboat Charter; and

- (c) issue a Certificate of Bareboat Charter Registry, which shall include the name and particulars of the ship, the name of the Port of Registry in Tonga and the expiry date of the Bareboat Charter and shall be in the Form prescribed in the Shipping (Registration) Regulations.
- (2) Upon the issue of a Certificate of Bareboat Charter Registry all documents issued to the ship by the Underlying Registry shall be surrendered to the appropriate authorities of that Registry.
- (3) Within thirty days of the issue of the Certificate of Bareboat Charter Registry the charterer shall make and deliver to the Registrar a declaration to that effect that all documents have been surrendered.
- (4) Registry of a Bareboat Charter Registry shall terminate on the date of expiry of the Bareboat Charter.
- (5) The charterer may make application for extension of the Bareboat Charter Registry, and upon the payment of the prescribed fee, the Registrar shall enter the new date of the expiry of the Bareboat Charter in the Register.

21 Circumstances for non-registration

Notwithstanding section 19 or 20 the Minister may, if he considers it necessary or expedient so to do for any reason, direct the Registrar not to enter in the Registry any ship or share, or any Bareboat Charter.

22 Certificate issued by the Registrar

- (1) Certificates issued by the Registrar shall —
 - (a) be kept by the master on board in a safe place and the particulars therein entered in the Official Log Book;
 - (b) remain the property of the Government;
 - (c) be produced if demanded by any person having lawful authority to inspect such certificates;
 - (d) only be issued for the lawful business of the ship.
- (2) Certificate issued by the Registrar shall not be removed or detained by any person having or claiming any interest in the ship by way of any title, lien, mortgage or other charge against the ship.
- (3) The name of the master of the ship shall be entered on the Certificate of Registry or Bareboat Charter Registry by the Registrar in accordance with the Shipping (Registration) Regulations.

- (4) If the master of a Tongan ship is changed while the ship is in Tonga, the Registrar shall endorse and sign a memorandum of the change on the Certificate of Registry or Bareboat Charter Registry.
- (5) If the master of a Tongan ship is changed while the ship is not in Tonga, the new master shall ensure that the proper officer at the next port at which the ship calls, endorses and signs a memorandum of the change on the Certificate of Registry or the Bareboat Charter Registry and shall forthwith notify the Registrar.
- (6) Any person, having a legal interest in the ship or not, who has in his possession or under his control a Certificate of Registry or a Certificate of Bareboat Charter Registry shall deliver such certificate on demand to the person entitled to the custody thereof for the purpose of the lawful business of the ship, or to any Registrar, or other person entitled by law to require such delivery.
- (7) Any person who fails to deliver the Certificate of Registry or a Certificate of Bareboat Charter Registry as required by subsection (6) commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.

23 Improper use of Certificates

Any owner or master of a ship who uses or attempts to use for any purpose a Certificate of Registry not legally granted in respect of that ship, commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.

24 Application of International Conventions to Tongan ships

- (1) Tongan ships that are required or approved to be registered and Bareboat Charters that are eligible to be registered in the Register of ships of Tonga shall carry those certificates required by the international conventions to which Tonga is a Party.
- (2) An application for any survey and subsequent issue of certificates shall be made to the Secretary.
- (3) Where such a ship meets the requirements of any international convention, the Secretary may issue any relevant certificate to the ship under the authority of the Government.
- (4) Where a Tongan ship that is required or approved to be registered and Bareboat Charter that is eligible to be registered in the Register of ships of Tonga has been issued with a certificate required under an international convention by a State that is a Party to that convention, then upon application, the Secretary, if he recognises the validity of that certificate,

may issue a Certificate of Endorsement for the duration of the original certificate, which shall have the same status as the original certificate.

- (5) Where Tonga is not a Party to a particular international convention and the Government of the country of the Underlying Registry issued a certificate required under the same convention, the Secretary may issue a similar certificate and shall return the original certificate to the issuing authority.

