



Tuvalu

MERCHANT SHIPPING ACT 1987

Act 11 of 1987



Tuvalu

MERCHANT SHIPPING ACT 1987

Arrangement of Sections

Section

PART I - PRELIMINARY	9
1 Short title.....	9
2 Commencement	9
3 Interpretation.....	10
PART II - REGISTRATION OF SHIPS	10
DIVISION 1 - THE REGISTRAR AND REGISTER OF SHIPS.....	10
4 Registrar of Ships.....	10
5 Register of Ships.....	10
DIVISION 2 - REGISTRATION OF SHIPS.....	10
6 Provisions relating to registration	10
7 Port of registry	11
8 Registration of ships	11
9 Restriction on registration of ship.....	12
10 Ship not entitled to be registered	12
11 Survey and measurement of ship	12
12 Marking of ship.....	13
13 Application for registration.....	14
14 Declaration of ownership on registry.....	14
15 Registration of ships procedure	14
16 Certificate of registry	15
17 Power to grant new certificate	15
18 Provisional registration	16
19 Loss of certificate of registry	16
20 Change in ownership	17

21	Delivery of certificate where ship is lost, etc.	17
22	Registry of alterations	18
DIVISION 3 - TRANSFERS AND TRANSMISSIONS		19
23	Transfer to be by bill of sale.....	19
24	Declaration of transfer.....	19
25	Registration of transfer.....	20
26	Transmission of ship on death, bankruptcy, etc.	20
27	Order for sale on transmission to unqualified person, etc.	20
28	Transfer of ship on sale by order of Court	21
29	Court may prohibit Transfer.....	21
DIVISION 4 - MORTGAGES		21
30	Method of mortgage of ship	21
31	Entry of discharge of mortgage.....	22
32	Priority of mortgages.....	22
33	Powers of mortgagee	22
34	Transfer of mortgage.....	23
35	Transmission of interest in mortgage by death, etc.....	23
DIVISION 5 - NATIONAL CHARACTER AND FLAG		23
36	Penalty for unduly assuming Tuvaluan character	23
37	Penalty for concealment of Tuvaluan character, etc.	24
38	Forfeiture for offence under section 37	24
39	National colours	24
40	Colours other than national colours.....	24
DIVISION 6 - MISCELLANEOUS		25
41	Registrar may require information	25
42	Notice of trusts not received.....	25
43	Equities not excluded by Act	25
44	Liability of owners	26
45	Ship's managing owner to be registered	26
46	Names of registered ships	26
PART III - INTERNATIONAL MARITIME CONVENTIONS		26
47	International Maritime Conventions	26
48	Implementation of Convention.....	27
49	Implementation of Collisions Convention	27
PART IV - SAFETY		28
DIVISION 1 - UNSAFE SHIPS		28
50	Detention of unsafe ships	28

51	Notice to be given of detention of unsafe ship.....	28
52	Offences in relation to unsafe ships	29
53	Failure to carry equipment	29
DIVISION 2 - GENERAL SAFETY AND PRECAUTIONS		30
54	Notification of serious danger to navigation.....	30
55	Reports of positions and movements of ships.....	31
56	Obligation to assist person in danger of being lost	31
57	Duty of ships to assist in case of collision	31
58	Right to salvage not affected.....	32
DIVISION 3 - CARRIAGE OF DANGEROUS GOODS		32
59	Definitions for the purposes of Division 3.....	32
60	Power to deal with goods suspected of being dangerous.....	32
61	Restriction on carriage of dangerous goods.....	33
62	Packing, etc. of dangerous goods.....	34
DIVISION 4 - CARRIAGE OF BULK CARGOES AND GRAIN CARGOES		34
63	Definitions for the purposes of Division 4.....	34
64	Storage and carriage of bulk and grain cargoes	34
DIVISION 5 - SHIPPING CASUALTIES		35
65	Meaning of “casualty”, etc.....	35
66	Investigations and inquires	35
67	Preliminary investigation.....	35
68	Marine Inquiry	36
69	Power of Marine Inquiry as to certificates.....	36
70	Failure to deliver certificate for cancellation, etc.	37
71	Restoration of certificates, etc.....	37
72	Appeals	38
PART V - MASTERS AND SEAMEN		38
DIVISION 1 - INTRODUCTORY.....		38
73	Application.....	38
74	Exemptions	39
DIVISION 2 - MANNING AND CERTIFICATION		39
75	Manning	39
76	Certificate of competency	39
77	Unqualified person going to sea as qualified officer or seaman	40
78	Production of certificate of competency	40
79	Disqualification of officer or seaman	40
80	Inquiry under section 79	41
81	Regulations for certificates of competency.....	42

DIVISION 3 - CREW AGREEMENTS	42
82 Crew agreements	42
83 Prohibition on seeking rewards for employment	42
84 Regulations for crew agreements	43
DIVISION 4 - WAGES	43
85 Agreements as to wages	43
86 Account of wages	43
87 Right of seaman to wages.....	44
88 Seaman cannot waive protection of Act.....	44
89 Regulations relating to wages	44
DIVISION 5 - CREW ACCOMMODATION.....	45
90 Crew accommodation.....	45
91 Regulations for crew accommodation	45
DIVISION 6 - WELFARE	45
92 Provisions and water	45
93 Medical stores etc.....	46
94 Complaints	46
95 Regulations for welfare	47
DIVISION 7 - DISCIPLINE.....	48
96 Misconduct endangering ship or persons on board.....	48
97 Continued or concerted disobedience, neglect of duty, etc.....	48
98 Absence without leave	48
99 Persons deemed to be seamen	49
100 Defence of drug taken for medical purposes.....	49
101 Disciplinary offences.....	49
102 Appeal	50
103 List of suspended persons	50
104 Regulations for disciplinary offences.....	50
DIVISION 8 - GENERAL	51
105 Stowaways.....	51
106 Unauthorised presence on hoard ship.....	51
107 Master’s power of arrest.....	51
108 Return of births and deaths on Tuvalu ship.....	51
109 Returns of births and deaths on foreign ships	52
110 Registrar of Seamen	52
111 Register of Seamen.....	52
112 Seaman’s Discharge Book	53
113 Official Log Book	53
114 Crew and Passenger Lists.....	53
115 Inquiries into death or serious Injury	53

116	Holding of inquiry	54
117	Absence of seaman from duty.....	54
118	Apprehension of foreign seaman	55
119	Detention of ships	55
120	General Regulations.....	56

PART VI - DIVISION OF LIABILITY **56**

121	Rule as to division of liability	56
122	Joint and several liability	57
123	Right of contribution.....	57
124	Additional rights of person entitled to contribution.....	57

PART VII - LEGAL PROCEEDINGS **58**

DIVISION 1 - OFFENCES AND LIMITATIONS.....58

125	Penalties	58
126	Limitation of actions.....	58
127	Interpretation for purposes of section 126	59

DIVISION 2 - JURISDICTION

128	Jurisdiction in case of offences	59
129	Jurisdiction over ship lying off coast	59
130	Jurisdiction in case of offence on board ship.....	59

PART VIII - GENERAL **60**

131	Mode of making declaration	60
132	Power of Registrar to dispense with evidence	60
133	False declaration	60
134	Proof of documents	61
135	Admissibility of documents in evidence.....	61
136	Proceedings on forfeiture of ship.....	61
137	Recovery of fines by distress	62
138	Inspections	62
139	Surveyors of ships.....	63
140	Inspectors and authorised officers	63
141	Regulations	63
142	Repeal and amendments	66

SCHEDULE 1 **67**

INTERPRETATION	67
----------------------	----

SCHEDULE 2	73
<hr/>	
PENALTIES.....	73
SCHEDULE 3	75
<hr/>	
AMENDMENTS.....	75
MERCHANT SHIPPING ACT 1987	80
<hr/>	
EXPLANATORY MEMORANDUM.....	80

Supporting Documents

ENDNOTES	82
<hr/>	
Table of Legislation History.....	82
Table of Renumbered Provisions.....	82
Table of Endnote References.....	82



Tuvalu

MERCHANT SHIPPING ACT 1987

Act 11 of 1987

AN ACT TO MAKE PROVISIONS FOR THE REGISTRATION OF SHIPS; THE CONTROL AND REGULATION OF MERCHANT SHIPPING; THE PROPER QUALIFICATION OF PERSONS EMPLOYED IN SERVICE AT SEA; THE REGULATION OF THE TERMS AND CONDITIONS OF PERSONS SO EMPLOYED; AND FOR CONNECTED PURPOSES

ENACTED BY THE PARLIAMENT OF TUVALU

Commencement [1st June, 1988]

PART I - PRELIMINARY

1 Short title

This Act may be cited as the Merchant Shipping Act 1987.

2 Commencement

- (1) This Act shall come into operation on such date as the Minister may, by notice, appoint and different dates may be appointed for, or for different purposes of, different provisions of this Act.
- (2) A notice under subsection (1) may make such provision as appears to the Minister to be necessary or expedient in connection with the provisions

brought into operation, including adaptations of this Act or any other written law in consequence of the partial operation of this Act.

3 Interpretation

Schedule I applies for and with respect to the interpretation of this Act.

PART II - REGISTRATION OF SHIPS

DIVISION 1 - THE REGISTRAR AND REGISTER OF SHIPS

4 Registrar of Ships

There shall be an office of Registrar of Ships which shall be a public office.

5 Register of Ships

- (1) The Registrar shall cause to be kept at Funafuti a Register (to be known as the Register of Ships), in such form as the Registrar determines.
- (2) The Registrar shall cause to be entered in the Register particulars of all ships registered under this Act, the other entries which are required by this Act to be entered in the Register and particulars of such other matters as he thinks fit.
- (3) Any person may inspect the Register at any time during the hours of official attendance by the Registrar on payment of the fee (if any) which is prescribed.

DIVISION 2 - REGISTRATION OF SHIPS

6 Provisions relating to registration

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

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

- (c) a person shall not be entitled to be registered as owner of a fractional part of a share in a ship, but any number of persons not exceeding 5 may be registered as joint owners of a ship or of any share or shares in the ship;
- (d) joint owners shall be considered as constituting one person only as regards the person entitled to be registered, and shall not be entitled to dispose severally of any interest in a ship, in respect of which they are jointly registered; and
- (e) a corporation shall be registered as owner by its corporate name.

7 Port of registry

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

8 Registration of ships

- (1) Where a ship, other than an exempt ship, —
 - (a) is owned by —
 - (i) a person who is a qualified person; or
 - (ii) persons each of whom is a qualified person; and
 - (b) is not registered in any other country,
the owner or those owners shall apply for registration of the ship under this Act.
- (2) Where a ship, other than an exempt ship —
 - (a) is engaged in near coastal trade or Pacific region trade;
 - (b) is manned by a crew, not less than 50 per cent of whom are citizens of Tuvalu; and
 - (c) is not registered in any other country; and
 - (d) is owned by owners whom the Minister is satisfied are of good repute,
the owner or owners of the ship may apply for registration of the ship under this Act.
- (3) Application may be made by or on behalf of the Government for registration of a Government ship.
- (4) In this section —
“**exempt ship**” means a ship —
 - (a) that is less than 10 metres in length; or

- (b) that is in the opinion of the Registrar of traditional build: or
- (c) that is prescribed or belongs to a class or description of ships that is prescribed; or
- (d) that is engaged in any class of navigation or trading, or used for any purpose, that is prescribed;

“**qualified person**” means —

- (a) a person who is a citizen of Tuvalu;
 - (b) a corporation established by an Act of Tuvalu;
 - (c) a corporation —
 - (i) established or registered in Tuvalu; and
 - (ii) having a place of business in Tuvalu.
- (5) The Minister may by order vary the percentage specified in subsection (2)(b).

9 Restriction on registration of ship

- (1) Except where application is made as provided in section 8 the Registrar shall not register a ship under this Act.
- (2) A ship which is not registered under section 8 shall not be recognised —
 - (a) in Tuvalu or for the purposes of this Act as a Tuvaluan ship; or
 - (b) as being entitled to the rights and privileges accorded to Tuvaluan ships.

