



ANALYSIS

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2000, No. 21

An Act to amend the Shipping Act 1998

(1 December 2000)

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 - (1) This Act may be cited as the Shipping Amendment Act 2000 and shall be read together with and deemed part of the Shipping Act 1998 ("the principal Act").

(2) Notwithstanding section 1(2) of the principal Act, this Act shall come into force when it receives the assent of the Queen's Representative.

2. Interpretation - Section 2 of the principal Act is amended by repealing the terms "Administration", "Corporation", and "Qualified person" and their respective definitions and inserting in alphabetical order the following definitions –

"Administrator" means, the person or company appointed by the Minister pursuant to section 42;

"Classification Society" means, a society nominated under section 14, which is a member of the International Association of Classification Societies;

"Cook Islands owned-ship" means, a ship that is either wholly or the majority of the shares in which are owned by one or more Cook Islanders or one or more permanent residents or a company incorporated under the Companies Act 1970-71;

"Foreign entity" means any entity that is not incorporated or established under the laws of the Cook Islands and if incorporated elsewhere is registered as a foreign company under the International Companies Act 1981-82;

"Qualified person" means, an international company registered under the International Companies Act 1981-82, an international trust registered under the International Trusts Act 1981-82 and an international partnership registered under the International Partnership Act 1981-82;"

3. International Conventions - Section 3 of the principal Act is amended by omitting the heading and repealing subsection (1) and substituting the following heading –

“3. International Conventions”

4. New Part - The principal Act is amended by repealing Part III and substituting the following Part -

“PART III
REGISTRATION OF VESSELS

Registration

9. Obligation to register Cook Islands-owned ships - (1) Subject to this Part, every Cook Islands-owned ship shall be registered under this Act.

(2) Where a Cook Islands-owned ship is operated by a foreign resident under a demise charter, the Registrar may, by instrument in writing, exempt the ship during the term of the charter from the requirement to be registered.

(3) Where a ship required to be registered is not registered, the owner of the ship is, in respect of each day on which the ship remains unregistered (including the day of a conviction for an offence against this subsection or any subsequent day), guilty of an offence, and, whether or not proceedings are instituted for such an offence, the ship may be detained until registration is effected.

(4) It is not a defence to a prosecution under subsection (3) that the ship required to be registered is registered under the law of a foreign country.

10. Exemptions from registration - Ships less than 15 metres in length, Government ships, fishing vessels, pleasure craft and vessels of traditional build are exempt from the requirement to be registered under section 9.

11. Ships permitted to be registered - (1) The following ships may be registered –

- (a) Cook Islands-owned ships referred to in section 10; and
- (b) ships on demise or bareboat charter as provided for in section 12; and
- (c) ships owned by a qualified person; and
- (d) ships owned by a foreign entity.

12. Demise or bareboat charter registration – (1) Where the laws of a foreign country permit a ship to be bareboat registered the Registrar may in his discretion and subject to the production and delivery of such documents as the Registrar may require register the ship, giving it the right to fly the Cook Islands flag.

(2) Subject to subsection (3), the law of the Cook Islands shall apply to all aspects of the ship's operation navigation and management during the period of registration.

(3) The law of the foreign country of the underlying registry shall apply to any ship's mortgage and related recorded instruments.

(4) At the request of any interested party, the Registrar may record any mortgage or related instrument on the Register.

(5) The bareboat registration will only be valid for the duration of the bare-boat/demise charterparty agreement. The bareboat charterer will notify the Registrar immediately whenever the relevant charterparty has been terminated or has come to an end for any reason.

(6) The Registrar in his discretion may require any relevant documentation for registration of a bareboat charterer, including, but not limited to –

- (a) the written consent of the underlying registry;
- (b) the consent of the owners of the ship;
- (c) the consent of any mortgagees of the ship; and
- (d) a copy of the bareboat charter party agreement in English.

(7) The Registrar in his discretion may permit the registration upon another registry of a bareboat charter, where the ship is already registered on the Register and may impose any conditions, as he deems necessary.

13. Application for registration - Subject to this Part, an application for the registration of a ship shall be made in accordance with this Act and regulations prescribed for the purpose.

14. Requirements of registration - (1) Before a vessel may be registered –

- (a) it shall be inspected by a surveyor at the owner's cost who shall ascertain the tonnage and issue a Tonnage Certificate, the particulars of which shall be entered in the vessel's Official Log Book;
- (b) the Registrar shall require proof of ownership of the vessel and the bill of sale or other instruments of transfer or transmission shall be sufficient evidence thereof;
- (c) the Registrar shall require proof of the vessel's seaworthiness and evidence that the vessel was built to, has been maintained, and is currently in class with an approved Classification Society at the time of the application for registration shall be prima facie evidence of the vessel's seaworthiness, but such presumption may be rebutted by a survey of hull and equipment caused to be carried out by the Registrar.