25 Bareboat Charter Registry - Jurisdiction

Every ship entered on the Bareboat Charter Registry shall —

- (a) be deemed to be a Tongan ship;
- (b) be under the jurisdiction and control of Tonga;
- (c) comply with all the laws applicable to Tongan ships; and
- (d) only fly the Tongan Flag as provided for in this Act.

26 Bareboat Charter Registry - Ownership

- (1) Registration of a ship on the Bareboat Charter Registry shall not assert any ownership rights over that ship and it shall have no effect with regard to title, transfer and transmission of such ship or shares therein.
- (2) On any transfer of ownership of a ship, the charter of which is entered on the Bareboat Charter Registry, the charters shall notify the Registrar of such transfer as required by section 10. The entry in the Registry shall continue unless the new owners raise an objection with the Registrar.
- (3) If the new owners of the ship terminate the charter the entry in the Bareboat Charter Registry shall thereupon terminate.

27 Power to grant new certificates

- (1) If a Certificate of Registry or a Certificate of Bareboat Charter Registry of a Tongan ship is —
 - (a) defaced or mutilated;
 - (b) mislaid, lost or destroyed;
 - (c) in the custody of any person not entitled to it,the Registrar shall grant a new Certificate in lieu of the original certificate upon payment of the prescribed fee.
- (2) If the Certificate referred to in subsection (1) is found at any time thereafter by the person entitled to it, the Certificate shall be delivered to

the Registrar for cancellation. Any person who fails to deliver the Certificate referred to in subsection (1) commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.

28 Registry of alterations to a ship

- (1) Where a Tongan ship is altered and does not correspond with the particulars relating to the Tonnage Certificate or the description contained in the Certificate of Registry, the owner of the ship shall within 7 days of that alteration being made, make a written application to the Registrar to register the alteration.
- (2) An application made under this section shall be accompanied by a Tonnage Certificate and the Registrar upon receipt of the application and prescribed fee, shall cause the alteration to be registered.
- (3) Every owner of a ship who fails to comply with this section commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.

29 Check of entries in the Register

- (1) If the Registrar has reason to believe that the Register does not contain accurate particulars in respect of any ship, he may direct the owner of the ship, or any other person in possession of information relating to the ship, to provide him with information.
- (2) Any person who fails to comply with this section, commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.

30 Transfer of ownership by Bill of Sale

- (1) Where a ship registered under this Act is disposed of to a Qualified Person or an Approved Person the ship shall be transferred by Bill of Sale in the Form prescribed in the Shipping (Registration) Regulations and executed by the transferor and transferee, and, in the case of a corporation, by the affixing of the corporate seal.
- (2) In respect of a newly constructed ship, a Builder's Certificate will be deemed to be a Bill of Sale for the purposes of this Act.
- (3) Upon application to the Registrar, such Bill of Sale may be registered in the Register of Ships if all the pre-requisites set out in this Part and in the Shipping (Registration) Regulations have been complied with.
- (4) Upon registration, the old Certificate of Registry shall be delivered to the Registrar, who shall issue a new Certificate of Registry to the new owner.

- (5) Whenever a ship registered in Tonga is sold by one Qualified Person to another Qualified Person, the change of ownership shall be endorsed by the Registrar on the ship's Certificate of Registry.

31 Registry of Mortgages

- (1) A registered ship is capable of being made security for a loan or other financial obligation by way of a mortgage in the Form prescribed in the Shipping (Registration) Regulations.
- (2) The Registrar shall not register a mortgage or other charge against a ship unless the Form prescribed in the Shipping (Registration) Regulations is completed and signed by the parties.
- (3) Upon the production to him of a mortgage, he shall register the mortgage by making an entry in the Register.
- (4) The Registrar shall —
 - (a) register mortgages in the order in which they are produced to him for that purpose;
 - (b) endorse and sign on each mortgage, stating the date and time that it was produced to him and entered in the Register; and
 - (c) endorse and sign the Certificate of Registry to the effect that a mortgage has been registered against the ship.
- (5) No mortgage shall be registered on the Bareboat Charter Register.

