



**TUVALU MERCHANT SHIPPING ACT
AND REGULATIONS**

LAWS OF TUVALU

MERCHANT SHIPPING ACT 1987

(Act 11 of 1987)

ARRANGEMENT OF SECTIONS

PART I-PRELIMINARY

Section

1. Short title
2. Commencement
3. Interpretation

PART II-REGISTRATION OF SHIPS

Division 1-- The Registrar and Register of Ship

4. Registrar of Ships
5. Register of Ships

Division 2--Registration of Ship

6. Provision relating to registration
7. Port of registry
8. Registration of ships
9. Restriction on registration of ship
10. Ship not entitled to be registered
11. Survey and measurement of ship
12. Marking of ship
13. Application for registration
14. Declaration of ownership on registry
15. Registration of ships-procedure
16. Certificate of registry
17. Power to grant new certificate
18. Provisional registration
19. Loss of certificate of registry
20. Change in ownership
21. Delivery of certificate where ship is lost etc.
22. Registry of alterations

Division 3-- Transfers and Transmissions

23. Transfer to be by bill of sale
24. Declaration of transfer
25. Registration of transfer
26. Transmission of ship on death, bankruptcy, etc.
27. Order for sale on transmission to unqualified person, etc.
28. Transfer of ship on sale by order of Court
29. Court may prohibit transfer

Division 4-Mortgages

30. Method of mortgage of ship
31. Entry of discharge of mortgage
32. Priority of mortgages
33. Powers of mortgagee
34. Transfer of mortgage
35. Transmission of interest in mortgage by death. etc.

Division 5-National Character and Flag

36. Penalty for unduly assuming Tuvaluan character
37. Penalty for concealment of Tuvaluan character, etc.
38. Forfeiture for offence under section 37
39. National colours
40. Colours other than national colours

Division 6-Miscellaneous

41. Registrar may require information
42. Notice of trusts not received
43. Equities not excluded by Act
44. Liability of owners
45. Ship's managing owner to be registered
46. Names of registered ships

PART III-INTERNATIONAL MARITIME COVENTIONS

47. International Maritime Conventions
48. Implementation of Convention
49. Implementation of Collisions Convention

PART IV-SAFETY

Division 1-Unsafe Ship

50. Detention of unsafe ships
51. Notice to be given of detention of unsafe ship
52. Offences in relation to unsafe ships
53. Failure to carry equipment

Division 2-General Safety and precautions

54. Notification of serious danger to navigation
55. Reports of positions and movements of ships
56. Obligation to assist person in danger of being lost
57. Duty of ship to assist in case of collision
58. Right to salvage not affected

Division 3-Carriage of Dangerous Good

59. Definitions for the purposes of *Division 3*
60. Power to deal with goods suspected of being dangerous
61. Restriction on carriage of dangerous goods
62. Packing. etc. of dangerous goods

Division 4-Carriage of Bulk Cargoes and grain Cargoes

- 63. Definitions for the purposes of *Division 4*
- 64. Storage and carriage of bulk and grain cargoes

Division 5-Shipping Casualties

- 65. Meaning “casualty”, etc.
- 66. Investigations and inquires
- 67. Preliminary investigation
- 68. Marine Inquiry
- 69. Power of Marine Inquiry as to certificates
- 70. Failure to deliver certificate for cancellation, etc.
- 71. Restoration of certificates, etc.
- 72. Appeals

PART V-MASTERS AND SEAMEN

Division 1 -Introductory

- 73. Application
- 74. Exemptions

Division 2-Manning and Certification

- 75. Manning
- 76. Certificate of competency
- 77. Unqualified person going to sea as qualified officer or seaman
- 78. Production of certificate of competency
- 79. Disqualification of officer or seaman
- 80. Inquiry under section 79
- 81. Regulations for certificates of competency

Division 3-Crew Agreements

- 82. Crew agreements
- 83. Prohibition on seeking rewards for employment
- 84. Regulations for crew agreements

Division 4- Wages

- 85. Agreements as to wages
- 86. Account of wages
- 87. Right of seaman to wages
- 88. Seaman cannot waive protection of Act
- 89. Regulations relating to wages

Division 5-Crew Accommodation

- 90. Crew accommodation
- 91. Regulations for crew accommodation

Division 6- Welfare

- 92. Provisions and water
- 93. Medical stores etc.
- 94. Complaints
- 95. Regulations for welfare

Division 7-Discipline

- 96. Misconduct endangering ship or persons on board ship
- 97. Continued or concerted disobedience, neglect of duty. etc.
- 98. Absence without leave
- 99. Persons deemed to be seamen
- 100. Defence of drug taken for medical purposes
- 101. Disciplinary offences
- 102. Appeal
- 103. List of suspended persons
- 104. Regulations for disciplinary offences

Division 8 – General

- 105. Stowaways
- 106. Unauthorised presence on board ship
- 107. Master's power of arrest
- 108. Returns of births and deaths on Tuvaluan ships
- 109. Returns of births and deaths on foreign ships
- 110. Registrar of Seamen
- 111. Register of Seamen
- 112. Seaman's Discharge Book
- 113. Official Log Book
- 114. Crew and Passenger Lists
- 115. Inquiries into death or serious injury
- 116. Holding of inquiry
- 117. Absence of seaman from duty
- 118. Apprehension of foreign seaman
- 119. Detention of ships
- 120. General regulations

PART VI-DIVISION OF LIABILITY

- 121. Rule as to division of liability
- 122. Joint and several liability
- 123. Right to contribution
- 124. Additional rights of person entitled to contribution

PART VII-LEGAL PROCEEDINGS

Division 1-Offences and Limitations

- 125. Penalties
- 126. Limitation of actions
- 127. Interpretation for purposes of section 126

Division 2-Jurisdiction

- 128. Jurisdiction in case of offences
- 129. Jurisdiction over ship lying off coast
- 130. Jurisdiction in case of offence on board ship

PART VIII-GENERAL

- 131. Mode of making declaration
 - 132. Power of Registrar to dispense with evidence
 - 133. False declaration
 - 134. Proof of documents
 - 135. Admissibility of documents in evidence
 - 136. Proceedings of forfeiture of ship
 - 137. Recovery of fines by distress
 - 138. Inspections
 - 139. Surveyors of ships
 - 140. Inspectors and authorised officers
 - 141. Regulations
 - 142. Repeals and amendments
- SCHEDULES-
- 1. Interpretation
 - 2. Penalties
 - 3. Amendments

MERCHANT SHIPPING ACT 1987

(Act 11 of 1987)

I assent

TUPUA LEUPENA G.C.M.G., M.B.E.,
Governor-General
5th February 1988

An Act to make provisions for the registration of ships; the control and regulation of merchant shipping; the proper qualification of persons employed in service at sea; the regulation of the terms and conditions of persons so employed; and for connected purposes

[Commencement: By Notice (1st June, 1988)]

Enacted by the Parliament of Tuvalu —

PART I-PRELIMINARY

1. This Act may be cited as the Merchant Shipping Act 1987.
2. — (1) This Act shall come into operation on such date as the Minister may, by notice, appoint and different dates may be appointed for, or for different purposes of, different provisions of this Act.
(2) A notice under subsection (1) may make such provision as appears to the Minister to be necessary or expedient in connection with the provisions brought into operation, including adaptations of this Act or any other written law in consequence of the partial operation of this Act.
3. Schedule 1 applies for and with respect to the interpretation of this Act.

PART II-REGISTRATION OF SHIPS*Division 1— The Registrar and Register of Ships*

4. There shall be an office of Registrar of Ships which shall be a public office.
5. — (1) The Registrar shall cause to be kept at Funafuti a Register (to be known as the Register of Ships), in such form as the Registrar determines.
(2) The Registrar shall cause to be entered in the Register particulars of all ships registered under this Act, the other entries which are required by this Act to be entered in the Register and particulars of such other matters as he thinks fit.

(3) Any person may inspect the Register at any time during the hours of official attendance by the Registrar on payment of the fee (if any) which is prescribed.

Division 2 — Registration of Ships

6. The following provisions apply to, and in relation to, the registration of ships under this Act, namely —

(a) the property in a ship shall be divided into 64 shares;

(b) subject to the provisions of this Act with respect to joint owners or owners by transmission, not more than 64 persons shall be entitled to be registered at the same time as owners of any ship, but this provision shall not affect the beneficial title of any number of persons or of a company represented by or claiming under or through any registered owner or joint owner;

(c) a person shall not be entitled to be registered as owner of a fractional part of a share in a ship, but any number of persons not exceeding 5 may be registered as joint owners of a ship or of any share or shares in the ship;

(d) joint owners shall be considered as constituting one person only as regards the person entitled to be registered, and shall not be entitled to dispose severally of any interest in a ship, in respect of which they are jointly registered; and

(e) a corporation shall be registered as owner by its corporate name.

7. The port of registry of every ship registered under this Act is Funafuti.

8. — (1) Where a ship, other than an exempt ship, —

(a) is owned by—

(i) a person who is a qualified person; or

(ii) persons each of whom is a qualified person; and

(b) is not registered in any other country,

the owner or those owners shall apply for registration of the ship under this Act.

(2) Where a ship, other than an exempt ship—

(a) is engaged in near coastal trade or Pacific region trade;

(b) is manned by a crew, not less than 50 per cent of whom are citizens of Tuvalu; and

(c) is not registered in any other country; and

(d) is owned by owners whom the Minister is satisfied are of good repute,

the owner or owners of the ship may apply for registration of the ship under this Act.

(3) Application may be made by or on behalf of the Government for registration of a Government ship.

(4) In this section —

"exempt ship" means a ship —

(a) that is less than 10 metres in length; or

(b) that is, in the opinion of the Registrar, of traditional build; or

(c) that is prescribed, or belongs to a class or description of ships that is prescribed; or

(d) that is engaged in any class of navigation or trading, or used for any purpose, that is prescribed;

"qualified person" means —

(a) a person who is a citizen of Tuvalu;

(b) a corporation established by an Act of Tuvalu;

(c) a corporation —

(i) established or registered in Tuvalu; and

(ii) having a place of business in Tuvalu.

(5) The Minister may by order vary the percentage specified in subsection (2)(b).

9. — (1) Except where application is made as provided in section 8, the Registrar shall not register a ship under this Act.

(2) A ship which is not registered under section 8 shall not be recognized —

(a) in Tuvalu or for the purposes of this Act as a Tuvaluan ship; or

(b) as being entitled to the rights and privileges accorded to Tuvaluan ships.

10. — (1) Where the Minister has reasonable cause to believe, and does believe, that any ship registered under this Act should not continue to be so registered he may direct the Registrar to require the master and owner of the ship, or either of them, to produce evidence to the satisfaction of the Minister that the ship should continue to be so registered.

(2) If within such time as may be determined by the Minister, not being less than 60 days, the evidence referred to in subsection (1) is not produced, the ship is liable to forfeiture.

11. — (1) Subject to subsection (5), a ship shall, before registry, be surveyed by a surveyor and, subject to subsection (4), its tonnage shall be ascertained by the surveyor in the prescribed manner, and the surveyor shall grant the appropriate tonnage certificate specifying the ship's tonnage and build and such other particulars as may be prescribed.

(2) The appropriate tonnage certificate granted under subsection (1) in respect of a ship shall, before the ship is registered, be delivered to the Registrar.

(3) The fees to be paid by the owner or owners of a ship to a surveyor in respect of a survey under this section are as prescribed.

(4) Subject to subsection (5), where a ship which is not registered under this Act has been measured and registered under the law of a foreign country, or has already been measured without having been so registered, the surveyor may, for the purposes of subsection (1), accept and use any suitable figures of measurement contained in the latest register relating to that ship or, in the case of an unregistered ship, in the latest certificate of measurement relating to that ship.

(5) Before acting under subsection (4), a surveyor shall satisfy himself that there have been no changes of measurement since the making of the register or certificate which he proposes to use, and where any such changes have been made, he shall remeasure the ship to the extent made necessary by those changes.

12. — (1) A ship in respect of which an application for registration is made shall not be registered unless the ship has first been marked permanently and conspicuously in the prescribed manner.

(2) The marks required by this section to be placed on a ship shall be permanently continued and no alteration shall be made to those marks except as provided by this Act.

(3) An owner or master of a ship registered under this Act who fails to keep permanently continued the marks placed on a ship under this section is guilty of an offence.

(4) A person who conceals, removes, alters, defaces or erases any mark required by this section to be placed or kept on a ship, except as provided by this Act or for the purposes of escaping from an enemy, is guilty of an offence.

(5) The Minister may, by notice, exempt the owner or master of any ship or class of ships from complying, either in whole or in part, with the requirements of this section.

13. — (1) An application for the registration of a ship under this Act shall be made by the owner or owners of the ship to the Registrar in prescribed form.

(2) An application under subsection (1) shall be made —

(a) where the owner is a corporation, by the agent of the corporation; or

(b) where the owner is not a corporation, by the person or persons seeking the registration of the ship or by his or their agent.

(3) The authority of an agent referred to in subsection (2) shall be in writing, and —

(a) in the case of an agent appointed by a corporation, under the common seal of the corporation; and

(b) in the case of an agent otherwise appointed, under the hand of the person or persons appointing the agent.

(4) The Registrar may require proof, to his satisfaction, —

(a) of the ownership; and

(b) of the seaworthiness,

of a ship before proceeding with the registration of the ship under this Act.

(5) An application for the registration of a ship under this Act shall be accompanied by such evidence in respect of the ship as may be prescribed.

14. — (1) A person shall not be entitled to be registered as owner of a ship until he, or in the case of a corporation, a person authorized under the common seal of the corporation to make declarations on behalf of the corporation, has made and signed a declaration of ownership referring to the ship, as described in the appropriate tonnage certificate, and containing the prescribed particulars.

(2) This section does not apply in relation to the registration of a Government ship.

15. — (1) Where the requirements of this Act relating to a ship before registry have been complied with, the Registrar shall, on payment of the prescribed fee, register the ship by allotting to the ship a registry number and by entering in the Register the name of the ship, the registry number allotted to the ship and such other particulars in respect of the ship as are prescribed.

(2) The Registrar shall not register a ship by a name by which a ship is already registered under this Act or, except in accordance with the direction of the Minister, by a name that is, in the opinion of the Registrar, undesirable.

(3) Where a ship has been registered under subsection (1), the registrar shall retain those of the documents submitted in connection with the application for registration as are prescribed.

16. — (1) As soon as practicable after the registration of a ship the Registrar shall grant to the owner or owners a certificate of registry in the prescribed form.

(2) The certificate of registry of a ship —

(a) shall be kept in a safe place on the ship;

(b) shall be used only for the lawful navigation of the ship; and

(c) shall not be subject to detention by reason of any title, lien, charge or interest had or claimed by any owner, mortgagee or other person to, on or in the ship.

(3) A master or owner of a ship who used for the navigation of a ship, a certificate of registry not legally granted in respect of the ship is guilty of an offence.

(4) A person —

(a) who has in his possession or under his control the certificate of registry of a ship; and

(b) who refuses, or fails without reasonable cause, to deliver the certificate on demand to —

(i) the person entitled to its custody for the purposes of the lawful navigation of the ship;

(ii) any other person entitled by law to require its delivery,

is guilty of an offence.

17. The Registrar may, upon the delivery to him of a certificate of registry of a ship, grant a new certificate in its place.

18. — (1) Where, at a place outside Tuvalu, a ship becomes wholly owned by a qualified person, or by persons each of whom is a qualified person, or becomes a Government ship, the diplomatic representative of Tuvalu in or for that place, or a person authorised by the Minister for that purpose, may grant to the master of the ship, on his application, a provisional certificate of registry stating —

(a) the name of the ship;

(b) the time and place of the ship's purchase and the names of her purchasers;

(c) the name of the ship's master;

(d) the best particulars respecting the ship's tonnage, build and description which the representative or person is able to obtain.

(2) A diplomatic representative of Tuvalu or other person granting a provisional certificate of registry shall forward a copy of any provisional certificate of registry granted by him under subsection (1) to the Registrar at the first convenient opportunity.

(3) A provisional certificate of registry granted under subsection (1) is deemed to be a certificate of registry granted under section 16 —

(a) until the expiry of 60 days after the date on which it was granted; or

(b) until the expiry of 10 days after the arrival of the ship in Funafuti, whichever is the earlier.

(4) If the period referred to in subsection (3) (b) has not begun to run, the Minister may, by instrument in writing, grant to the master of a ship, on his application, an extension of the period referred to in subsection (3) (a), and in that event and in the particular case, the reference in paragraph (a) to 60 days shall be read as a reference to the extended period.

(5) A master of a ship who fails to deliver to the Registrar a provisional certificate of registry granted under subsection (1) in respect of the ship within 10 days after the first arrival of the ship in Funafuti, is guilty of an offence.

19. — (1) Where a certificate of registry of a ship is lost, mislaid or destroyed the Registrar shall grant a new certificate in its place.

(2) A diplomatic representative of Tuvalu or a person authorised by the Minister for that purpose on receiving, from the master of a ship or some other person having knowledge of the facts of the case, a declaration giving details of a lost, mislaid or destroyed certificate of registry of the ship together with particulars of the ship and its owner or owners, shall grant a provisional certificate of registry containing a statement of the circumstances under which it was granted.

(3) A provisional certificate of registry granted under subsection (2) shall be valid —

(a) until the expiry of 60 days after the date on which it was granted; or

(b) until a new certificate is granted in place of the certificate of registry, whichever is the earlier.

20. Where a change occurs in the ownership of a ship registered under this Act —

(a) notification of the change shall be given to the Registrar, and

(b) subject to section 21, the certificate of registry shall be endorsed in the prescribed manner.

