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2007, No. 14

An Act to provide for the registration of vessels and related matters

(27 June 2007

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same as follows:

1. Short Title and commencement – (1) This Act may be cited as the Ship Registration Act 2007.

(2) This Act shall come into force on the date that it is assented to.

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

"Act" includes any regulations, rules, notices and directives made or given under that Act;
"Commercial yacht" means, a yacht engaged in trade or commerce or on charter for hire;
"Convention" means, any bilateral or multilateral treaty, convention, or agreement, to the extent to which the Cook Islands is bound and includes any understanding concluded by the Cook Islands and the government of any other country;
"Cook Islands vessel" means, a vessel registered under this Act;
"Court" means the High Court of the Cook Islands;
"Demise charter" in relation to a vessel means, the demise, letting, hire or delivery of the vessel to the charterer, by virtue of which the charterer has the whole possession and control of the vessel including the right to appoint its master and crew;
"Minister" means the Minister for the time being having responsibility for shipping;
"Owner" means, in relation to a Cook Islands vessel the registered owner;
"Prescribed" means, prescribed by regulation;
"Private pleasure craft" means any vessel used for or capable of navigation that neither carries passengers for hire nor is engaged in trade or commerce but which is used solely for the pleasure or recreational purposes of its owner or charterer;

"Provisional registration" means, a provisional registration of a vessel under section 16 and in the case of a demise charter under section 19(6);
"qualified person" means, either –
(a) a person who is resident in the Cook Islands; or
(b) an entity which –
(i) is incorporated in the Cook Islands; or
(ii) is registered or established in the Cook Islands; or
(c) a person who, being an owner of a commercial yacht or a private pleasure craft, is a current member of an organisation or other entity which is notified by the Minister in the Gazette.
"Register" means the Ships Register kept for the purposes of section 36 and includes a branch register;
"Registry" means the office of the Registrar and includes a branch registry;
"Representative person" means, a person appointed for the purposes of section 13(2)(h);
"Secretary" means the Secretary for Transport;
"ship" means every description of craft used for or capable of navigation over water but does not include a private pleasure craft or a small ship;
"small ship" means a ship of less than 24 meters in length;
"Tonnage Convention" means the International Convention on Tonnage Measurement of Ships 1969;
"Vessel" means any ship, small ship, commercial yacht or private pleasure craft whether or not under construction.

PART I
PRELIMINARY

3. Application – (1) Except as provided in subsection (2), this Act binds the Crown.

(2) Unless expressly provided or the context requires otherwise, this Act applies to –
(a) vessels owned by or on demise charter to a qualified person;
(b) the owner, master and crew of such vessels,
but, subject to subsection (3), does not apply to a government ship or the master and crew of a government ship.

(3) Regulations may prescribe the extent to which the provisions of this Act may apply to –
(a) a government ship;
(b) a vessel that is not a Cook Islands vessel;
(c) the owner, master and crew of a vessel referred to in paragraphs (a) and (b);
(d) platforms and structures used on, over or under water.

(4) This Act shall be interpreted, and all persons exercising or performing functions, duties or powers conferred or imposed by or under this Act shall act in a manner consistent with the international and regional obligations of the Cook Islands relating to shipping, maritime safety and commerce and the preservation and protection of the marine environment.

(5) The provisions of this Act, if inconsistent with a convention, may be amended, repealed and extended as may be prescribed and any such regulations may come into force either in part or whole on a date either before or after the date that they are made.

(6) For the purposes of subsection (2) and any regulations prescribed under subsection (3), a government ship means a ship –

(a) wholly owned by the Government of the Cook Islands; or

(b) chartered by and under the management and control of the Cook Islands Government.

PART 2
ADMINISTRATION

4. Administration – Subject to section 7, the Secretary shall be responsible to the Minister for the administration of this Act.

5. Powers and functions of Secretary – The Secretary shall have all the functions and powers as are conferred on the Secretary in or under this Act or as are necessary for the purposes of this Act.

6. Delegation by Secretary – (1) The Secretary may, in writing, delegate any responsibility, function or power to any other person.

(2) A person to whom a responsibility, function or power is delegated may, with the consent of the Secretary, delegate that responsibility, function or power to any other person.

(3) The performance of a responsibility, function or power by a person to whom it is delegated shall be valid and effective as if performed by the person delegating.

(4) A delegation of a responsibility, function or power under this section shall not prevent the performance of that responsibility, function or power by the Secretary.

(5) A person purporting to act under a delegation under this section shall be deemed to be acting pursuant to and consistent with such delegation unless the contrary is established.

PART 3
SHIPS REGISTRY

Administration

7. Administration of this Part – The Administrator appointed under section 8 shall be responsible for the administration of this Part.

8. Appointment of Administrator – (1) The Minister may with the approval of Cabinet enter into a contract on behalf of the Government appointing an Administrator to perform the responsibilities and functions of the Administrator under this Act and as may be provided by that contract.

(2) In the event that no Administrator has been appointed in accordance with subsection (1), references to the Administrator shall be construed as references to the Secretary.