32 Recording of Maritime Liens

- (1) The Registrar shall, at the request of the holder of a maritime lien, record the maritime lien by recording in the Register —
 - (a) the claim against the owner, Bareboat Charterer, manager or operator of the ship secured by the maritime lien on the ship;
 - (b) the date of the event which gave rise to the maritime lien against the ship; and
 - (c) the name and address of the lien holder for the service of notice or documents.
- (2) The registration of any maritime lien shall not confer upon the lien holder any right to which the lien holder would not otherwise be entitled in the absence of recording.
- (3) Subject to Article 8 of the International Convention on Maritime Liens and Mortgages 1993, a maritime lien shall be extinguished after a period of one year.

- (4) A maritime lien shall not be enforceable against a ship owned by a bona fide purchaser for value without notice unless such lien has been registered in the Register at the port in which the ship is recorded, but the debt shall be enforceable against the owner and vendor who has incurred the debt from which the maritime lien arises, irrespective of registration.

33 Priority of Maritime Liens and Mortgages

- (1) If there are more mortgages than one registered in respect of the same ship or share, the mortgages shall, notwithstanding any express, implied, or constructive notice, be entitled in priority one over the other, according to the date and time at which each mortgage is registered in the Register.
- (2) A registered mortgage shall not be affected by any act of bankruptcy or insolvency committed by the mortgagor after the date of registration of the mortgage, notwithstanding that the bankrupt or insolvent mortgagor had at the commencement of his insolvency the possession of or power to dispose of the ship.
- (3) Subject to subsection (5) any such mortgage shall be preferred over any right, claim, or interest of the other creditors of the bankrupt or any trustee or assignee on their behalf in relation to the ship.
- (4) Each of the following claims against the owner, Bareboat Charter, manager or operators of the ship shall be secured by an International Maritime Lien on the ship:
 - (a) claims for wages and others sums due to the master, officers, and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf,
 - (b) claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;
 - (c) claims for reward for the salvage of the ship;
 - (d) claims for port, canal and other waterway dues and pilotage dues;
 - (e) claims based on tort arising out of physical loss or damage caused by the operation of the ship other than loss of or damage to cargo, containers and passengers' effects carried on the ship.
- (5) The International Maritime Liens set in subsection (4) shall take priority over registered mortgages.
- (6) No other claim shall take priority over International Maritime Liens or over registered mortgages, except that in the event of a sale of a stranded or sunken ship causing a hazard to safe navigation that is removed by

Government authority, the cost of such removal shall be paid out of the proceeds of the sale before all claims secured by maritime lien on the ship.

34 Discharge of Mortgage

- (1) The Registrar, after production to him of a discharge of mortgage in the Form prescribed in the Shipping (Registration) Regulations, shall enter in the Register that the mortgage has been discharged.
- (2) On that entry being made, the property (if any) which passed to the mortgagee vests in the person to whom, having regard to any intervening acts and circumstances, it would have vested if the mortgage had not been made.

35 Default of Mortgage

- (1) A mortgagee shall not by reason of the mortgage be deemed to be the owner of the ship, nor shall a mortgagor be deemed to have ceased to be the owner of the ship.
- (2) Subject to the provisions of subsections (3) and (4), no such mortgagee shall, merely by virtue of the mortgage, be entitled to sell or otherwise dispose of the mortgaged ship or share.
- (3) In the event of default of mortgage, the registered mortgagee is entitled to recover the amount due under the mortgage. Upon application, notice of which is to be served on the mortgagor, and any subsequent mortgagees, a Court may grant an order, directing that the mortgaged ship, or any share therein, be sold by tender or at a public auction or in such terms the Court may deem fit, and that the proceeds of the sale be used to satisfy —
 - (a) the expenses of conducting the sale;
 - (b) any existing maritime liens against the ship;
 - (c) the amount outstanding to the mortgagee under the mortgage;
 - (d) the amount outstanding to subsequent mortgagees;
 - (e) the balance to the mortgagor.
- (4) Upon receiving an application, a Court may set the date of the hearing, notice of which shall be published for three times in a newspaper having wide circulation in Tonga, and the Court shall appoint a person as an officer of the Court, to conduct the sale and distribute the proceeds in accordance with the order. An officer so appointed shall not be liable for any act of commission or omission in conducting the sale or distributing the proceeds if acting in good faith.