(2) Regulations may prescribe which Classification Societies are approved under this Act.

(3) An application for registration of a vessel shall be accompanied by such other information, documents and evidence as regulations may prescribe for the purpose.

(4) The Registrar may appoint in any place within, or without the Cook Islands suitably qualified persons to be surveyors to survey, measure and do all such other things as the Registrar may require in respect of ships to be registered under this Part.

15. Foreign-registered ships not registrable under this Act - (1) The Registrar shall not register a ship under this Act if it is registered under the law of a foreign country, unless otherwise provided.

(2) Where, in relation to a ship that has, at any time, been registered under the law of a foreign country, application is made for the registration of the ship under this Act, the application shall be accompanied by such evidence as the Registrar requires to establish -

- (a) that the ship is no longer registered under the law of that country; or
- (b) that steps have been taken, or are proposed to be taken, to close the registration of the ship under the law of that country on or before the registration of the ship under this Act.

16. Entry of particulars in Register - The Registrar shall register a ship by entering in the Register such particulars relating to the ship as are prescribed.

Registration Certificates

17. Grant of registration certificate - Upon the registration of a ship under section 16, the Registrar shall grant a registration certificate in respect of the ship, in the prescribed form, containing the particulars entered in the Register relating to the ship and such other matters as are prescribed.

18. Custody of registration certificate - (1) The registration certificate of a ship shall not be used except for the purpose of the lawful navigation of the ship, and shall not be subject to detention by reason of a claim by an owner, mortgagee, charterer, operator or any other person to any title to, lien or charge on, or interest in, the ship.

(2) A person having possession or control of a registration certificate shall not fail, without reasonable excuse, to deliver the certificate on demand to the person entitled to the custody of it for the purposes of the lawful navigation of the ship, or to the Registrar, a Deputy Registrar, a proper officer or any other person entitled by law to require its delivery.

(3) If, in any proceedings in respect of an offence against this section in relation to a registration certificate, the court is of the opinion that the certificate is lost, the court shall make an order to that effect and cause an office copy of the order to be served on the Registrar.

(4) In this section, registration certificate includes a provisional registration certificate.

19. Provisional Certificates - (1) If the Registrar is for any reason prevented from issuing a certificate of registration, the Registrar may in his discretion issue a provisional certificate of registration in the prescribed form.

(2) A provisional certificate shall not be issued unless an application for registration under section 13 has been made.

(3) A provisional registration certificate shall have the same effect as a registration certificate for such period after the date on which the certificate was granted as the Registrar specifies in the certificate.

20. Temporary passes - (1) Where the Registrar is satisfied that, by reason of special circumstances, permission should be granted for an unregistered ship to travel —

- (a) from a Cook Islands port to a foreign port; or
- (b) from a foreign port to another foreign port or to a Cook Islands port,

he may grant a temporary pass in respect of that ship, specifying the voyage which the ship is authorized to make and the time during which the pass remains valid, and the Registrar shall grant the pass accordingly.

(2) A temporary pass shall be in the prescribed form.

(3) A temporary pass granted in respect of a ship has, subject to the matters specified in the pass, the same effect as a registration certificate and, for the purposes of this Act and of the lawful navigation of the ship on the voyage specified in the pass, the ship shall be deemed to be registered.

21. Improper use of certificate - A person who, in relation to a ship, whether or not it is a registered ship, uses, or permits the use of, a registration certificate, provisional registration certificate or temporary pass not legally granted and in force under this Act in respect of the ship is guilty of an offence.

Identification

22. Marking of ship - (1) Every ship registered shall be marked in accordance with the regulations with marks directed by the Registrar.

(2) Subject to subsection (4), if the markings placed on a registered ship in accordance with the requirements of subsection (1) are not maintained, the owner and master of the ship are each, in respect of each day during which the markings are not maintained (including the day of a conviction under this subsection or any subsequent day), guilty of an offence punishable upon conviction -

- (a) if the offender is a natural person, by a fine not exceeding \$1,000; or
- (b) if the offender is a body corporate, by a fine not exceeding \$2,000.

(3) Subject to subsection (4), a person shall not conceal, remove, alter, deface or obliterate, or suffer any person under his or her control to conceal, remove, alter, deface or obliterate, any marking that is on a registered ship in accordance with the requirements of subsection (1).

(4) Subsections (2) and (3) do not apply in relation to anything done as authorized by the regulations or done for the purpose of escaping capture by an enemy.