9. Functions and powers of Administrator – (1) It shall be the function of the Administrator to –

(a) supervise and ensure the proper administration of this Part;
(b) promote the Register;
(c) provide offices, and engage services, facilities and personnel for the due administration of this Part and the promotion of the Register;
(d) undertake such other functions or services as may be agreed between the Administrator and the Government or organisation or person.

(2) The Administrator shall have all such powers necessary to perform the Administrators functions including the power to –

(a) enter into contracts for the performance or provision by any other person of those functions conferred on the Administrator under this Act;
(b) charge fees in respect of the performance and provision of services provided under this and any other Act in relation to vessels.

(3) Notwithstanding section 68 of the Ministry of Finance and Economic Development Act 1995/96, all fees charged by the Administrator to a vessel shall be the property of the Administrator.

(4) All fees charged by the Administrator shall, from the date rendered until paid, be a first charge against the vessel in the name of the Administrator.

(5) The Administrator and every officer, employee and agent of the Administrator shall not be civilly liable for any act or omission in the performance of their functions and the exercise of their powers under this Act unless they have acted in bad faith.

10. Administrator to report to Secretary - (1) The Administrator shall within 3 months after the end of each year report to the Secretary on the Administrators financial accounts and the performance of the Administrators functions under this Act.

(2) The Secretary may for good cause engage any person to provide independent verification of the Administrators report under subsection (1).

(3) The Administrator and the Secretary shall consult on the recommendations (if any) made by the person appointed under subsection (2) and where reasonable and practicable shall implement those recommendations.

11. Registrar of Ships – (1) There shall be a Registrar of Ships who shall be appointed by the Administrator with the approval of the Secretary which approval shall not be unreasonably withheld.

(2) The terms and conditions upon which the Registrar is appointed shall be determined by the Administrator.

(3) It shall be the function of the Registrar to –

(a) determine if a vessel shall be registered under this Part;

(b) properly maintain the Register;

(c) ensure that Cook Islands vessels are safe, seaworthy and properly manned in accordance with the requirements of this Act and any other Act applying to such vessels;

(d) issue or facilitate the issue of such information bulletins, certificates, licenses, approvals, exemptions and dispensations as may be required by Cook Islands vessels and their crew;

(e) require the production of such information as is necessary for the performance of the Registrars functions and administration of this Part;

(f) perform such other functions conferred on the Registrar by this Act and any other Act or as may be prescribed.

(4) The Registrar shall have all the powers necessary to perform the Registrars functions and without limiting the generality of the foregoing, the power to –

(a) specify procedures to be followed for the registration of vessels and the administration of this Part;

(b) determine, if not prescribed, the form of registers, certificates, applications, declarations, notices and other documents necessary for the registration of and other matters relating to vessels, maintenance of the Register and the administration of this Part;

(c) determine, if not prescribed, the manner in which applications, declarations and other documents necessary for the registration of and other matters relating to vessels shall be executed, attested and registered;

(d) exercise, subject to any conditions or qualifications specified by the Secretary, such powers of the Secretary as are necessary for the purpose of subsection (3)(c);

(e) issue infringement notices for infringement deficiencies and impose and collect infringement fines in the manner prescribed.

(5) In the performance of the Registrars responsibilities and functions and the exercise of the Registrars powers, the Registrar shall be responsible to the Administrator and shall be subject to any directions from the Administrator.

(6) The Registrar shall not be personally liable in respect of any act or omission when acting in that capacity unless the Registrar has acted in bad faith.

12. Delegation by Registrar – (1) The Registrar may with the approval of the Administrator, –

(a) appoint any person to be a Deputy Registrar on terms and conditions; and

(b) in writing, delegate to a Deputy Registrar or any other person, any or all of the Registrars responsibilities, functions and powers.

(2) The performance of a responsibility, function or power by a person to whom it is delegated shall be valid and effective as if performed by the Registrar.

(3) A delegation of a responsibility, function or power under this section shall not prevent the performance of that responsibility, function or power by the Registrar.

(4) A Deputy Registrar or other person to whom a responsibility, function or power is delegated shall not be personally liable in respect of any act or omission when acting in that capacity unless that person has acted in bad faith.

Registration

13. Conditions of registration – (1) Subject to section 14, a vessel shall, be entitled to be entered upon the Register if, –

(a) the vessel is or will be wholly owned by a qualified person; or

(b) the majority of the shares in the vessel are or will be owned by a qualified person.

(2) An application for registration of a vessel shall describe the vessel and contain such information as the Registrar shall require so as to determine, –

(a) the age of the vessel;

(b) the safety of the vessel;

(c) the seaworthiness of the vessel;

(d) the manning levels required for the vessel;

(e) the owners of the vessel;

(f) if the vessel is registered elsewhere, it has been or will be (in the case of provisional registration) deregistered;

(g) the surveys to be conducted and the certificates required to be issued for the vessel to comply with this Act or any other Act;

(h) subject to regulations being prescribed, the representative person in the Cook Islands for the vessel;

(i) such other matters as the Registrar may deem necessary to fulfill the Registrars functions, duties and obligations under this Act and any other Act.