10 Ship not entitled to be registered

- (1) Where the Minister has reasonable cause to believe, and does believe, that any ship registered under this Act should not continue to be so registered he may direct the Registrar to require the master and owner of the ship, or either of them, to produce evidence to the satisfaction of the Minister that the ship should continue to be so registered.
- (2) If within such time as may be determined by the Minister not being less than 60 days, the evidence referred to in subsection (1) is not produced the ship is liable to forfeiture.

11 Survey and measurement of ship

- (1) Subject to subsection (5), a ship shall, before registry, be surveyed by a surveyor and, subject to subsection (4), its tonnage shall be ascertained by the surveyor in the prescribed manner, and the surveyor shall grant the

appropriate tonnage certificate specifying the ship's tonnage and build and such other particulars as may be prescribed.

- (2) The appropriate tonnage certificate granted under subsection (1) in respect of a ship shall, before the ship is registered, be delivered to the Registrar.
- (3) The fees to be paid by the owner or owners of a ship to a surveyor in respect of a survey under this section are as prescribed.
- (4) Subject to subsection (5), where a ship which is not registered under this Act has been measured and registered under the law of a foreign country, or has already been measured without having been so registered, the surveyor may for the purposes of subsection (1), accept and use any suitable figures of measurement contained in the latest register relating to that ship or in the case of an unregistered ship, in the latest certificate of measurement relating to that ship.
- (5) Before acting under subsection (4), a surveyor shall satisfy himself that there have been no changes of measurement since the making of the register or certificate which he proposes to use, and where any such changes have been made, he shall re-measure the ship to the extent made necessary by those changes.

12 Marking of ship

- (1) A ship in respect of which an application for registration is made shall not be registered unless the ship has first been marked permanently and conspicuously in the prescribed manner.
- (2) The marks required by this section to be placed on a ship shall be permanently continued and no alteration shall be made to those marks except as provided by this Act.
- (3) An owner or master of a ship registered under this Act who fails to keep permanently continued the marks placed on a ship under this section is guilty of an offence.
- (4) A person who conceals, removes, alters, defaces or erases any mark required by this section to be placed or kept on a ship except as provided by this Act or for the purposes of escaping from an enemy, is guilty of an offence.
- (5) The Minister may, by notice, exempt the owner or master of any ship or class of ships from complying, either in whole or in part, with the requirements of this section.

13 Application for registration

- (1) An application for the registration of a ship under this Act shall be made by the owner or owners of the ship to the Registrar in the prescribed form.
- (2) An application under subsection (1) shall be made —
 - (a) where the owner is a corporation, by the agent of the corporation; or
 - (b) where the owner is not a corporation, by the person or persons seeking the registration of the ship or by his or their agent.
- (3) The authority of an agent referred to in subsection (2) shall be in writing, and —
 - (a) in the case of an agent appointed by a corporation under the common seal of the corporation; and
 - (b) in the case of an agent otherwise appointed under the hand of the person or persons appointing the agent.
- (4) The Registrar may require proof, to his satisfaction. —
 - (a) of the ownership; and
 - (b) of the seaworthiness,of a ship before proceeding with the registration of the ship under this Act.
- (5) An application for the registration of a ship under this Act shall be accompanied by such evidence in respect of the ship as may be prescribed.

14 Declaration of ownership on registry

- (1) A person shall not be entitled to be registered as owner of a ship until he or in the case of a corporation, a person authorised under the common seal of the corporation to make declarations on behalf of the corporation, has made and signed a declaration of ownership referring to the ship, as described in the appropriate tonnage certificate and containing the prescribed particulars.
- (2) This section does not apply in relation to the registration of a Government ship.

15 Registration of ships procedure

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

- (2) The Registrar shall not register a ship by a name by which a ship is already registered under this Act or except in accordance with the direction of the Minister, by a name that is, in the opinion of the Registrar, undesirable.
- (3) Where a ship has been registered under subsection (1), the registrar shall retain those of the documents submitted in connection with the application for registration as are prescribed.

16 Certificate of registry

- (1) As soon as practicable after the registration of a ship the Registrar shall grant to the owner or owners a certificate of registry in the prescribed form.
- (2) The certificate of registry of a ship —
 - (a) shall be kept in a safe place on the ship;
 - (b) shall be used only for the lawful navigation of the ship; and
 - (c) shall not be subject to detention by reason of any title, lien, charge or interest had or claimed by any owner, mortgagee or other person to, on or in the ship.
- (3) A master or owner of a ship who used for the navigation of a ship, a certificate of registry not legally granted in respect of the ship is guilty of an offence.
- (4) A person —
 - (a) who has in his possession or under his control the certificate of registry of a ship; and
 - (b) who refuses, or fails without reasonable cause, to deliver the certificate on demand to —
 - (i) the person entitled to its custody for the purposes of the lawful navigation of the ship;
 - (ii) any other person entitled by law to require its delivery.is guilty of an offence.

17 Power to grant new certificate

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

18 Provisional registration

- (1) Where, at a place outside Tuvalu, a ship becomes wholly owned by a qualified person, or by persons each of whom is a qualified person, or becomes a Government ship, the diplomatic representative of Tuvalu in or for that place, or a person authorised by the Minister for that purpose, may grant to the master of the ship, on his application, a provisional certificate of registry stating —
 - (a) the name of the ship;
 - (b) the time and place of the ship's purchase and the names of her purchasers;
 - (c) the name of the ship's master;
 - (d) the best particulars respecting the ship's tonnage, build and description which the representative or person is able to obtain.
- (2) A diplomatic representative of Tuvalu or other person granting a provisional certificate of registry shall forward a copy of any provisional certificate of registry granted by him under subsection (1) to the Registrar at the first convenient opportunity.
- (3) A provisional certificate of registry granted under subsection (1) is deemed to be a certificate of registry granted under section 16 —
 - (a) until the expiry of 60 days after the date on which it was granted; or
 - (b) until the expiry of 10 days after the arrival of the ship in Funafuti, whichever is the earlier.
- (4) If the period referred to in subsection (3) (b) has not begun to run the Minister may, by instrument in writing, grant to the master of a ship, on his application, an extension of the period referred to in subsection (3) (a), and in that event and in the particular case, the reference in paragraph (a) to 60 days shall be read as a reference to the extended period.
- (5) A master of a ship who fails to deliver to the Registrar a provisional certificate of registry granted under subsection (1) in respect of the ship within 10 days after the first arrival of the ship in Funafuti, is guilty of an offence.

19 Loss of certificate of registry

- (1) Where a certificate of registry of a ship is lost, mislaid or destroyed the Registrar shall grant a new certificate in its place.
- (2) A diplomatic representative of Tuvalu or a person authorised by the Minister for that purpose on receiving, from the master of a ship or some other person having knowledge of the facts of the case, a declaration

giving details of a lost, mislaid or destroyed certificate of registry of the ship together with particulars of the ship and its owner or owners, shall grant a provisional certificate of registry containing a statement of the circumstances under which it was granted.

- (3) A provisional certificate of registry granted under subsection (2) shall be valid —
- (a) until the expiry of 60 days after the date on which it was granted; or
 - (b) until a new certificate is granted in place of the certificate of registry.

whichever is the earlier.

20 Change in ownership

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

- (a) notification of the change shall be given to the Registrar; and
- (b) subject to section 21, the certificate of registry shall be endorsed in the prescribed manner.

21 Delivery of certificate where ship is lost, etc.

- (1) Where —
- (a) a ship registered under this Act is either actually or constructively lost, taken by the enemy, burnt or broken up;
 - (b) there is such a change —
 - (i) in the ownership or in the qualification of any owner; or
 - (ii) in the use or in the manning of a ship registered under this Act that the ship would not, if application were then made qualify for registration under section 8(1), (2) or (3).

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

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

Register that notice has been received and subject to this section, the registry of the ship shall be deemed to be closed.

- (4) Where, at the time when the Registrar receives notice that a circumstance referred to in subsection (1) (b) is applicable in relation to the owner or owners of a ship, or in relation to a ship, registered under this Act, the ship is subject to an undischarged mortgage entered in the Register, the Registrar shall give to the mortgagee a notice in writing specifying the circumstances so applicable.
- (5) If, within 60 days after notice is given to the mortgagee under subsection (4), an application is not made to the Court for an order under subsection (6), the registry of the ship in the Register shall, subject to subsection (8), be deemed to be closed on the expiration of that period.
- (6) If, before the expiration of the period of 60 days referred to in subsection (5), or within such further time as the Court, on an application made either before or after the expiration of that period, allows an application is made to the Court for an order under this subsection the Court may order the sale of the ship and direct that the proceeds of the sale, after deducting the expenses of the sale be paid first to the mortgagee or, if there are two or more mortgages, to the mortgagees in order of priority and, after satisfaction of the mortgage or mortgages, to the owners of the ship.
- (7) Where the Court grants an application for an extension of time within which an application for an order under subsection (6) may be made, it may grant the extension on such terms and conditions as to costs and otherwise as it thinks just.
- (8) On an application for an order under subsection (6), the Court may give such directions with respect to the closure of the registry of the ship as it thinks fit, and the Registrar shall give effect to any directions given by the Court.
- (9) A person who refuses or fails without reasonable cause to comply with subsection (1) is guilty of an offence.

22 Registry of alterations

- (1) Where a ship registered under this Act is so altered as not to correspond with the particulars relating to the appropriate tonnage certificate or to the description of the ship contained in the Register, the owner of the ship shall, within 21 days, make, or cause to be made, to the Registrar an application in writing to register the alteration.
- (2) An owner of a ship who refuses or fails to comply with the provisions of subsection (1) is guilty of an offence.

- (3) An application made under subsection (1) shall be accompanied by the appropriate tonnage certificate.
- (4) The Registrar, upon receipt of an application under subsection (1) and upon receipt of the prescribed fee (if any), shall cause the alteration to be registered.
- (5) In causing the alteration of a ship to be registered, the Registrar shall cancel the certificate of registry and shall grant a new certificate of registry and shall make the prescribed entries in the Register.

DIVISION 3 - TRANSFERS AND TRANSMISSIONS

23 Transfer to be by bill of sale

- (1) Where a ship registered under this Act is disposed of in circumstances where the ship, after the disposal, will continue to qualify for registration under section 8 (1), (2) or (3) the ship shall be transferred by bill of sale.
- (2) A bill of sale shall —
 - (a) be in the prescribed form; and
 - (b) be executed by the transferor and the transferee in the presence of, and be attested by, a witness or witnesses.

24 Declaration of transfer

- (1) Where a ship registered under this Act is transferred, the transferee is not entitled to be registered as owner of the ship until he or in the case of a corporation, a person authorised by this Act to make declarations on behalf of the corporation, has made and signed a declaration of transfer in the prescribed form referring to the ship and —
 - (a) containing —
 - (i) statements that show that the transferee is a qualified person, or, where there is more than one transferee, that each transferee is a qualified person; and
 - (ii) a statement that to the best of his knowledge and belief, only a qualified person, or persons each of whom is a qualified person, is or are entitled as owner to any legal or beneficial interest in the ship or a share in the ship; or
 - (b) as the case may be, containing a statement that paragraphs (a) and (b) of section 8 (2) apply in relation to the ship.
- (2) This section does not apply in relation to a ship registered under this Act which, on transfer, becomes a Government ship.

25 Registration of transfer

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

26 Transmission of ship on death, bankruptcy, etc.

- (1) Where the property in a ship registered under this Act is transmitted to any person on the death or bankruptcy of any registered owner, or by any lawful means other than by a transfer made under this Act, then, subject to section 27, that person shall authenticate the transmission by making and signing a declaration of transmission in the prescribed form identifying the ship, and the declaration of transmission shall contain such statements and shall be accompanied by such documents as are prescribed.
- (2) The Registrar, on receipt of the declaration of transmission under subsection (1), accompanied by the statements and documents referred to in that subsection, shall enter in the Register the name of the person entitled under the transmission as owner of the ship the property in which has been transmitted, and where there is more than one such person, the Registrar shall enter the names of all such persons, but those persons, however numerous, shall, for the purposes of any provision of this Act relating to the number of persons entitled to be registered as owners, be considered as one person.