23. Name of registered ship and change of name - (1) A person shall not describe a registered ship by any name other than the name by which the ship is for the time being registered.

(2) Subject to this Act, application may be made to the Registrar, in the manner prescribed, for a change in the name of a registered ship.

(3) If -

- (a) the name proposed for a ship in an application for the registration of the ship; or
- (b) the new name proposed for a registered ship in an application under subsection (2),

is a prescribed name, or a name included in a prescribed class of names, the Registrar shall disallow the name.

(4) Where the Registrar grants an application under subsection (2) -

- (a) he or she shall cause the new name to be entered in the Register and endorsed on the ship's registration certificate; and
- (b) section 22 applies in relation to the marking of the new name on the ship as if the ship had been registered by that name.

(5) Where a vessel is required to be registered and is registered upon another register, the Registrar shall not register the vessel unless -

- (a) a certificate of deletion has been issued by a Registrar of another registry; or
- (b) the Registrar is satisfied that a certificate will be issued from another registry.

Transfers, Transmissions and Mortgages

24. Interpretation - In sections 24 to 40, "ship" means a registered ship.

25. Transfer of ship - (1) Subject to section 26, a ship or a share in a ship shall be transferred by a bill of sale made in accordance with the regulations.

(2) Where a ship or a share in a ship is so transferred, the bill of sale and a declaration of transfer made by the transferee under subsection (4) shall be lodged by the transferee with the Registrar within 14 days after execution of the bill of sale or within such longer period as the Registrar, in special circumstances, allows.

(3) The Registrar shall, as soon as practicable after the lodgement by the transferee of a bill of sale relating to the transfer of a ship or a share in a ship together with a declaration of transfer, register the bill of sale by entering in the Register the name of the transferee as owner of the ship or share and shall endorse on the bill of sale the fact of the entry having been made, together with the date and time of the making of the entry.

(4) A declaration of transfer for the purposes of subsection (2) shall be made in accordance with the regulations.

(5) Bills of sale lodged under this section shall be registered in the order of their lodgement.

26. Transmission of ship by operation of law - (1) Where a ship or a share in a ship is transmitted to a person by any lawful means other than by a transfer under section 25, a declaration of transmission made by that person under subsection (3) together with such evidence of transmission as is prescribed shall be lodged by that person with the Registrar within 21 days of that transmission taking place or within such longer period as the Registrar, in special circumstances, allows.

(2) The Registrar shall, as soon as practicable after the lodgement by a person of a declaration of transmission of a ship or a share in a ship together with such other evidence of transmission as is prescribed, enter in the Register the name of that person as owner of the ship or share.

(3) A declaration of transmission for the purposes of subsection (1) shall be made in accordance with the regulations.

27. Delivery of registration certificate on transfer - (1) Where a ship or a share in a ship is transferred to a person by a bill of sale or transmitted to a person by other lawful means, the person who has possession or control of the ship's registration certificate shall deliver the certificate to the person to whom the ship or share is transferred or transmitted.

(2) Where a registration certificate is delivered to a person under subsection (1), the person shall immediately deliver the certificate to the Registrar.

(3) Where a registration certificate is delivered to the Registrar under subsection (2), the Registrar shall -

- (a) endorse the registration certificate with the particulars of change of ownership of the ship or share; and
- (b) cause the endorsed certificate to be returned to the registered agent of the ship or to such other person as the registered agent directs.

28. Mortgage of ship - (1) A ship or a share in a ship may be made a security for the discharge of an obligation by way of a mortgage under this Act.

(2) The instrument of such a mortgage shall be made in accordance with the regulations.

(3) As soon as practicable after the lodgement of a mortgage instrument so made, the Registrar shall register the mortgage by entering particulars of the mortgage in the Register and shall endorse on the instrument the fact of the entry having been made, together with the date and time of the making of the entry.

(4) Mortgage instruments lodged under this section shall be registered in the order of their lodgement.

29. Priority of mortgages - (1) Where 2 or more mortgages are registered in respect of the same ship or share in a ship, the priority among the mortgagees is in accordance with the order of registration of the mortgages, irrespective of the dates upon which they were made or executed and notwithstanding any express, implied or constructive notice.

(2) A registered mortgage shall not be affected by any act of bankruptcy or insolvency committed by the mortgagor after the date of registration of the mortgage, notwithstanding that the bankrupt or insolvent had at the commencement of his bankruptcy or insolvency the vessel in his possession, order or disposition.

(3) Any such mortgage shall be preferred to any right, claim, or interest in the vessel of the other creditors of the bankrupt or any trustee or assignee on their behalf.