(3) A qualified person shall be entitled to have a private pleasure craft or small ship entered on the register provided that the Registrar is satisfied that at the time of application it complies with any requirements prescribed under this and any other Act relating to private pleasure craft or small ships.

14. Refusal of registration – (1) The Registrar may refuse to register a vessel if, –

(a) it is a ship, it is more than 20 years old;

(b) The vessel will remain registered elsewhere;

(c) the vessel's condition is such that it is unsafe, not seaworthy, a pollution risk or in some other respect will not substantially comply with this Act or any other Act;

(d) the vessel is not in good standing because it has been engaged in contravention of a convention (whether or not the Cook Islands is a party to that convention) or the law of another State;

(e) the owners or any persons associated with the owners are not of good standing having been convicted of an offence elsewhere relating to the operation of the vessel;

(f) the vessel or the applicants for registration do not otherwise qualify for registration;

(g) registration would be detrimental to the interests of the Cook Islands.

(2) The Registrar may, subject to conditions that the Registrar may impose, grant a dispensation from compliance with a requirement for registration of a vessel if the Registrar is satisfied –

(a) that compliance is not necessary;

(b) there has been substantial compliance;

(c) there has been compliance in an alternative manner.

(3) The Minister may, if the Minister is of the opinion that registration of a vessel is detrimental to the interests of the Cook Islands, direct the Registrar in writing that the vessel not be registered or that the registration of the vessel be cancelled and the reasons therefore.

(4) If the Registrar receives a directive under subsection (4), the Registrar shall take all such steps as may be necessary to either, -

(a) prevent the vessel from being registered; or

(b) cancel the registration of the vessel in accordance with section 17.

15. Certificate of registration – (1) If the Registrar is satisfied that the application for registration should be granted, the vessel shall be entered on the Register and a certificate of registration issued in respect of the vessel.

(2) A certificate of registration shall be valid and effective until it is cancelled or expires.

(3) The issue of a certificate of registration in respect of a vessel shall have the effect of –

(a) permitting the vessel to fly the national flag and to be marked with a Cook Islands port of registry in accordance with the requirements of this Act; and

(b) the vessel having Cook Islands nationality and the Cook Islands becoming the competent authority to exercise exclusive jurisdiction and control over the vessel in accordance with the laws of the Cook Islands.

16. Provisional certificate of registration – (1) If an application for registration of a vessel does not contain all the information required by the Registrar, the Registrar may, pending receipt of that information and subject to such conditions as the Registrar may impose, enter the vessel upon the Register and issue a certificate of provisional registration if there is confirmation, –

(a) of the name of the vessel;

(b) of the identity of the owners of the vessel; and

(c) of the description of the vessel;

(d) of the tonnage and build of the vessel if the Tonnage Convention applies.

(2) A certificate of provisional registration shall –

(a) record the matters set out in subsection (1)(a), (b) and (c);

(b) issue for a period determined by the Registrar and specified in the certificate which may at any time and from time to time upon application be extended.

(3) A certificate of provisional registration shall have the same effect and validity as a certificate of registration until it is cancelled or expires. .

(4) The period of validity of a certificate of provisional registration under subsection (1) together with any extensions under subsection (2) shall not exceed 6 months.

17. Cancellation of registration – (1) The Registrar may cancel a certificate or provisional certificate of registration of a vessel and remove the vessel from the Register if the owner has applied to have the vessel removed from the Register or the Registrar is satisfied –

(a) the vessel has not, cannot or ceases to comply with this Act or any other Act;

(b) the owner of the majority of the shares in the vessel ceases to be a qualified person;

(c) the vessel ceases to be safe;

(d) the vessel ceases to be seaworthy;

(e) the vessel has become a pollution risk;

(f) the vessel ceases to be of good standing because it has been engaged in contravention of the laws of the Cook Islands or another State or a convention (whether or not the Cook Islands is a party to that convention);

(g) the owners or persons associated with the owners cease to be of good standing;

(h) the vessel remains or is or about to be registered elsewhere;

(i) information requested by the Registrar and necessary for the continued registration of the vessel has not been supplied to the Registrar;

(j) the ownership changes;

(k) fees invoiced by and due to the Administrator have not been paid;

(l) continued registration would be detrimental to the interests of the Cook Islands;

(m) any penalty imposed on the owner by the Registrar or the Court has remained unpaid for a period of more than 3 months and no appeal against that penalty is pending;

(n) any summons issued by the Court has been duly served on the owner and the owner has without justification failed to answer to that summons;

(o) the vessel has become a total loss.

(2) If the Registrar intends that a vessel be removed from the Register for the reasons set out in subsection (1) and the certificate or provisional certificate of registration be cancelled, the Registrar shall give written notice to the owner of the vessel –

(a) specifying the reasons why the vessel is to be removed from the Register;

(b) the date upon which the vessel will be removed from the Register being a date no less than 30 days from the date of service of the notice on the owner unless the reasons for the cancellation necessitates a shorter period of time (which shall not be less than 7 days after the date upon which the notice is deemed to have been received);

(c) requiring the owner to give reason before the date of removal why the vessel should not be removed from the Register and the certificate or provisional certificate of registration cancelled.