27 Order for sale on transmission to unqualified person, etc.

- (1) Where the property in a ship registered under this Act is transmitted on death or bankruptcy or otherwise and as a result the ship would not if application were then made, qualify for registration under section 8 (1) or (2), the Court may, on application by or on behalf of that person or one or more of those persons, order a sale of the property so transmitted, and direct that the proceeds of the sale, after deducting the expenses of the sale, be paid to the person or persons entitled under the transmission or otherwise as the Court directs.
- (2) The Court may require any evidence it thinks fit in support of the application and may make the order on any terms and conditions it thinks

just or may refuse to make the order, and generally may act in the case as the justice of the case requires.

- (3) An application under this section shall be made within 60 days after the occurrence of the event on which the transmission has taken place, or within such further time (not exceeding in the whole one year from the date of the occurrence) which the Court allows.
- (4) If the application is not made within the time specified in subsection (3) or if the Court refuses an order for sale, the ship transmitted is liable to forfeiture.

28 Transfer of ship on sale by order of Court

- (1) Where the Court orders the sale of a ship registered under this Act, the order shall contain a declaration vesting in a person or persons specified in the order the right to transfer the ship, and that person is entitled to transfer the ship in the manner and to the same extent as if he was the registered owner of the ship.
- (2) The Registrar shall obey the requisition of the person named in a declaration under subsection (1) in respect of any such transfer to the same extent as if that person were the registered owner.

29 Court may prohibit Transfer

- (1) The Court may, if it thinks fit, and without prejudice to any other of its powers, on the application of a person claiming an interest in a ship registered under this Act make an order prohibiting for the time specified in the order any dealing with that ship.
- (2) The Court may make an order under subsection (1) on any terms or conditions it thinks just, or may refuse to make the order, and generally may act in the case as the justice of the case requires.
- (3) The Registrar, after being served with a copy of an order made under this section, shall not register any dealings prohibited by the order.

DIVISION 4 - MORTGAGES

30 Method of mortgage of ship

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

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

31 Entry of discharge of mortgage

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

32 Priority of mortgages

- (1) Where there are more mortgages than one registered in respect of the same ship registered under this Act, the mortgagees are, notwithstanding any express, implied, or constructive notice, entitled in priority one over the other, according to the date and time at which each mortgage is produced to the Registrar and not according to the date of each mortgage itself.
- (2) A registered mortgage shall not be affected by any act of bankruptcy committed by the mortgagor after the date of registration of the mortgage, notwithstanding that the mortgagor, where he is adjudicated to be insolvent, at the commencement of his insolvency had the ship in his possession, order or disposition, or was the reputed owner of the ship, and the mortgage shall be preferred to any right, claim or interest in the ship of the other creditors of the insolvent or any trustee or assignee on their behalf.

33 Powers of mortgagee

- (1) Except as may be necessary for making a mortgaged ship available as a security for the mortgage debt, a mortgagee shall not, by reason of the mortgage, be deemed to be the owner of the ship nor shall a mortgagor be deemed to have ceased to be the owner of the ship.
- (2) Subject to subsections (3) and (4), a registered mortgagee shall have power absolutely to dispose of the ship in respect of which he is registered and to give effectual receipts for the purchase money.

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

34 Transfer of mortgage

- (1) A registered mortgage of a ship may be transferred to any person by registration of the instrument of transfer in the prescribed form.
- (2) On the production to the Registrar of an instrument of transfer of a registered mortgage and of the mortgage to which the instrument of transfer relates, the Registrar shall register the transfer by making an entry of the transfer in the Register and shall endorse and sign on the mortgage and on the instrument of transfer a memorial stating the date and time of the production to him of the instrument of transfer and mortgage.

35 Transmission of interest in mortgage by death, etc.

- (1) Where the interest of a mortgagee in a ship is transmitted to any person on the death or bankruptcy of the mortgagee, or by any lawful means, other than by a transfer under this Act the transmission shall be authenticated by a declaration of the person to whom the interest is transmitted.
- (2) A declaration referred to in subsection (1) shall be in the prescribed form and shall contain a statement of the manner in which, and the person to whom, the interest has been transmitted, and shall be accompanied by such evidence as is prescribed.
- (3) The Registrar after receipt of the declaration and accompanying evidence, shall enter the name of the person entitled under the transmission in the Register as the mortgagee of the ship.

DIVISION 5 - NATIONAL CHARACTER AND FLAG

36 Penalty for unduly assuming Tuvaluan character

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

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

37 Penalty for concealment of Tuvaluan character, etc.

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

- (a) does anything or permits anything to be done; or
 - (b) carries or permits to be carried on a ship any papers or documents.
- with intent to —
- (c) conceal the Tuvaluan character of the ship from a person entitled by law to inquire into the character of the ship;
 - (d) deceive a person referred to in paragraph (c); or
 - (e) assume a foreign character.

is guilty of an offence.

38 Forfeiture for offence under section 37

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

39 National colours

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

40 Colours other than national colours

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

- (a) the master of the ship;
- (b) the owner if he is on board the ship; and (c) any person hoisting those colours.

are each guilty of an offence.

DIVISION 6 - MISCELLANEOUS

41 Registrar may require information

- (1) The Registrar may, where he has reason to believe that the Register does not contain accurate particulars in respect of a ship registered under this Act direct the owner of the ship, or any other person in possession of information relating to the ship, to furnish him with information in respect of the ship.
- (2) A person who, after having been given a direction under subsection (1), fails, to the extent to which he is able to do so, to comply with that direction is guilty of an offence.

42 Notice of trusts not received

- (1) No notice of any trust express, implied or constructive, shall be entered in the Register or shall he received by the Registrar.
- (2) Subject to this Act, and subject to any rights and powers appearing on the face of the Register to be vested in any other person, the registered owner of a ship has absolute power to dispose of the ship and to give effectual receipts for any money paid or advanced by way of consideration.

43 Equities not excluded by Act

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

- (a) the provisions of this Act for preventing notice of trusts from being entered in the Register or received by the Registrar: and
- (b) the powers of disposition and of giving receipts conferred by this Act on registered owners and mortgagees; and
- (c) the provisions of this Act relating to the exclusion of unqualified persons from the ownership of ships registered under this Act.

interests arising under contract or other equitable interests may be enforced by or against the owner or mortgagee of any ship in respect of his interest in the ship in the same manner as in respect of any other personal property.

44 Liability of owners

- (1) Subject to subsection (2), where a person has a beneficial interest in a ship registered under this Act and that ship is registered in the name of some, other person as owner, the person having the interest shall, as well as the registered owner, be subject to all pecuniary penalties imposed by this Act on the owners of ships, and proceedings may be taken for the enforcement of any such penalties against both or either of those persons, with or without joining the other of them.
- (2) Subsection (1) does not apply to a person having a beneficial interest by way of mortgage, except in the case of a mortgage in possession of a ship.

45 Ship's managing owner to be registered

- (1) The name and address of the managing owner for the time being of every ship registered under this Act shall be registered with the Registrar.
- (2) Where there is not a managing owner, there shall be registered the name of the ship's husband or other person to whom the management of the ship is entrusted by or on behalf of the owner, and any person whose name is so registered shall, for the purposes of this Act, be under the same obligations and subject to the same liabilities as if he were the managing owner.
- (3) This section does not apply in relation to a Government ship.

46 Names of registered ships

- (1) An owner or master of a ship registered under this Act who suffers or permits the ship to be described by a name other than that by which the ship is for the time being registered is guilty of an offence.
- (2) The Regulations may make provisions for, or in relation to, the change of the name of a ship.

PART III - INTERNATIONAL MARITIME CONVENTIONS

47 International Maritime Conventions

“International Maritime Convention” means —

- (a) the Safety Convention;
- (b) the Load Line Convention;
- (c) the Tonnage Measurement Convention;

- (d) any other convention, agreement or treaty relating to —
 - (i) shipping;
 - (ii) seamen;
 - (iii) safety;
 - (iv) the prevention, reduction or control of pollution of the sea or other waters by matter from ships; or
 - (v) limitation of liability of ship-owners for loss.

48 Implementation of Convention

- (1) The Minister may, in relation to any International Maritime Convention specified in the regulations, make such regulations for the purpose of implementing, or enabling legal effect to be given to, the Convention in Tuvalu as the Minister considers necessary or expedient.
- (2) Regulations under subsection (1) may include consequential amendments of any written law for the purpose specified in subsection (1).
- (3) Where the Minister is satisfied —
 - (a) that the government of any foreign country has ratified, acceded to or denounced any International Maritime Convention; or
 - (b) that any such Convention has been applied or has ceased to apply to any country,

he may, by notice, make a declaration to that effect and the notice shall be received in any proceeding as evidence of the matter so declared.

49 Implementation of Collisions Convention

- (1) The Collisions Convention shall have the force of law in Tuvalu.
- (2) Where, in respect of —
 - (a) a ship that is registered under this Act; or
 - (b) any ship that is within Tuvalu waters,the owner, or the master, or any other person, fails to comply with a requirement of the Collision Convention, the master or owner of the ship or that other person is guilty of an offence.
- (3) A person who, except in the case of a ship that is in distress and requires assistance, exhibits a signal that is prescribed in the Collisions Convention as being a signal used to designate a vessel that is in distress and that requires assistance is guilty of an offence.

PART IV - SAFETY

DIVISION 1 - UNSAFE SHIPS

50 Detention of unsafe ships

- (1) This section applies in relation to —
 - (a) a ship registered under this Act; and
 - (b) a ship not so registered which is at a port or place in Tuvalu.
- (2) Where, whether on complaint or otherwise, the Harbour Master or an inspector has reason to believe that a ship in relation to which this section applies is unsafe, he may cause the ship to be detained until he is satisfied that the ship can go to sea without serious danger to the crew or any passenger on the ship, having regard to the voyage proposed.
- (3) A ship is deemed to be unsafe for the purposes of this section if, by reason of —
 - (a) the defective condition of the hull, machinery or equipment
 - (b) under-manning:
 - (c) overloading or improper loading; or
 - (d) any other matter.

the ship cannot proceed to sea without serious danger to the crew or any passengers on the ship, having regard to the voyage proposed.
- (4) In considering for the purposes of this section whether or not a ship is unsafe regard shall be had to the requirements of —
 - (a) any International Maritime Convention implemented in Tuvalu under regulations made for the purposes of section 48, or otherwise having effect in Tuvalu, and applying in relation to the ship; and
 - (b) any of the Regulations so applying.

51 Notice to be given of detention of unsafe ship

- (1) Where a ship is detained under section 50, the Harbour Master or, as the case may be, the inspector shall give notice in writing to the master setting out the reasons for the detention.
- (2) Where a ship that is registered in a foreign country is detained under section 50, the Harbour Master or, as the case may be, the inspector shall so inform the Minister and the Minister shall —

- (a) if that foreign country has diplomatic relations with Tuvalu, cause the Consul or other diplomatic representative of that foreign country; or
 - (b) in any other case, cause the Government of that foreign country, to be informed of the detention and of the reasons for the detention.
- (3) Where a ship is detained under section 50, the master may make written representation to the Minister with respect to the release of the ship, and the Minister may, if he considers that in all the circumstances he is justified in doing so, either order the release of the ship or refuse to do so.

52 Offences in relation to unsafe ships

- (1) This section applies in relation to —
- (a) a ship registered under this Act; and
 - (b) a ship not so registered which is at a port or place in Tuvalu.
- (2) Where —
- (a) a ship referred to in subsection (1)(a) goes to sea, whether from a port or place in Tuvalu or not, on any voyage; or
 - (b) a ship referred to in subsection (1)(b) goes to sea on any voyage, and the ship is unsafe —
 - (c) any person who has knowingly sent, or attempted to send; and
 - (d) the master of the ship who has knowingly taken, or attempted to take,
- the unsafe ship to sea are each guilty of an offence.
- (3) It is a defence to the prosecution for an offence under subsection (2) if the accused person proves that —
- (a) he used all reasonable means to ensure that the ship was being sent or taken to sea in a safe state; or
 - (b) having regard to the circumstances, the sending or taking, or attempted sending or taking, of the ship to sea was reasonable and justifiable.
- (4) The provisions of section 50(3) and (4) apply for the purposes of this section as they apply for the purposes of section 50.

53 Failure to carry equipment

- (1) This section applies in relation to —
- (a) a ship registered under this Act; and

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

the master and owner of the ship are each guilty of an offence.