- (5) Subject to subsection (4), the Court may make an order declaring ownership of the ship to the purchaser, which order may then be registered in the Register, which shall be deemed to be equivalent to a Bill of Sale.
- (6) Where more than one person is registered as mortgagee of the same ship, a subsequent mortgagee shall not, except under an order of the Court, make an application to sell the ship without the concurrence of every prior mortgagee.

36 Transfer of Mortgage

- (1) A registered mortgage of a ship may be transferred to any person by registration of an instrument of transfer of mortgage in the Form prescribed in the Shipping (Registration) Regulations.
- (2) On production to the Registrar of an instrument of transfer of a registered mortgage and of the mortgage to which the instrument of transfer relates, the Registrar shall —
 - (a) enter Transfer of the Mortgage in the Register; and
 - (b) sign the Mortgage and Transfer of Mortgage and state the date and time.

37 Delivery of Certificate when ship is lost or ceases to be a Tongan ship

- (1) In the event of a registered ship being an actual or constructive loss, taken by an enemy, burnt or broken up or ceasing for any reason to be a Tongan ship, the owner of the ship shall immediately on obtaining knowledge of the event give notice thereof to the Registrar.
- (2) The Registrar shall make an entry thereof in the Register and its registry shall be considered as deleted, except so far as relates to any unsatisfied mortgages registered therein.
- (3) Except where the ship's Certificate of Registry is mislaid, lost or destroyed, the master of the ship shall, immediately if any event referred to in subsection (1) occurs in any port in Tonga, or within 7 days after his arrival in any other port if it occurs elsewhere, deliver the Certificate to the Registrar.
- (4) The provisions of this section shall apply mutatis mutandis to a ship that is chartered to an Eligible Person.
- (5) Any owner or master who fails to comply with this section, commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000.

38 Forfeiture of ship

- (1) Where any ship has become subject to forfeiture under this Act, the Secretary may seize and detain the ship and make an application to the Supreme Court for an order that the ship, its equipment and stores be forfeited to the Government.
- (2) Where an order is made under subsection (1) it shall contain a declaration vesting in the Secretary the right to transfer the ship.
- (3) On receipt of the order, the Secretary may conduct the sale of the ship by tender or by public auction, or in such other manner directed by the Court.
- (4) On completion of the sale, the Secretary shall be entitled to transfer the ship and issue a Bill of Sale to the purchaser as if he were the registered owner of the ship.
- (5) Such sale shall be considered a forced sale and all registered mortgages, or other charges, except those assumed by the purchaser with the consent of the holders, and all liens and other encumbrances of whatsoever nature, shall cease to attach to the ship.

39 Sale of Ship by Order of the Court

- (1) Where any ship is subject to arrest and detention an aggrieved party may make an application to the Court for the arrest, detention or sale of the ship in satisfaction in whole or in part of any claims against the ship, its owner, charterer or master.
- (2) Where the Court makes an order for sale of the ship, it may make such further orders regarding the sale of the ship, the process to be followed and the distribution of the proceeds as it deems just in the circumstances of the case.
- (3) The Registrar shall treat the order as if it were a Bill of Sale and shall enter the same and the name of the purchaser as registered owner.