21. — (1) Where —

(a) a ship registered under this Act is either actually or constructively lost, taken by the enemy, burnt or broken up;

(b) there is such a change —

(i) in the ownership or in the qualification of any owner; or

(ii) in the use or in the manning,

of a ship registered under this Act that the ship would not, if application were then made, qualify for registration under section 8(1), (2) or (3),

the owner or, if there is more than one owner, each owner, of the ship shall, immediately on obtaining knowledge of the event give notice to the Registrar.

(2) The Registrar shall, on receipt of a notice specifying that an event referred to in subsection (1) (a) has occurred in relation to a ship, make or cause to be made an entry in the Register of the event, and the registry of the ship in the Register shall be deemed to be closed except in so far as relates to any undischarged mortgage entered in the Register.

(3) The Registrar shall, on receipt of notice that a circumstance specified in subsection (1) (b) has arisen, make or cause to be made an entry in the Register that notice has been received and, subject to this section, the registry of the ship shall be deemed to be closed.

(4) Where, at the time when the Registrar receives notice that a circumstance referred to in subsection (1) (b) is applicable in relation to the owner or owners of a ship, or in relation to a ship, registered under this Act, the ship is subject to an undischarged mortgage entered in the Register, the Registrar shall give to the mortgagee a notice in writing specifying the circumstances so applicable.

(5) If, within 60 days after notice is given to the mortgagee under subsection (4), an application is not made to the Court for an order under subsection (6), the registry of the ship in the Register shall, subject to subsection (8), be deemed to be closed on the expiration of that period.

(6) If, before the expiration of the period of 60 days referred to in subsection (5), or within such further time as the Court, on an application made either before or after the expiration of that period allows, an application is made to the Court for an order under this subsection, the Court may order the sale of the ship and direct that the proceeds of the sale, after deducting the expenses of the sale, be paid first to the mortgagee or, if there are two or more mortgages, to the mortgagees in order of priority and, after satisfaction of the mortgage or mortgages, to the owners of the ship.

(7) Where the Court grants an application for an extension of time within which an application for an order under subsection (6) may be made, it may grant the extension on such terms and conditions as to costs and otherwise as it thinks just.

(8) On an application for an order under subsection (6), the Court may give such directions with respect to the closure of the registry of the ship as it thinks fit, and the Registrar shall give effect to any directions given by the Court.

(9) A person who refuses, or fails without reasonable cause, to comply with subsection (1) is guilty of an offence.

22. — (1) Where a ship registered under this Act is so altered as not to correspond with the particulars relating to the appropriate tonnage certificate or to the description of the ship contained in the Register, the owner of the ship shall, within 21 days, make, or cause to be made, to the Registrar an application in writing to register the alteration.

(2) An owner of a ship who refuses or fails to comply with the provisions of subsection (1) is guilty of an offence.

(3) An application made under subsection (1) shall be accompanied by the appropriate tonnage certificate.

(4) The Registrar, upon receipt of an application under subsection (1) and upon receipt of the prescribed fee (if any), shall cause the alteration to be registered.

(5) In causing the alteration of a ship to be registered, the Registrar shall cancel the certificate of registry and shall grant a new certificate of registry and shall make the prescribed entries in the Register.

Division 3 — Transfers and Transmission

23. — (1) Where a ship registered under this Act is disposed of in circumstances where the ship, after the disposal, will continue to qualify for registration under section 8 (1), (2) or (3) the ship shall be transferred by bill of sale.

(2) A bill of sale shall —

(a) be in the prescribed form; and

(b) be executed by the transferor and the transferee in the presence of, and be attested by, a witness or witnesses.

24. — (1) Where a ship registered under this Act is transferred, the transferee is not entitled to be registered as owner of the ship until he, or in the case of a corporation, a person authorised by this Act to make declarations on behalf of the corporation, has made

and signed a declaration of transfer in the prescribed form referring to the ship and —
(a) containing —

- (i) statements that show that the transferee is a qualified person, or, where there is more than one transferee, that each transferee is a qualified person; and
- (ii) a statement that, to the best of his knowledge and belief, only a qualified person, or persons each of whom is a qualified person, is or are entitled as owner to any legal or beneficial interest in the ship or a share in the ship; or

(b) as the case may be, containing a statement that paragraphs (a) and (b) of section 8 (2) apply in relation to the ship.

(2) This section does not apply in relation to a ship registered under this Act which, on transfer, becomes a Government ship.

25. — (1) Every bill of sale for the transfer of a ship registered under this Act, when duly executed, shall be produced to the Registrar with the declaration of transfer referred to in section 24 and the Registrar shall enter into the Register the name of the transferee as owner of the ship, and shall endorse on the bill of sale the fact of that entry having been made, with the day and hour of the entry.

(2) Bills of sale of a ship registered under this Act shall be entered in the Register in the order of their production to the Registrar.

26. — (1) Where the property in a ship registered under this Act is transmitted to any person on the death or bankruptcy of any registered owner, or by any lawful means other than by a transfer made under this Act, then, subject to section 27, that person shall authenticate the transmission by making and signing a declaration of transmission in the prescribed form identifying the ship, and the declaration of transmission shall contain such statements and shall be accompanied by such documents as are prescribed.

(2) The Registrar, on receipt of the declaration of transmission under subsection (1), accompanied by the statements and documents referred to in that subsection, shall enter in the Register the name of the person entitled under the transmission as owner of the ship the property in which has been transmitted, and where there is more than one such person, the Registrar shall enter the names of all such persons, but those persons, however numerous, shall, for the purposes of any provision of this Act relating to the number of persons entitled to be registered as owners, be considered as one person.

27. — (1) Where the property in a ship registered under this Act is transmitted on death or bankruptcy or otherwise and as a result the ship would not, if application were than made, qualify for registration under section 8 (1) or (2), the Court may, on application by or on behalf of that person or one or more of those persons, order a sale of the property so transmitted, and direct that the proceeds of the sale, after deducting the expenses of the sale, be paid to the person or persons entitled under the transmission or otherwise as the Court directs.

(2) The Court may require any evidence it thinks fit in support of the application and may make the order on any terms and conditions it thinks just, or may refuse to make the order, and generally may act in the case as the justice of the case requires.

(3) An application under this section shall be made within 60 days after the occurrence of the event on which the transmission has taken place, or within such further time (not exceeding in the whole one year from the date of the occurrence) which the Court allows.

(4) If the application is not made within the time specified in subsection (3) or if the Court refuses an order for sale, the ship transmitted is liable to forfeiture.

28. — (1) Where the Court orders the sale of a ship registered under this Act, the order shall contain a declaration vesting in a person or persons specified in the order the right to transfer the ship, and that person is entitled to transfer the ship in the manner and to the same extent as if he was the registered owner of the ship.

(2) The Registrar shall obey the requisition of the person named in a declaration under subsection (1) in respect of any such transfer to the same extent as if that person were the registered owner.

29. — (1) The Court may, if it thinks fit, and without prejudice to any other of its powers, on the application of a person claiming an interest in a ship registered under this Act, make an order prohibiting for the time specified in the order any dealing with that ship.

(2) The Court may make an order under subsection (1) on any terms or conditions it thinks just, or may refuse to make the order, and generally may act in the case as the justice of the case requires.

(3) The Registrar, after being served with a copy of an order made under this section, shall not register any dealings prohibited by the order.

Division 4 — Mortgages

30. — (1) A ship registered under this Act may be made a security for a loan or other valuable consideration, and the instrument creating the security (in this Act referred to as "a mortgage") shall be in the prescribed form.

(2) The Registrar, on the production to him of a mortgage, shall register the mortgage by making an entry of the mortgage in the Register.

(3) The Registrar shall register mortgages in the order in which they are produced to him for that purpose and he shall endorse and sign a memorial on each mortgage, stating the date and time that it was produced to him.

31. The Registrar, after production to him of a discharge of mortgage in the prescribed form, shall make an entry in the Register that the mortgage has been discharged, and on that entry being made the estate (if any) which passed to the mortgagee vests in the person in whom (having regard to intervening acts and circumstances, if any) it would have vested if the mortgage had not been made.

32. — (1) Where there are more mortgages than one registered in respect of the same ship registered under this Act, the mortgagees are, notwithstanding any express, implied, or constructive notice, entitled in priority one over the other, according to the date and time at which each mortgage is produced to the Registrar and not according to the date of each mortgage itself.

(2) A registered mortgage shall not be affected by any act of bankruptcy committed by the mortgagor after the date of registration of the mortgage, notwithstanding that the mortgagor, where he is adjudicated to be insolvent, at the commencement of his insolvency had the ship in his possession, order or disposition, or was the reputed owner of the ship, and the mortgage shall be preferred to any right, claim or interest in the ship of the other creditors of the insolvent or any trustee or assignee on their behalf.

33. — (1) Except as may be necessary for making a mortgaged ship available as a security for the mortgage debt, 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 subsections (3) and (4), a registered mortgagee shall have power absolutely to dispose of the ship in respect of which he is registered and to give effectual receipts for the purchase money.

(3) Where there are more persons than one registered as mortgagees of the same ship, a subsequent mortgagee shall not, except under an order of the Court, sell the ship without the concurrence of every prior mortgagee.

(4) A mortgagee shall not sell the ship subject to the mortgage without the leave of the Court.

34. — (1) A registered mortgage of a ship may be transferred to any person by registration of the instrument of transfer in the prescribed form.

(2) On the 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 register the transfer by making an entry of the transfer in the Register and shall endorse and sign on the mortgage and on the instrument of transfer a memorial stating the date and time of the production to him of the instrument of transfer and mortgage.

35. — (1) Where the interest of a mortgagee in a ship is transmitted to any person on the death or bankruptcy of the mortgagee, or by any lawful means, other than by a transfer under this Act, the transmission shall be authenticated by a declaration of the person to whom the interest is transmitted.

(2) A declaration referred to in subsection (1) shall be in the prescribed form and 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 evidence as is prescribed.

(3) The Registrar after receipt of the declaration and accompanying evidence, shall enter the name of the person entitled under the transmission in the Register as the mortgagee of the ship.

Division 5 — National Character and Flag

36. — (1) If a person uses the National Flag or assumes Tuvaluan national character for or on board a ship which is not registered under this Act for the purpose of making the ship appear to be a ship registered under this Act, the ship is liable to forfeiture unless the use or assumption has been made for the purpose of escaping capture by an enemy or by a foreign ship of war in the exercise of some belligerent right.

(2) In any proceeding for the enforcement of the forfeiture of a ship under subsection (1), the burden of proving a right to use the National Flag or to assume Tuvaluan national character lies on the person using that flag or assuming that character.

37. A master or owner of a ship registered under this Act who —

(a) does anything or permits anything to be done; or

(b) carries or permits to be carried on a ship any papers or documents,
with intent to —

(c) conceal the Tuvaluan character of the ship from a person entitled by law to inquire into the character of the ship;

(d) deceive a person referred to in paragraph (c); or

(e) assume a foreign character,

is guilty of an offence.

38. Where the master or owner of a ship is convicted of an offence under section 37 the ship is liable to forfeiture.

39. — (1) The National Flag shall be the proper national colours for a ship registered under this Act.

(2) A master of a ship registered under this Act who, except where it would be unreasonable having regard to all the circumstances to do so, fails to cause the National Flag to be hoisted at all times on the ship, is guilty of an offence.

40. Where, except with the consent of the Minister or as a courtesy flag when in the waters of a foreign country, any distinctive national colours other than the National Flag are hoisted on board a ship registered under this Act —

(a) the master of the ship;

(b) the owner if he is on board the ship; and

(c) any person hoisting those colours,

are each guilty of an offence.

Division 6-Miscellaneous

41. — (1) The Registrar may, where he has reason to believe that the Register does not contain accurate particulars in respect of a Ship registered under this Act, direct the owner of the ship, or any other person in possession of information relating to the ship, to furnish him with information in respect of the ship.

(2) A person who, after having been given a direction under subsection (1), fails, to the extent to which he is able to do so, to comply with that direction is guilty of an offence.

42. — (1) No notice of any trust, express, implied or constructive, shall be entered in the Register or shall be received by the Registrar.

(2) Subject to this Act, and subject to any rights and powers appearing on the face of the Register to be vested in any other person, the registered owner of a ship has absolute power to dispose of the ship and to give effectual receipts for any money paid or advanced by way of consideration.

43. The expression "beneficial interest" where used in this Act includes interests, and the intention of this Act is that, without prejudice to —

(a) the provisions of this Act for preventing notice of trusts from being entered in the Register or received by the Registrar; and

(b) the powers of disposition and of giving receipts conferred by this Act on registered owners and mortgagees; and

(c) the provisions of this Act relating to the exclusion of unqualified persons from the ownership of ships registered under this Act,
interests arising under contract or other equitable interests may be enforced by or against the owner or mortgagee of any ship in respect of his interest in the ship in the same manner as in respect of any other personal property.

44. — (1) Subject to subsection (2), where a person has a beneficial interest in a ship registered under this Act and that ship is registered in the name of some other person as owner, the person having the interest shall, as well as the registered owner, be subject to all pecuniary penalties imposed by this Act on the owners of ships, and proceedings may be taken for the enforcement of any such penalties against both or either of those persons, with or without joining the other of them.

(2) Subsection (1) does not apply to a person having a beneficial interest by way of mortgage, except in the case of a mortgage in possession of a ship.

45. — (1) The name and address of the managing owner for the time being of every ship registered under this Act shall be registered with the Registrar.

(2) Where there is not a managing owner, there shall be registered the name of the ship's husband or other person to whom the management of the ship is entrusted by or on behalf of the owner, and any person whose name is so registered shall, for the purposes of this Act, be under the same obligations and subject to the same liabilities as if he were the managing owner.

(3) This section does not apply in relation to a Government ship.

46. — (1) An owner or master of a ship registered under this Act who suffers or permits the ship to be described by a name other than that by which the ship is for the time being registered is guilty of an offence.

(2) The Regulations may make provisions for, or in relation to the change of the name of a ship.

PART III — INTERNATIONAL MARITIME CONVENTIONS

47. "International Maritime Convention" means —

- (a) the Safety Convention;
- (b) the Load Line Convention;
- (c) the Tonnage Measurement Convention;
- (d) any other convention, agreement or treaty relating to —
 - (i) shipping;
 - (ii) seamen;
 - (iii) safety;
 - (iv) the prevention, reduction or control of pollution of the sea or other waters by matter from ships; or
 - (v) limitation of liability of shipowners for loss.

48. — (1) The Minister may, in relation to any International Maritime Convention specified in the regulations, make such regulations for the purpose of implementing, or enabling legal effect to be given to, the Convention in Tuvalu as the Minister considers necessary or expedient.

(2) Regulations under subsection (1) may include consequential amendments of any written law for the purpose specified in subsection (1).

(3) Where the Minister is satisfied —

- (a) that the government of any foreign country has ratified, acceded to or denounced any International Maritime Convention; or
- (b) that any such Convention has been applied or has ceased to apply to any country, he may, by notice, make a declaration to that effect and the notice shall be received in any proceeding as evidence of the matter so declared.

49. — (1) The Collisions Convention shall have the force of law in Tuvalu.

(2) Where, in respect of —

- (a) a ship that is registered under this Act; or
- (b) any ship that is within Tuvalu waters,

the owner, or the master, or any other person, fails to comply with a requirement of the Collision Convention, the master or owner of the ship or that other person is guilty of an offence.

(3) A person who, except in the case of a ship that is in distress and requires assistance, exhibits a signal that is prescribed in the Collisions Convention as being a signal used to designate a vessel that is in distress and that requires assistance is guilty of an offence.

PART IV — SAFETY

Division 1 – Unsafe Ships

50. — (1) This section applies in relation to —

- (a) a ship registered under this Act; and
- (b) a ship not so registered which is at a port or place in Tuvalu.

(2) Where, whether on complaint or otherwise, the Harbour Master or an inspector has reason to believe that a ship in relation to which this section applies is unsafe, he may cause the ship to be detained until he is satisfied that the ship can go to sea without serious danger to the crew or any passenger on the ship, having regard to the voyage proposed.

(3) A ship is deemed to be unsafe for the purposes of this section if, by reason of —

- (a) the defective condition of the hull, machinery or equipment;
- (b) undermanning;
- (c) overloading or improper loading; or
- (d) any other matter,

the ship cannot proceed to sea without serious danger to the crew or any passengers on the ship, having regard to the voyage proposed.

(4) In considering for the purposes of this section whether or not a ship is unsafe regard shall be had to the requirements of —

- (a) any International Maritime Convention implemented in Tuvalu under regulations made for the purposes of section 48, or otherwise having effect in Tuvalu, and applying in relation to the ship; and
- (b) any of the Regulations so applying.

51. — (1) Where a ship is detained under section 50, the Harbour Master or, as the case may be, the inspector shall give notice in writing to the master setting out the reasons for the detention.

(2) Where a ship that is registered in a foreign country is detained under section 50, the Harbour Master or, as the case may be, the inspector shall so inform the Minister and the Minister shall —

(a) if that foreign country has diplomatic relations with Tuvalu, cause the Consul or other diplomatic representative of that foreign country; or

(b) in any other case, cause the Government of that foreign country, to be informed of the detention and of the reasons for the detention.

(3) Where a ship is detained under section 50, the master may make written representation to the Minister with respect to the release of the ship, and the Minister may, if he considers that in all the circumstances he is justified in doing so, either order the release of the ship or refuse to do so.

52. — (1) This section applies in relation to —

(a) a ship registered under this Act; and

(b) a ship not so registered which is at a port or place in Tuvalu.