DIVISION 2 - GENERAL SAFETY AND PRECAUTIONS

54 Notification of serious danger to navigation

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

“**island radio station**” means a Government radio station on an outer island.

55 Reports of positions and movements of ships

- (1) The master of a ship, not being an exempt ship, at sea within Tuvalu waters shall make by radio reports of the positions and movements of the ship in accordance with this section.
- (2) A report under subsection (1) shall —
 - (a) be made —
 - (i) to Funafuti Radio;
 - (ii) at least twice in every period of 24 hours; and
 - (iii) as soon as possible after leaving a port and before closing down prior to arriving at a port; and
 - (b) include information as to —
 - (i) the position, course and speed of the ship;
 - (ii) the next port of destination of the ship; and
 - (iii) the estimated time of arrival at that port.
- (3) The master of a ship who refuses, or fails without reasonable cause, to comply with subsection (1) is guilty of an offence.
- (4) The Minister may, by order, exempt any ship, or class of ships, from the requirements of subsection (1), and the reference in subsection (1) to “an exempt ship” shall be construed accordingly.

56 Obligation to assist person in danger of being lost

- (1) This section applies in relation to (a) a ship registered under this Act; and
- (b) a ship not so registered which is within Tuvalu waters.
- (2) The master of a ship in relation to which this section applies shall render assistance to any person who is found at sea in danger of being lost.
- (3) A master of a ship in relation to which this section applies who, without reasonable cause (the burden of proof of which is on him), fails to comply with subsection (2) is guilty of an offence.
- (4) It is a defence in a prosecution for an offence under subsection (3) if the master proves that compliance with the requirement of subsection (2) would have caused serious danger to his ship or to any person in his ship.

57 Duty of ships to assist in case of collision

- (1) This section applies in relation to —
 - (a) a ship registered under this Act; and

- (b) a ship not so registered which is within Tuvalu waters.
- (2) In every case of collision between two ships it shall be the duty of the person in charge of a ship in relation to which this section applies —
- (a) to render to the other ship, her master, crew and passengers (if any) such assistance as is practicable and necessary in order to save them from collision;
 - (b) to stay by the other ship until he has ascertained that she has no need for further assistance: and
 - (c) to give the person in charge the name of his own ship and of the port to which she belongs and the ports from which she comes and to which she is bound, if and in so far as he can do so without danger to his own ship, crew or passengers (if any).
- (3) Any person who without reasonable cause fails to comply with subsection (2) is guilty of an offence.

58 Right to salvage not affected

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

DIVISION 3 - CARRIAGE OF DANGEROUS GOODS

59 Definitions for the purposes of Division 3

In this Division —

“**dangerous goods**” means any goods listed as such for the purposes of the IMDG Code;

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

60 Power to deal with goods suspected of being dangerous

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

- (a) refuse to take on board any package which he suspects may contain dangerous goods;
- (b) open and inspect any package which on reasonable grounds he suspects may contain dangerous goods; and

- (c) discharge, destroy, render innocuous or otherwise deal with any goods which —
 - (i) in his opinion are dangerous goods; and
 - (ii) have been shipped on board the ship without his knowledge and consent

and shall not be subject to any liability of any kind for doing so.

61 Restriction on carriage of dangerous goods

- (1) A person who sends or attempts to send by any ship, or (not being the owner or master of the ship) carries or attempts to carry in any ship any dangerous goods without —
 - (a) distinctly marking their nature on the outside of the package containing the goods; and
 - (b) giving written notice —
 - (i) to the Harbour Master not less than 24 hours before the goods are to be shipped; and
 - (ii) to the Master or owner of the ship at or before the time of sending the goods to be shipped,
of the —
 - (iii) correct technical name of the goods; and
 - (iv) the name and address of the shipper;

is guilty of an offence.
- (2) Any person who knowingly sends or attempts to send by, or carries or attempts to carry in, any ship any dangerous goods under a false description, or falsely describes the shipper of any dangerous goods, is guilty of an offence.
- (3) Where any dangerous goods have been sent or carried, or an attempt has been made to send or carry any dangerous goods, on board any ship in contravention of this Act, the Court may order them, and any packages or container in which they are contained, to be forfeited to the Crown.
- (4) The Court may exercise the power conferred by subsection (3) notwithstanding —
 - (a) that the owner of the goods has not committed any offence in respect of the goods, or is not before the Court, or has no notice of the proceedings: or
 - (b) that there is no evidence as to the ownership of the goods,

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

62 Packing, etc. of dangerous goods

- (1) Subject to subsection (2), the requirements with respect to the packing, storage and carriage of dangerous goods in ships are those prescribed in the IMDG Code.
- (2) For the case of a ship that is engaged on a voyage other than an international voyage, the Harbour Master or an inspector may permit such modifications to the requirements referred to in subsection (1) as he considers reasonable having regard to —
 - (a) the type of ship concerned; and
 - (b) the trade in which the ship is, or is about to be, engaged.

DIVISION 4 - CARRIAGE OF BULK CARGOES AND GRAIN CARGOES

63 Definitions for the purposes of Division 4

In this Division —

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

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

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

64 Storage and carriage of bulk and grain cargoes

- (1) Subject to subsection (2), the requirements for —
 - (a) the storage and carriage of bulk cargo in a ship shall be those prescribed in the Bulk Cargoes Code; and
 - (b) the storage and carriage of grain in a ship shall be those prescribed in Chapter VI of the Safety Convention.
- (2) In the case of a ship that is engaged on a voyage other than an international voyage, the Harbour Master or an inspector may permit such modifications to the requirements referred to in subsection (1) (a) or (b) as he considers reasonable having regard to —

- (a) the type of ship concerned;
- (b) the trade in which the ship is, or is about to be, engaged.

DIVISION 5 - SHIPPING CASUALTIES

65 Meaning of “casualty”, etc.

In this Division —

“**casualty**”, in relation to a ship, means —

- (a) the loss or the presumed loss, the stranding, the grounding or the abandonment of, or damage to, the ship or a board belonging to the ship; or
- (b) damage caused by a ship or by a boat belonging to the ship: or
- (c) a loss of life caused by —
 - (i) fire on board; or
 - (ii) accident to; or
 - (iii) accident occurring on board.

the ship or a boat belonging to the ship:

“**ship**” means a ship which, when a casualty occurs in relation to the ship —

- (a) is registered under this Act or
- (b) is within Tuvalu waters.

66 Investigations and inquires

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

- (a) a preliminary investigation to be carried out; and
- (b) a Marine Inquiry to be held; or
- (c) a preliminary investigation to be carried out and a Marine Inquiry to be held.

67 Preliminary investigation

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

- (a) may —
 - (i) go on board any ship involved in the casualty;

- (ii) require any person to answer questions relating to the casualty: and
 - (iii) require the production to him of any certificate relating to any ship involved in the casualty;
- (b) shall, upon conclusion of the investigation, send to the Minister a report containing a full statement of the case and of his opinion on the case, accompanied by such report on, or extracts from, the evidence and such observations as he thinks fit.

68 Marine Inquiry

- (1) Where the Minister causes a Marine Inquiry to be held under section 66 he shall —
- (a) appoint a person to conduct the Marine Inquiry: and
 - (b) nominate two assessors to assist the person.
- (2) In any such case where a question as to the cancellation or suspension of a certificate of competency is likely to arise, the assessors nominated under subsection (1) (b) shall hold certificates of equivalent or higher rank to those held by the person whose certificate may be cancelled or suspended; but the proceedings before a Marine Inquiry shall not be challenged on the ground of any alleged failure to comply with the requirement of this subsection.
- (3) The person appointed and any assessor nominated under subsection (1) may —
- (a) go on board any ship;
 - (b) require any person to answer questions relating to the casualty; and
 - (c) require the production to him of any document or certificate relating to any ship involved in the casualty.
- (4) On the conclusion of an inquiry under section 66, the person appointed under subsection (1) shall make a full report in writing to the Minister setting out the results of the inquiry.
- (5) The Regulations may make provisions with respect to proceedings in any Marine Inquiry.

69 Power of Marine Inquiry as to certificates

- (1) Where, as a result of a Marine Inquiry, the Inquiry is satisfied that a master or a qualified officer or seaman —
- (a) is unfit to discharge his duties because of —

- (i) incompetence;
 - (ii) misconduct; or
 - (iii) any other reason.
- (b) has been seriously negligent in the discharge of his duties: or
- (c) has failed to give assistance and information as required by section 57.

and, in a case coming under paragraph (a) or (b), is further satisfied that the unfitness or negligence caused or contributed to the casualty, the Marine Inquiry may —

- (d) order the cancellation or suspension of any certificate of competency of the master, qualified officer or other seaman: or
 - (e) censure the master, qualified officer or other seaman.
- (2) Where a cancellation or suspension is ordered under subsection (1)(d) the master, qualified officer or seaman concerned shall forthwith deliver the certificate to the Registrar of Seamen for cancellation or suspension.

70 Failure to deliver certificate for cancellation, etc.

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

71 Restoration of certificates, etc.

- (1) Where a Marine Inquiry has been held under this Division the Minister may order the whole or part of a case to be reheard, and shall do so if —
- (a) new and important evidence which could not be produced at the inquiry has been discovered; or
 - (b) there appears to the Minister to be other grounds for suspecting that a miscarriage of justice may have occurred.
- (2) Where a certificate has been cancelled or suspended under this Division by a Marine Inquiry under section 69 the Minister may —
- (a) on the recommendation of the Marine Inquiry: or
 - (b) if he is of the opinion that the circumstances of the case require it, cause the issue of a new certificate of a lower grade in place of the cancelled or suspended certificate.

72 Appeals

- (1) Subject to subsection (2), where under this Division —
- (a) the certificate of a master, qualified officer or other seaman is cancelled or suspended;
 - (b) any such person is censured;
 - (c) the costs or part of the costs of an inquiry are awarded by a Marine Inquiry against any person; or
 - (d) the Marine Inquiry has found that the casualty has been caused or contributed to by the wrongful act of any person,
- the master, qualified officer or other seaman in the case of (a) or (b) and in the case of (c) or (d) any person who has appeared at the hearing and is affected by the decision of the Marine Inquiry, may appeal to the Court and the Court may make such order as the justice of the case requires.
- (2) Where a rehearing has been ordered under section 71, no appeal may be made until the decision of the rehearing has been given.

PART V - MASTERS AND SEAMEN

DIVISION 1 - INTRODUCTORY

73 Application

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

- (a) the provisions of this Part apply in relation to a ship registered under this Act not being —
 - (i) a vessel of less than 10 metres in length; or
 - (ii) a pleasure craft;
- (b) the provision of section 75 apply in relation to such vessels as may be prescribed;
- (c) such provisions of this Part as are specified in an order made by the Minister for the purpose apply in relation to —
 - (i) any class or description of ships identified in the order (not being ships registered under this Act or in a country other than Tuvalu); and
 - (ii) engaged in near coastal trade.

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

74 Exemptions

- (1) Subject to subsection (3), the Minister may, by order, exempt a particular ship or a particular class or description of ships, from any requirement of this Part which would otherwise apply in relation to the ship.
- (2) An exemption under subsection (1) may be given in respect of —
 - (a) a particular period;
 - (b) one, or more than one, particular voyage; or
 - (c) generally.
- (3) No exemption shall be given under subsection (1) in relation to any prohibition in the Regulations against employing any identified class of persons.

DIVISION 2 - MANNING AND CERTIFICATION

75 Manning

- (1) A ship shall be manned by such number and grades of persons as may be prescribed.
- (2) The extent to which the persons manning a specified grade or grades on a ship shall be citizens of Tuvalu may also be prescribed.
- (3) An owner or master of a ship who suffers or permits the ship to go to sea —
 - (a) without being manned in the manner prescribed; or
 - (b) knowing the ship to have a crew consisting of fewer citizens of Tuvalu than the prescribed proportion of the crew,is guilty of an offence.

76 Certificate of competency

- (1) Subject to this Act the prescribed authority may issue a certificate of competency in the prescribed manner to a person attaining such standard as may be prescribed.
- (2) A certificate of competency issued under this section is evidence that the person to whom the certificate is issued is of the qualification or grade specified in the certificate.