40 Transmission of Property in a Ship by operation of law

- (1) Where the property in a Tongan ship or share therein is transmitted to a person on the death or insolvency of any registered owner, or by any lawful means other than by a transfer under this Act —
 - (a) that person shall authenticate the transmission by making and signing a Declaration of Transmission, in the Form prescribed in the Shipping (Registration) Regulations;
 - (b) if the transmission is consequent on bankruptcy, the Declaration of Transmission shall be accompanied by proper proof of such claim;

- (c) if the transmission is consequent of death, the Declaration of Transmission shall be accompanied by —
 - (i) probate or letters of administration; or
 - (ii) in case of joint ownership, proof of survivorship or a duly certified copy thereof.
- (2) On receipt of the Declaration of Transmission, the Registrar shall enter in the Register the name of persons entitled to be the owner of the ship.

41 Transmission of Mortgage

- (1) The Transmission of Mortgage shall be authenticated by an affidavit sworn by the person to whom the interest is transmitted.
- (2) An affidavit referred to in subsection (1) shall contain a statement of the manner in which, and the person to whom, the interest has been transmitted and shall be accompanied by such documents as the Registrar may require.
- (3) The Registrar, after receipt of the affidavit and accompanying documents referred to above, shall enter the name of the person entitled to be the mortgagee of the ship in the Register.

42 Registry Fee

- (1) The fee for the registry of ships required to be registered under section 8(1), the annual fee and the fees for the documents required to be lodged with the Registrar shall be those prescribed in the Shipping (Registration) Regulations and shall be paid to the Registrar before registration.
- (2) Fees for the registry of Tongan ships that are approved to be registered under section 8(3) and Bareboat Charters that are eligible to be registered under section 8(2) and documents required to be lodged with the Registrar shall be prescribed by the Minister by publication in the Gazette.
- (3) All unpaid registration fees shall constitute a maritime lien on the ship in respect of which such amounts are due and such lien shall have priority over all other except under section 33(4)(a) and (c).

43 Annual Tonnage Fee

- (1) This section shall only apply to Tongan ships that are approved to be registered under section 8(3) and Bareboat Charters that are eligible to be registered under section 8(2).

- (2) There shall be an annual tonnage fee per gross tonnage for all ships and Bareboat Charters in the Register as prescribed by the Minister by publication in the Gazette.
- (3) Unless otherwise provided, all fees payable under this section shall be paid on 1 January of the year in respect of which such fees are due. If payment is not received by 31 March of such year, the Certificate of Registry or the Certificate of Bareboat Charter Registry of the ship for which any fee is overdue shall be cancelled by the Registrar.
- (4) Where a ship is entered in the Register for the first time, the fee payable under subsection (3) shall be calculated on a pro-rata basis from the date of registration for the remainder of that calendar year.
- (5) All annual tonnage fees shall be paid to the Registrar.
- (6) All unpaid annual tonnage fees shall constitute a maritime lien on the ship in respect of which such amounts are due and such lien shall have priority over all otherwise except those for wages and salvage.
- (7)
 - (a) Any ship which is withdrawn from service and laid up for one year or more shall, subject to any condition prescribed under paragraph (c), be exempted from payment of annual tonnage tax under this section during the period of such withdrawal.
 - (c) Upon the re-entry of service by such ship the tonnage fee due and payable by such ship shall be calculated on a pro rata basis from the date of such re-entry for the remainder of that calendar year.
 - (c) The Minister may prescribe by publication in the Gazette the conditions under which any ship may be exempted under paragraph (a).

44 Flag for Tongan ships

- (1) The Minister may, by regulations declare what shall be the Tongan Flag for all ships registered under this Act and for all ships which are not so registered but which are owned by the Government; and different flags may be declared for different classes of ships.
- (2) The Secretary or any officer authorised by the Minister may board any ship on which any flag is hoisted contrary to this Act and take away the flag which shall be forfeited to the Government following conviction under subsection (3).
- (3) The master or owner of a ship on which any flag is hoisted contrary to this Act commits an offence and shall be liable upon conviction to a fine not exceeding \$5,000 and the ship shall be liable to forfeiture.

45 Unlawful assumption of Tongan character

No person on board a ship that is not a Tongan ship shall use the Tongan Flag with intent to make it appear to be a Tongan ship.