(2) Where —

(a) a ship referred to in subsection (1)(a) goes to sea, whether from a port or place in Tuvalu or not, on any voyage; or

(b) a ship referred to in subsection (1)(b) goes to sea on any voyage, and the ship is unsafe —

(c) any person who has knowingly sent, or attempted to send; and

(d) the master of the ship who has knowingly taken, or attempted to take, the unsafe ship to sea are each guilty of an offence.

(3) It is a defence to the prosecution for an offence under subsection (2) if the accused person proves that—

(a) he used all reasonable means to ensure that the ship was being sent or taken to sea in a safe state; or

(b) having regard to the circumstances, the sending or taking, or attempted sending or taking, of the ship to sea was reasonable and justifiable.

(4) The provisions of section 50(3) and (4) apply for the purposes of this section as they apply for the purposes of section 50.

- 53.** — (1) This section applies in relation to —
- (a) a ship registered under this Act; and
 - (b) a ship not so registered which is at a port or place in Tuvalu.
- (2) Where —
- (a) a ship referred to in subsection (1)(a) goes to sea, whether from a port or place in Tuvalu or not, on any voyage; or
 - (b) a ship referred to in subsection (1)(b) goes to sea to engage in near coastal trade, and the ship —
 - (c) does not carry the equipment which is required to be carried on or fitted to the ship on the voyage by—
 - (i) any International Maritime Convention implemented in Tuvalu under regulations made for the purposes of section 48, or otherwise having effect in Tuvalu, and applying in relation to the ship; or
 - (ii) any of the Regulations so applying; or
 - (d) carries any such equipment which is not in good order and ready for use, the master and owner of the ship are each guilty of an offence.

Division 2 — General Safety and Precautions

- 54.** — (1) The master of a ship, not being an exempt ship, at sea within Tuvalu waters shall make a report of any serious danger to navigation on or near the course of the ship in accordance with this section.
- (2) A report under subsection (1) shall —
- (a) be given —
 - (i) as soon as possible by radio; and
 - (ii) to any ship in the vicinity of the danger, to Funafuti Radio and to the nearest island radio station in the vicinity of the danger; and
 - (b) give details of the position and nature of the danger;
- (3) The master of a ship who refuses, or fails without reasonable cause, to comply with subsection (1) is guilty of an offence.
- (4) The Minister may, by order, exempt any ship, or class of ships, from the requirements of subsection (1), and the reference in subsection (1) to "an exempt ship" shall be construed accordingly.
- (5) In this section —
- "island radio station" means a Government radio station on an outer island.

55. — (1) The master of a ship, not being an exempt ship, at sea within Tuvalu waters shall make by radio reports of the positions and movements of the ship in accordance with this section.

(2) A report under subsection (1) shall —

(a) be made —

- (i) to Funafuti Radio;
- (ii) at least twice in every period of 24 hours, and
- (iii) as soon as possible after leaving a port and before closing down prior to arriving at a port; and

(b) include information as to —

- (i) the position, course and speed of the ship;
- (ii) the next port of destination of the ship; and
- (iii) the estimated time of arrival at that port.

(3) The master of a ship who refuses, or fails without reasonable cause, to comply with subsection (1) is guilty of an offence.

(4) The Minister may, by order, exempt any ship, or class of ships, from the requirements of subsection (1), and the reference in subsection (1) to "an exempt ship" shall be construed accordingly.

56. — (1) This section applies in relation to —

(a) a ship registered under this Act; and

(b) a ship not so registered which is within Tuvalu waters.

(2) The master of a ship in relation to which this section applies shall render assistance to any person who is found at sea in danger of being lost.

(3) A master of a ship in relation to which this section applies who, without reasonable cause (the burden of proof of which is on him), fails to comply with subsection (2) is guilty of an offence.

(4) It is a defence in a prosecution for an offence under subsection (3) if the master proves that compliance with the requirement of subsection (2) would have caused serious danger to his ship or to any person in his ship.

57. — (1) This section applies in relation to —

(a) a ship registered under this Act; and

(b) a ship not so registered which is within Tuvalu waters.

(2) In every case of collision between two ships it shall be the duty of the person in charge of a ship in relation to which this section applies —

(a) to render to the other ship, her master, crew and passengers (if any) such assistance as is practicable and necessary in order to save them from collision;

(b) to stay by the other ship until he has ascertained that she has no need for further assistance; and

(c) to give the person in charge the name of his own ship and of the port to which she belongs and the ports from which she comes and to which she is bound, if and in so far as he can do so without danger to his own ship, crew or passengers (if any).

(3) Any person who without reasonable cause fails to comply with subsection (2) is guilty of an offence.

58. Compliance by the master of a ship with the requirements of section 56 or 57 or Regulation 10 of Chapter V of the Safety Convention (if applicable in Tuvalu) shall not affect his right, or the right of any other person, to salvage.

Division 3 — Carriage of Dangerous Goods

59. In this Division —

"dangerous goods" means any goods listed as such for the purposes of the IMDG Code;

"IMDG Code" means the International Maritime Dangerous Goods Code published by the International Maritime Organisation, London in 1981, as amended from time to time.

60. The master owner of a ship at a port or place in Tuvalu may —

(a) refuse to take on board any package which he suspects may contain dangerous goods;

(b) open and inspect any package which on reasonable grounds he suspects may contain dangerous goods; and

(c) discharge, destroy, render innocuous or otherwise deal with any goods which —

(i) in his opinion are dangerous goods; and

(ii) have been shipped on board the ship without his knowledge and consent and shall not be subject to any liability of any kind for doing so.

61. — (1) A person who sends or attempts to send by any ship, or (not being the owner or master of the ship) carries or attempts to carry in any ship any dangerous goods without —
(a) distinctly marking their nature on the outside of the package containing the goods; and

(b) giving written notice —

- (i) to the Harbour Master not less than 24 hours before the goods are to be shipped; and
- (ii) to the Master or owner of the ship at or before the time of sending the goods to be shipped, of the —
- (iii) correct technical name of the goods; and
- (iv) the name and address of the shipper;

is guilty of an offence.

(2) Any person who knowingly sends or attempts to send by, or carries or attempts to carry in, any ship any dangerous goods under a false description, or falsely describes the shipper of any dangerous goods, is guilty of an offence.

(3) Where any dangerous goods have been sent or carried, or an attempt has been made to send or carry any dangerous goods, on board any ship in contravention of this Act, the Court may order them, and any packages or container in which they are contained, to be forfeited to the Crown.

(4) The Court may exercise the power conferred by subsection (3) notwithstanding —

(a) that the owner of the goods has not committed any offence in respect of the goods, or is not before the Court, or has no notice of the proceedings; or

(b) that there is no evidence as to the ownership of the goods,

but the Court may require such notice as it may direct to be given to the owner or shipper or the goods before they are forfeited.

62. — (1) Subject to subsection (2), the requirements with respect to the packing, storage and carriage of dangerous goods in ships are those prescribed in the IMDG Code.

(2) For the case of a ship that is engaged on a voyage other than an international voyage, the Harbour Master or an inspector may permit such modifications to the requirements referred to in subsection (1) as he considers reasonable having regard to —

(a) the type of ship concerned; and

(b) the trade in which the ship is, or is about to be, engaged.

Division 4-Carriage of Bulk Cargoes and Grain Cargoes

63. In this Division —

“bulk cargo” means a cargo prescribed in the Bulk Cargoes Code;

"Bulk Cargoes Code" means the Code of Safe Practice for Solid Bulk Cargoes published by the International Maritime Organisation, London in 1983, as amended from time to time;

"grain" includes wheat, maize, oats, rye, barley, rice, pulse and processed forms thereof, whose behaviour is similar to that of grain in its natural state.

64. — (1) Subject to subsection (2), the requirements for —

(a) the storage and carriage of bulk cargo in a ship shall be those prescribed in the Bulk Cargoes Code; and

(b) the storage and carriage of grain in a ship shall be those prescribed in Chapter VI of the Safety Convention.

(2) In the case of a ship that is engaged on a voyage other than an international voyage, the Harbour Master or an inspector may permit such modifications to the requirements referred to in subsection (1) (a) or (b) as he considers reasonable having regard to —

(a) the type of ship concerned;

(b) the trade in which the ship is, or is about to be, engaged.

Division 5 — Shipping Casualties

65. In this Division —

"casualty", in relation to a ship, means —

(a) the loss or the presumed loss, the stranding, the grounding or the abandonment of, or damage to, the ship or a board belonging to the ship; or

(b) damage caused by a ship or by a boat belonging to the ship; or

(c) a loss of life caused by —

(i) fire on board; or

(ii) accident to; or

(iii) accident occurring on board, the ship or a boat belonging to the ship;

"ship" means a ship which, when a casualty occurs in relation to the ship —

(a) is registered under this Act; or

(b) is within Tuvalu waters.

66. Where a casualty occurs in relation to a ship, the Minister may cause —

(a) a preliminary investigation to be carried out; and

(b) a Marine Inquiry to be held; or

(c) a preliminary investigation to be carried out and a Marine Inquiry to be held.

67. Where the Minister causes a preliminary investigation to be carried out under section 66 the person carrying out the preliminary investigation —

(a) may —

- (i) go on board any ship involved in the casualty;
- (ii) require any person to answer questions relating to the casualty; and
- (iii) require the production to him of any certificate relating to any ship involved in the casualty;

(b) shall, upon conclusion of the investigation, send to the Minister a report containing a full statement of the case and of his opinion on the case, accompanied by such report on, or extracts from, the evidence and such observations as he thinks fit.

68. — (1) Where the Minister causes a Marine Inquiry to be held under section 66 he shall —

(a) appoint a person to conduct the Marine Inquiry; and

(b) nominate two assessors to assist the person.

(2) In any such case where a question as to the cancellation or suspension of a certificate of competency is likely to arise, the assessors nominated under subsection (1) (b) shall hold certificates of equivalent or higher rank to those held by the person whose certificate may be cancelled or suspended; but the proceedings before a Marine Inquiry shall not be challenged on the ground of any alleged failure to comply with the requirement of this subsection.

(3) The person appointed and any assessor nominated under subsection (1) may —

(a) go on board any ship;

(b) require any person to answer questions relating to the casualty; and

(c) require the production to him of any document or certificate relating to any ship involved in the casualty.

(4) On the conclusion of an inquiry under section 66, the person appointed under subsection (1) shall make a full report in writing to the Minister setting out the results of the inquiry.

(5) The Regulations may make provisions with respect to proceedings in any Marine Inquiry.

69. — (1) Where, as a result of a Marine Inquiry, the Inquiry is satisfied that a master or a qualified officer or seaman —

(a) is unfit to discharge his duties because of —

- (i) incompetence;
- (ii) misconduct; or
- (iii) any other reason,

- (b) has been seriously negligent in the discharge of his duties; or
- (c) has failed to give assistance and information as required by section 57, and, in a case coming under paragraph (a) or (b), is further satisfied that the unfitness or negligence caused or contributed to the casualty, the Marine Inquiry may —
- (d) order the cancellation or suspension of any certificate of competency of the master, qualified officer or other seaman; or
- (e) censure the master, qualified officer or other seaman.
- (2) Where a cancellation or suspension is ordered under subsection (1)(d) the master, qualified officer or seaman concerned shall forthwith deliver the certificate to the Registrar of Seamen for cancellation or suspension.

70. Where a certificate is ordered to be cancelled or suspended or is cancelled or suspended and the holder fails to deliver up the certificate as required under this Division, he is guilty of an offence.

71. — (1) Where a Marine Inquiry has been held under this Division the Minister may order the whole or part of a case to be reheard, and shall do so if —

- (a) new and important evidence which could not be produced at the inquiry has been discovered; or
- (b) there appears to the Minister to be other grounds for suspecting that a miscarriage of justice may have occurred.

(2) Where a certificate has been cancelled or suspended under this Division by a Marine Inquiry under section 69 the Minister may —

- (a) on the recommendation of the Marine Inquiry; or
- (b) if he is of the opinion that the circumstances of the case require it, cause the issue of a new certificate of a lower grade in place of the cancelled or suspended certificate.

72. — (1) Subject to subsection (2), where under this Division —

- (a) the certificate of a master, qualified officer or other seaman is cancelled or suspended;
- (b) any such person is censured;
- (c) the costs or part of the costs of an inquiry are awarded by a Marine Inquiry against any person; or
- (d) the Marine Inquiry has found that the casualty has been caused or contributed to by the wrongful act of any person.

the master, qualified officer or other seaman in the case of (a) or (b) and in the case of (c) or (d) any person who has appeared at the hearing and is affected by the decision of the Marine Inquiry, may appeal to the Court and the Court may make such order as the justice of the case requires.

(2) Where a rehearing has been ordered under section 71, no appeal may be made until the decision of the rehearing has been given.

PART V
MASTERS AND SEAMEN

Division 1 — Introductory

73. Subject to this Part and to any exception granted under section 74, —

(a) the provisions of this Part apply in relation to a ship registered under this Act not being —

- (i) a vessel of less than 10 metres in length: or
- (ii) a pleasure craft;

(b) the provision of section 75 apply in relation to such vessels as may be prescribed;

(c) such provisions of this Part as are specified in an order made by the Minister for the purpose apply in relation to —

- (i) any class or description of ships identified in the order (not being ships registered under this Act or in a country other than Tuvalu); and
- (ii) engaged in near coastal trade,

and the reference to "ship" in any provision of this Part shall be construed accordingly.

74. — (1) Subject to subsection (3), the Minister may, by order, exempt a particular ship or a particular class or description of ships, from any requirement of this Part which would otherwise apply in relation to the ship.

(2) An exemption under subsection (1) may be given in respect of —

- (a) a particular period;
- (b) one, or more than one, particular voyage; or
- (c) generally.

(3) No exemption shall be given under subsection (1) in relation to any prohibition in the Regulations against employing any identified class of persons.

Division 2—Manning and Certification

- 75.** — (1) A ship shall be manned by such number and grades of persons as may be prescribed.
- (2) The extent to which the persons manning a specified grade or grades on a ship shall be citizens of Tuvalu may also be prescribed.
- (3) An owner or master of a ship who suffers or permits the ship to go to sea —
- (a) without being manned in the manner prescribed; or
 - (b) knowing the ship to have a crew consisting of fewer citizens of Tuvalu than the prescribed proportion of the crew,
- is guilty of an offence.
- 76.** — (1) Subject to this Act, the prescribed authority may issue a certificate of competency in the prescribed manner to a person attaining such standard as may be prescribed.
- (2) A certificate of competency issued under this section is evidence that the person to whom the certificate is issued is of the qualification or grade specified in the certificate.
- 77.** A person who goes to sea as a master, or a qualified officer or a seaman of a particular grade and who is not a master, or an officer, or a seaman of that grade is guilty of an offence.
- 78.** Any person serving or engaged to serve in a ship and holding a certificate of competency or other document, which is evidence that he is a master, a qualified officer or other qualified seaman, who fails, without reasonable excuse on demand to produce the certificate or other document to —
- (a) his employer;
 - (b) the master of the ship on which he is employed; or
 - (c) an authorised officer,
- is guilty of an offence.
- 79.** — (1) Where, in the opinion of the Minister, a master or a qualified officer or seaman —
- (a) is unfit to discharge his duties because of —
 - (i) incompetence;
 - (ii) misconduct; or
 - (iii) any other reason;
 - (b) has been seriously negligent in the discharge of his duties; or
 - (c) has failed to give assistance and information after a collision.

the Minister may cause an inquiry to be held and —

(d) shall appoint a person to conduct the inquiry; and

(e) may, if he thinks fit, suspend the certificate of competency of the master, officer or seaman pending the outcome of the inquiry.

(2) Where a certificate is suspended under subsection (1), the Registrar of Seamen may direct the master, officer or seaman to deliver up the certificate to him.

(3) A master or an officer or seaman who refuses or fails without reasonable cause, to comply with a direction given under subsection (2) is guilty of an offence.

80. — (1) Where the Minister has caused an inquiry to be held under section 79, the person appointed for the purpose of that inquiry, may —

(a) go on board any ship;

(b) require any person to answer questions relating to the subject of the inquiry; and

(c) require the production to him of any document or certificate which, in his opinion is relevant to the inquiry.

(2) A person appointed for the purpose of an inquiry —

(a) may, if satisfied as to any of the matters referred to in section 79 —

(i) order the cancellation or suspension of any certificate of competency of the master, officer or other seaman; or

(ii) censure the master, officer or other seaman.

(b) may make such order with regard to the costs of the inquiry as he thinks fit; and

(c) shall make a report on the inquiry to the Minister.

(3) Where a person appointed for the purpose of an inquiry orders the cancellation or suspension of a certificate of competency, the Minister may —

(a) cancel or suspend the certificate, as the case requires;

or

(b) if the Minister considers the administration of a censure more appropriate, censure the master, officer or other seaman.

(4) Where, under this section, —

(a) a certificate of competency is cancelled or a censure is administered; or

(b) costs of an inquiry are awarded against a master, officer or other seaman,

the master, officer or other seaman concerned may, within 30 days, appeal to the Court which shall make such order as the justice of the case requires.

(5) A person, in holding an inquiry —

(a) may be assisted by one or more assessors with such qualifications as are prescribed; and
(b) shall be assisted, in such circumstances as are prescribed, by two or more such assessors, nominated by the Minister.

81. The Regulations may make provision for and in relation to —

(a) the standards of competence to be attained by a master, an officer or other seaman and other conditions to be satisfied in order for the master, the officer or other seaman to be a master or a qualified officer or other seaman of a particular grade;
(b) the manner in which the attainment of any standard or the satisfaction of any other condition is to be evidenced;
(c) the manner and conduct of any examinations and the conditions for admission to examinations;
(d) the appointment and remuneration of examiners;
(e) the issue, form and recording of certificates of competency and other documents; and
(f) the endorsement of certificates of competency and other documents.