77 Unqualified person going to sea as qualified officer or seaman

A person who goes to sea as a master, or a qualified officer or a seaman of a particular grade and who is not a master, or an officer, or a seaman of that grade is guilty of an offence.

78 Production of certificate of competency

Any person serving or engaged to serve in a ship and holding a certificate of competency or other document which is evidence that he is a master, a qualified officer or other qualified seaman, who fails, without reasonable excuse on demand to produce the certificate or other document to —

- (a) his employer;
- (b) the master of the ship on which he is employed; or
- (c) an authorised officer,

is guilty of an offence.

79 Disqualification of officer or seaman

(1) Where, in the opinion of the Minister, a master or a qualified officer or seaman —

- (a) is unfit to discharge his duties because of —
 - (i) incompetence;
 - (ii) misconduct; or
 - (iii) any other reason;

- (b) has been seriously negligent in the discharge of his duties: or
- (c) has failed to give assistance and information after a collision.

the Minister may cause an inquiry to be held and —

- (d) shall appoint a person to conduct the inquiry; and
- (e) may, if he thinks fit, suspend the certificate of competency of the master, officer or seaman pending the outcome of the inquiry.

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

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

80 Inquiry under section 79

- (1) Where the Minister has caused an inquiry to be held under section 79, the person appointed for the purpose of that inquiry, may —
 - (a) go on board any ship;
 - (b) require any person to answer questions relating to the subject of the inquiry; and
 - (c) require the production to him of any document or certificate which, in his opinion is relevant to the inquiry.
- (2) A person appointed for the purpose of an inquiry —
 - (a) may, if satisfied as to any of the matters referred to in section 79 —
 - (i) order the cancellation or suspension of any certificate of competency of the master, officer or other seaman; or
 - (ii) censure the master, officer or other seaman.
 - (b) may make such order with regard to the costs of the inquiry as he thinks fit; and
 - (c) shall make a report on the inquiry to the Minister.
- (3) Where a person appointed for the purpose of an inquiry orders the cancellation or suspension of a certificate of competency, the Minister may —
 - (a) cancel or suspend the certificate, as the case requires; or
 - (b) if the Minister considers the administration of a censure more appropriate, censure the master, officer or other seaman.
- (4) Where, under this section, —
 - (a) a certificate of competency is cancelled or a censure is administered; or
 - (b) costs of an inquiry are awarded against a master, officer or other seaman,

the master, officer or other seaman concerned may, within 30 days, appeal to the Court which shall make such order as the justice of the case requires.
- (5) A person, in holding an inquiry —
 - (a) may be assisted by one or more assessors with such qualifications as are prescribed; and
 - (b) shall be assisted, in such circumstances as are prescribed, by two or more such assessors,

nominated by the Minister.

81 Regulations for certificates of competency

The Regulations may make provision for and in relation to —

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

DIVISION 3 - CREW AGREEMENTS

82 Crew agreements

- (1) Where a person is employed as a seaman on a ship there shall be a crew agreement between the employer, or some one acting on his behalf, and the seaman.
- (2) A crew agreement shall be in writing and executed by the parties to the agreement.
- (3) A crew agreement may be with respect to employment in one or more ships and may be for —
 - (a) a particular period not exceeding 2 years; or
 - (b) one, or more than one, particular voyage.
- (4) In every crew agreement, notwithstanding any express provision in the agreement to the contrary, there is an implied term that the employer and the owner of the ship shall use all reasonable means to ensure that the ship in which the crewman is, or is to be, employed, is seaworthy for, and during any voyage which may take place during the currency of the agreement and any consent or purported consent by the seaman to waive the benefit of that implied term is void and of no effect.

83 Prohibition on seeking rewards for employment

A person who demands or receives, directly or indirectly, from another person seeking employment as a seaman any remuneration or reward, whether in cash

or otherwise, for providing employment to that other person is guilty of an offence.

84 Regulations for crew agreements

The Regulations may make provision for and in relation to —

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

DIVISION 4 - WAGES

85 Agreements as to wages

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

86 Account of wages

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

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

87 Right of seaman to wages

- (1) The lien of —
- (a) a seaman for his wages; and
 - (b) a master of a ship for his wages and for reimbursement of any expenditure or disbursements properly incurred or made by him on behalf of the ship,
- have priority over all other liens irrespective of the date of that lien or those other liens.
- (2) The right of a seaman to wages does not depend on the earnings of freight.

88 Seaman cannot waive protection of Act

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

89 Regulations relating to wages

The Regulations may make provision for and in relation to —

- (a) the deductions which may be made from the wages due to a crewman;
- (b) the manner in which deductions may be made;
- (c) the manner in which wages are to be paid;
- (d) the manner in which wages are to be accounted for where a seaman leaves a ship otherwise than on termination of an agreement;
- (e) the form and manner in which accounts of wages are to be prepared by an employer and delivered to a seaman;
- (f) the form of allotment notes; and
- (g) the circumstances in which allotments may be made.

DIVISION 5 - CREW ACCOMMODATION

90 Crew accommodation

- (1) A ship shall have accommodation exclusively reserved for the use of the crew and known as the crew accommodation.
- (2) The crew accommodation of a ship shall be of the prescribed standard.
- (3) An owner or master of a ship who suffers or permits the ship to go to sea without crew accommodation of the prescribed standard is guilty of an offence.

91 Regulations for crew accommodation

The Regulations may make provision for and in relation to —

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

DIVISION 6 - WELFARE

92 Provisions and water

- (1) An employer or master of a ship shall ensure that the provisions and water supplied for the use of crewmen are as prescribed.
- (2) Where three or more seamen are of the opinion that the provisions or water supplied for the use of seamen are not as prescribed, they may complain to the master and if they are dissatisfied with the action if any

taken by the master or with the master's failure to act they may complain to the Registrar of Seamen.

- (3) Where a complaint is made the Registrar of Seamen shall forthwith cause the complaint to be investigated.
- (4) For the purposes of an investigation under this section the Registrar of Seamen may cause the provisions or water to be examined.
- (5) Where, after an investigation under this section, the Registrar of Seamen is of the opinion that the provisions or water are not as prescribed he shall direct the employer or the master to replace them.
- (6) An employer or a master shall comply with a direction given under this section.

93 Medical stores etc.

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

94 Complaints

- (1) Where, in the opinion of a seaman, the seaman has cause to complain about —
 - (a) the master:
 - (b) any other seaman on a ship: or
 - (c) the conditions on board a ship.he may complain to the master.
- (2) Where a seaman —
 - (a) has made a complaint under subsection (1); and
 - (b) is dissatisfied with —
 - (i) the action taken by the master on that complaint: or
 - (ii) the failure of the master to take any action,the seaman may —
 - (c) state his dissatisfaction to the master: and
 - (d) may request the master to make adequate arrangements for the seaman to complain to the Registrar of Seamen, as soon as the service of the ship permits.

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

95 Regulations for welfare

The Regulations may make provision for and in relation to —

- (a) the quality and quantity of the provisions and water to be supplied for the use of seamen;
- (b) the manner of checking and inspecting provisions and water supplied for the use of seamen;
- (c) the manner and conduct of medical examinations of seamen and of persons seeking employment as seamen;
- (d) the medicines and medical and surgical stores (including books containing instructions and advice) to be carried in a ship and the manner in which such medicines and stores are to be carried, stored and used in a ship;
- (e) the appointment and certification of first-aid attendants and the circumstances in which first-aid attendants are to be carried on a ship;
- (f) the manner in which medical expenses incurred in respect of a seaman while at a place outside the country may be recovered from an employer;
- (g) the circumstances and the manner in which the Minister shall make provision for the relief, maintenance and return to a proper return port of a seaman;
- (h) the manner in which any wages due to a distressed seaman and any property left on board a ship by a distressed seaman are to be dealt with;
- (i) the manner in which any expense incurred in bringing ashore a seaman who has been ship-wrecked, or in maintaining him after he has been brought ashore, may be recovered from the person who last employed him as a seaman; and
- (j) the manner in which the property of a deceased seaman is to be —
 - (i) held in custody; or
 - (ii) sold, converted into cash or otherwise disposed of.

DIVISION 7 - DISCIPLINE**96 Misconduct endangering ship or persons on board**

- (1) This section applies where a seaman —
- (a) does any act which causes, or is likely to cause —
 - (i) the loss or destruction, or serious damage to; or
 - (ii) the death of, or serious injury to, a person on board, a ship; or
 - (b) fails to do anything required to be done by him to preserve —
 - (i) a ship from loss, destruction, or serious damage; or
 - (ii) any person on board the ship from death or serious injury.
- (2) Where the act, or failure to act, by the seaman referred to in subsection (1) —
- (a) is deliberate;
 - (b) amounts to a breach or neglect of duty or disobedience to a lawful command; or
 - (c) occurs when the seaman is under the influence of alcohol or a drug, the seaman is guilty of an offence.

97 Continued or concerted disobedience, neglect of duty, etc.

Where a seaman on a ship —

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

98 Absence without leave

Where —

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

the seaman is guilty of an offence.

99 Persons deemed to be seamen

Notwithstanding any other provision of this Act, where —

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

he is, for the purposes of this Division, deemed to be a seaman on the ship.

100 Defence of drug taken for medical purposes

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

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

101 Disciplinary offences

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

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

102 Appeal

- (1) Where —
- (a) the Registrar of Seamen has declared a seaman to be a suspended person; and
 - (b) the period of suspension exceeds 12 months, the seaman may within 30 days of receiving the prescribed notification of his suspension, appeal to the Court.
- (2) Where an appeal is made under subsection (1), the Court shall make such orders as the justice of the case requires.

103 List of suspended persons

- (1) The Registrar of Seamen shall keep a list known as the list of suspended persons.
- (2) Where a seaman is suspended for a period —
- (a) of 12 months or less; or
 - (b) exceeding 12 months and —
 - (i) no appeal to the Court is made within the period of 30 days referred to in section 102; or
 - (ii) an appeal is made under that section and the Court orders that the appeal be dismissed.

the Registrar of Seamen shall include the name of the seaman in the list of suspended persons.

104 Regulations for disciplinary offences

The Regulations may make provision for and in relation to —

- (a) misconduct on board a ship which is a disciplinary offence;
- (b) the procedures under which a master may find that a seaman has committed a disciplinary offence;

- (c) the manner in which a declaration of suspension shall be made and the manner in which that declaration shall be notified to —
 - (i) a suspended person; and
 - (ii) the person who last employed him as a seaman:
- (d) the manner in which the name of a suspended person shall be included in a list of suspended persons; and
- (e) the manner in which a list of suspended persons is —
 - (i) to be kept; and
 - (ii) to be made available for inspection by any person appearing to the Registrar of Seamen to be interested.

DIVISION 8 - GENERAL

105 Stowaways

A person who, without the consent of —

- (a) the master of a ship; or
- (b) a person authorised by the master to give that consent,

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

106 Unauthorised presence on hoard ship

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

- (a) without the consent of the master of a ship or of a person authorised by the master to give that consent goes on hoard a ship in port in Tuvalu: or
- (b) remains on hoard a ship after being requested to leave by the master, a police officer or a customs officer.

is guilty of an offence.

107 Master's power of arrest

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

108 Return of births and deaths on Tuvalu ship

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

- (2) The master of a ship who refuses, or fails without reasonable cause, to make a return in the prescribed form to the Harbour Master of any —
 - (a) birth occurring in; or
 - (b) death occurring, or presumed to have occurred, in,the ship, is guilty of an offence.

109 Returns of births and deaths on foreign ships

- (1) In this section “ship” means a ship registered in a country other than Tuvalu.
- (2) The master of a ship who refuses, or fails without reasonable cause, to make a return in the prescribed form to the Harbour Master of any —
 - (a) birth of a Tuvalu citizen occurring in; or
 - (b) death of a Tuvalu citizen occurring, or presumed to have occurred, in,the ship, on a voyage to a port or place in Tuvalu is guilty of an offence.

110 Registrar of Seamen

- (1) There shall be an office of Registrar of Seamen which shall be a public office.
- (2) The same person may, but need not, hold the offices of Registrar of Seamen under this section and Registrar of Ships under section 4.