(4) A maritime lien recorded in the Register shall rank in priority as against other maritime liens and registered mortgages in accordance with the provisions of the International Convention on Maritime Liens and Mortgages 1993.

(5) Notwithstanding anything contained in this Act or the International Convention on Maritime Liens and Mortgage 1993, a maritime lien is not enforceable against a ship owned by a bona fide purchaser for value without notice unless such lien has been registered in the Register at the port in which the ship is registered, but it is enforceable against the owner and vendor who has incurred the debt from which the maritime lien arises, irrespective of registration.

(6) The Registrar shall, at the request of the holder of a maritime lien register the maritime lien by making the entry in the register –

- (a) describing the claim against the owner, demise charterer, manager or operator of the vessel secured by the maritime lien on the vessel; and
- (b) the date of the event which gave rise to the maritime lien against the vessel; and
- (c) the name and address of the lien holder for the service of notice or documents.

(7) Subject to Article 9 of the International Convention on Maritime Liens and Mortgages 1993, a maritime lien shall be extinguished after a period of one year.

30. Mortgage not to change ownership - A mortgage of a ship or of a share in a ship does not have the effect of the mortgagee becoming, or the mortgagor ceasing to be, owner of the ship or share except to the extent necessary to make the ship or share available as a security under the mortgage.

31. Mortgagee to have power of disposal - (1) A mortgagee of a ship or of a share in a ship has power absolutely to dispose of the ship or share and to give effectual receipts in respect of the disposal, but where there are 2 or more mortgages of the same ship or share, a subsequent mortgagee shall not, except under an order of the Court, dispose of the ship or share without the consent of every prior mortgagee.

(2) A mortgagee of a ship or of a share in a ship who intends to dispose of the ship or the share shall not dispose of the ship or share unless he or she has first given notice in writing to the Registrar of his or her intention so to dispose of the ship or share.

(3) Where the Registrar is notified by a mortgagee of the intention of that mortgagee to dispose of a ship or of a share in a ship, the Registrar shall forthwith inform the subsequent mortgagee (if any) or each subsequent mortgagee (if more than one) of that ship or share whose interest in that ship or share is entered in the Register of the matter so notified to him or her.

(4) The disposal of a ship or of a share in a ship is not invalidated because of any failure to comply with a requirement of subsection (2) in relation to the disposal.

32. Transfer of mortgage - (1) A mortgage of a ship or of a share in a ship may be transferred by an instrument of transfer made in accordance with the regulations.

(2) Where a mortgage is so transferred, the instrument of transfer of the mortgage shall be lodged by the person to whom the mortgage has been transferred with the Registrar within 21 days of its having been so executed or within such longer period as the Registrar, in special circumstances, allows.

(3) The Registrar shall, as soon as practicable after the lodgement of the instrument of transfer of the mortgage, enter in the Register the name of the transferee as the mortgagee of the ship or share the subject of the mortgage and endorse on the instrument the fact of the entry having been made, together with the date and time of the making of the entry.

33. Transmission of mortgage by operation of law - (1) Where the interest of a mortgagee in a mortgage of a ship or of a share in a ship is transmitted to a person by any lawful means other than by a transfer under section 32, a declaration of transmission made by that person in accordance with the regulations, together with such evidence of the transmission as is prescribed, shall be lodged by that person with the Registrar within 21 days of that interest being transmitted to that person or within such longer period as the Registrar, in special circumstances, allows.

(2) The Registrar shall, as soon as practicable after the lodgement by a person of a declaration of transmission of the interest of a mortgagee in a mortgage of a ship or a share in a ship, together with such evidence of the transmission as is prescribed, enter in the Register the name of that person as mortgagee of the ship or share.

34. Discharge of mortgage - (1) Where a mortgage is discharged, the mortgage instrument together with such evidence of the discharge of the mortgage as is prescribed shall be lodged by the mortgagor with the Registrar within 21 days after the discharge or within such longer period as the Registrar, in special circumstances, allows.

(2) The Registrar shall, as soon as practicable after the lodgement by the mortgagor of the mortgage instrument, together with such evidence of the discharge of the mortgage as is prescribed, make an entry in the Register to the effect that the mortgage has been discharged and, on that entry being made, any interest of the mortgagee under the mortgage vests in the mortgagor.

(3) Where the mortgage instrument cannot, for any reason, be lodged with the Registrar, there shall be lodged by the mortgagor with the Registrar, in substitution for the mortgage instrument and such evidence of the discharge of the mortgage as is prescribed for the purposes of subsection (1), a declaration by the mortgagee setting out such particulars relating to the ship in respect of which the mortgage was given, the mortgage and its discharge as are prescribed for the purposes of this subsection.