Division 3—Crew Agreements

82. — (1) Where a person is employed as a seaman on a ship there shall be a crew agreement between the employer, or some one acting on his behalf, and the seaman.

(2) A crew agreement shall be in writing and executed by the parties to the agreement.

(3) A crew agreement may be with respect to employment in one or more ships and may be for —

(a) a particular period not exceeding 2 years; or
(b) one, or more than one, particular voyage.

(4) In every crew agreement, notwithstanding any express provision in the agreement to the contrary, there is an implied term that the employer and the owner of the ship shall use all reasonable means to ensure that the ship in which the crewman is, or is to be, employed, is seaworthy for, and during, any voyage which may take place during the currency of the agreement and any consent, or purported consent, by the seaman to waive the benefit of that implied term is void and of no effect.

83. A person who demands or receives, directly or indirectly, from another person seeking employment as a seaman any remuneration or reward, whether in cash or otherwise, for providing employment to that other person is guilty of an offence.

84. The Regulations may make provision for and in relation to —

- (a) the conditions and particulars to be included in a crew agreement;
- (b) the form of a crew agreement and the manner in which an agreement shall be made;
- (c) the manner in which a crew agreement shall be —
 - (i) added to;
 - (ii) amended; or
 - (iii) lodged with the Registrar of Seamen;
- (d) the circumstances in which a crew agreement or a copy of an agreement, shall be carried in a ship;
- (e) the requirements for a crew agreement, or a copy of an agreement, to be delivered to an authorised officer;
- (f) the requirement for a crew agreement or a copy of an agreement, to be made available for perusal by an authorised officer;
- (g) the conditions under which a person not under 16 years of age but less than 18 years of age may enter into a crew agreement;
- (h) the notice required to be given to the Registrar of Seamen before a crew agreement is entered into or terminated;
- (i) the procedures and practices to be followed on the termination of a crew agreement; and
- (j) the circumstances under which, other than by reason of termination of a crew agreement, a seaman may be left behind from a ship outside Tuvalu.

Division 4 — Wages

85. Subject to this Act, a seaman shall be paid wages in accordance with the terms of a crew agreement.

86. An employer who refuses, or fails without reasonable cause, to deliver to a seaman an exact account of the —

- (a) wages due to the seaman under a crew agreement; and
 - (b) deductions (if any) made from those wages,
- is guilty of an offence.

87. — (1) The lien of —

(a) a seaman for his wages; and

(b) a master of a ship for his wages and for reimbursement of any expenditure or disbursements properly incurred or made by him on behalf of the ship,

have priority over all other liens irrespective of the date of that lien or those other liens.

(2) The right of a seaman to wages does not depend on the earnings of freight.

88. A provision in a crew agreement, whether express or implied, which purports to modify, vary or negative the rights of a seaman under this Division is void and of no effect.

89. The Regulations may make provision for and in relation to —

(a) the deductions which may be made from the wages due to a crewman;

(b) the manner in which deductions may be made;

(c) the manner in which wages are to be paid;

(d) the manner in which wages are to be accounted for where a seaman leaves a ship otherwise than on termination of an agreement;

(e) the form and manner in which accounts of wages are to be prepared by an employer and delivered to a seaman;

(f) the form of allotment notes; and

(g) the circumstances in which allotments may be made.

Division 5 — Crew Accommodation

90. — (1) A ship shall have accommodation exclusively reserved for the use of the crew and known as the crew accommodation.

(2) The crew accommodation of a ship shall be of the prescribed standard.

(3) An owner or master of a ship who suffers or permits the ship to go to sea without crew accommodation of the prescribed standard is guilty of an offence.

91. The Regulations may make provision for and in relation to —

(a) the crew accommodation requirements for new and existing ships;

- (b) the minimum space per man which must be provided by way of sleeping accommodation for crewmen and the maximum number of persons by whom a specified part of such sleeping accommodation may be used;
- (c) the position in a ship in which the crew accommodation or any part of the crew accommodation is to be located;
- (d) the standards to be observed in the construction, equipment, ventilation, lighting, heating and furnishing of crew accommodation;
- (e) the provision of washing, sanitary, toilet, messing and hospital facilities for crewmen;
- (f) the standards of maintenance of crew accommodation;
- (g) the prohibition or restriction of the use of crew accommodation for purposes other than those for which it is designed.

Division 6 — Welfare

92. — (1) An employer or master of a ship shall ensure that the provisions and water supplied for the use of crewmen are as prescribed.

(2) Where three or more seamen are of the opinion that the provisions or water supplied for the use of seamen are not as prescribed, they may complain to the master and if they are dissatisfied with the action if any taken by the master or with the master's failure to act they may complain to the Registrar of Seamen.

(3) Where a complaint is made the Registrar of Seamen shall forthwith cause the complaint to be investigated.

(4) For the purposes of an investigation under this section the Registrar of Seamen may cause the provisions or water to be examined.

(5) Where, after an investigation under this section, the Registrar of Seamen is of the opinion that the provisions or water are not as prescribed he shall direct the employer or the master to replace them.

(6) An employer or a master shall comply with a direction given under this section.

93. An owner or master of a ship who suffers or permits the ship to go to sea without carrying the prescribed number of qualified first-aid attendants, medicines and medical and surgical stores is guilty of an offence.

94. — (1) Where, in the opinion of a seaman, the seaman has cause to complain about —

- (a) the master;
- (b) any other seaman on a ship; or
- (c) the conditions on board a ship,

he may complain to the master.

(2) Where a seaman —

(a) has made a complaint under subsection (1); and

(b) is dissatisfied with —

(i) the action taken by the master on that complaint;

or

(ii) the failure of the master to take any action,

the seaman may —

(c) state his dissatisfaction to the master; and

(d) may request the master to make adequate arrangements for the seaman to complain to the Registrar of Seamen, as soon as the service of the ship permits.

(3) A master to whom a request has been made under subsection (2) who refuses, or fails without reasonable cause, to make the adequate arrangements referred to in that sub-section is guilty of an offence.

95. The Regulations may make provision for and in relation to —

(a) the quality and quantity of the provisions and water to be supplied for the use of seamen;

(b) the manner of checking and inspecting provisions and water supplied for the use of seamen;

(c) the manner and conduct of medical examinations of seamen and of persons seeking employment as seamen;

(d) the medicines and medical and surgical stores (including books containing instructions and advice) to be carried in a ship and the manner in which such medicines and stores are to be carried, stored and used in a ship;

(e) the appointment and certification of first-aid attendants and the circumstances in which first-aid attendants are to be carried on a ship;

(f) the manner in which medical expenses incurred in respect of a seaman while at a place outside the country may be recovered from an employer;

(g) the circumstances and the manner in which the Minister shall make provision for the relief, maintenance and return to a proper return port of a seaman;

- (h) the manner in which any wages due to a distressed seaman and any property left on board a ship by a distressed seaman are to be dealt with;
- (i) the manner in which any expense incurred in bringing ashore a seaman who has been shipwrecked, or in maintaining him after he has been brought ashore, may be recovered from the person who last employed him as a seaman; and
- (j) the manner in which the property of a deceased seaman is to be —
 - (i) held in custody; or
 - (ii) sold, converted into cash or otherwise disposed of.

Division 7—Discipline

96. — (1) This section applies where a seaman —

- (a) does any act which causes, or is likely to cause, —
 - (i) the loss or destruction, or serious damage to; or
 - (ii) the death of, or serious injury to, a person on board a ship; or
- (b) fails to do anything required to be done by him to preserve —
 - (i) a ship from loss, destruction, or serious damage; or
 - (ii) any person on board the ship from death or serious injury.

(2) Where the act, or failure to act, by the seaman referred to in subsection (1) —

- (a) is deliberate;
- (b) amounts to a breach or neglect of duty or disobedience to a lawful command; or
- (c) occurs when the seaman is under the influence of alcohol or a drug,
the seaman is guilty of an offence.

97. Where a seaman on a ship —

- (a) a persistently and wilfully —
 - (i) neglects his duty; or
 - (ii) disobeys a lawful command; or
- (b) combines with other seamen to —
 - (i) neglect his duty; or
 - (ii) disobey a lawful command; or
 - (iii) impede the navigation of the ship or the progress of a voyage,
he is guilty of an offence.

98. Where —

- (a) a seaman is absent without leave from a ship at a time when he is required to be on board;
 - (b) his absence is —
 - (i) due to his recklessness; or
 - (ii) deliberate and without reasonable cause; and
 - (c) a ship —
 - (i) is thereby delayed; or
 - (ii) goes to sea without him,
- the seaman is guilty of an offence.

99. Notwithstanding any other provision of this Act. Where —

- (a) a person is carried to sea in a ship without the consent of the master or of any other person authorised to give consent to his being so carried; or
 - (b) a distressed seaman is carried on a ship for the purpose of being returned to his proper return port,
- he is, for the purposes of this Division, deemed to be a seaman on the ship.

100. It is a defence to a charge for an offence against section 96 if the person charged proves that —

- (a) at the time of the alleged act or failure to act, he was under the influence of a drug taken by him for medical purposes; and
- (b) either —
 - (i) he took that drug on medical advice and complied with any direction given as part of that advice; or
 - (ii) he had no reason to believe that the drug might have the influence it had.

101. — (1) The master of a ship who finds that a seaman has committed a disciplinary offence must make a report of his findings in the prescribed form to the Registrar of Seamen.

(2) Where —

- (a) two or more reports under subsection (1) have been made within the prescribed time in respect of a seaman; or
 - (b) a seaman has committed an offence under section 96, 97, or 98,
- the Registrar of Seamen may declare the seaman to be a suspended person.

102. — (1) Where —

(a) the Registrar of Seamen has declared a seaman to be a suspended person; and
(b) the period of suspension exceeds 12 months, the seaman may within 30 days of receiving the prescribed notification of his suspension, appeal to the Court.

(2) Where an appeal is made under subsection (1), the Court shall make such orders as the justice of the case requires.

103. — (1) The Registrar of Seamen shall keep a list known as the list of suspended persons.

(2) Where a seaman is suspended for a period —

(a) of 12 months or less; or

(b) exceeding 12 months and —

(i) no appeal to the Court is made within the period of 30 days referred to in section 102; or

(ii) an appeal is made under that section and the Court orders that the appeal be dismissed, the Registrar of Seamen shall include the name of the seaman in the list of suspended persons.

104. The Regulations may make provision for and in relation to —

(a) misconduct on board a ship which is a disciplinary offence;

(b) the procedures under which a master may find that a seaman has committed a disciplinary offence;

(c) the manner in which a declaration of suspension shall be made and the manner in which that declaration shall be notified to —

(i) a suspended person; and

(ii) the person who last employed him as a seaman;

(d) the manner in which the name of a suspended person shall be included in a list of suspended persons; and

(e) the manner in which a list of suspended persons is —

(i) to be kept; and

(ii) to be made available for inspection by any person appearing to the Registrar of Seamen to be interested.

Division 8 — General

105. A person who, without the consent of —

(a) the master of a ship; or

(b) a person authorised by the master to give that consent,

goes to sea or attempts to go to sea in a ship is guilty of an offence.

106. A person, not being an authorised person or an inspector who —

(a) Without the consent of the master of a ship or of a person authorised by the master to give that consent goes on board a ship in port in Tuvalu; or

(b) remains on board a ship after being requested to leave by the master, a police officer or a customs officer,

is guilty of an offence.

107. The master of a ship may cause any person on board the ship to be put under restraint if and for so long as it appears to him necessary or expedient in the interest of safety or for the preservation of good order or discipline on board the ship.

108. — (1) In this section, “ship” means a ship registered under this Act.

(2) The master of a ship who refuses, or fails without reasonable cause, to make a return in the prescribed form to the Harbour Master of any —

(a) birth occurring in; or

(b) death occurring, or presumed to have occurred, in, the ship, is guilty of an offence.

109. — (1) In this section, “ship” means a ship registered in a country other than Tuvalu.

(2) The master of a ship who refuses, or fails without reasonable cause, to make a return in the prescribed form to the Harbour Master of any —

(a) birth of a Tuvalu citizen occurring in; or

(b) death of a Tuvalu citizen occurring, or presumed to have occurred, in, the ship, on a voyage to a port or place in Tuvalu is guilty of an offence.

110. — (1) There shall be an office of Registrar of Seamen which shall be a public office.

(2) The same person may, but need not, hold the offices of Registrar of Seamen under this section and Registrar of Ships under section 4.

111. — (1) The Registrar of Seamen shall cause to be kept at Funafuti a book to be known as the Registrar of Seamen.

(2) The Registrar of Seamen shall cause to be entered into the Register of Seamen —

(a) particulars of any Seaman’s Discharge Book issued under section 112;

(b) particulars of any period during which a person is a suspended person; and

(c) such other particulars as may be prescribed.

(3) Any person may inspect the Register of Seamen at any time during the hours approved by the Registrar of Seamen.

112. — (1) The Registrar of Seamen may issue to a person a book to be known as a Seaman's Discharge Book.

(2) A Seaman's Discharge Book shall be in the prescribed form.

113. — (1) The master of a ship shall keep a record book relating to the ship to be known as the Official Log Book.

(2) Subject to this Act, the master of a ship who fails without reasonable cause —

(a) to keep the Official Log Book in the prescribed manner; and

(b) to carry the Official Log Book in the ship,

is guilty of an offence.

(3) A person who wilfully destroys or mutilates or renders illegible any entry in an Official Log Book is guilty of an offence.

114. — (1) An employer or the master of a ship shall make and, in the prescribed manner, maintain separate lists of —

(a) the crew of the ship, to be known as a Crew List; and

(b) the passengers on the ship, to be known as a Passenger List.

(2) Up-to-date copies of the lists referred to in subsection (1) are to be maintained ashore by or on behalf of the managing owner of a ship.

115. — (1) Where —

(a) a person dies or suffers a serious injury in a ship; and

(b) the master of the ship fails, without reasonable cause, to notify the Harbour Master of the death or serious injury,

the master of the ship is guilty of an offence.

(2) Subject to sub-section (2), where —

(a) a person dies or suffers a serious injury in a ship; or

(b) a seaman belonging to a ship dies or suffers a serious injury away from the ship,

an inquiry into the circumstances surrounding the death or serious injury shall, unless the Minister otherwise directs, be held by a person authorised by the Minister at the next port in Tuvalu at which the ship calls.

(3) No inquiry shall be held under this section in a case where an inquiry is, is to be, or is required to be, held under the Death and Fire Inquiries Act.

116. — (1) For the purpose of holding an inquiry under section 115, the person authorised under that section may —

- (a) go on board a ship at any time and inspect the ship or any article on board the ship;
 - (b) summon any person to appear before him; and
 - (c) require the production of any document which in his opinion is relevant to the inquiry.
- (2) Where an inquiry has been held the person who held it shall make a report in writing of the findings to the Minister who may make a copy of the report available
- (a) in the case of a person who has died —
 - (i) to the next of kin of the deceased person; or
 - (ii) to any other person who requests such a copy and who appears to the Minister to be interested; and
 - (b) in the case of a person who has suffered a serious injury —
 - (i) to that person or to a person acting on his behalf; or
 - (ii) to any other person who requests such a copy and who appears to the Minister to be interested.

117. — (1) In this section, “seaman” means a seaman who is absent from a ship at a time when, under a crew agreement, he is required to be on board.

(2) Where a seaman proves —

- (a) that his absence from a ship was due to —
 - (i) accident;
 - (ii) mistake; or
 - (iii) some cause beyond his control; and
 - (b) that he took all reasonable precautions to avoid being absent.
- his absence is not a breach of contract.

(3) Where, in an action for breach of contract arising from the absence of a seaman from a ship, a seaman fails to prove the matters referred to in subsection (2), if special damages are

- (a) not claimed by his employer, his civil liability is limited to 50 dollars; or
- (b) claimed by his employer, his civil liability is limited to 50 dollars.

118. — (1) Where it appears to the Minister that due facilities will be given by the government of a country for apprehending and receiving seamen who desert in that country from ships regis-

tered under this Act, the Minister may, by order, declare that this section shall apply in relation to that country, subject to any conditions stated in the order.

(2) Where, in Tuvalu, a seaman deserts from a ship registered in a country to which, under subsection (1), this section applies, the master of the ship may apply to the Court for aid in apprehending the deserter, and the Court and its officers shall give all aid within their power, and for that purpose the Court may, on information given on oath, issue a warrant for the deserter to be conveyed on board the ship, or delivered to the master, or owner of the ship or his agent, to be so conveyed.

119. — (1) Where —

(a) a ship is at a place in Tuvalu or within Tuvalu waters; and

(b) the Harbour Master is of the opinion that the owner or the master of the ship or an employer, has failed to comply with a requirement of this Part, the ship may be detained.

(2) Where a ship is detained under subsection (1), the ship may be detained until such time as the Harbour Master issues a certificate showing that —

(a) the Harbour Master is satisfied that the owner, the employer and the master have complied with the provisions of this Part; and

(b) the ship may go to sea without a contravention of any provision of this Part.

120. The Regulations may make provision for and in relation to —

(a) the issue and form of Seaman's Discharge Book;

(b) entries to be made in the Register of Seamen;

(c) endorsements to be made in Seaman's Discharge Books;

(d) the particulars required to be entered in an Official Log Book;

(e) the persons by whom entries in an Official Log Book are to be made, signed or witnessed;

(f) the procedure to be followed in the making of entries in an Official Log Book;

(g) the production, or delivery of an Official Log Book to such person, in such circumstances and within such times as may be specified;

(h) the particulars to be entered in the Crew List and in a Passenger List;

- (i) the time during which a Crew List or a Passenger List may remain in force;
- (j) the manner of notification to specified persons of changes in a Crew List or a Passenger List;
- (k) the places and manner in which a Crew List and a Passenger List and copies of these Lists are to be maintained; and
- (l) the manner in which a Crew List or a Passenger List or copies are to be made available on demand to specified persons.