(3) If the owner fails to give any reason why the vessel should not be removed from the Register and the certificate or provisional certificate of registration cancelled or if the Registrar is not satisfied with the reasons given, the Registrar may remove the vessel from the Register and cancel the certificate or provisional certificate of registration on the date specified in the notice or any date thereafter.

(4) As soon as practicable after service upon the owner of the notice given under subsection (2), a copy of the notice (along with a copy of this section) shall be served upon every person having a registered interest in respect of the vessel and any such person may apply to the Court not later than 7 days after the date on which the notice was received for an order staying the cancellation of the vessels registration and the Court may as make such orders, impose such conditions and require such securities and undertakings as it considers appropriate in the circumstances.

(5) Where the owner applies to have the vessel removed from the Register, the Registrar shall remove the vessel from the Register subject to –

(a) proof of consent of any person having a registered interest in the vessel or, in the absence of such consent, an order of the Court;

(b) payment of all outstanding fees and charges in respect of the vessel including those for the removal of the vessel from the Register;

(c) satisfaction of any outstanding obligation in respect of the vessel under this Act or any other Act;

(d) any other matter relating to the administration and enforcement of this Act that in the opinion of the Registrar properly precludes the removal of the vessel from the Register;

(e) any order of the Court.

18. Effect of expiry or cancellation of certificate of registration – (1) A certificate or provisional certificate of registration shall cease to have effect upon the expiration of the day that its term expires or it is cancelled.

(2) Nothing in section 17 shall apply in respect of the expiry of a certificate or provisional certificate of registration.

(3) The owner of a vessel for which a certificate or provisional certificate of registration that has expired or has been cancelled shall cause the certificate to be surrendered to the Registrar.

(4) The owner and master of a vessel each commit an offence against this Act if a certificate or provisional certificate of registration that has expired or has been cancelled is –

(a) not surrendered to the Registrar;

(b) proffered or represented as being valid and current unless it is proved that all reasonable steps were taken to prevent it from being so proffered or represented.

Demise Charter Registration

19. Demise charter registration – (1) Subject to the provisions of this section, a vessel on demise charter to a qualified person may on application to the Registrar be registered under this Act on the same basis as if that person was the owner of that vessel.

(2) A vessel on demise charter may not be entered on the Register until there has been lodged with the Registrar –

(a) proof of deletion or suspension of the prior registration (if any);

(b) the consent of the owner to registration;

(c) a certified copy of the charter party.

(3) If the Registrar is satisfied that the application for registration of a vessel on demise charter should be granted, the vessel shall be entered on the Register and a certificate of registration issued in respect of the vessel which shall be valid and take effect from a date specified in the certificate until expiry of the period of the charter party or until the charter party terminates.

(4) For the purposes of subsection (3), the charterer shall within 7 working days of any change in the period of the charter party give notice to the Registrar of those changes and any certificate issued under this section shall be reissued or cancelled in accordance with that notice.

(5) Any charterer of a vessel who fails to give notice in accordance with subsection (4) commits an offence against this Act.

(6) Subject to section 16(1) and subsection (2)(b) and (c) of this section being satisfied, the Registrar may provisionally register a vessel on demise charter and issue a certificate of provisional registration in the same manner and having the same effect and duration as set out in section 16(2), (3) and (4).

(7) The registration of a vessel under subsections (3) or (6) shall have the same effect provided for in section 15(3).

(8) The Registrar may cancel a certificate or provisional certificate of registration of a vessel on demise charter –

(a) if the charter party terminates before expiry of the period of the charter party; or

(b) for the reasons provided in section 17(1) but subject to the manner provided in section 17(2), (3) and (4).

(9) Section 18 shall apply with all necessary modification to a certificate and provisional certificate of registration issued in accordance with this section and which have either expired or been cancelled and the charterer and master of the vessel shall be liable under subsection (4) of that section and in the case of the charterer, as if the charterer were the owner.

(10) If a certificate of registration is issued in accordance with this section and a mortgage or charge is recorded against the vessel in the register of prior registration, the Registrar may on application of the owner, mortgagee or charge holder -

(a) register the mortgage or charge upon the Register and if more than one in the order agreed by the persons entitled to the mortgages or charges;

(b) issue a notice of registration setting out the order of registration.

Surveys, Tonnage, Markings and National Flag Requirements in General

20. Surveys – (1) To determine if a vessel can or can continue to be registered under this Part, the Registrar may require the ship to be surveyed for a purpose and in a manner directed by the Registrar.

(2) A survey under subsection (1) shall be conducted by a surveyor appointed by the Registrar.

(3) A surveyor appointed under subsection (2) shall not be personally liable in respect of any act or omission when acting in that capacity unless the surveyor has acted in bad faith.