(4) In this section, mortgagor, in relation to a ship or a share in a ship, includes any person in whom, having regard to any intervening acts and circumstances, the interest of the mortgagee would have been vested if the mortgage had not been made.

35. Powers of disposal by owner - The owner of a ship or of a share in a ship has power, subject to this Act and to any rights and powers appearing in the Register to be vested in any other person, absolutely to dispose of the ship or share and to give effectual receipts in respect of the disposal.

36. Equities not excluded - Subject to sections 31 and 35, beneficial interests may be enforced by or against the owner or mortgagee of a ship or of a share in a ship in respect of his or her interest in the ship or share in the same manner as in respect of any other personal property.

37. Caveat may be lodged forbidding registration of certain instruments -
(1) A person claiming an interest in a ship or in a share in a ship under any unregistered instrument, or by operation of law or otherwise, may lodge with the Registrar a caveat in accordance with the prescribed form forbidding the entry in the Register of any instrument relating to any dealing with that ship or share until after notice of the intended dealing is given to the caveator.

(2) Every caveat shall state the name and address of the caveator and shall contain a sufficient description to identify the ship or the share in the ship in which the caveator claims an interest and the interest claimed by the caveator together with such other information as may be requested by the Registrar and shall be signed by the caveator or by his or her solicitor or agent.

(3) A caveat shall not be entered in the Register by the Registrar unless

- (a) there is specified in the caveat an address in the Cook Islands at which notices relating to the caveat or to proceedings in respect of the caveat may be served;
- (b) an indemnity in the prescribed form is provided by the caveator in favour of the Registrar together with such security that the Registrar in his discretion may require.

(4) Where a person entitled to withdraw a caveat notifies the Registrar, by lodging a notice in the prescribed form, that the name of the caveator or the address for service of notices on the caveator has been changed from the name or address specified in the caveat, the Registrar shall record on the caveat and in the Register the name or address so notified and that name or address shall thereupon be the name of, or the address for service of notices on, the caveator.

(5) Every notice relating to a caveat or to any proceeding in respect of a caveat shall be deemed to be duly served if served in accordance with a manner of service specified in the regulations -

- (a) at:
 - (i) the address stated in the caveat in pursuance of subsection (3); or
 - (ii) if an address has been notified under subsection (4), the address, or the last address, so notified; or
 - (b) if the caveat was signed by a solicitor or agent, at the office of that solicitor or at the address of that agent.
- (6) A caveat may be withdrawn -
- (a) by the caveator or by the solicitor or agent of the caveator if the solicitor or agent is authorized so to withdraw it;
 - (b) where the caveator is dead, by the executor of the will, or the administrator of the estate, of the caveator;
 - (c) by a trustee or official receiver or other person in whom the interest claimed by the caveator is vested pursuant to law; or
 - (d) by any person in whom there is entrusted, by reason of the mental incapacity of the caveator, pursuant to an order of the Court or pursuant to a law of the Cook Islands, the management and care of the interest claimed by the caveator.

(7) Where there is lodged for entry in the Register an instrument relating to a dealing with a ship, or a share in a ship, in respect of which a caveat has been lodged and the Registrar is satisfied that, upon entry of that instrument in the Register there will vest in the caveator the interest claimed by the caveator in the caveat, the Registrar may, notwithstanding the caveat and the provisions of sections 38 and 39, enter the dealing in the Register and may record on the caveat or in the Register that the caveat has lapsed.

38. Notice of caveat - (1) Upon entry in the Register of a caveat, the Registrar shall notify particulars of the caveat -

- (a) if the caveat relates to the ship, to the person or each person entered in the Register as an owner or part owner, or as a mortgagee, of the ship; and
- (b) if the caveat relates to a share in the ship—to the person or each person entered in the Register as an owner or part owner, or as a mortgagee, of that share.

(2) Any person notified, or required to be notified under subsection (1), of the entry in the Register of a caveat may, if he or she thinks fit, summon the caveator to attend before the Court to show cause why the caveat should not be removed.

(3) The Court, upon proof that the caveator has been summoned, may make such order, either *ex parte* or otherwise, as the Court thinks fit.

39. When caveat to lapse - A caveat entered in the Register in respect of a ship or a share in a ship shall, unless an order to the contrary is made by the Court and served on the Registrar, be deemed to have lapsed upon the expiration of 14 days after notice is given to the caveator that -

- (a) if the caveat relates to a ship, the person or each person entered in the Register as an owner or part-owner of the ship or a person having a right to register a dealing with the ship; or
- (b) if the caveat relates to a share in the ship, the person or each person entered in the Register as an owner or part-owner of the share or a person having a right to register a dealing with the share,

has applied for the registration of any dealing with the ship or share.