PART VI

DIVISION OF LIABILITY

121. Where by the fault of two or more ships damage or loss is caused to one or more of those ships, any of their cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each ship was in fault, but —

- (a) if having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally;
- (b) nothing in this section operates so as to render any ship liable for loss or damage to which the fault of the ship has not contributed; and
- (c) nothing in this section affects the liability of any person under a contract of carriage or any contract, or shall be construed as imposing upon any person any liability from which he is exempted by any contract or by any law, or affecting the right of any person to limit his liability in the manner provided by law.

(2) In this section, “freight” includes passage money and hire, and reference to damage or loss caused by the fault of a ship includes a reference to any salvage or other expenses consequent upon that fault recoverable at law by way of damages.

122. — (1) Where loss of life or personal injury is suffered by any person on board a ship owing to the fault of that ship and of any other ship or ships, the liability of the owners of the ships shall be joint and several.

(2) Subsection (1) shall not be construed as depriving any person of any right of defence on which, independently of this section, he might have relied in any action brought against him by the person injured, or any person entitled to sue in respect of the loss of life, nor shall it affect the right of any person to limit his liability in cases to which this section relates in the manner provided by law.

123. — (1) Where loss of life or personal injury is suffered by any person on board a ship owing to the fault of that ship and any other ship or ships, and a proportion of the damage is recovered against the owners of one of the ships that exceeds the proportion in which the ship was in fault, they may recover by way of contribution the amount of the excess from the owners of the other ship or ships to the extent to which those ships were respectively in fault. (2) No amount shall be recovered if, by reason of any statutory or contractual limitation of or exemption from liability or for any other reason, it could not have been recovered in the first instance as damages by the person entitled to sue for that amount.

124. In addition to any other remedy provided by law, the person entitled to any contribution under section 123 shall have, for the purpose of recovering contribution subject to this Act, the same rights and powers as the persons entitled to sue for damages in the first instance.

PART VII

LEGAL PROCEEDINGS

Division 1 — Offences and Limitations

125. — (1) An offence under a provision of this Act specified in column 1 of the Schedule 2 is punishable as indicated in column 3 (where a period of time indicates the maximum term of imprisonment, and a monetary amount indicates the maximum fine for the offence in question).

(2) Where both a period of time and a monetary amount are indicated in column 3 of Schedule 2 both a fine and imprisonment, not exceeding the maximum indicated in that column, may be imposed in respect of an offence.

(3) The description of an offence given in column 2 of Schedule 2 is illustrative only and not definitive or exhaustive.

(4) Subject to any special provision of this Act, no conviction for an offence shall be made under this Act in proceedings instituted in Tuvalu, unless those proceedings are commenced within one year after the commission of the offence.

126. — (1) No action shall be maintained to enforce any claim or lien against a ship or her owners in respect of any damages or loss to another ship, her cargo or freight, or any property on board her, or damages for loss of life or personal injuries suffered by any person on board her, caused by the fault of the former ship, whether such ship be wholly or partly in fault, unless proceedings in the action are commenced within two years from the date when the damage or loss or injury was caused.

(2) No action shall be maintained under this Act to enforce any contribution in respect of an overpaid proportion of any damages for loss of life or personal injuries unless proceedings in the action are commenced within one year from the date of payment.

(3) Any court having jurisdiction to deal with an action to which this section relates may, in accordance with the rules of court, extend any such period, to such extent and on such conditions as it thinks fit, and shall, if satisfied that there has not during such period been any reasonable opportunity of arresting the defendant ship within the jurisdiction of the court, or within the territorial sea of the country to which the plaintiffs ship belongs or in which the plaintiff resides or has his principal place of business, extend any such period to an extent sufficient to give such reasonable opportunity.

127. For the purposes of section 126 —

(a) the expression “freight” includes passage money and hire; and

(b) references to damage or loss caused by the fault of a vessel shall be construed as including reference to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages.

Division 2 — Jurisdiction

128. For the purpose of giving jurisdiction under this Act, every offence under this Act shall be deemed to have been committed either in the place in which the same actually was committed or in any place in which the offender may be.

129. — (1) A court which has jurisdiction in any part of the coast of Tuvalu shall have Jurisdiction over any vessel being on or lying or passing off that part, and over all persons on board the vessel, in the same manner as if the vessel or persons were within the limits of the original jurisdiction of the court.

(2) The jurisdiction conferred by subsection (1) is in addition to and not in derogation of any jurisdiction or power of a court under any other law.

130. — (1) A person who does an act or makes an omission on board a ship registered under this Act is liable to be prosecuted for any offence for which he could be prosecuted in respect of an act or omission if it were done or made in Tuvalu and, in any such prosecution, it is not a defence to prove that the act was done or the omission made beyond the territorial limits of Tuvalu.

(2) For the purposes of a prosecution under subsection (1), any court, which would have jurisdiction in respect of the offence if the act or omission concerned were done or made within the limits of Tuvalu, shall have jurisdiction in respect of the offence.

**PART VIII
GENERAL**

131. — (1) A declaration required by this Act (except under sections 101 and 118) may be made before the Registrar of Ships, a magistrate, a notary public, a Commissioner for Oaths or a diplomatic representative of Tuvalu.

(2) A declaration required by this Act (except under sections 101 and 118) may be made on behalf of a corporation by any person authorised in that behalf under the common seal of the corporation.

132. When under this Act (except under sections 101 and 118) any person is required to make a declaration on behalf of himself or of any corporation, or any evidence is required to be produced to the Registrar of Ships and it is shown to the satisfaction of the Registrar of Ships that for any reasonable cause that person is unable to make the declaration, or that the evidence cannot be produced, the Registrar of Ships, may, on the production of such other evidence and subject to such terms as he may see fit, dispense with the declaration or evidence.

133. — (1) A person who, in a declaration made under or for the purposes of this Act (except under sections 101 and 118), or in any document or other evidence produced to the Registrar of Ships or the Registrar of Seamen —

(a) wilfully makes or assists in making, or procures to be made a false statement concerning the title to, or ownership of, or the interest existing in, a ship registered under this Act; or

(b) utters, produces or makes use of any declaration or document containing any false statement, knowing the same to be false,
is guilty of an offence.

(2) Where, in a declaration made under or for the purposes of this Act (except under sections 101 and 118), a person wilfully makes a false statement in relation either to his being a qualified person, the ship in respect of which that false statement has been made is liable to forfeiture to the extent of the interest in the ship of the declarant or, unless it is proved that the declaration was made without authority, of a person on behalf of whom the declaration was made.

134. — (1) All certificates or other documents (including endorsements on certificates or other documents) to which this section applies are admissible in evidence in the manner provided by section 135.

(2) This section applies to —

(a) a certificate or other document issued, granted, given or made under this Act or purporting to be issued, granted, given or made under this Act and signed, or purporting to be signed, by any person required or authorised by this Act to issue, grant, give or make any such certificate or document;

(b) an endorsement made, or purporting to be made, under this Act and signed, or purporting to be signed, by any person required or authorised by this Act to make any such endorsement; and

(c) a certificate given or made by the Registrar of Ships asserting the negative of any circumstance, fact or thing.

135. — (1) Where a certificate or other document is by this Act declared to be admissible in evidence, it shall, on its production from proper custody, be admissible in evidence in any court, and, subject to all just exceptions, shall be conclusive evidence of the matters stated in it.

(2) A copy of any certificate or other document referred to in subsection (1) or extract from any such certificate or document is also admissible in evidence if proved to be an examined copy or extract, or if it purports to be signed and certified as a true copy or extract by the officer or person to whom custody of the certificate or other document is entrusted.

(3) Any person who is by this Act required or authorised to issue, grant, give or make any certificate or other document, shall furnish a certified copy of the certificate or document to any person applying at a reasonable time for such certified copy or certified extract.

136. — (1) Where a ship has become liable to forfeiture under this Act, the Minister may cause the ship to be seized and may detain the ship and may bring the ship for adjudication before the Court.

(2) The Court may, where a ship has been brought before it for adjudication under subsection (1), on such terms and conditions as it thinks just, order that the ship be forfeited to the Crown.

137. Where a court adjudges a person convicted of any offence against this Act to pay any fine or other moneys and that person is the master of a ship, and the fine or other moneys are not paid within the time and in the manner limited by the conviction or specified in the order of the court, the court may, in addition to any other power it may have to compel payment, direct the amount remaining unpaid to be levied by distress or by the sale of the ship or the equipment of the ship, as the case requires.

138. — (1) For the purpose of seeing that the provisions of this Act and of any International Maritime Convention implemented in Tuvalu under regulations made for the purposes of section 48, or otherwise having effect in Tuvalu, are complied with, the Harbour Master, an inspector or an authorised officer in relation to any of those provisions or any such Convention may exercise all or any of the powers specified in subsection (7).

(2) For the purpose of the effective exercise or performance of his functions under this Act or for the purposes of any Convention referred to in subsection (1), the Harbour Master, an inspector or an authorised officer may exercise all or any of the powers specified in subsection (7).

(3) The Harbour Master or an inspector may, if he considers it necessary in consequence of an accident or for any other reason, require a ship to be taken into dock for a survey of its hull or machinery.

(4) The powers under subsection (1), (2) or (3) may be exercised by the Harbour Master or an authorised officer in respect of a ship registered under this Act, notwithstanding that the ship is outside the jurisdiction of Tuvalu.

(5) A person exercising a power under subsection (1) or (2) shall not unnecessarily delay a ship.

(6) Any person who obstructs a person in the exercise of his powers under this section or who fails to comply with a requirement made under subsection (3) is guilty of an offence.

(7) For the purposes of subsections (1) and (2), the specified powers are powers —

(a) at all reasonable times, to go on board a ship and inspect the ship or any part of the ship, or any part of the machinery, boats, equipment of the ship, or any articles on board the ship;

(b) to require the production of, and to inspect, any document or certificate carried in the ship in pursuance of this Act or any Convention referred to in subsection (1); or

(c) to require any person to answer questions relevant to the exercise of a power, being exercised under paragraph (a) or (b) for a purpose referred to in subsection (1) or (2).

139. — (1) The Minister may, by notice, appoint persons, including corporations and unincorporated bodies of persons, he thinks fit to be surveyors of ships for the purposes of this Act.

(2) The appointment of a surveyor of ships under this section may be restricted to either or both certain types or classes of ship or certain kinds of survey.

(3) Where a corporation or an unincorporated body of persons is appointed under subsection (1), it shall, if the Minister so directs, nominate a person to carry out surveys, issue certificates and do all other things necessary on its behalf.

(4) A nomination under subsection (3) shall be notified to the Minister and on receiving such notification the Minister shall cause to be published a notice of the matter in the notification.

(5) The power under this section includes a power to appoint persons, including corporations and unincorporated bodies of persons, outside Tuvalu to be surveyors of ships.

(6) The duties of a surveyor of ships shall be performed under the direction of the Minister and in accordance with regulations made by the Minister.

140. The Minister may, by notice, designate any person —

(a) as an inspector for the purposes of this Act;

(b) as an authorised officer for the purposes of this Act or of any provision of this Act.

141. — (1) The Minister may make Regulations prescribing all matters that are required or permitted by this Act to be prescribed for the carrying out or giving effect to this Act and in particular for prescribing—

(a) the manner of doing, and the fees payable in respect of, any matter or thing that is required or permitted to be done under this Act;

(b) forms to be used, for or in connection with this Act;

and

(c) the means by which, and the conditions subject to which, a ship or a class of ship may be exempted from compliance with the Regulations or any provisions of the Regulations.

(2) The Regulations may prescribe the manner in which the tonnage of any ship shall be ascertained and may —

(a) for that purpose, apply by reference all or any of the provisions of any law of the United Kingdom relating to tonnage measurement;

(b) make different provision for different descriptions of ships or for the same description of ships in different circumstances;

(c) make any provision in the Regulations dependent on compliance with such condition, to be evidenced in such manner, as may be specified in the Regulations; and

(d) prohibit or restrict the carriage of goods or stores in spaces not included in the registered tonnage of a ship.

(3) The Regulations may make provision —

(a) prescribing safety requirements and providing for the issue of local safety certificates in prescribed cases;

(b) prescribing matters relating to load lines and providing for the issue of local load line certificates in prescribed cases;

(c) prescribing the period during which any such certificate is to remain in force, and providing for the renewal and cancellation of any such certificate.

(4) Regulations made under subsection (3) may make provision for and in relation to —

(a) the requirements with which the hull, machinery and equipment of ships shall comply;

(b) the appliances to be carried, and the measures to be observed, on ships for the saving of life at sea and for the prevention, detection and extinction of fires on ships;

(c) the requirements for the holding and recording of musters and drills for crew and passengers;

(d) the requirements with respect to the equipping of ships with radio telephones and radio navigational aids, the operation, maintenance and use of radio telephones and radio-navigational aids in ships, and the number and qualifications of the radio telephone operators to be carried on ships;

(e) the measures and procedures to be followed and the equipment to be carried on ships to ensure safety of navigation;

(f) the requirements which must be complied with in respect of the stowage and carriage of livestock, deck cargo, grain, dangerous goods and hazardous cargoes in ships;

(g) the observance of safety standards and procedures on board ships;

(h) safety and safeworking practices on board ships;

(i) the measures to be observed for the prevention of collisions;

(j) requirements related to the provision and use on ships of lights and signals;

(k) the requirements which must be complied with in respect of lights and signals from the shore to ships;

(l) the manner of determining freeboards to be assigned to ships;

(m) the manner of determining, in relation to a ship, the deck which is to be the freeboard deck and for requiring the position of that deck to be indicated on each side of the ship by a mark;

(*n*) the manner of determining, by reference to a mark, the freeboards assigned to a ship and the position in which each side of a ship is to be marked with a line indicating the maximum depths to which the ship may be loaded;

(*o*) the requirements in respect of hull, superstructure, fittings and appliances which are relevant to the assignment of freeboards to ships;

(*p*) the manner of recording particulars of the requirements under paragraph (*o*) and the methods of determining the extent of compliance with the conditions of assignment; and

(*q*) the information relating to the stability of a ship required to be provided by the owner of the ship to the master of the ship.

(5) The Regulations may, in relation to a ship carrying passengers, make provision for and in relation to—

(*a*) the accommodation of passengers;

(*b*) the manner of notification of the carriage of unberthed passengers;

(*c*) provisions, water, medical stores and medical inspection;

(*d*) the carriage of medical staff and the provision of hospital accommodation;

(*e*) sanitary facilities;

(*f*) sale of alcohol;

(*g*) passenger lists;

(*h*) the cargo which may be carried and the method of stowing cargo;

(*i*) the maintenance of good order in respect of the passengers;

(*j*) the prevention of wilful damage and injury to the machinery or equipment of a ship by a passenger;

(*k*) the prevention of any obstruction to any crewman in the execution of his duty;

(*l*) the prevention of the molesting of or interference with any person on board the ship.

(6) Regulations made under subsection (5) shall apply only in relation to —

(*a*) a ship registered under this Act; or

(*b*) a ship engaged in near coastal trade.

(7) The Regulations may make provision with respect to vessels employed in navigation on lagoons or inland waters and manning of such vessels.

- 142.** — (1) The Merchant Shipping (Fees) Act is repealed.
- (2) The written laws specified in Schedule 3 are amended, or as the case may be revoked, to the extent specified in that Schedule.
- (3) The Merchant Shipping Acts 1894 to 1974 of the United Kingdom Parliament, and any subsidiary legislation made under those Acts, are repealed in so far as they are part of the law of Tuvalu.