21. Tonnage – (1) A ship shall before it is registered and while registered have a current tonnage certificate issued by the Registrar in accordance with this Act. The Registrar shall enter that certificate upon the Register which shall, subject to subsection (2), be conclusive of the ships tonnage, build and other particulars descriptive of the ship.

(2) The Registrar may direct that a ships tonnage be re-measured in accordance with this Act if the Registrar believes that the measurement would be materially different from its existing measurement.

(3) Notwithstanding subsection (1), a certificate or other document issued by a contracting government to the Tonnage Convention for the purposes of recording a ships tonnage, build and other particulars may, subject to any regulations relating to tonnage and if the Registrar directs, be accepted for the purposes of subsection (1).

22. Markings – (1) Every vessel, shall before registration under section 15 be permanently and conspicuously marked in accordance with regulations providing for the markings of vessels and if no such regulations are prescribed, then, to the satisfaction of the Registrar.

(2) Where a vessel is provisionally registered it shall be permanently and conspicuously marked in accordance with subsection (1) as soon as is practicable after being so registered.

(3) The port of registry shall be the port of Avatiu or such other port as may be prescribed.

(4) The name of a vessel may only be changed with the approval of the Registrar.

23. National flag – (1) A vessel registered under this Act shall fly –

(a) the national flag of the Cook Islands ; or

(b) such other flag or pennant as may be prescribed.

(2) A vessel that is required to be registered under this Act but is not registered –

(a) shall not be recognized as a Cook Islands vessel; and

(b) is not entitled to any benefits, privileges, advantages or protection usually enjoyed by a Cook Islands vessel.

(3) Any law of the Cook Islands that provides in respect of Cook Islands vessels for –

(a) the payment of any fee or other charge;
(b) any liability to a fine or forfeiture;
(c) the punishment of offences committed on board a vessel or by any person belonging to a vessel,

shall be applied, dealt with and enforced in the same manner and in all respects in the case of a vessel required to be but not registered under this Act as if it were registered.

(4) The master or owner of a vessel that is not a Cook Islands vessel commits an offence who without reasonable cause does anything or causes or permits any thing to be done for the purposes of causing the vessel to appear to be a Cook Islands vessel.

(5) The master or owner of a vessel required to fly the national flag of the Cook Islands or another flag in accordance with subsection (1), commits an offence who without reasonable cause does anything or causes or permits any thing to be done for the purposes of concealing the nationality of the vessel or causing the vessel to appear not to be a Cook Islands vessel.

(6) A master or owner who commits an offence against subsections (4) or (5) is liable to imprisonment for a term not exceeding 3 years and/or a fine not exceeding $250,000 and the vessel in respect of which the offence is committed is liable to forfeiture under this Act.

Registerable Interests in Vessels

24. Registerable interests - (1) For the purposes of this Act, a registerable interest in a vessel means, -

(a) an interest in ownership;
(b) and interest in a mortgage;
(c) and interest in a charter;
(d) an interest under section 35.

(2) Only a registerable interest may be entered upon the Register.

Ownership

25. Ownership - (1) The property in a vessel shall be divided into 64 shares.

(2) A person shall not be entitled to be registered as owner of a fractional part of a share.

(3) Any number of persons not exceeding 5, may be registered as joint owners of a share.

(4) Persons registered as joint owners of a share shall be considered as constituting one person and they shall only together be capable of disposing of a share in respect of which they are registered jointly.

(5) Subject to an order of the Court, the Registrar shall not be bound to recognise any person as an owner of a vessel or a share other than the person declared and registered as the owner of that vessel or share.

26. Transfer of ownership by owner – (1) The transfer of a vessel or share by an owner shall be effected by a bill of sale which shall –

(a) contain the description of the vessel or share sufficient to identify it to the satisfaction of the Registrar; and

(b) be executed by the owner or the owner's duly authorised agent.

(2) Every person who is a transferee of a vessel or a share (including each joint owner) shall complete a declaration of transfer in the prescribed form.

(3) The person disclosed in a bill of sale as the transferee of a vessel or share shall be registered as the owner of the vessel or share if the Registrar is satisfied that –

(a) a correctly completed declaration of transfer has been received;

(b) the vessel is entitled to be or remain registered.

(4) Subject to subsection (3), the Registrar shall –

(a) endorse on a bill of sale the date and time that it is received;

(b) if more than 1 bill of sale is received, register the owners of the vessel or share in the order that the bills of sale are received; and

(c) issue a new certificate of registration.

27. Transfer by operation of law - (1) The transfer of a vessel or share by operation of law shall be effected by a declaration of transmission in the prescribed form which shall –

(a) contain the description of the vessel or share sufficient to identify it to the satisfaction of the Registrar; and

(b) be executed by the person to whom the vessel or share is to be transferred.

(2) The person disclosed in a declaration of transmission as the transferee shall be registered as the owner of the vessel or share if the Registrar is satisfied that –

(a) a correctly completed declaration of transmission has been received; and

(b) the vessel is entitled to remain registered; and

(c) every person having a registered interest in the vessel has consented to the transmission; and

(d) sufficient proof of transmission has been received.