111 Register of Seamen

- (1) The Registrar of Seamen shall cause to be kept at Funafuti a book to be known as the Register of Seamen.
- (2) The Registrar of Seamen shall cause to be entered into the Register of Seamen —
 - (a) particulars of any Seaman’s Discharge Book issued under section 112;
 - (b) particulars of any period during which a person is a suspended person; and
 - (c) such other particulars as may be prescribed.
- (3) Any person may inspect the Register of Seamen at any time during the hours approved by the Registrar of Seamen.

112 Seaman's Discharge Book

- (1) The Registrar of Seamen may issue to a person a book to be known as a Seaman's Discharge Book.
- (2) A Seaman's Discharge Book shall be in the prescribed form.

113 Official Log Book

- (1) The master of a ship shall keep a record book relating to the ship to be known as the Official Log Book.
- (2) Subject to this Act, the master of a ship who fails without reasonable cause —
 - (a) to keep the Official Log Book in the prescribed manner; and
 - (b) to carry the Official Log Book in the ship,is guilty of an offence.
- (3) A person who wilfully destroys or mutilates or renders illegible any entry in an Official Log Book is guilty of an offence.

114 Crew and Passenger Lists

- (1) An employer or the master of a ship shall make and, in the prescribed manner, maintain separate lists of —
 - (a) the crew of the ship, to be known as a Crew List; and
 - (b) the passengers on the ship, to be known as a Passenger List.
- (2) Up-to-date copies of the lists referred to in subsection (1) are to be maintained ashore by or on behalf of the managing owner of a ship.

115 Inquiries into death or serious injury

- (1) Where —
 - (a) a person dies or suffers a serious injury in a ship; and
 - (b) the master of the ship fails, without reasonable cause, to notify the Harbour Master of the death or serious injury,the master of the ship is guilty of an offence.
- (2) Subject to sub-section (2), where —
 - (a) a person dies or suffers a serious injury in a ship; or
 - (b) a seaman belonging to a ship dies or suffers a serious injury away from the ship,

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

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

Cap. 13

116 Holding of inquiry

- (1) For the purpose of holding an inquiry under section 115, the person authorised under that section may —
- (a) go on board a ship at any time and inspect the ship or any article on board the ship;
 - (b) summon any person to appear before him: and
 - (c) require the production of any document which in his opinion is relevant to the inquiry.
- (2) Where an inquiry has been held the person who held it shall make a report in writing of the findings to the Minister who may make a copy of the report available
- (a) in the case of a person who has died —
 - (i) to the next of kin of the deceased person: or
 - (ii) to any other person who requests such a copy and who appears to the Minister to be interested: and
 - (b) in the case of a person who has suffered a serious injury —
 - (i) to that person or to a person acting on his behalf; or
 - (ii) to any other person who requests such a copy and who appears to the Minister to be interested.

117 Absence of seaman from duty

- (1) In this section, “**seaman**” means a seaman who is absent from a ship at a time when, under a crew agreement he is required to be on board.
- (2) Where a seaman proves —
- (a) that his absence from a ship was due to —
 - (i) accident
 - (ii) mistake: or
 - (iii) some cause beyond his control; and
 - (b) that he took all reasonable precautions to avoid being absent,

his absence is not a breach of contract.

- (3) Where, in an action for breach of contract arising from the absence of a seaman from a ship, a seaman fails to prove the matters referred to in subsection (2), if special damages are —
 - (a) not claimed by his employer, his civil liability is limited to 50 dollars: or
 - (b) claimed by his employer, his civil liability is limited to 50 dollars.

118 Apprehension of foreign seaman

- (1) Where it appears to the Minister that due facilities will be given by the government of a country for apprehending and receiving seamen who desert in that country from ships registered under this Act, the Minister may, by order, declare that this section shall apply in relation to that country, subject to any conditions stated in the order.
- (2) Where, in Tuvalu, a seaman deserts from a ship registered in a country to which, under subsection (1), this section applies, the master of the ship may apply to the Court for aid in apprehending the deserter, and the Court and its officers shall give all aid within their power, and for that purpose the Court may, on information given on oath, issue a warrant for the deserter to be conveyed on board the ship, or delivered to the master, or owner of the ship or his agent, to be so conveyed.

119 Detention of ships

- (1) Where —
 - (a) a ship is at a place in Tuvalu or within Tuvalu waters; and
 - (b) the Harbour Master is of the opinion that the owner or the master of the ship or an employer, has failed to comply with a requirement of this Part,the ship may be detained.
- (2) Where a ship is detained under subsection (1), the ship may be detained until such time as the Harbour Master issues a certificate showing that —
 - (a) the Harbour Master is satisfied that the owner, the employer and the master have complied with the provisions of this Part; and
 - (b) the ship may go to sea without a contravention of any provision of this Part.

120 General Regulations

The Regulations may make provision for and in relation to —

- (a) the issue and form of Seaman's Discharge Book;
- (b) entries to be made in the Register of Seamen;
- (c) endorsements to be made in Seaman's Discharge Books;
- (d) the particulars required to be entered in an Official Log Book;
- (e) the persons by whom entries in an Official Log Book are to be made, signed or witnessed;
- (f) the procedure to be followed in the making of entries in an Official Log Book;
- (g) the production, or delivery of an Official Log Book to such person, in such circumstances and within such times as may be specified;
- (h) the particulars to be entered in the Crew List and in a Passenger List;
- (i) the time during which a Crew List or a Passenger List may remain in force;
- (j) the manner of notification to specified persons of changes in a Crew List or a Passenger List;
- (k) the places and manner in which a Crew List and a Passenger List and copies of these Lists are to be maintained; and
- (l) the manner in which a Crew List or a Passenger List or copies are to be made available on demand to specified persons.

PART VI - DIVISION OF LIABILITY

121 Rule as to division of liability

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

- (a) if having regard to all the circumstances of the case, it is not possible to establish different degrees of fault the liability shall be apportioned equally;
- (b) nothing in this section operates so as to render any ship liable for loss or damage to which the fault of the ship has not contributed:
and

- (c) nothing in this section affects the liability of any person under a contract of carriage or any contract, or shall be construed as imposing upon any person any liability from which he is exempted by any contract or by any law, or affecting the right of any person to limit his liability in the manner provided by law.
- (2) In this section, “freight” includes passage money and hire, and reference to damage or loss caused by the fault of a ship includes a reference to any salvage or other expenses consequent upon that fault recoverable at law by way of damages.

122 Joint and several liability

- (1) Where loss of life or personal injury is suffered by any person on board a ship owing to the fault of that ship and of any other ship or ships, the liability of the owners of the ships shall be joint and several.
- (2) Subsection (1) shall not be construed as depriving any person of any right of defence on which, independently of this section, he might have relied in any action brought against him by the person injured, or any person entitled to sue in respect of the loss of life, nor shall it affect the right of any person to limit his liability in cases to which this section relates in the manner provided by law.

123 Right of contribution

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

124 Additional rights of person entitled to contribution

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

PART VII - LEGAL PROCEEDINGS

DIVISION 1 - OFFENCES AND LIMITATIONS

125 Penalties

- (1) An offence under a provision of this Act specified in column I of the Schedule 2 is punishable as indicated in column 3 (where a period of time indicates the maximum term of imprisonment, and a monetary amount indicates the maximum fine for the offence in question).
- (2) Where both a period of time and a monetary amount are indicated in column 3 of Schedule 2 both a fine and imprisonment, not exceeding the maximum indicated in that column, may be imposed in respect of an offence.
- (3) The description of an offence given in column 2 of Schedule 2 is illustrative only and not definitive or exhaustive.
- (4) Subject to any special provision of this Act, no conviction for an offence shall be made under this Act in proceedings instituted in Tuvalu, unless those proceedings are commenced within one year after the commission of the offence.

126 Limitation of actions

- (1) No action shall be maintained to enforce any claim or lien against a ship or her owners in respect of any damages or loss to another ship, her cargo or freight, or any property on board her, or damages for loss of life or personal injuries suffered by any person on board her, caused by the fault of the former ship, whether such ship be wholly or partly in fault, unless proceedings in the action are commenced within two years from the date when the damage or loss or injury was caused.
- (2) No action shall be maintained under this Act to enforce any contribution in respect of an overpaid proportion of any damages for loss of life or personal injuries unless proceedings in the action are commenced within one year from the date of payment.
- (3) Any court having jurisdiction to deal with an action to which this section relates may, in accordance with the rules of court, extend any such period, to such extent and on such conditions as it thinks fit, and shall, if satisfied that there has not during such period been any reasonable opportunity of arresting the defendant ship within the jurisdiction of the court, or within the territorial sea of the country to which the plaintiffs ship belongs or in which the plaintiff resides or has his principal place of business, extend

any such period to an extent sufficient to give such reasonable opportunity.

127 Interpretation for purposes of section 126

For the purposes of section 126 —

- (a) the expression “freight” includes passage money and hire; and
- (b) references to damage or loss caused by the fault of a vessel shall be construed as including reference to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages.

DIVISION 2 - JURISDICTION

128 Jurisdiction in case of offences

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

129 Jurisdiction over ship lying off coast

- (1) A court which has jurisdiction in any part of the coast of Tuvalu shall have jurisdiction over any vessel being on or lying or passing off that part, and overall persons on board the vessel, in the same manner as if the vessel or persons were within the limits of the original jurisdiction of the court.
- (2) The jurisdiction conferred by subsection (1) is in addition to and not in derogation of any jurisdiction or power of a court under any other law.

130 Jurisdiction in case of offence on board ship

- (1) A person who does an act or makes an omission on board a ship registered under this Act is liable to be prosecuted for any offence for which he could be prosecuted in respect of an act or omission if it were done or made in Tuvalu and, in any such prosecution, it is not a defence to prove that the act was done or the omission made beyond the territorial limits of Tuvalu.
- (2) For the purposes of a prosecution under subsection (1), any court, which would have jurisdiction in respect of the offence if the act or omission concerned were done or made within the limits of Tuvalu, shall have jurisdiction in respect of the offence.

PART VIII - GENERAL

131 Mode of making declaration

- (1) A declaration required by this Act (except under sections 101 and 118) may be made before the Registrar of Ships, a magistrate, a notary public, a Commissioner for Oaths or a diplomatic representative of Tuvalu.
- (2) A declaration required by this Act (except under sections 101 and 118) may be made on behalf of a corporation by any person authorised in that behalf under the common seal of the corporation.

132 Power of Registrar to dispense with evidence

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

133 False declaration

- (1) A person who, in a declaration made under or for the purposes of this Act (except under sections 101 and 118), or in any document or other evidence produced to the Registrar of Ships or the Registrar of Seamen —
 - (a) wilfully makes or assists in making, or procures to be made a false statement concerning the title to, or ownership of, or the interest existing in, a ship registered under this Act or
 - (b) utters, produces or makes use of any declaration or document containing any false statement, knowing the same to be false,is guilty of an offence.
- (2) Where, in a declaration made under or for the purposes of this Act (except under sections 101 and 118), a person wilfully makes a false statement in relation either to his being a qualified person, the ship in respect of which that false statement has been made is liable to forfeiture to the extent of the interest in the ship of the declarant or, unless it is proved that the declaration was made without authority, of a person on behalf of whom the declaration was made.

134 Proof of documents

- (1) All certificates or other documents (including endorsements on certificates or other documents) to which this section applies are admissible in evidence in the manner provided by section 135.
- (2) This section applies to —
 - (a) a certificate or other document issued, granted, given or made under this Act or purporting to be issued, granted, given or made under this Act and signed, or purporting to be signed, by any person required or authorised by this Act to issue, grant give or make any such certificate or document;
 - (b) an endorsement made, or purporting to be made, under this Act and signed, or purporting to be signed, by any person required or authorised by this Act to make any such endorsement; and
 - (c) a certificate given or made by the Registrar of Ships asserting the negative of any circumstance, fact or thing.

135 Admissibility of documents in evidence

- (1) Where a certificate or other document is by this Act declared to be admissible in evidence, it shall on its production from proper custody, be admissible in evidence in any court, and, subject to all just exceptions, shall be conclusive evidence of the matters stated in it.
- (2) A copy of any certificate or other document referred to in subsection (1) or extract from any such certificate or document is also admissible in evidence if proved to be an examined copy or extract, or if it purports to be signed and certified as a true copy or extract by the officer or person to whom custody of the certificate or other documents entrusted.
- (3) Any person who is by this Act required or authorised to issue, grant give or make any certificate or other document shall furnish a certified copy of the certificate or document to any person applying at a reasonable time for such certified copy or certified extract.