SCHEDULE 1 (*section 3*)
INTERPRETATION
Definitions

1. In this Act, unless the context otherwise requires —
- “appropriate tonnage certificate” means —
- (a) in the case of a Tonnage Measurement Convention ship, an International Tonnage Certificate as specified in Annex II of the Tonnage Measurement Convention; and
- (b) in any other case, a Tuvalu Tonnage Certificate as prescribed;
- “authorised officer”, in relation to any provision of this Act, means a person designated, under section 140(b), as an authorised officer for the purpose of this Act, or for the purposes of that provision;
- “bankrupt” includes insolvent;
- “certificate of competency” means a certificate issued to a person under section 76 which entitles the person to be employed in the capacity stated in the certificate;
- “certificate of registry” means a certificate by that name granted under section 16;
- “Collisions Convention” means the Convention on the International Regulations for Preventing Collisions at Sea 1972, together with the International Regulations for Preventing Collisions at Sea 1972, constituted by the rules and other annexes attached to the Convention, as corrected by Process-Verbal of Rectification dated 1 December 1973, as affected by any amendment made under Article VI of that Convention, other than an amendment not accepted by Tuvalu;

“the Court” means the High Court;

“crew”, in relation to a ship, means the person employed on board and in the business of the ship but does not include a pilot or a person temporarily employed on board the ship while the ship is at a port;

“crew agreement” means an agreement entered into under section 82;

“disciplined force” has the meaning given in section 2(1) of Schedule 1 to the Constitution;

“employer”, in relation to a seaman, means the person who has entered into a crew agreement with the seaman for the employment of the seaman on a ship;

“equipment”, in relation to a ship, includes every thing or article belonging to or used in connection with, or necessary, for the navigation, safety and working of the ship;

“existing ship” means a ship that is not a new ship;

“fishing vessel” means a vessel used or intended to be used for catching whales, seals, walrus or other living resources of the sea but excluding any vessel that is —

(a) engaged in harvesting or transporting algae or aquatic plants; or

(b) primarily a carrier or mothership;

“going to sea” and related expressions have the meaning given by paragraph 3 of this Schedule;

“Government ship” means a ship that belongs to the Government or to an authority or instrumentality of the Government, or that is held by any person on behalf of, or for the benefit of, the Government but does not include a vessel belonging to a disciplined force;

“Gross Tonnage”, in relation to a ship having alternative gross tonnages, shall be taken to be the larger of those tonnages;

“Harbour Master” means the person for the time being appointed to that office under section 5 of the Harbours Act;

“inspector” means a person designated under section 140(a) as an inspector;

“international Maritime Convention” has the meaning given in section 47;

“international voyage” means a voyage from a port or place in Tuvalu to a port or place outside Tuvalu, or conversely;

“length”, in relation to a ship, means —

(a) the length shown in the ship’s certificate of registry or tonnage certificate; or

(b) the ship does not possess either of those certificates or where the length is not shown on either of those

certificates, the length as determined by the Harbour Master or an inspector;

“load line” means a line marked on a ship indicating the depth to which the ship may safely be loaded;

“the Load Line Convention” means the International Convention on Load Lines, 1966, as affected by any amendment made under Article 29 of that Convention, other than an amendment not accepted by Tuvalu;

“Load Line Convention ship” means a ship that is —

(a) of a kind to which the Load Line Convention applies; and

(b) registered in a country the government of which has accepted or acceded to the Load Line Convention and has not denounced or suspended the operation of that Convention;

“master”, in relation to a ship, means the person having lawful command or charge of the ship, but does not include a pilot;

“mortgage” means an instrument of security of the kind referred to in section 30(1);

“National Flag” means the National Flag of Tuvalu;

“near coastal trade” means trade or operations of a ship going to any ports or places in Tuvalu beyond the protection of the reefs;

“new ship” means a ship —

(a) the keel of which was laid or which was at a similar stage of construction; or

(b) that has been substantially —

(i) altered; or

(ii) reconstructed,

after the date of commencement of this Act;

“Official Log Book”, in relation to a ship, means the Official Log Book kept under section 113;

“owner” includes the meaning given by paragraph 5 of this Schedule;

“Pacific region trade” means trade or operations, not being near coastal trade, of a ship within the area demarcated by latitudes 15 Degrees North to 47 Degrees South and longitudes 130 Degrees East to 130 Degrees West;

“passenger” means a person carried on board a ship with the knowledge or consent of the owner or master of the ship but does not include —

(a) a person engaged in any capacity on board the ship in the business of the ship; or

(b) a child under the age of one year;

“passenger ship” means a ship that is carrying or capable of carrying more than 12 passengers and which is engaged in an international voyage;

“pilot”, in relation to a ship, means any person not belonging to the ship who has the lawful conduct of the ship;

“proper return port”, in relation to a seaman, means such port or place as is agreed upon by the master and the seaman and is named in a crew agreement;

“qualified person” means a person of the kind referred to in section 8(4);

“the Register” means the Register of Ships referred to in section 5;

“the Register of Seamen” means the Register of Seamen referred to in section 111;

“the Registrar” means the person holding the office of Registrar of Ships;

“the Registrar of Seamen” means the person holding the office of Registrar of Seamen;

“the Regulations” means the regulations made under this Act;

“the Safety Convention” means the International Convention for the Safety of Life at Sea, 1974 as affected by any amendment made under Article VIII of the Convention, other than an amendment not accepted by Tuvalu, and includes the Protocol of 1978 relating to the Convention;

“Safety Convention ship” means a ship that is —

(a) of a kind to which the Safety Convention applies; and

(b) registered in a country the government of which has accepted or acceded to the Safety Convention and has not denounced that Convention;

“seaman”, in relation to a ship, means a person, other than —

(a) the master or a pilot or

(b) a person temporarily employed on board a ship while the ship is at port, being a person who is engaged or employed in any capacity on board the ship and in the business of the ship;

“Seamans Discharge Book” means a book issued under section 112;

“ship” includes —

(a) in relation to the ownership of a ship, a share in the ship and any interest in the ship or share; and

(b) every description of vessel used, or capable of being used, in navigation by water, but does not include—

(c) a vessel ordinarily propelled by oars or paddles;

(d) a vessel belonging to a disciplined force or to the defence force of any other country; or

(e) a vessel employed in navigation on lagoons or inland waters;

“suspended person” means a person whose name is included in the list of suspended persons kept under section 103;

“surveyor” means a surveyor of ships appointed under section 139 and includes a person in respect of whom a notification given under section 139(4) has been notified and has not been cancelled;

“this Act” includes the Regulations;

“Tonnage Measurement Convention” means the International Convention on Tonnage Measurement of Ships 1969 as affected by any amendment made under Article 18 of that Convention, other than an amendment not accepted by Tuvalu;

“Tonnage Measurement Convention ship” means a ship that is —

(a) of a kind to which the Tonnage Measurement Convention applies; and

(b) registered in a country the government of which has accepted or acceded to the Tonnage Measurement Convention and has not denounced that Convention;

“traditional build” in relation to a ship, means a ship built of traditional materials to a traditional local design;

“Tuvalu waters” means the internal waters, territorial sea and, where applicable, archipelagic waters of Tuvalu, all as defined by or under the Marine Zones (Declaration) Act 1983;

“unlimited trade” means trade or operations of a ship, going beyond the protection of the reefs, which is not confined to near coastal trade or Pacific region trade.

Meaning of “this Part”, etc.

2. A reference in a Part of this Act to “this Part” or “this Division” includes a reference to any regulations made in respect of the matters contained in that Part or, as the case may be, that Division.

Going to sea etc.

3. — (1) Subject to sub-paragraph (2), a ship shall, for the purpose of this Act, be deemed to have —

(a) gone to sea; or

(b) been taken or sent to sea.

if the ship has got under way for the purpose of —

(c) going to sea;

(d) plying or running; or

(e) proceeding on a voyage.

(2) A ship shall not be deemed under sub-paragraph (1) to have —

(a) gone to sea; or

(b) been taken or sent to sea;

by reason only that the ship has been got under way for the purpose of moving the ship from one berth or place in a port to another berth or place in the port.

Exemptions

4. Any power conferred by this Act to provide for or grant an exemption includes power to provide for or grant the exemption subject to conditions.

Meaning of “owner”

5. Unless the contrary intention appears, a reference in this Act (other than in Parts II and V) to the owner of a ship shall, where the ship is operated by a person other than the owner, be read as including a reference to that person.

SCHEDULE 2
PENALTIES

(Section 125)

1 <i>Section</i>	2 <i>Description of Offence</i>	3 <i>Penalty Imprisonment or Fine or Both</i>
12 (3)	Failing to keep marks.....	\$1000
12 (4)	Removing etc. marks.....	\$1000
16 (3)	Using illegal certificate of registry.....	2 years; \$5000
16 (4)	Failing etc. to deliver certificate of registry.....	\$1000
18 (5)	Failing to deliver up provisional certificate.....	\$500
21 (9)	Failing etc. to give notice of loss of ship.....	\$1000
22 (2)	Failing etc. to apply to register alterations.....	\$1000
37	Concealing Tuvaluan character etc.	2 years; \$5000
39 (2)	Failing to hoist National Flag.....	\$1000
40	Using colors other than National Flag.....	\$1000
41 (2)	Failing to give information to Registrar of Ships.....	\$1000
46 (1)	Describing ship by name not registered.....	\$1000
49 (2)	Failing to comply with Collisions Convention.....	2 years; \$5000
49 (3)	Wrongly exhibiting distress signal.....	2 years; \$5000
52 (2)	Sending or taking unsafe ship to sea.....	2 years; \$5000
53 (2)	Failing to carry proper equipment.....	2 years; \$5000
54 (3)	Failing etc. to notify serious danger to navigation.....	\$500
55 (3)	Failing etc. to make radio report of ship.....	\$500
56 (3)	Failing to assist person in danger of being lost.....	2 years; \$5000
57 (3)	Failing to assist in case of collision.....	2 years; \$5000
61 (1)	Sending etc. dangerous goods to sea without notice.....	\$1000
61 (2)	Sending etc. dangerous goods to sea falsely described..	\$1000
70	Failing to deliver up cancelled etc. certificate.....	\$100
75 (3)	Permitting ship to go to sea improperly manned.....	2 years; \$5000
77	Unqualified person going to sea as qualified.....	2 years; \$5000
78	Failing to produce certificate of competency etc.....	2 years; \$5000
79 (3)	Failing etc. to deliver up suspended certificate.....	\$1000
83	Seeking etc. rewards for employment.....	\$1000
86	Refusing etc. to give seaman account of wages.....	\$100
90 (2)	Permitting ship to go to sea without proper crew accommodation.....	\$1000
93	Permitting ship to go to sea without medical stores etc..	\$1000
94 (3)	Master failing to make arrangements for seaman's complaint.....	\$100
96 (2)	Misconduct endangering ship etc.....	2 years; \$1000
97	Continued or concerted disobedience etc.....	\$500
98	Absence without leave.....	\$250
105	Stowing away on ship.....	3 months; \$500
106	Unauthorized presence on ship.....	\$100
108 (2)	Failing to make return of birth or death on Tuvalu ship..	\$250
109 (2)	Failing to make return of birth or death on foreign ship..	\$250

113 (2)	Failing to carry or keep Official Log Book.....	\$500
113 (3)	Destroying etc. Official Log Book.....	\$500
115 (1)	Master failing to notify death or serious injury.....	\$250
133 (1)	Making etc. false declaration.....	2 years; \$1000
138 (6)	Obstructing etc. inspector.....	6 months; \$1000

MERCHANT SHIPPING (AMENDMENT) ACT 1991

(Act 17 of 1991)

EXPLANATORY MEMORANDUM

(This Memorandum is **not** part of **the Act**)

The purpose of this **Act is to amend the Merchant Shipping Act 1987 to provide for the registration of vessels under bareboat charter.** It also brings into **force** certain international maritime conventions and validates the purported bringing into force of such conventions by regulation. The Act has nine sections divided as follows -

Sections 1 and 2 Preliminary Short Title and Commencement.

Sections 3 to 5 Registration of ships. These sections amends the Merchant Shipping Act to provide that where vessels are manned by a **satisfactory number** of Tuvaluan seamen it may apply for registration under the Principal Act providing that the Minister's approval has been obtained and it is not registered in any other country. **Furthermore the definition of** a "qualified person" is extended to include a company which maintains an office in Tuvalu which is staffed by persons who are accountable to the Government of Tuvalu on behalf of the **owner or owners at least one of whom** is a citizen of Tuvalu.

A new division is **inserted relating to bareboat charter registration which consists of sections 22A to 22X** and provides that vessels tender **bareboat charter may fly the Tuvalu flag** and be subject to **the laws of Tuvalu tender certain conditions and** for certain periods set out therein. It also provides that vessels registered under the Tuvalu registry may be bareboat chartered out to other jurisdictions.

Sections 6 International Maritime Conventions. The **section brings into force certain important International** maritime conventions and **validates the purported bringing into force of certain** of those conventions by regulation. It **also provides that the International convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978** may – be brought **into force on a date, to** be notified by the Minister in the Gazette.

Sections 7 and 8 General. These sections provide that the Minister may approve are **agreements made under the provisions** of the Principal Act. The

minister may by notice appoint surveyors of **ships from The International Association of Classification Societies**, which Association includes Lloyds Registry, American Bureau, Germanische Llyods, NKK, Bureau Veritas, and Norsky Veritas.

Section 9

This section amends Schedule 1 by **inserting some new definitions**.

MERCHANT SHIPPING (AMENDMENT) ACT 1991

(Act 17 of 1991)

I assent

Toaripi Lauti PC GCMG
Governor-General

15th January 1992

AN ACT to amend the Merchant Shipping Act to make provision for bareboat charter registration, to give the force of law to certain Maritime Conventions, alid other incidental matters thereto.

Commencement 1/2/1992 GN 11/92

ENACTED by the Parliament of Tuvalu –

- | | |
|-----------------------------|---|
| Short title | 1. This Act may be cited as Merchant Shipping (Amendment) Act 1991. |
| Commencement | 2. Thus Act shall come into force on such date as the Minister may by notice appoint. |
| Amendment of s.8 of Cap 64A | 3. Section 8 of the Merchant Shipping Act is hereby amended by
(1) repealing subsection 2 and substituting the following:
“(2) Where a ship, other than an exempt ship,
(a) is manned by officers and crew, not less than a satisfactory number of which, a determined by the Minister, are citizens of Tuvalu; and
(b) is not registered in any other country; and
(c) in respect of which the Minister’s approval for registration has been obtained, the owner or owners of the |

ship may apply for registration of the ship under this Act.”; and

(2) adding to the definition of “qualified person” in subsection (4) the following:

“ (d) a person or corporation which maintains, an office in Tuvalu, which is staffed by persons, accountable to the Government of Tuvalu on behalf of the owner or owners, at least one of whom is a citizen of Tuvalu.”

Amendment of s.9 of Cap 64A

4. Section 9 of the Merchant Shipping Act is amended by ***inserting*** before the word “Except” in subsection (1) the following:

“Subject to the provisions of Division 2A of this Part,”.

Addition of new Division 2A to Cap 64A.

5. The Merchant Shipping Act is amended by inserting after Division 2 Part 11, the following:

“Division 2A – Bareboat Charter Registration

Interpretation 22A. For the purposes of this Division unless the context otherwise requires:

“bareboat charter” means the contract for the lease or sub-lease of a ship, hereinafter reported to as charter, 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 her, master and crew for the duration of the charter but excluding the right to sell or mortgage the ship;

“bareboat charter registration” means the registration of a ship in a bareboat charter registry under the name of the charter;

“bareboat charter registry” means the registry of the state whose flag the ship is entitled to fly during the period in which the Charterer is registered as the bareboat Charterer;

“compatible registry” means a ship registry of a foreign State declared by the Minister to be a compatible registry in terms of section 22B of this Act;

“day” means calendar day;

“underlying registry” means the registry of 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 registration’ shall be construed accordingly.

Compatible Registries 22B. Whenever it appears to the Minister that the provisions of the law of a State with regards to bareboat charter registration are compatible with the provisions of this Act, he may declare the ship registry of that State to be a compatible registry for the purposes of this Part of this Act.

Conditions for registration 22C. (1) Notwithstanding anything contained in sections 8 and 9 of this Act, a ship shall be eligible to be registered as a Tuvaluan ship under this Part of this Act provided that:-

- (a) the ship is bareboat chartered to a qualified person in terms of section 8 of this Act;
- (b) the ship is not a Tuvaluan ship, and is registered in a compatible registry;
- (c) is not registered in another bareboat charter registry; and
- (d) the following certified documents are submitted to the Registrar to his satisfaction:
 - (i) an application for registration under this Part of this Act made by

the Charterer or his authorized agent containing such information may be required by the Registrar;

(ii) a declaration of bareboat charter made by the Charterer accompanied by a copy of the charter agreement, which charter agreement –shall not; be available for the public inspection;

(iii) a transcript or an extract of the underlying registration of the ship which shall include a description of the ship, the owners and, where applicable, all registered mortgagees and encumbrances of the ship; and

(iv) the consent in writing for the ship to be bareboat charter registered in Tuvalu of:

(a) the appropriate authorities of the underlying registry who may be further required by the Registrar to declare that during the period of bareboat charter registration the ship will not be entitled to fly their flag;

(b) the owners of the ship; and

(c) all registered mortgages.

(2) Any amendments or modifications to the bareboat charter shall within thirty days be produced, to the Registrar by the Charterer.

(3) Whenever any amendments or modifications are effected to the underlying registration, the Charterer shall:-

(a) within seven days from such amendments being effected communicate to the Registrar of any such amendments or modifications; and

(b) within thirty days of such amendments or modifications having been entered in the underlying register produce to the Registrar a transcript or an extract of the underlying registration showing such amendments or modifications.

(4) For the purposes of this section, all documents issued other than by the government authorities shall be, either signed in the presence of the Registrar or of a Commissioner for Oaths or a Tuvaluan Consular Officer, or else certified by a Notary Public.

Ascertainment of tonnage

22D. The Tonnage of a ship to be registered under this part of this Act shall be ascertained in accordance with the Tonnage Regulations made under this Act:

Provided that at the request of the Charterer the Registrar may accept the tonnage of such ships to be that registered in the underlying registry if he is satisfied that the provisions of the Tonnage Measurement Convention, if

applicable to such ship and unless such ship has been exempted from them, have been adhered to.

Name of ship
bareboat
chartered
registered in
Tuvalu

22E.(1) Subject to the provisions of subsection (2) of this section a ship shall be registered under this Part of this Act by the name under which it is registered in the underlying registry, provided that such name is not already the name of a registered Tuvaluan Ship or a name similar as be calculated to deceive.

(2) The name of a ship to be registered or of a ship already registered under this Part of this Act, may be changed, prior or subsequent to registration under this Part of this Act as the case may be, provided the appropriate authorities of the underlying registry, the owners; and the registered mortgagees, if any, have consented thereto and provided also that such change is made in accordance with the provisions of section 46 of this Act.

Bareboat
charter
registration

22F.(1) The Registrar, if satisfied that all conditions for registration specified in this Part and in other Parts of this Act where applicable, have been complied with, and on payment of the prescribed fee shall:-

- (a) enter in the Register provided for in section 5 of this Act, all particulars of the ship and its underlying registration, owners and charterers, stating that it is a bareboat charter registration, the expiry date of such registration, and that the register does not, contain an official record of any mortgages affecting the ship;
- (b) inform the appropriate authorities of the underlying registry of the registration under this Part; and
- (c) issue a certificate of bareboat

charter registration, which shall include the name and particulars of the ship, the name of the home port Funafuti and the expiry date of the registration.