(3) Subject to subsection (2), the Registrar shall –

(a) endorse on a declaration of transmission the date and time that it is received;

(b) if more than one declaration is received, register the owners of the ship or share in the order that the declarations are received; and

(c) issue a new certificate of registration for the vessel.

Mortgages

28. Mortgages - (1) A vessel or a share shall be capable of being made a security for the repayment of a loan or the discharge of any other obligation by way of mortgage.

(2) A mortgagee shall be entitled to register a mortgage and the Registrar shall register a mortgage in the manner prescribed.

(3) A mortgage shall be registered on the date and time that it is accepted for registration by the Registrar at Rarotonga and shall rank in priority over every other mortgage or interest registered after that date and time not withstanding the dates of execution and not withstanding any express, implied or constructive notice.

(4) A registered mortgage shall not be affected by any act of bankruptcy or insolvency committed by the mortgagor after the date of registration of the mortgage and such mortgage shall be preferred to any right, claim, or interest in the vessel of the other creditors and any trustee or assignee in their behalf.

(5) A mortgagee shall not by reason of the mortgage be deemed to be the owner of the vessel, nor shall the mortgagor by reason of the mortgage be deemed to have ceased to be the owner of the vessel.

(6) If a mortgage is registered, the Registrar shall not, except in accordance with an order of the Court, –

(a) register any subsequent registerable interest without the prior written consent of the mortgagee;

(b) cancel the registration of the vessel except in accordance with section 17(4);

(c) register a transfer of ownership in the vessel without the prior written consent of the mortgagee.

(7) For the purposes of subsection (3), a mortgage shall have been accepted and registered when –

(a) either the mortgage so made is lodged with or notice in the prescribed form of its particulars signed by the mortgagor is transmitted to the Registrar; and

(b) particulars of the mortgage are entered in the Register; and

(c) there is endorsed on the mortgage or notice the fact of the entry having been made together with the date and time of the making of the entry.

(8) Where notice of a mortgage is transmitted to the Registrar under subsection (7)(a), the mortgagee shall within 14 days of transmitting the notice, cause the original notice and the mortgage so made to be lodged with the Registrar.

29. Variation of mortgage priorities - The priority between two or more registered mortgages may be varied by memorandum of priority executed by each of the mortgagees and registered in the prescribed manner .

30. Variation of mortgage – (1) The parties to a registered mortgage may vary the terms of the mortgage by memorandum of variation, executed by each of them and registered in the prescribed manner.

(2) A memorandum of variation shall not be binding on any other mortgagee or mortgagor unless consented to by them in writing.

31. Transfer of mortgages – (1) The transfer of a mortgage of a vessel or share may be effected by memorandum of transfer executed by the mortgagee and the transferee and registered in the prescribed manner.

(2) The transfer of a mortgage of a vessel or share by operation of law shall be effected by a declaration of transmission executed by the transferee who shall be registered as the mortgagee of the vessel or share, if the Registrar is satisfied that –

(a) a correctly completed declaration of transmission has been received; and

(b) every person having a registered interest in the vessel has consented to the transmission; and

(c) sufficient proof of transmission has been received.

32. Discharge of mortgage – (1) A registered mortgage may only be discharged by –

(a) a memorandum of discharge executed by the mortgagee; or

(b) an order of the Court.

(2) A memorandum of discharge shall be in the prescribed form and shall be registered in the prescribed manner.

33. Mortgagees power of sale – (1) If a mortgagor defaults under the mortgage, the mortgagee shall, subject to subsection (2), have the absolute power to sell the ship and give effectual receipts for the purchase money.

(2) If two or more mortgages are registered in respect of the same ship, a mortgagee shall not sell the ship without –

(a) the written consent of each prior mortgagee; or

(b) an order of the Court.

(3) A mortgagee intending to exercise the power of sale shall give notice of that intention to the Registrar in the prescribed manner who shall give notice of that intended sale to each subsequent mortgagee.

Demise Charters

34. Demise charters – A demise charter of a Cook Islands vessel may be registered by the charterer and the Registrar shall register the charter in the prescribed manner if, -

(a) the owner and every other person having a registered interest consents in writing; and

(b) a certified copy of the charter is received by the Registrar.

Other Registerable Interests

35. Other registerable interests – The following interests may only be registered subject to the consent of all other persons having a registered interest in respect of the vessel or in accordance with a final order of the Court –

(a) an interest arising out of or relating to ownership of a vessel or a share;
(b) an interest arising out of or relating to possession of a vessel;
(c) a title reservation relating to the sale of a vessel;
(d) an interest including a priority interest arising out of or relating to any mortgage of a vessel;
(e) any other interest prescribed by regulation.

The Register

36. Ships Register - (1) For the purposes of this Act, there shall be a Cook Islands Ships Register on which shall be entered all matters required or permitted by this Act.

(2) The entry upon the Register shall be public notice of those registerable interests.

(3) The Register shall be kept at the principal place of business of the Administrator in the Cook Islands and any part of it may be kept at such other places as the Registrar directs.