136 Proceedings on forfeiture of ship

- (1) Where a ship has become liable to forfeiture under this Act the Minister may cause the ship to be seized and may detain the ship and may bring the ship for adjudication before the Court.
- (2) The Court may, where a ship has been brought before it for adjudication under subsection (1), on such terms and conditions as it thinks just order that the ship be forfeited to the Crown.

137 Recovery of fines by distress

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

138 Inspections

- (1) For the purpose of seeing that the provisions of this Act and of any International Maritime Convention implemented in Tuvalu under regulations made for the purposes of section 48, or otherwise having effect in Tuvalu, are complied with, the Harbour Master, an inspector or an authorised officer in relation to any of those provisions or any such Convention may exercise all or any of the powers specified in subsection (7).
- (2) For the purpose of the effective exercise or performance of his functions under this Act or for the purposes of any Convention referred to in subsection (1), the Harbour Master, an inspector or an authorised officer may exercise all or any of the powers specified in subsection (7).
- (3) The Harbour Master or an inspector may, if he considers it necessary in consequence of an accident or for any other reason, require a ship to be taken into dock for a survey of its hull or machinery.
- (4) The powers under subsection (1), (2) or (3) may be exercised by the Harbour Master or an authorised officer in respect of a ship registered under this Act, notwithstanding that the ship is outside the jurisdiction of Tuvalu.
- (5) A person exercising a power under subsection (1) or (2) shall not unnecessarily delay a ship.
- (6) Any person who obstructs a person in the exercise of his powers under this section or who fails to comply with a requirement made under subsection (3) is guilty of an offence.
- (7) For the purposes of subsections (1) and (2), the specified powers are powers —
 - (a) at all reasonable times, to go on board a ship and inspect the ship or any part of the ship, or any part of the machinery, boats, equipment of the ship, or any articles on board the ship;

- (b) to require the production of, and to inspect, any document or certificate carried in the ship in pursuance of this Act or any Convention referred to in subsection (1); or
- (c) to require any person to answer questions relevant to the exercise of a power, being exercised under paragraph (a) or (b) for a purpose referred to in subsection (1) or (2).

139 Surveyors of ships

- (1) The Minister may, by notice, appoint persons, including corporations and unincorporated bodies of persons, he thinks fit to be surveyors of ships for the purposes of this Act.
- (2) The appointment of a surveyor of ships under this section may be restricted to either or both certain types or classes of ship or certain kinds of survey.
- (3) Where a corporation or an unincorporated body of persons is appointed under subsection (1), it shall if the Minister so directs, nominate a person to carry out surveys, issue certificates and do all other things necessary on its behalf.
- (4) A nomination under subsection (3) shall be notified to the Minister and on receiving such notification the Minister shall cause to be published a notice of the matter in the notification.
- (5) The power under this section includes a power to appoint persons, including corporations and unincorporated bodies of persons, outside Tuvalu to be surveyors of ships.
- (6) The duties of a surveyor of ships shall be performed under the direction of the Minister and in accordance with regulations made by the Minister.

140 Inspectors and authorised officers

The Minister may, by notice, designate any person —

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

141 Regulations

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

- (a) the manner of doing~ and the fees payable in respect of any matter or thing that is required or permitted to be done under this Act
 - (b) forms to be used for or in connection with this Act and
 - (c) the means by which, and the conditions subject to which, a ship or a class of ship may be exempted from compliance with the Regulations or any provisions of the Regulations.
- (2) The Regulations may prescribe the manner in which the tonnage of any ship shall be ascertained and may —
- (a) for that purpose, apply by reference all or any of the provisions of any law of the United Kingdom relating to tonnage measurement;
 - (b) make different provision for different descriptions of ships or for the same description of ships in different circumstances;
 - (c) make any provision in the Regulations dependent on compliance with such condition, to be evidenced in such manner, as may be specified in the Regulations; and
 - (d) prohibit or restrict the carriage of goods or stores in spaces not included in the registered tonnage of a ship.
- (3) The Regulations may make provision —
- (a) prescribing safety requirements and providing for the issue of local safety certificates in prescribed cases;
 - (b) prescribing matters relating to load lines and providing for the issue of local load line certificates in prescribed cases;
 - (c) prescribing the period during which any such certificate is to remain in force, and providing for the renewal and cancellation of any such certificate,
- (4) Regulations made under subsection (3) may make provision for and in relation to —
- (a) the requirements with which the hull, machinery and equipment of ships shall comply;
 - (b) the appliances to be carried, and the measures to be observed, on ships for the saving of life at sea and for the prevention, detection and extinction of fires on ships;
 - (c) the requirements for the holding and recording of musters and drills for crew and passengers;
 - (d) the requirements with respect to the equipping of ships with radio telephones and radio navigational aids, the operation, maintenance and use of radio telephones and radio-navigational aids in ships, and the number and qualifications of the radio telephone operators to be carried on ships;

- (e) the measures and procedures to be followed and the equipment to be carried on ships to ensure safety of navigation;
 - (f) the requirements which must be complied with in respect of the stowage and carriage of livestock, deck cargo, grain, dangerous goods and hazardous cargoes in ships;
 - (g) the observance of safety standards and procedures on board ships;
 - (h) safety and safe-working practices on board ships;
 - (i) the measures to be observed for the prevention of collisions;
 - (j) requirements related to the provision and use on ships of lights and signals;
 - (k) the requirements which must be complied with in respect of lights and signals from the shore to ships;
 - (l) the manner of determining freeboards to be assigned to ships;
 - (m) the manner of determining, in relation to a ship, the deck which is to be the freeboard deck and for requiring the position of that deck to be indicated on each side of the ship by a mark;
 - (n) the manner of determining, by reference to a mark, the freeboards assigned to a ship and the position in which each side of a ship is to be marked with a line indicating the maximum depths to which the ship may be loaded;
 - (o) the requirements in respect of hull, superstructure, fittings and appliances which are relevant to the assignment of freeboards to ships;
 - (p) the manner of recording particulars of the requirements under paragraph (0) and the methods of determining the extent of compliance with the conditions of assignment; and
 - (q) the information relating to the stability of a ship required to be provided by the owner of the ship to the master of the ship.
- (5) The Regulations may, in relation to a ship carrying passengers, make provision for and in relation to —
- (a) the accommodation of passengers;
 - (b) the manner of notification of the carriage of unberthed passengers;
 - (c) provisions, water, medical stores and medical inspection;
 - (d) the carriage of medical staff and the provision of hospital accommodation;
 - (e) sanitary facilities;
 - (f) sale of alcohol;
 - (g) passenger lists;

- (h) the cargo which may be carried and the method of stowing cargo;
 - (i) the maintenance of good order in respect of the passengers;
 - (j) the prevention of wilful damage and injury to the machinery or equipment of a ship by a passenger;
 - (k) the prevention of any obstruction to any crewman in the execution of his duty;
 - (l) the prevention of the molesting of or interference with any person on board the ship.
- (6) Regulations made under subsection (5) shall apply only in relation to —
- (a) a ship registered under this Act; or
 - (b) a ship engaged in near coastal trade.
- (7) The Regulations may make provision with respect to vessels employed in navigation on lagoons or inland waters and manning of such vessels.

142 Repeal and amendments

- (1) The Merchant Shipping (Fees) Act is repealed.
Cap. 86
- (2) The written laws specified in Schedule 3 are amended, or as the case may be revoked, to the extent specified in that Schedule.
- (3) The Merchant Shipping Acts 1894 to 1974 of the United Kingdom Parliament, and any subsidiary legislation made under those Acts, are repealed in so far as they are part of the law of Tuvalu.

SCHEDULE 1

(section 3)

INTERPRETATION

Definitions

1. In this Act, unless the context otherwise requires "appropriate tonnage certificate" means —

- (a) in the case of a Tonnage Measurement Convention ship, an International Tonnage Certificate as specified in Annex II of the Tonnage Measurement Convention; and
- (b) in any other case, a Tuvalu Tonnage Certificate as prescribed;

"authorised officer", in relation to any provision of this Act, means a person designated, under section 1 40(b), as an authorised officer for the purpose of this Act, or for the purposes of that provision;

"bankrupt" includes insolvent;

"certificate of competency" means a certificate issued to a person under section 76 which entitles the person to be employed in the capacity stated in the certificate;

"certificate of registry" means a certificate by that name granted under section 16;

"Collisions Convention" means the Convention on the International Regulations for Preventing Collisions at Sea 1972, together with the International Regulations for Preventing Collisions at Sea 1972, constituted by the rules and other annexes attached to the Convention, as corrected by Process-Verbal of Rectification dated 1 December 1973, as affected by any amendment made under Article VI of that Convention, other than an amendment not accepted by Tuvalu;

"the Court" means the High Court;

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

"crew agreement" means an agreement entered into under section 82;

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

Schedule to 1 of 1986

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

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

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

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

- (a) engaged in harvesting or transporting algae or aquatic plants; or
- (b) primarily a carrier or mother-ship;

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

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

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

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

Cap. 88

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

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

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

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

- (a) the length shown in the ship’s certificate of registry or tonnage certificate; or
- (b) the ship does not possess either of those certificates or where the length is not shown on either of those certificates, the length as determined by the Harbour Master or an inspector;

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

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

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

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

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

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

“**National Flag**” means the National Flag of Tuvalu;

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

“**new ship**” means a ship —

- (a) the keel of which was laid or which was at a similar stage of construction; or
- (b) that has been substantially-
 - (i) altered; or
 - (ii) reconstructed.

after the date of commencement of this Act

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

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

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

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

- (a) a person engaged in any capacity on board the ship in the business of the ship; or
- (b) a child under the age of one year;

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

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

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

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

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

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

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

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

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

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

“**Safety Convention ship**” means a ship that is —

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

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

- (a) the master or a pilot or
- (b) a person temporarily employed on board a ship while the ship is at port,

being a person who is engaged or employed in any capacity on board the ship and in the business of the ship;

“**Seaman’s Discharge Book**” means a book issued under section 112;

“**ship**” includes —

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

- (b) every description of vessel used, or capable of being used, in navigation by water, but does not include —
- (c) a vessel ordinarily propelled by oars or paddles;
- (d) a vessel belonging to a disciplined force or to the defence force of any other country; or
- (e) a vessel employed in navigation on lagoons or inland waters;

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

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

“**this Act**” includes the Regulations;

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

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

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

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

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

5 of 1983

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

Meaning of “this Part”, etc.

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

Going to sea etc.

- 3.
- (1) Subject to sub-paragraph (2), a ship shall, for the purpose of this Act, be deemed to have —
- (a) gone to sea; or
 - (b) been taken or sent to sea,
- if the ship has got under way for the purpose of-
- (c) going to sea;
 - (d) plying or running; or
 - (e) proceeding on a voyage.
- (2) A ship shall not be deemed under sub-paragraph (1) to have —
- (a) gone to sea; or
 - (b) been taken or sent to sea; .
- by reason only that the ship has been got under way for the purpose of moving the ship from one berth or place in a port to another berth or place in the port.