(2) Upon the issue of a certificate of bareboat charter registration all documents issued to the ship by the underlying registry, shall be surrendered to the appropriate authorities of that registry and, within thirty days of the issue of the certificate as aforesaid, the charterer shall make and deliver to the Registrar a declaration to that effect.

Duration of bareboat charter registration

22G. Subject to the provisions of section 22H of this Act the duration of such registration shall be for a period not exceeding the duration of the bareboat charter or the expiry date of the underlying registration, whichever is the shorter period, but in no case for a period exceeding two years.

Extension of bareboat charter registration

22H.(1) At the request of the Charterer or his authorized Agent the Registrar may extend registration and further extend the registration for the remaining period of the charter or until the expiry date of the underlying registry, whichever is the shorter period, but in no case for periods exceeding two years, at a time, provided that he has not received any objections to this extension from the appropriate authorities of the underlying registry, the owners and the registered mortgagees, if any, within seven days from the Registrar having informed them of such request for extension.

(2) Upon the grant of an extension in terms of subsection (1) of this section, the Registrar shall:-

- (a) enter the new date of expiry in, the register of the ship;
- (b) issue a certificate of extension of bareboat charter registration

which shall include the date of expiry thereof; and

- (c) inform the appropriate authorities of the underlying registry.

International convention certificates of ship bareboat charter registered in Tuvalu

22I. A ship bareboat charter registered under this Division required to be issued with international convention certificates in terms of an international convention to which Tuvalu is a party shall be issued with such certificates under the authority of the Government of Tuvalu:

Provided that where Tuvalu is not a party to such convention a certificate required under the convention may be issued, with the permission of the Registrar, under the authority of the government of the underlying registry.

Jurisdiction over a ship registered under this Division

22J. (1) A ship registered under this Division of this Act shall be deemed to be a Tuvaluan ship and except where otherwise provided shall be under the jurisdiction and control of Tuvalu and shall comply with all the laws applicable to Tuvaluan ships.

(2) A ship registered under this Division shall only fly the National Flag as provided for in this Act.

(3) The home port of a ship registered, under this Division of this Act shall be Funafuti this shall be shown on the certificate of bareboat charter registration and shall be marked on the stern in accordance with the provisions of the Act.

Ownership of ship registered under this Division

22K.(1) This Act shall not assert any ownership rights over a ship registered under this Division and it shall have no effect with regards to title and transfer and transmission of such ship or shares therein.

(2) Any transfer of ownership of a ship registered under this Division shall be notified

by the charterers to the Registrar, and the registration of the ship under this Division shall be closed unless the new owners, within seven days, have informed the Registrar that they have no objection to the registration of the ship under this Division and, within thirty days of having made such declaration, delivered to the Registrar, their consent in writing to such registration.

Payment of fees

22L. A ship registered under this Division shall be subject to the payment of the initial and annual registration fees and of any other fees set out in this Act, or in any regulations made thereunder.

Mortgages and encumbrances

22M. Mortgages and encumbrances may not be registered under this Act in respect of a ship registered under this Division of this Act, and the Registrar shall refuse to register any such mortgages and encumbrances; such power of registration shall remain vested in the underlying registry.

Closure of bareboat charter registration

22N. (1) The Minister may order that the registration of –a ship under this Division shall be closed:-

- (a) if any of the provisions of this Act, in as far as the same may be applicable to a ship registered under this Division are not complied with; or
- (b) for any reason specified in section 10 of this Act, in as far as the same may be applicable to a ship registered under this Division.

(2) Where the charterer of a ship; registered under this Division desires to close the bareboat charter, registration of such ship, he shall make an application to that effect to the Registrar giving all such particulars and information as the Registrar may require for the purpose, and such application made and substantiated as aforesaid shall be acceded to if

all liabilities and obligations in respect of the ship towards the Government of Tuvalu whether for fees, charges, fines or otherwise have been paid.

(3) The Registrar shall close the registration of a ship under this Division and shall make an entry to that effect in the register, if:-

- (a) the Minister has ordered *such* closure in terms of subsection (1) of this section;
- (b) a voluntary closure of registry has been requested and such request has been acceded to by the Registrar in terms of subsection (2) of this section;
- (c) the appropriate authorities of the underlying registry, or the owners, or any of the mortgagees, if any, have withdrawn their consent to the bareboat charter registration in Tuvalu;
- (d) the registration in the underlying registry has for any reason be terminated;
- (e) the charter lapses or is terminated by any of the parties to it; or
- (f) the period for which the ship has been bareboat charter registered lapses and no extension has been granted in accordance with 22H of this Act.

(4) Upon the closure of a registration in terms of subsection (3) of this section the *ship* shall cease to be a Tuvaluan ship and the Registrar shall immediately notify the

appropriate authorities of the underlying registry, the owners and the mortgagees, if any, of such closure.

(5) The Registrar may refuse to issue a deletion certificate or a transcript of registry showing the closure of registry until:-

- (a) the certificate of bareboat charter registration issued in terms of section 22F of this Act has been surrendered to him; and
- (b) all liabilities and obligations in respect of the ship towards the Government whether for fees, charges, fines or otherwise have been paid.

Bareboat charter registration in a foreign registry 22O. Notwithstanding any other provision of this Act a Tuvaluan ship registered under Division 2 of this Part may be bareboat charter registered in a foreign registry if the Registrar gives his consent in writing thereto in terms of section 22P of this Act.

Consent of the Registrar 22P.(1) The Registrar may give his consent referred to in section 22O of this Act if:-

- (a) the ship is registered as a Tuvaluan ship under Division 2 of this Part:

Provided that a ship provisionally registered under Division 2 of this Part shall not be considered as registered for the purpose of this paragraph;

- (b) the bareboat charter registry where the ship is to be registered is a compatible registry; and
- (c) the following documents are submitted to him;
 - (i) an application for

bareboat charter registration in a foreign registry made by the owners containing such information as may be required by the Registrar;

- (ii) the consent in writing to such registration of all registered mortgagees, if any;
- (iii) a written undertaking by the owners to surrender the certificate of registration issued under this Act within fifteen days from entry into the bareboat charter registry;
- (iv) a written undertaking by the charterer that the Tuvaluan Flag shall not be hoisted during the period of bareboat charter registration; and
- (v) a copy of the bareboat charter.

(2) The owners shall produce to the Registrar any amendments or modifications to the bareboat charter within thirty days of such amendments or modifications being effected.

(3) For the purpose of this section, all documents issued other than by government authorities shall be, either signed in the presence of the Registrar or of a Commissioner for Oaths or of a Tuvaluan Consular Officer, or else certified by a Notary Public.

Name of ship
bareboat
charter
registered in a
foreign

22Q. (1) Subject to the provisions of subsection (2) of this section a ship registered under Division 2 of this Part shall be bareboat charter registered in a foreign registry by the name under which it is registered under this Act.

registry

(2) The name of a Tuvaluan registered ship bareboat charter registered in a foreign registry may be changed with the written permission of the Registrar only if such changes are being effected also in the bareboat charter registry.

Registration in a foreign bareboat charter

22R. The registration in a foreign bareboat charter registry of a ship registered under this Act not made in accordance with the provisions of this Division shall be null and void.

Bareboat charter registration of a Tuvaluan ship in a foreign registry

22S. (1) Upon the bareboat charter registration of a Tuvaluan ship in a foreign registry:-

- (a) the owners shall immediately notify the Registrar of such registration, and within thirty days surrender to the Registrar the certificate of registration issued to the ship under this Act and deliver to the Registrar a transcript or an extract of the foreign bareboat charter registration; and
- (b) the Registrar, if satisfied that such registration have been effected according to the provisions of this Act, shall make an entry thereof in the register of the said ship.

(2) The owners shall immediately notify the Registrar of the closure or lapse of the bareboat charter registration in a foreign registry, and shall within thirty days of the closure of such registry deliver to the Registrar a transcript or an extract of the foreign bareboat charter registration showing such closure.

Obligations while ship is in a foreign bareboat charter registry

22T. (1) Unless otherwise provided for in this Division, the owners of a Tuvaluan ship bareboat charter registered in a foreign registry shall comply with all the provisions of this Act as if the ship was not registered in the foreign registry.

(2) During the time a Tuvaluan ship is bareboat charter registered in a foreign registry in terms of the provisions of this Division of this Act:-

(a) notwithstanding the provisions of Division 5 of this Part of this Act, such ship shall not hoist the Tuvaluan Flag; and

(b) notwithstanding the provisions of section 7 of this Act, the home port of such ship shall be that of the foreign bareboat charter registry.

(3) The owners shall, within fifteen days from entry into the foreign bareboat charter registry, make and deliver to the Registrar a declaration to the effect that the name of the foreign home port has been marked on the stern of the ship in lieu of the name Funafuti.

Payment of fees while ship is in a foreign bareboat charter registry

22U. A Tuvaluan ship bareboat charter registered in a foreign registry shall, notwithstanding such registration, continue to be subject to the payment of all the fees set out in this Act, or in any regulations made thereunder, in respect of Tuvaluan ships.

International convention certificates of ship bareboat charter registered in foreign registry

22V. A Tuvaluan ship bareboat charter registered in a foreign registry required to be issued with international convention certificates in terms of an international convention to which Tuvalu is a party shall be issued with such certificates under the authority of the Government of the bareboat charter registry:

Provided that where the State the bareboat charter registry is not a party to such convention the certificate required under such convention may be issued under the authority of the Government.

Title, mortgages and encumbrances

22W.(1) Notwithstanding that a Tuvaluan ship may be bareboat charter registered in a foreign registry, all matters with respect to title over

of ship
bareboat
charter
registered in a
foreign
registry

the ship, mortgages and encumbrances shall continue to be governed by Tuvaluan law.

(2) Any transaction affecting the title over the ship or relating to the registration, amendment, transfer and transmission and discharge of mortgages shall be made and registered in accordance with the provisions of this Act and only by the purpose specified therein.

(3) The registration of any mortgages or encumbrances in the bareboat charter registry shall be null and void.

Termination
of bareboat
charter
registration in
foreign
registry

22X.(1) The Registrar may withdraw the consent referred to in section 22O of this Act, if any of the applicable provisions of this Act, are not complied with:

Provided that the Registrar shall withdraw such consent if,

- (a) the Minister, in the national interest or in the interest of Tuvalu shipping and after giving the owners and charterers of the ship a reasonable opportunity to make representations, has ordered the Registrar to withdraw his consent;
- (b) any of the conditions required to be fulfilled in terms of subsection (1) of section 22P of this Act is not so fulfilled; or
- (c) the charter terminates or is terminated by any of the parties to it.

(2) Upon the withdrawal of the consent of the Registrar in terms of subsection (1) of this section:-

(a) the Registrar shall inform the appropriate authorities of the bareboat charter registry, the owners, the charterers, and the mortgagees, if any, of such withdrawal; and

(b) the bareboat charter registration shall be terminated.

(3) Upon the termination of the bareboat charter registration:-

the Registrar shall make an entry thereof in the register, and the ship shall thereupon be again subject to all the provisions of Tuvaluan law;

(b) within thirty days from the termination of such registration the owners shall make and deliver a declaration to the Registrar that the certificates of a bareboat charter registration has been surrendered to the foreign bareboat charter registry, and thereupon the Registrar, unless the registration of the ship under Division 2 of this Part is also closed, shall again deliver to owners the certificate of registration which has been surrendered to him in terms of section 22S(1)(a) of this Act; and

(c) within thirty days from the termination of such registration the owners shall deliver to the Registrar a transcript or an extract of register showing that the bareboat charter registration has been cancelled.

Regulations 22Y. Regulations made under this Act shall apply to vessels registered under this Division with such amendments or additions, and to such extent, as may be determined by the Registrar after consultation with the Minister.

Amendment of Part III of Cap 64A 6. The Merchant Shipping Act is hereby amended by repealing Part III and substituting the following:

PART III – INTERNATIONAL MARITIME CONVENTIONS

International maritime conventions 47.(1) Subject to this Act, the Safety Convention, the Load Line Convention, the Tonnage Measurement Convention, the Collisions Convention and the Limitation of Liability Convention shall have the force of law in Tuvalu.

(2) Upon notice being given by the Minister in the Gazette the STCW Conventions shall have the force of law in Tuvalu.

Regulations 48.(1) Regulations made under this Act may make provision for the implementation of any or all of the Conventions referred to in section 47 of this Act.

Penalties (2) Regulations made under this Act may provide for:-

(a) the payment of fees; and

(b) penalties for failure to observe or comply with requirements of any of the conventions referred to in section 47 of this Act.

Transitional 49. For the avoidance of doubt, where any of the International Conventions referred to in section 47 of this Act has been purportedly brought into effect by regulations made under the Act, then that Convention shall be deemed to have been given the

force of law from that date, and all actions taken pursuant to the terms of that Convention shall be deemed to have been validly taken, and any such regulations shall be deemed to have been validly promulgated.

Amendment of s.84
of Cap 64A

7. Section 84 of the Merchant Shipping Act is amended by inserting after the word “agreement” in paragraph (a), the following:

“including a requirement that the agreement receive the approval of the Minister:”.

Amendment of s.139
of Cap 64A

8. Section 139 of the Merchant Shipping Act is amended by repealing subsection (1) and substituting the following:-

“(1) The Minister may, by, notice, appoint surveyors of ships for the purposes of this Act, from societies which are members of the International Association of Classifications Societies”.

Amendment of
Schedule 1 of Cap
64A

9. Schedule 1 of the Merchant Shipping Act is hereby amended by:

(1) inserting after the word “length” and its definition the following:-

“Limitation of Liability Convention” means the International Convention relating to the Limitation of the Liability of the Owners of Sea-Going Ships, signed at Brussels on 10th October 1957.

(2) inserting after the word “ship” and its definition, the following:-

“STCW Convention” means the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers 1978.”

I certify that this is a correct copy of the Bill passed by the Parliament of Tuvalu on the 17 December 1991.

A Ielemia
Clerk of Parliament

I certify that this Bill is in order for the assent of the Governor-General as Head of State.

14 January 1992

Y P Id
F P Teo
Acting Attorney General

Published by the exhibition at the Public Office of the Government this 14 day of January 1992.

ilei
Acting Secretary to Government



MERCHANT SHIPPING (AMENDMENT ACT No.2) ACT 2004

(Act 2 of 2004)

I assent

Faimalaga Luka OBE
GOVERNOR – GENERAL

Dated 1st April 2004

An Act to amend the Merchant Shipping Act 1991 to make provisions for the registration of foreign vessels and for connected purposes herewith.

(Commencement: 1st April, 2004)

ENACTED by Parliament of Tuvalu -

- | | |
|-----------------------------|---|
| Short title | 1. This Bill may be cited as the Merchant Shipping (Amendment No.2) Act 2004. |
| Commencement | 2. This Act shall come into force on such date as the Minister may appoint by notice. |
| Amendment of s.8 of Cap 64A | 3. Section 8 of the Merchant Shipping Act is hereby amended by -

(1) inserting the following new paragraph (d) of subsection (2)

“(d) is owned by such other person or any legal entity having the legal capacity to own a vessel as the Minister may, by regulations prescribe,”

(2) inserting the following new subsection (6) after subsection (5)

“(6) Notwithstanding the provisions of section 141 of |

the Merchant Shipping Act, the Minister may in addition make regulations prescribing all matters incidental to the registration of foreign vessels and in particular for prescribing –

- (i) the extent of the ownership of a ship or class of ships eligible to be registered under this Act; and
- (ii) the proper administration and management of the registration of ships owned by any persons other than a citizen of Tuvalu; and
- (iii) the appointment of a person or a corporation not registered in Tuvalu to administer the registration of foreign vessels”.

MERCHANT SHIPPING (AMENDMENT No.2) Act 2004
(Act 2 of 2004)

EXPLANATORY MEMORANDUM

(This Memorandum is not part of the Bill)

The purpose of the Bill is to amend the Merchant Shipping Act 1991 to extend the registration of ships in Tuvalu to include foreign vessels registration by corporation not registered in Tuvalu or by any person who is not a citizen of Tuvalu. The amendment extends the power of the Minister to make Regulations with regards to foreign vessel registration and any other matter incidental thereto.

I certify that this is a correct copy of the Bill passed by Parliament on the 26th day of March 2004.

Lily Tagisia Faavae
Acting Clerk of Parliament

I certify that this Bill is in order for the Governor-General's assent as Head of State

Iakoba T Italeli
Attorney-General

Published by exhibition at the public office of the Government this 1st day of April 2004.

Panapasi Nelesone
Secretary to Government



GOVERNMENT OF TUVALU

LN: /04

MERCHANT SHIPPING (REGISTRATION OF FOREIGN VESSELS) REGULATIONS 2004

In exercise of the powers conferred by section 3(2) of the Merchant Shipping Act 1987, as amended by the Merchant Shipping (Amendment No.2) Act 2004, the Minister makes the following regulations –

1. Short Title

- (1) These Regulations may be cited as the Merchant Shipping (Registration of Foreign Vessels) Regulations 2004.
- (2) These Regulations shall be deemed to come into effect retrospectively on the fifth day of May 2004.