46 Concealment of Tongan character

No owner or master of a Tongan ship shall knowingly do anything, or permit anything to be done, or carry or permit to be carried any papers or documents, with intent to conceal the Tongan character of the ship from any person entitled by any law for the time being in force to inquire into the same, or with intent to deceive any person so entitled as aforesaid.

47 Tongan ships to hoist Tongan Flag in certain cases

A Tongan ship shall hoist the Tongan Flag —

- (a) on a signal being made to it by any of His Majesty's ships;
- (b) on entering or leaving any foreign port;
- (c) if of 15 metres or more in length, on entering or leaving any Tongan port.

48 National character of ship to be declared before clearance

- (1) No ship shall be granted outward clearance until the master of that ship declares the name of the country in which it is registered and produces a Certificate of Registry.
- (2) Any ship attempting to proceed to sea without such clearance may be detained until clearance has been granted.

49 Liabilities of ships not recognized as Tongan ships

Where it is declared by the Minister that a Tongan ship shall not be recognized as a Tongan ship that ship shall not be entitled to any privileges, benefits, advantages or protection usually enjoyed by Tongan ships or to use the Tongan Flag for Tongan ships or to assume the Tongan national character, but so far as regards the payment of dues, the liability to fine and forfeiture and the punishment of offences committed on board such ship, or by any persons belonging to it, such ship shall be dealt with in the same manner in all respect as if it were a recognized Tongan ship.

50 Liability of owners, bareboat charterers and operators

Owners, Bareboat Charterers and operators shall be subject to any pecuniary penalty imposed by this Act or any other law and proceedings for the enforcement of any such penalty may be taken against any such person with or without joining any other.

51 Evidence of Register

- (1) On application to the Registrar and on payment of the prescribed fee, a person may, at any time during office hours, inspect any Register and may obtain a certified copy of any entry in the Register.
- (2) The following documents shall be admissible in evidence in any Court in the manner provided by this Act, namely:
 - (a) any Register on its production from the custody of the Registrar or other person having the lawful custody thereof,
 - (b) a Certificate of Registry or Certificate of Bareboat Charter Registration under this Act purporting to be signed by the Registrar or any other officer authorised by the Minister;
 - (c) an endorsement on a certificate of registry purporting to be signed by the Registrar or any other officer authorised by the Minister;
 - (d) every declaration made in pursuance of this Act in respect of a Tongan ship.
- (3) A certified copy of an entry in a Register shall be admissible in evidence in any Court and have the same effect as the original entry in the Register of which it is a copy.

52 Declarations

Any declaration required to be made under this Act shall be made before any one of the following persons —

- (a) the Secretary, Registrar or a Deputy Registrar;
 - (b) a consul or consular agent of Tonga;
 - (c) a diplomatic officer of Tonga; or
 - (d) a barrister, solicitor, notary public, magistrate, commissioner for oaths or any other officer, authorised by the laws of the place where the declaration is made.
- (2) Where a ship registered under section 8(1) of this Act is transferred, the transferee shall not be entitled to be registered as owner of the ship until a declaration is made in the Form prescribed in the Shipping (Registration) Regulations.

- (3) Any document purporting to bear the seal or signature of any person authorised under this Act to take a declaration shall be admissible in evidence without proof of the seal or signature.

53 False Declarations and Statements

Any person who knowingly —

- (a) makes a false declaration, statement or representation;
- (b) gives false evidence on oath; or
- (c) alters, produces or makes use of any false declaration or statement,

in connection with any application, report, record or proceeding under this Act, commits an offence and shall be liable upon conviction to a term of imprisonment not exceeding 2 years, or a fine not exceeding \$20,000.

54 Offences

Where an owner, master or charterer of a Tongan ship commits an offence against this Act a Court may, in addition to any other penalty, order the Registrar to remove the ship from the Register.