37. Seal and signature of Registrar - (1) There shall be a seal of the Cook Islands Ship Registry in a form determined by, and under the control of, the Registrar.

(2) All courts and persons acting judicially shall take judicial notice of the seal and shall presume that it was duly affixed.

(3) Where the seal is affixed to a document and a signature on the document purports to be the signature of the Registrar or of a person empowered to sign the document by virtue of a delegation, it shall be presumed until the contrary is proved, that the signature is that of the Registrar or the person so empowered, as the case may be.

38. Inspection of Register - (1) A person may inspect the Register during the hours when the Registry is open for business.

(2) A person is entitled to obtain a copy or an extract from any registerable interest entered in the Register or document associated with any such entry.

39. Correction of errors in Register - (1) The Registrar may correct, or cause to be corrected, any entry, error, defect or mistake in the Register.

(2) The Court may on application by the Registrar or any person having an interest in a vessel –

(a) decide any question that is necessary or expedient to decide in connection with the rectification of the Register;(b)
(b) make such order as it thinks fit directing rectification of the Register.

(3) The Registrar on receiving a copy of the order made under subsection (2) shall rectify the Register accordingly.

40. Registrar's discretion – (1) If anything required to be done –

(a) cannot be done or is omitted to be done at or within the time required by this Act; or

(b) is done irregularly in manner or form; or

(c) is insufficiently provided for by or under this Act,

the Registrar may, extend that time for the thing to be done, or validate anything so done irregularly, or make such other provision for the doing of that thing as the Registrar thinks fit.

(2) No registration or other act by the Registrar shall be declared void by reason of any irregularity in the application for registration or failure to comply with the provisions of this Act or by reason of any mistake in the manner or form of the registration or act, if there was otherwise substantial compliance with the requirements of this Act.

PART 4
PENALTIES

41. Proceedings – (1) A prosecution for an offence against this Act shall be commenced by way of information.

(2) No prosecution may be commenced except by –

(a) the Registrar;

(b) the Secretary; or

(c) a person authorised in that behalf by the Secretary.

42. Proceedings on forfeiture – (1) Where a vessel is liable to forfeiture under section 23(6), the Secretary or a person authorised by the Secretary may seize and detain the vessel and the Minister may apply to the Court for an order that the vessel and its equipment be forfeited to the Crown.

(2) Upon application by the Minister under subsection (1), the Court may order the vessel and its equipment be forfeited to the Crown.

(3) Anything forfeited under this section becomes the property of the Crown and may be sold or otherwise dealt with as the Minister thinks fit.

(4) The owner or master of a vessel detained under this section who resists detention or causes or permits that vessel to go to sea or fails to take reasonable steps to prevent that vessel from going to sea before it is released from detention by a competent authority commits an offence against this Act.

(5) The Secretary or person authorised by the Secretary shall not be liable either civilly or criminally for the seizure or detention of a vessel if the Court, in determining any proceeding relating to the vessel or seizure or detention, is satisfied that there were reasonable grounds for the seizure or detention but otherwise the Court may award costs and damages to any party aggrieved and make such other order as it thinks just.

43. False statements – (1) Every person commits an offence against this Act who –

(a) makes or presents to a person having duties or functions under this Act any oral or written statement knowing that statement to be false or misleading in any material particular; or

(b) by means of a statement or document that the person knows to be, or to contain information that is, false or misleading in any material particular, causes or attempts to cause a person having duties, functions or powers under this Act to do or refrain from doing any act or thing in the performance or exercise of those duties, functions or powers.

(2) For the purposes of the application of this section to a body corporate -

(a) a statement made, presented or otherwise used by a person acting on behalf of the body corporate shall be deemed to have been made, presented or otherwise used by the body corporate; and

(b) the knowledge of any person employed by or concerned in the management of the body corporate shall be deemed to be the knowledge of the body corporate.

44. Making false documents – Every person commits an offence against this Act who –

(a) makes any register book, certificate, bill of sale, instrument of mortgage or other document knowing the same to be false or misleading in any material particular; or

(b) forges or fraudulently alters any such document, or assists any other person to do so, or procures the forgery or fraudulent alteration of any such document.

45. Liability of officers of bodies corporate – Where a body corporate is convicted of an offence against this Act, every director and every person concerned with the management of the body corporate shall be guilty of a like offence if it is proved that the act or omission that constituted the offence took place with that persons authority, permission or consent, or that the person knew or should have known was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

46. Admissibility of documents – (1) A document declared by any provision of this Act to be admissible in evidence, is on mere production, admissible in evidence in any proceedings as prima facie evidence of -

(a) any matter stated in the document in pursuance of this Act or in pursuance of any duty or function under this Act; and

(b) the fact that the document was signed by the person by whom it purports to be signed.

(2) The person having custody of any document referred to in subsection (1) shall upon payment of a reasonable fee by the applicant, supply to the applicant a copy of or an extract from the document, certified by writing signed by that person.

(3) The Registrar or a Deputy Registrar may –

(a) supply copies of or extracts from any entry in the Register or of any document forming part of or associated with the Register;

(b) certify any such copy or extract in writing signed and sealed with the seal of the Registrar.