40. No dealing to be registered while caveat in force - (1) Subject to this section, so long as a caveat remains in force in respect of a ship or a share in a ship, the Registrar shall not, except with the consent in writing of a person entitled to withdraw the caveat, enter in the Register particulars of any dealing with that ship or share.

(2) Subsection (1) shall not operate to prevent the entry in the Register of a dealing with a ship or a share in a ship which, when the caveat was lodged with the Registrar, had previously been lodged with the Registrar in a form satisfactory for entry in the Register.

(3) Except to the extent that it otherwise specifies, a caveat shall not prevent the Registrar from entering in the Register -

- (a) the transmission of a ship or of a share in a ship to a person where that person becomes so entitled by operation of law; or
- (b) a dealing by a person as the mortgagee under a mortgage of a ship or a share in a ship, being a mortgage to the entry of which the caveator has consented or in respect of which the caveat has lapsed.

41. Compensation for lodging caveat without reasonable cause - A person who lodges a caveat with the Registrar without reasonable cause is liable to pay to a person who has sustained damage thereby such compensation as is just and the compensation is recoverable in an action in a court of competent jurisdiction by the person who has sustained damage from the person who lodged the caveat.

Administration

42. Administration - (1) The Minister may, on such terms and conditions as may be approved by Cabinet, appoint and engage a person to be called the Administrator, to administer this Act, and to administer, manage and have control of the Register and Registration Office and any reference in this Act to the Registrar shall include and be read as a reference to the Administrator appointed pursuant to this section.

(2) There shall be a Registrar of Ships who shall be appointed by the Secretary, subject to the recommendation and approval of the Administrator and on such terms and conditions as the Administrator shall approve.

(3) The Secretary shall, if an Administrator has been appointed under this section, obtain the approval of the Administrator before making an appointment under subsection (2).

43. Functions and powers of Registrar - (1) In addition to the functions conferred by other provisions of this Act, the function of the Registrar is to maintain the Register and, for that purpose -

- (a) receive and record all information and documents required or permitted to be lodged with the Registrar under this Act;
- (b) to grant, issue, vary or revoke such certificates and other documents as are required or permitted to be granted or issued under this Act; and
- (c) to issue copies of, and extracts from, any such certificates and other documents and entries in the Register;
- (d) to direct the owner of the vessel or any other person to furnish any information concerning the vessel.

(2) The Registrar has power to do all things necessary or convenient to be done for or in connection with, or as incidental to, the performance of his or her functions including, but without limiting the generality of the foregoing, such powers for and in relation to requiring the furnishing of information and documents (including the delivery of certificates and other documents granted or issued under this Act) as are provided by the regulations.

44. Delegation by Registrar - (1) The Registrar may in his discretion appoint any person or entity including but not limited to a proper officer to carry out all or any of the Registrar's functions duties and powers.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Registrar.

(3) A delegation under this section does not prevent the exercise of a power by the Registrar.

45. Registration Office - (1) For the purposes of this Act -

- (a) there shall be a Cook Islands Shipping Registration Office; and
- (b) the Registrar may, by public notice, establish branch offices of that Office.

(2) The Registration Office, and the branch offices established under paragraph (1)(b), shall be at such places as are determined by the Registrar.

46. Seal of Registration Office and signature of Registrar - (1) There shall be a seal of the Cook Islands Shipping Registration Office, in a form determined by the Registrar, which shall be under the control of the Registrar.

(2) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Registration Office affixed to a document and shall presume that it was duly affixed.

(3) Where a signature on a document purports to be the signature of the Registrar or of a person empowered to sign the document by virtue of a delegation under section 44, it shall be presumed, until the contrary is proved, that the signature is that of a person who, at the relevant time, was holding, or performing the duties of, the office of Registrar or was so empowered to sign that document, as the case may be.

The Register of Ships

47. Cook Islands Register of Ships - (1) For the purposes of this Act, there shall be a register, to be known as the Cook Islands Register of Ships, in which shall be entered all matters required or permitted by this Act to be entered in the Register.

(2) The Register and copies of the Register, or of such part or parts of the Register as the Registrar directs, shall be kept at such places as the Registrar directs.

48. Inspection of Register - A person may, on payment of the prescribed fee inspect the Register at any reasonable time during the hours when the Registration Office, or branch office, as the case may be, is open for business and, on payment of the prescribed fee, is entitled to be furnished with a copy of, or extract from, any entry in the Register.