2. Interpretation

All words and phrases defined in the Act shall bear the same meaning in these Regulations unless the context otherwise requires-

- (a) “Act” means the Merchant Shipping Act 1987 and any amendment thereof.
- (b) “Agent” means an agent appointed under regulation 3(2).
- (c) “Foreign Vessel Administrator” means the Tuvalu Registration of Foreign Vessel Administrator appointed under regulation 3(1).
- (d) “Foreign trade” means trade between Tuvalu and a foreign country or between one foreign country and another and includes transportation of goods between the ports of Tuvalu and ports of foreign countries and between the ports of one foreign country and another.
- (e) “Minister” means the Minister responsible for the Registrar of Ships and Seafarers within the meaning of the Act.
- (f) “Owner” means the owner, managing owner, part owner, and the agent of a vessel. The “owner” if a person is not a citizen of Tuvalu or in the case of a company is not a registered company in Tuvalu.
- (g) “Prescribed fee” means the fee specified in the Schedule to these Regulations;
- (h) “Registrar of Vessels” or “Registrar” means the Registrar of Ships referred to in section 5 of the Act.

- (i) “Vessel” means a sea-going ship of any type, class, size or weight engaged in any kind of trade, service or international maritime activity, including pleasure vessel.

3. Establishment of Tuvalu Registration of Foreign Vessel Administration

- (1) There is hereby created Tuvalu Registration of Foreign Vessel Administration to be headed by the Foreign Vessel Administrator who shall be appointed by notice by the Minister after consultation with Cabinet.
- (2) The Registrar, after recommendation from the Foreign Vessel Administrator, may from time to time appoint such persons, as he may think fit, as agents.
- (3) The Foreign Vessel Administrator or his or her agent is authorized-
 - (a) to issue all such licenses, certificates or other documents as are necessary or proper for carrying out the purposes of these Regulations or of any international convention to which Tuvalu is or may become a party;
 - (b) to suspend or to revoke any license, certificate, permit or document issued under the Regulations if their provisions are violated; and
 - (c) to operate a Register to be known as the Register of Foreign Vessel which shall be kept in an office at the place where the Foreign Vessel Administrator is located and also at the homeport.
- (4) The Registrar of Vessels, the Registrar of Seamen and the Foreign Vessel Administrator or an agent shall not be liable to damages or otherwise for any loss accruing to any person by reason of any act done or default by them in their official capacity.

4. General provisions

- (1) No vessel engaged in foreign trade shall be documented under the laws of Tuvalu or be accorded the rights and privileges of a Tuvalu vessel unless such vessel shall be registered in accordance with the provisions of these Regulations.
- (2) The homeport of every vessel so registered shall be Funafuti, and the homeport shall be shown on the Certificate of Registry.
- (3) A vessel registered in accordance with these Regulations shall be entitled to fly the Tuvalu flag.

5. Vessel eligible to be documented and re-documented

- (1) The following classes of vessels shall be eligible to be documented or re-documented-
- (a) a vessel as defined in regulation 2(i);
 - (b) a vessel referred to in paragraph (a) of sub regulation (1) of this regulation shall not be eligible for initial documentation or re-documentation if, on January 1 of the year in which initial documentation or re-documentation is sought, such vessel is over fifteen years of age, computed from completion of first construction;
 - (c) the Foreign Vessel Administrator may document or re-document a vessel of over fifteen years of age where-
 - (i) the vessel meets all other applicable requirements; and
 - (ii) it has been satisfactorily demonstrated that there is a genuine need for such waiver.
 - (d) a vessel engaged solely in domestic commerce shall not be documented under the provisions of these Regulations.

6. Registration fees

- (1) The owner of a vessel shall pay the prescribed fee upon first registration and an annual fee.
- (2) The Minister, on the recommendation of the Foreign Vessel Administrator and after consultation with the Registrar, may by notice amend the prescribed fee.

7. Annual tonnage tax

- (1) The owner of a vessel shall pay the prescribed fee as an annual tonnage tax on his or her vessel on the anniversary of the date of its registration.
- (2) If the owner fails to pay the tonnage tax as provided under sub-regulation (1), the Foreign Vessel Administrator or the Registrar may cancel the Certificate of Registry of the vessel with respect to which such tax has not been paid.
- (3) An unpaid tonnage tax and any other charges including penalties owing under these Regulations (not exceeding 10,000 dollars) due to the Foreign Vessel Administrator shall constitute a maritime lien on the vessel and such lien shall have priority over all others save those for wages and salvage.

8. Title of vessel's documents

The vessel's document shall be called the "Certificate of Registry".

9. Conditions precedent to issuance of Permanent Certificate of Registry

- (1) An application for permanent registration of a vessel under these Regulations shall be submitted to the Foreign Vessel Administrator or the Registrar who may issue a permanent Certificate of Registry for the vessel provided that the owner furnishes satisfactory proof to the issuing officer-
 - (a) as to the vessel's ownership;
 - (b) that any foreign marine document for the vessel has been surrendered with the consent of the government that issued it or has been legally cancelled;
 - (c) that the vessel, and in the case if it is over fifteen years old, has passed an inspection report and meets the highest classification requirements of one of the Classification Societies under regulations 18(1);
 - (d) that the owner has paid to the Administrator or his or her designee a sum equal to the initial registration fee;
 - (e) that the markings of name, official number, homeport and draft required by these Regulations have actually been made; and
 - (f) certificate of measurement has been issued.
- (2) There shall be no documents granted or papers issued to a vessel until all applicable provisions of these Regulations have been complied with.
- (3) Without prejudice to the provisions of the Penal Code or any other law any person who wilfully and with intent to defraud destroys makes or concurs in making any false entry in or omits or alters or concurs in omitting or altering any particulars under these regulations shall be liable to a fine of \$1000, and in the case of a continuing offence, to further fine of \$100 for each day, subsequent to the days on which he is convicted, during which the offence continues.

10. Oaths

- (1) In order to document a vessel, the owner shall take an oath declaring the name of the vessel, its net tonnage or tonnages, the place where built, the date when built, the name and residence of any other owner and his citizenship, each owner's proportion, and the name of the affiant and his citizenship.
- (2) The oath shall be taken before a notary public or an officer authorized to administer oaths pursuant to the Oaths and Statutory Declarations of the Laws of Tuvalu or by laws of the place where the oath is administered.
- (3) The names of the persons owning shares in an incorporated company owning such vessel need not be stated. The oath of any other person interested and concerned in the vessel shall not be required. An agent or attorney who

purchases any vessel shall take oath as to the ownership of the vessel and that he is the agent or attorney for the owner and in such capacity has made such purchase in good faith.

- (4) If the document of a vessel is lost or destroyed, the Master, or other person in command, may take the following oath at or nearest to the port where the vessel is first located after such loss or destruction before any person as prescribed in sub regulation 2 of this regulation:

“I, (insert name of the person swearing) being Master or in command of the (insert type of vessel) or vessel called the (insert name of the vessel) Official No. (insert No.) owned by (insert name of the owner) of (insert domicile of the owner) do swear (or affirm) that the said vessel has been, as I verily believe, registered according to the law of Tuvalu by the name of (insert again name of vessel), and that a Permanent (or Provisional) Certificate of Registry bearing No. (insert No. of lost Certificate) was issued for such vessel pursuant to the laws of Tuvalu at (insert date of issuance of lost certificate), which certificate has been lost (or destroyed); and that the same, if found, and within my power, will be delivered up to the Foreign Vessel Administrator.”

- (5) Where an oath is taken in the foregoing form, the officer or person administering such oath shall grant to the vessel a temporary Provisional Certificate of Registry and insert therein that it is issued in lieu of the one lost or destroyed. The officer or person shall forthwith send to the Foreign Vessel Administrator a written notice, accompanied by a copy of the oath, advising that such oath has been taken and such temporary Provisional Certificate issued. Upon receipt of such notice the Foreign Vessel Administrator, upon being satisfied that the vessel is entitled to a Certificate of Registry, may grant a new Certificate of Registry, identical with that which was lost or destroyed. As soon as practicable after the issuance of such a Certificate of registry, the temporary Provisional Certificate hereinbefore referred to must be surrendered to the Foreign Vessel Administrator.

11. Forms of documents

- (1) The Foreign Vessel Administrator or his or her duly authorized agent shall prescribe and furnish forms of Provisional and Permanent Certificate of Registry.
- (2) The Foreign Vessel Administrator may prescribe endorsements that may be made on vessel documents from time to time with or without issuance of a new document or surrender of the old document.

12. Numbering of Registry Certificates

- (1) The Foreign Vessel Administrator or his or her duly authorized agent shall progressively number the Certificates of Registry granted by him or her beginning anew at the commencement of each year and shall record them in a book kept for that purpose in the office at the place where the Foreign Vessel Administrator is located and at the homeport. He or she shall also retain permanently copies of all such documents issued by or surrendered to him or her.
- (2) The Foreign Vessel Administrator's office and the homeport office in Funafuti shall maintain all of the following documents-
 - (a) certificates of permanent and provisional registry and licences;
 - (b) bill of sale and other instruments of conveyance of vessel;
 - (c) mortgages of vessel;
 - (d) assignments of mortgages; and
 - (e) all other documents relating to a vessel which are entitled to be recorded.

13. Use of Certificate of Registry

- (1) The Certificate of Registry shall be used only for the lawful navigation of the vessel.
- (2) The Certificate of Registry shall not be subject to detention by reason of any title, lien, charge or interest whatsoever had or claimed by an owner, mortgagee or another person to, on or in the vessel.
- (3) Except as otherwise provided therein, regulation 10(4) shall apply where the Certificate of Registry of a Tuvalu vessel is mislaid, lost or destroyed.
- (4) The owner of a Tuvalu vessel may make written application to close its registry if there is no:
 - (a) unsatisfied mortgage entered in its register;
 - (b) unpaid fees under these Regulations with respect to the vessel; and
 - (c) outstanding claims of the master or seamen of the vessel in respect of wages which have been notified to the Foreign Vessel Administrator or the agent.
- (5) The application shall specify the name of the vessel, the intended port and country or registry (if applicable) or otherwise the reason for the closure. On receipt of the application, and satisfied of the matters mentioned above, the Foreign Vessel Administrator or the Agent shall close the registry of the vessel and make an entry thereof in the register.

14. Names, numbers and marks on vessel

- (1) Every registered vessel shall have her name marked upon each bow and upon the stern. The homeport of vessel shall also be carved upon the stern. These names shall be painted or gilded, or consist of cut or carved or cast Roman letters in light colour on a dark background, or in a dark colour on a light background, secured in place and distinctly visible. The smallest letter used shall not be less than one hundred millimetres in height.
- (2) The Foreign Vessel Administrator or his or her agent may prescribe a system of numbering registered vessel. The designated number of each vessel shall be carved deeply or otherwise marked permanently on her main beam.
- (3) The draft of every registered vessel shall be marked on each side of her stem and upon the sternpost, in metres or in decimetres, in either Arabic or Roman numerals. The bottom of each numeral shall indicate the draft to that line.
- (4) Upon initial registration of a vessel, the Foreign Vessel Administrator shall assign to the vessel an official number.

15. Change in name of vessel

- (1) The Foreign Vessel Administrator may change the name of a Tuvalu vessel on application of the owner and the payment of the prescribed fee. In the event of change of the vessel name the Foreign Vessel Administrator shall issue a new Certificate of Registry to the owner.
- (2) The Foreign Vessel Administrator shall, in consultation with the Registrar of Vessel, establish necessary Rules and procure necessary evidence as to age, condition, where built, and pecuniary liability of the vessel so as to prevent injury to public or private interests. The person desiring the change of name shall pay the prescribed of procuring evidence.
- (3) If the name of a Tuvalu vessel is changed by any device or contrivance with intent to deceive as to its true name or character such vessel shall be liable to be struck off from the Register.

16. Inspection of document

Any officer designated by the Foreign Vessel Administrator, or who within Tuvalu is concerned in the collection of government revenue, may at all times inspect the Certificate of Registry and tonnage tax receipt of a vessel of Tuvalu. A Master who fails to exhibit the same, when required by such officer, shall be liable to a penalty of one hundred dollars (\$100), and if his failure is willful shall be liable to a penalty of not more than one thousand dollars (\$1,000) or imprisoned for not more than one year, or both.

17. Transfers and Transmissions

- (1) The ownership of registered vessel shall be transferred by a bill of sale followed by the delivery of the vessel to the purchaser.
- (2) The execution by the purchaser of a protocol of delivery and acceptance shall be deemed sufficient evidence that the vessel has been delivered to the purchaser.
- (3) The signature on the bill of sale and the protocol of delivery and acceptance shall be authenticated by a notary public or a head office agent in the place where such documents are issued before they can be registered at the head office.
- (4) The registration of the title to the vessel at the head office shall be necessary to complete the vessel's registration and the permanent registration of a mortgage thereon.
- (5) The owner of a vessel may execute a mortgage as security for a loan or other valuable consideration or to meet any lawful obligation, present or future.
- (6) The mortgage, duly executed by the owner or his or her authorized representative, shall be registered at head office in order to create *in rem* rights against the vessel.
- (7) The deed of the mortgage may be executed in the form prescribed by the Foreign Vessel Administrator made hereunder and shall contain the following information-
 - (a) names and addresses of the mortgagor and the mortgagee;
 - (b) maximum amount secured by the mortgage, including (in addition to the capital) all interest accrued, costs, collection expenses, any amounts resulting from currency fluctuations and other sums agreed between the parties;
 - (c) maturity dates of both capital and interest or the manner of determining these dates, unless the mortgage has been executed as security for obligations repayable on demand or as security for future obligations or for obligations which have not arisen at the date of execution of the mortgage;
 - (d) rate of interest payable (in cases where the parties have agreed on the payment of interest), or the manner of determining such rate of interest;
 - (e) full description of the vessel, including its tonnage, dimensions, registrations number and radio call sign;
 - (f) any other provisions that may be agreed between the parties.

- (8) The signature(s) on the deed of mortgage shall be authenticated in like manner as provided under sub-regulation (3) before the deed can be registered at the Head Office.
- (9) The mortgage deed may stipulate that the mortgagee may proceed to the private sale of the vessel in the event of default by the mortgagor.
- (10) (a) A vessel which is subject to a registered mortgage in its previous registry shall deliver the mortgagee's written consent to the transfer of flag not later than sixty calendar days after its provisional registration with the Foreign Vessel Administrator. A notary public shall notarise such document.
 - (b) The mortgagee's written consent, duly notarized, shall also be required for the issue of new navigation licences due to the transfer of ownership, or the change of name of the vessel or its owner, as well as for the vessel's deregistration.

18. Survey and safety

- (1) Surveyors of vessel are appointed under the Merchant Shipping (Amendment) Act 1991.
- (2) Every vessel shall be surveyed or inspected in accordance with section 11 of the Act.
- (3) No Tuvalu vessel shall proceed to sea unless the required safety certificates are carried on board.
- (4) The Master of a Tuvalu vessel shall produce to the Port Officer at the port from which clearance for the vessel is sought for an international voyage the certificate required by the foregoing regulations to be in force when the vessel proceeds to sea. A clearance shall not be granted, and the vessel may be detained, until the said certificate or certificates are so produced.

19. Compliance with International Conventions and Agreements

- (1) It shall be the duty of the owner and the Master to ensure that their vessel is in compliance with the requirements of the International Maritime Organisation Conventions, the International Labour Organisation Conventions and other relevant International Instruments as may be specified under the Act.
- (2) It shall be the duty of the owner and the Master to ensure that their vessel's personnel are provided with publications, instruction booklets and manuals or other information sufficient to enable their vessel to be operated in accordance with the Conventions referred to in sub-regulation (1) of this regulation.

- (3) In the event of failure to comply with sub-regulation (1) of this regulation or any Conventions or Agreements entered into by Tuvalu before or after the commencement of these Regulations, the Registrar may suspend or cancel a vessel's Certificate of Registry and impose a monetary penalty not to exceed \$100,000, and such other conditions as may be necessary to bring about compliance with maritime or maritime-related Conventions and others which are in force, or the provisions of which are applied by Tuvalu in advance of entry into force.

20. Miscellaneous

- (1) A Tuvalu vessel shall hoist the proper national colours on entering or leaving any port.
- (2) Unless otherwise stated, any person who is convicted by a court of competent jurisdiction of a violation of any of the provisions of these Regulations or any other law in accordance with these Regulations shall, upon conviction, be liable to a fine up to the sum of \$100,000 or to imprisonment for a term not exceeding five (5) years or both.
- (3) The fees specified under Schedule 1 of these regulations shall apply to the registration of bareboat charter.

3. Amendment of section 33

Section 33 of the Merchant Shipping Act 1987 is amended by inserting subsection 5 as follows:

“(5) For the purposes of this section Court shall mean any Court of competent jurisdiction in a place where a registered mortgagee has filed legal proceedings for the disposal of a vessel or enforcement of a mortgage.”

4. Amendment of Schedule 1

Schedule 1 of the Merchant Shipping Act 1987 is amended by inserting a definition for ‘near coastal voyages’ after the definition of “near coastal trade” as follows:

“near coastal voyages” means voyages and trade within coastal waters up to 30 nautical miles from the coastlines of Tuvalu, Kiribati, Fiji, Solomon Island, Papua New Guinea, Indonesia, Malaysia, Singapore, Thailand, Cambodia, Vietnam, Philippines and Brunei.”

MERCHANT SHIPPING (AMENDMENT) ACT 2007

(Act No.5 of 2007)

EXPLANATORY MEMORANDUM
(This Memorandum is not part of the Act)

The purpose of the Act is to amend the Merchant Shipping Act 1987 to make certain retroactive corrections in the provisions for registration of foreign vessels so as to clarify the ambit of the foreign vessels eligible for registration under the Act.

I certify that this is a correct copy of the Bill passed by Parliament on the 2 day of August 2007

Lakaga Uniuni
Acting Clerk of Parliament

I certify that this Bill is in order for the assent of the Governor-General as Head of State

8 May 2007

Ese Apinelu
Acting Attorney-General

Published by exhibition at the Public Office of the Government this 3rd day of August 2007.

Panapasi Nelesone
Secretary to Government