55 Tongan seafarers

- (1) The Minister may, by notice published in the Gazette, determine the number of Tongan seafarers that shall be employed, wherever practicable, on Tongan ships.
- (2) The charterer of a ship the Bareboat Charter of which is registered on the Bareboat Charter Registry who fails, without reasonable excuse, to employ the number of Tongans determined under subsection (1) within 12 months after registration of the charter, shall pay twice the annual registration fees in respect of that ship.
- (3) The owner of a ship registered on the Register who fails, without reasonable excuse, to employ the requisite number of Tongans as determined under subsection (1) within 12 months after registration, shall pay twice the prescribed Annual Tonnage Fee.
- (4) The owners and charterers of ships to which subsections (2) and (3) apply who have not complied with this section after 36 months after initial registration shall be required to register their ships or Bareboat Charters in a registry in another jurisdiction.
- (5) Any ship of which the owner or master has failed to comply with subsection (4) shall be struck off the Register.

56 Saving Provision

Any entry made in the Register prior to the Shipping (Amendment) Act 2001 coming into force and any documents or certificate in the possession of the Registrar, owner, charterer, mortgagee, master or any other person entitled to hold the document or certificate shall continue to be valid as if it was made after the said Act came into force.”

4. Section 97 of the Principal Act is deleted and replaced with the following:

“97 Burial expenses

- (1) Upon the death of a seaman during his employment on a Tongan ship, whether on board or ashore, the ship owner or charterer shall within three months of the death pay a lump sum equal to his base annual salary to the seaman's next of kin or personal representative.
 - (2) The ship owner or charterer shall not be liable to pay the amount under subsection (1) if the seaman is a member of the Government Retirement Fund.
 - (3) Upon the death of a seaman during his employment on a Tongan ship outside Tongan waters whether on board or ashore, the ship owner or charterer shall be liable to repatriate the body of the deceased seaman to Tonga in the most expeditious manner.
 - (4) On return of the deceased seaman's body to Tonga, the ship owner or charterer of the ship on which the seaman was employed at the time of employment shall pay a lump sum in compensation for reasonable funeral expenses incurred by the seafarer's next of kin or personal representative.
 - (5) Notwithstanding subsection (1), the owner or charterer of the ship in which the seaman was employed at the time of his death shall pay a lump sum corresponding to the basic wages of the deceased to the end of the month in which the death occurred to his next of kin or personal representative”.
5. Section 131(1) of the Principal Act is amended by deleting the number “123” and replacing it with “145”.
6. Section 137 of the Principal Act is deleted and replaced with the following:

“137 Alterations to a ship

For the purposes of this Act:

“**alteration**” means a change to the original hull, structure, motive power, auxiliary power, equipment, appurtenances, outfittings and furnishings of a significant nature of the ship includes repairs and modification.

“**significant nature**” means that such change affects the use of the ship, its safety, seaworthiness, safety of passengers on board and the particulars contained in its Certificate of Registry.”

7. Section 161 of the Principal Act is deleted and replaced with the following:

“161 Object found at sea

- (1) Notwithstanding anything contained in this Part, any object found in Tongan waters that is not a wreck shall be regarded as the property of the Government.
 - (2) Any person finding such as an object in Tongan waters shall forthwith deliver it for safekeeping to the appropriate Government officer appointed under this Part who shall immediately inform the Secretary.
 - (3) The Minister may in his discretion, pay the finder any reasonable expense incurred in delivering the object to the Government officer and may in addition pay such reward, as the Minister deems just and reasonable.
 - (4) If the true owner of the object found at sea can prove his ownership of the object to the satisfaction of the Minister, the object shall be released to him upon payment of any expenses reasonably incurred.
 - (5) If any owner does not exercise any right to an object found at sea within 12 months after the object is found, all rights to the object are extinguished and ownership vests in the Government.
 - (6) The operation of this Part of this Act shall not derogate from or interfere with the rights, duties and obligations of other Government agencies contained in this Act or any other Act.”
8. Section 195(2) of the Principal Act is amended by deleting the word “the” before “Court” in line 2 and replacing it with “a”.

Passed in the Legislative Assembly this 24th day of October, 2001.