49. Obsolete or incorrect entries in Register - (1) Where -

- (a) in relation to a particular ship, no entry or amendment of an entry has been made in the Register for such period as is prescribed for the purposes of this section; and
- (b) the Registrar has reason to suspect that:
 - (i) any particulars entered in the Register in relation to the ship, other than particulars relating to a mortgage, are incorrect;
 - (ii) in relation to the ship, any notice, information or document in relation to which an entry in the Register is required by this Act to be made has not been lodged with the Registrar within the period referred to in paragraph (a); or
 - (iii) the ship has been lost (whether actually or constructively), taken by an enemy, burnt or broken up,

the Registrar may, by notice in writing served on the registered agent or any owner of the ship, require him or her to furnish to the Registrar, within a specified period (not being less than 30 days) after the date of service of the notice, such information and documents relating to the ship as are specified in the notice.

(2) Where -

- (a) a person on whom a notice is served under subsection (1) fails to furnish to the Registrar, within the period specified in the notice, the information and documents specified in the notice; or
- (b) the person on whom a notice is so served furnishes information or documents that the Registrar considers may justify the closure of the registration relating to the ship or the alteration of any entry made in the Register,

the Registrar may, by notice in writing, give such directions as he sees fit in regard to the issues of entry on the Register and the closing of the registration relating to the ship or with respect to any entry or amendment of an entry to be made in the Register.

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

Miscellaneous

51. Ships lost or ceasing to be entitled to be registered - (1) In the event of a registered ship -

- (a) being lost (whether actually or constructively), taken by an enemy, burnt or broken up; or
- (b) ceasing to be entitled to be registered,

the owner of the ship shall, immediately after obtaining knowledge of the event, unless notice has already been given to the Registrar under this subsection, give notice in writing of the event to the Registrar.

(2) Where the Registrar receives a notice under subsection (1) relating to a ship, he or she shall make an entry in the Register of the event to which the notice relates.

(3) Where an entry has been made in the Register under subsection (2) in respect of a ship -

- (a) if the entry is in respect of a ship that has been lost (whether actually or constructively), taken by an enemy, burnt or broken up, the registration of the ship shall be deemed to be closed except so far as it relates to any unsatisfied mortgage of the ship; and
- (b) if the entry is in respect of a ship that has ceased to be entitled to be registered, the registration of the ship shall, subject to this section, be deemed to be closed.

(4) Where a ship, in relation to which the Registrar has received notice under subsection (1) of an event referred to in paragraph (1)(a) or (b), is subject to an unsatisfied mortgage or mortgages -

- (a) the registration of the ship, so far as it relates to the mortgage or mortgages, shall, subject to subsections (5) and (6), not be deemed to be closed; and

- (b) the Registrar shall give notice in writing to the mortgagee, or each mortgagee, as the case may be, that he or she has received notice under subsection (1) of the event so referred to.

(5) Subject to this section, where the Registrar gives a notice under subsection (4) to the mortgagee or mortgagees of a ship, the registration of the ship, so far as it relates to the mortgage or mortgages, shall be deemed to be closed at the expiration of a period of 60 days after the date of the notice.

(6) Where a mortgagee who has received a notice under subsection (4) makes application to the Court within the period of 60 days after the date of the notice or within such extended time as the Court, on application made either before or after the expiration of that period, allows, the Court may do all or any of the following, namely -

- (a) order that the ship and the ship's equipment be sold;
- (b) make such other orders for and in relation to the distribution of the proceeds of the sale as it thinks fit; and
- (c) make such orders and give such directions with respect to the closure of the registration of the ship as it thinks fit (including, in the case of an application for an extension of time, an order that the registration shall not be deemed to be closed for such period as the Court determines).

(7) Notice of an application made under subsection (6) (including an application for an extension of time) shall be served on the Registrar.

(8) An order under subsection (6) may be on such terms and conditions as to costs and otherwise as the Court thinks fit.

(9) The Registrar shall give effect to any orders and directions given by the Court under this section so far as they relate to the Register.

(10) Where the registration of a ship is closed or deemed to be closed under this section, the person having possession of the registration certificate or provisional registration certificate relating to the ship shall deliver the certificate to the Registrar or a proper officer in accordance with the regulations.

(11) Nothing in this section shall be taken to prejudice any rights of a mortgagee existing apart from this section.

52. Proceedings on forfeiture - (1) Where a ship is subject to forfeiture under this Act, an officer may seize and detain the ship and the Minister may apply to the Court for an order under subsection (2).

(2) Upon application being made under subsection (1) in relation to a ship, the Court may order the ship and its equipment to 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) In this section, officer means an officer or employee of the Crown appointed by the Minister by writing signed by him or her to be an officer for the purposes of this section.

52A. Registration fees and charges - (1) The owner of a vessel registered under this part shall be liable to pay the initial and annual registration fees and any other fees as may be prescribed by the Registrar.