(4) A document purporting to be a copy or an extract supplied under subsections (2) or (3) is admissible in evidence.

47. Penalties - Every person who commits an offence against this Act or any regulation made under this Act for which no other penalty is prescribed shall on conviction be liable to a fine not exceeding $250,000, and, if the offence is a continuing one, to a further fine not exceeding $5,000 for every day after the first day on which the offence has continued.

48. Infringement deficiencies, notices and fines – (1) For the purposes of this section, infringement deficiencies in relation to a vessel means, deficiencies in the standards required for safety, protection of the environment against pollution, security and such other matters as may be prescribed.

(2) Regulations may be prescribed –

(a) defining the standards so required and to be maintained;

(b) for the form and manner of issue of infringement notices by the Registrar where an infringement deficiency exists;

(c) for the imposition and collection of infringement fines from the owner or charterer of a vessel where infringement deficiencies are found;

(d) for the time within, manner and procedure by which a notice of dispute to an infringement notice may be lodged with the Registrar for the Registrar's determination;

(e) for appeals to the Court against a determination by the Registrar.

(3) An infringement fine prescribed for an infringement deficiency shall not exceed $30,000 and if the infringement is a continuing one shall not exceed $5000 for each day the infringement continues.

PART 5
MISCELLANEOUS

49. Giving of notices - (1) Except as otherwise specified under this Act, where any notice Court proceeding or other document is to be given, served on, or furnished to any person (in this section referred to as the first person) or in respect of any vessel, that notice proceeding or other document, as the circumstances so require, may be-

(a) given personally to the first person or another person authorised to act on behalf of the first person; or

(b) sent by registered post to the first person or another person authorised to act on behalf of the first person at their usual or last known place of business or abode; or

(c) sent to the first person, or another person authorised to act on the person's behalf, at their usual or last known address; and, for the purposes of this paragraph,-

(i) the term "electronic transmission" means any transmission of information sent electronically; and includes any transmission sent by fax, electronic mail, or electronic data transfer;

(ii) the term "address" means a fax number or an electronic mail address.

(2) Any notice proceeding or other document so sent by registered post shall be deemed to have been given, served, or received 7 days after the date on which it was posted, unless the person to whom it was posted proves that, otherwise than through that person's fault, the notice proceeding or document was not received.

(3) Any notice proceeding or other document so sent by electronic transmission shall be deemed to have been given, served, or received at the time of transmission, unless the person to whom it was transmitted proves that, otherwise than through that person's fault, the notice proceeding or document was not received.

(4) For the purposes of this section, a notice, proceeding or other document given or sent to a representative person in accordance with subsection (1), shall be deemed to also be the giving or sending of that notice, proceeding or other document to the first person.

50. Regulations – (1) The Queen's Representative may make regulations, prescribing all matters required contemplated or permitted by this Act to be prescribed or expedient necessary or convenient to be prescribed for carrying out or giving effect to this Act and its due administration.

(2) Without limiting the generality of subsection (1), regulations may be made for and in relation to –

(a) the administration of the Registry;

(b) the registration of registerable interests;

(c) the requirements and conditions (additional to the requirements and conditions set out in this Act) for the registration of commercial yachts;

(d) the requirements and conditions for the registration of platforms and structures used on or over water;

(e) extending or modifying the functions, duties or powers of the Administrator or Registrar;

(f) the form and content of documents contemplated or required by this Act;

(g) the appointment of a representative person in the Cook Islands in relation to a vessel for the purposes of compliance by the vessel with the requirements of this and any other Act;

(h) offences for the contravention of or non-compliance with regulations made under this Act and the imposition of penalties not exceeding $100,000 in respect of any offence and, in the case of continuing offences, the imposition of further penalties not exceeding $1000 for each day during which the offence has continued.

(3) Regulations made under this Act may come into force either in part or whole on a date either before or after the date that they are made.

51. Repeals – (1) The Shipping Amendment Act 2000 is repealed.

(2) The Ships (Registration) Regulations 2001 are revoked.

52. Savings – (1) Every vessel registered before the commencement date of this Act shall be deemed to have been registered under this Act and shall be subject to the provisions of this Act accordingly.

(2) The Register established under the Shipping Amendment Act 2000 shall continue to be the Register under this Act and every act, matter or thing done and every certificate, instrument, notice or other document issued under the enactments repealed by this Act shall notwithstanding those repeals continue in force and have effect according to their tenor as if done or issued under this Act.

(3) The agreement (as amended) dated 18th May 2000 between Her Majesty the Queen in right of the Cook Islands acting by and through the Minister of Transport and the Secretary and Maritime Cook Islands Limited (formerly known as Cook Islands Maritime & Shipping Registry Limited) pursuant to which Maritime Cook Islands Limited was engaged to provide all services reasonably required to administer, manage, operate, supervise, promote and market and Register shall, notwithstanding its entry into force and execution before the commencement date of this Act be deemed to be an appointment of the Administrator under and for the purposes of section 8.

This Act is administered by the Ministry of Transport

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