52B. Regulations - (1) The Queen's Representative may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), the regulations may make provision for and in relation to -

- (a) the manner in which, and the time within which, applications under this Act are to be made;
- (b) the forms, documents and information to be furnished by applicants in connection with, or in support of any application under this Act;
- (c) the keeping of the Register and copies of the Register, or a part or parts of the Register;
- (d) the entries to be made in the Register;
- (e) the manner in which, and the time within which, documents and information are to be lodged, including provision empowering the Registrar -
 - (i) to direct a person who has lodged, or is seeking to lodge, any document or information to do such things as are necessary to ensure that the document or information is in accordance with the requirements of this Act; and
 - (ii) to treat any document or information as not having been lodged until it is in accordance with the requirements of this Act;
- (f) the registration (whether by way of entry in the Register or otherwise) of documents and information;
- (g) the re-registration of ships entitled to be registered, the registration of which under this Act, or under any other Act, has been closed;
- (h) the registration of Government ships;
- (i) the closure of the registration of ships;
- (j) the age of vessels that may be entered upon the Register;
- (k) registration, survey requirements and ancillary matters;
- (l) the qualifications required of, and other requirements relating to, registered agents;
- (m) the verification, by statutory declaration, of information and documents required for the purposes of this Act;
- (n) the retention or return by the Registrar of documents lodged in accordance with this Act;
- (o) the selection, naming and change of ports of registry for registered ships;
- (p) the matters to be recorded or endorsed on registration certificates, provisional registration certificates and temporary passes;
- (q) the marking of ships for the purposes of section 22;

- (r) the making of any declaration or the doing of any thing required or permitted by this Act to be made or done in the name and on behalf of a person incapable of making such a declaration or doing any such thing by reason of infancy, lunacy or other disability;
 - (s) the manner in which instruments, notices and other documents under this Act may be given to, or served on, persons;
 - (t) the payment of fees and expenses to persons required under this Act to attend and give evidence or make declarations before the Registrar or other persons;
 - (u) the imposition and recovery of initial and annual registration fees and fees in relation to registration and survey requirements and all ancillary matters;
 - (v) the conduct of any business relating to the Registration Office;
 - (w) the declaration of specified documents, or of documents included in specified classes of documents, to be admissible in evidence;
 - (x) the form of any instrument, notice or other document permitted or required to be issued, furnished, lodged or registered for the purposes of this Act;
 - (y) amending, modifying or repealing any provision of this Part; and
 - (z) any matter incidental to or connected with any of the foregoing.
- (3) The regulations may provide that a specified provision of this Act does not apply, or applies with specified modifications, in relation to Government ships.
- (4) The power conferred by subsection (3) to make modifications by regulation includes the power to omit any matter or add any new matter.
- (5) The regulations may provide, in respect of an offence against the regulations, for the imposition of a fine not exceeding \$500.
- (6) The power to make regulations conferred by this Act shall not be taken to imply, or exclude the power to make provision for or in relation to a matter by reason only of the fact that -
- (a) provision is made by this Act in relation to that matter or another matter; or
 - (b) power is expressly conferred by this Act to make provision by regulation for or in relation to another matter.
- (7) The power to make regulations conferred by this Act may be exercised -
- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case; and
 - (b) so as to make, with respect to the cases in relation to which it is exercised, the same provision for all those cases or a different provision for different cases or classes of case.

52C. Discretion of the Registrar - (1) Where -

- (a) any provision of this Act cannot be carried out by reason of lack of communication or by reason of an act of God; or

- (b) anything is omitted to be done or cannot be done at the time required by or under this Act, or is done before or after that time, or is otherwise irregularly done in matter of form, or sufficient provision is not made by or under this Act,

the Registrar may at any time before or after the time within which the thing is required to be done, extend that time, or validate anything so done before or after the time required or so irregularly done in matter of form, or make such other provision for the case as the Registrar thinks fit.

(2) No registration or other act 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 regulations made under this Act or by reason of any mistake in the use of the forms provided under this Act, if it appears to the Registrar that the application was made substantially in accordance with this Act.

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

(2) The agreement dated 18th May 2000 between Her Majesty the Queen in right of the Government of the Cook Islands acting by and through the Minister of Transport and the Secretary and Cook Islands Maritime and Shipping Registry Limited pursuant to which Cook Islands Maritime and Shipping Registry Limited was engaged to provide all services reasonably required to administer, manage, operate, supervise, promote and market the Register and the Registration Office shall notwithstanding its entry into and execution before the commencement date of this Part be deemed to be an appointment of an Administrator under and for the purposes of section 42.

This Act is administered by the Ministry of Transport