Exemptions

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

Meaning of “owner”

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

SCHEDULE 2

(section 125)

PENALTIES

<i>1</i>	<i>2</i>	<i>3</i>
<i>Section</i>	<i>Description of Offence</i>	<i>Penalty Imprisonment or Fine or Both</i>
12 (3)	Failing to keep marks	\$1000
12 (4)	Removing etc. marks	\$1000
16 (3)	Using illegal certificate of registry	2 years; \$5000
16 (4)	Failing etc. to deliver certificate of registry	\$1000
18 (5)	Failing to deliver up provisional certificate	\$500
21 (9)	Failing etc. to give notice of loss of ship	\$1000
22 (2)	Failing etc. to apply to register alterations	\$1000
37	Concealing Tuvaluan character etc	2 years; \$5000
39 (2)	Failing to hoist National Flag	\$1000
40	Using colours other than National Flag	\$1000
41 (2)	Failing to give information to Registrar of Ships.	\$1000
46 (1)	Describing ship by name not registered	\$1000
49 (2)	Failing to comply with Collisions Convention	2 years; \$5000
49 (3)	Wrongly exhibiting distress signal	2 years; \$5000
52 (2)	Sending or taking unsafe ship to sea	2 years; \$5000
53 (2)	Failing to carry proper equipment.	2 years; \$5000
54 (3)	Failing etc. to notify serious danger to navigation	\$500
55 (3)	Failing etc. to make radio report of ship	\$500
56 (3)	Failing to assist person in danger of being lost	2 years; \$5000

57 (3)	Failing to assist in case of collision	2 years; \$5000
61 (1)	Sending etc. dangerous goods to sea without notice	\$1000
61 (2)	Sending etc. dangerous goods to sea falsely described	\$1000
70	Failing to deliver up cancelled etc., certificate	\$100
75 (3)	Permitting ship to go to sea improperly manned.	2 years; \$5000
77	Unqualified person going to sea as qualified	2 years; \$5000
78	Failing to produce certificate of competency etc	2 years; \$5000
79 (3)	Failing etc. to deliver up suspended certificate	\$1000
83	Seeking etc. rewards for employment	\$1000
86	Refusing etc. to give seaman account of wages	\$100
90 (2)	Permitting ship to go to sea without proper crew accommodation	\$1000
93	Permitting ship to go to sea without medical stores etc	\$1000
94 (3)	Master failing to make arrangements for seaman's complaint.	\$100
96 (2)	Misconduct endangering ship etc.	2 years; \$1000
97	Continued or concerted disobedience etc.	\$500
98	Absence without leave	\$250
105	Stowing away on ship	3 months; \$500
106	Unauthorised presence on ship	\$100
108 (2)	Failing to make return of birth or death on Tuvalu ship	\$250
109 (2)	Failing to make return of birth or death on foreign ship	\$250
113 (2)	Failing to carry or keep Official Log Book	\$500
113 (3)	Destroying etc. Official Log Book	\$500
115 (1)	Master failing to notify death or serious injury	\$250
133 (1)	Making etc. false declaration	2 years; \$1000
138 (6)	Obstructing etc. inspector	6 months; \$1000

SCHEDULE 3

(section 142(2))

AMENDMENTS**Workmen's Compensation Act (Cap.83)**

In section 3(1) (interpretation) in paragraph (a) of the definition of "Tuvalu ship" repeal "Merchant Shipping Act 1894" and substitute "Merchant Shipping Act 1987".

In section 26 (Act to apply to accidents to seamen employed on Tuvalu ships) —

- (a) in subsection (2) —
 - (i) in paragraphs (c) and (d) repeal "Merchant Shipping Act 1894" and substitute "Merchant Shipping Act 1987".
 - (ii) repeal paragraph (e) and substitute the following paragraph —

“(e) any sum payable under this Act shall be paid in full notwithstanding anything in the Merchant Shipping Act 1987, but any limitation of the owner's liability imposed by or under that Act shall apply to the amount receivable by way of indemnity under section 25 as if the indemnity were damages for loss of life or personal injury;” and

11 of 1987
 - (iii) in paragraph (f) repeal “subsections (2) and (3) of section 174 of the Merchant Shipping Act 1894 (which relates to the recovery of wages of seaman lost with their ship), “ and substitute “the Merchant Shipping Act 1987”;
- (b) in subsection (6) repeal “territorial waters” and substitute “Tuvalu waters”; and
- (c) after subsection (6) insert the following subsection“(7) For the purposes of this section “fishing vessel” and “Tuvalu waters” have the meanings given in Schedule 1 to the Merchant Shipping Act 1987 and a reference to that Act includes regulations made under that Act.”

11 of 1987

Carriage of Goods by Sea Act (Cap. 87)

In section 7 (saving and operation) repeal “of sections 446 to 450, both inclusive, 502 and 503 of the Merchant Shipping Act 1894, as amended by any subsequent enactment, or the operation of any other enactment” and substitute “of any written law”.

Harbours Act (Cap. 88)

In section 9 (penalty for non-compliance with Harbour Master’s direction) repeal “\$10” and “1 month” and substitute respectively “\$100” and “3 months”.

In section 11 (penalty for hindering Harbour Master) repeal “\$40” and “3 months” and substitute respectively “\$400” and “9 months”.

In section 12(2) (Harbour Master may order masts to be struck) repeal “\$40” and “3 months” and substitute respectively “\$400” and “9 months”.

In section 14 (Harbour Master or pilot not to be taken to sea except under unavoidable necessity) repeal “\$200” and substitute “\$1000”.

In section 21 (pilot shall not demand or accept either more or less than authorised) repeal “\$20” and substitute “\$1000”.

In section 22 (as to vessels carrying explosives or other dangerous materials) number the existing section subsection (1) and at end insert the following subsection —

“(2) Subsection (1) applies in relation to dangerous goods (as defined in section 59 of the Merchant Shipping Act 1987) as it applies in relation to gunpowder.”

11 of 1987

In section 44 (offences relating to harbours) repeal “\$100” and “6 months” and substitute respectively “12 months”.

Shipping Act (Cap. 89)

In long title add at end “on lagoons and inland waters”

In section 1 (short title) before “Shipping” insert “Lagoon” In section 2 (interpretation) repeal the definition of “lagoon service vessel” and substitute the following definition —

“ “lagoon service vessel” means a vessel employed in navigation on lagoons or inland waters;”

After section 2 insert the following section —

“Application 11 of 1987

- 2A. After the commencement of the Merchant Shipping Act 1987, this Act shall have effect only in so far as it applies in relation to, for the purposes of, or in connection with, lagoon service vessels.”

Shipping Regulations (Cap. 89 Sub Leg page 9)

In regulation 1 (citation) before “Shipping” insert “Lagoon” Alter regulation 1 insert the following regulation —

“Application 11 of 1987

- 1A After the commencement of the Merchant Shipping Act 1987, these Regulations shall have effect only in so far as they apply in relation to, for the purposes of, or in connection with, lagoon service vessels.”

Shipping (Certification of Seamen) Act (Cap. 90)

In Section 1 (short title) before “Seamen” insert “Able”

In section 2 (interpretation) repeal the definition of “Tuvalu ship” and substitute the following definition —

“ “Tuvalu ship” means a ship registered under the Merchant Shipping Act 1987.”

11 of 1987

Crown Proceedings Act (Cap. 95)

In section 7 (liability in respect of Government vessels)-

- (a) in subsection (1) —
- (i) repeal “Merchant Shipping Acts 1894 to 1967” and substitute “Merchant Shipping Act 1987, or regulations made under that Act”;
- (ii) repeal “the said Acts” and substitute “that Act or those regulations”;
- (b) repeal subsection (2).

Merchant Shipping (Oil Pollution)(Tuvalu) Order 1975 (Supplement VI page 87 UK S.I. 1975/2174)

In Schedule 1 (the Merchant Shipping (Oil Pollution) Act 1971) —

- (a) in section 4(2) (a) (ascertainment of tonnage for purposes of section) revoke “a British ship (whether registered in Tuvalu or

- elsewhere) or a ship to which an Order under section 84 of the Merchant Shipping Act 1894 applies,” and substitute “registered in Tuvalu, or is owned by a person who is a qualified person, as defined in section 8(3) of the Merchant Shipping Act 1987, or by persons each of whom is a qualified person (whether or not registered elsewhere)”;
- (b) in section 4(2) (c) revoke “section 1 of the Merchant Shipping Act 1965 (tonnage regulations)” and substitute “141(2) of the Merchant Shipping Act 1987”;
 - (c) in section 4(2) (d) revoke “Commissioner” and substitute “Minister”;
 - (d) in section 4(4) (specification of equivalent amounts) revoke “Commissioner” wherever it occurs and substitute “Minister”;
 - (e) in section 10 (compulsory insurance against liability for pollution) revoke “Commissioner” wherever it occurs and substitute “Minister”;
 - (f) in section 11 (issue of certificate by Commissioner)-
 - (i) revoke “Commissioner” wherever it occurs and substitute “Minister”;
 - (ii) in subsection (5) revoke “Registrar-General of Shipping and Seamen” and substitute “Registrar of Ships”;
 - (g) in section 13 (jurisdiction of Tuvalu Courts and registration of foreign judgments) revoke subsection (1);
 - (h) in section 19(2) (meaning of “the Convention”, “Convention country” and “Convention State”) revoke “Her Majesty by Order in Council made under this subsection as it applies in the United Kingdom” and substitute “the Minister by order made under this subsection”;
 - (i) in section 21(2) (construction and commencement) revoke “Merchant Shipping Acts 1894 to 1961” and substitute “Merchant Shipping Act 1981”.

In Schedule 2 (the Merchant Shipping Act 1974) —

- (a) in section 1(2) (interpretation of Part I) revoke “Her Majesty by Order in Council made under this subsection as it applies in the United Kingdom” and substitute “the Minister by order made under this subsection”;
- (b) revoke “Commissioner” wherever it occurs except in section 24 and substitute “Minister”;
- (c) in section 6 (jurisdiction and effect of judgments) revoke subsection (1);

- (d) in section 9 (modification of limitation of liability under 1971 Act) in section 8A(3) set out there revoke “Her Majesty by Order in Council made under this subsection as it applies in the United Kingdom” and substitute “the Minister by order made under this subsection”;
- (e) in section 23 (construction and interpretation) revoke subsection (1) and substitute the following subsection —
“(1) This Act shall be construed as one with the 1101’ 1987 Merchant Shipping Act 1981”.

MERCHANT SHIPPING ACT 1987

EXPLANATORY MEMORANDUM

(This Memorandum is not part of the Act)

The purpose of this Act is to make Tuvaluan laws forming a comprehensive code on merchant shipping, including the registration of ships, their control and regulation and matters to do with merchant seamen.

The Act effectively updates Tuvalu's maritime legislation in line with the nation's needs and also allows Tuvalu to have its own laws to comply with its obligations under various international maritime conventions to which it is a party (sections 47 to 49). It further allows the replacement for MV Nivaga to be registered under Tuvalu's own laws.

The Act has 8 main Parts as follows-

Part I - Preliminary-short title, commencement by notice by the Minister and interpretation (in Schedule 1).

Part II - Registration of Ships-the establishment of a Register of Ships (section 5) and procedure for registration, certificates of registry etc., transfers, mortgages and the national flag and character of a ship. Only ships with a genuine link with Tuvalu and with owners of good repute will be eligible for registration (i.e. engaged in regional trade and manned at least 50% by Tuvaluans) (section 8(2)). This Part will not apply to exempt ships such as those under 10 metres long or of traditional build (section 8(4)).

Part III - International Maritime Conventions-on safety of life at sea, load lines, tonnage measurement and prevention of collisions, the designation of other conventions by the Minister and measures for their implementation in detail by regulations.

Part IV - Safety-dealing with unsafe ships, general safety precautions, carriage of dangerous goods, bulk cargoes and grain cargoes, shipping casualties and Marine Inquiries.

Part V - Masters and seamen-manning, qualifications, wages, crew agreements and accommodation, welfare, discipline, Registrar of Seamen, general regulations.

Part VI - Division of liability-rules to be applied when damage or loss caused by more than 1 ship.

Part VII - Legal proceedings-penalties for offences (in Schedule 2), jurisdiction.

Part VIII - General-declarations, inspections, surveyors, regulations, repeal of Merchant Shipping (Fees) Act (Cap. 86) and the UK Merchant Shipping Acts 1894 to 1974 as they applied in Tuvalu and consequential amendments to other related laws (in Schedule 3).

Much of the detailed law will be set out in several sets of regulations, which in turn will make reference to the relevant conventions and to the South Pacific Maritime Code published by SPEC in 1986 and dealing with the key areas of safety and certification of officers.

The Act is complementary to Tuvalu's present laws on shipping (Cap. 87-90) except that after it comes into operation the Shipping Act (Cap. 89) and Shipping Regulations will only apply to lagoon service vessels.

The Act replaces several UK Merchant Shipping Acts which have applied in Tuvalu by force of Law as part of Professor Patchett's project on the Repatriation of Inherited Imperial Laws.

ENDNOTES**Table of Legislation History**

Legislation	Year and No	Commencement

Table of Renumbered Provisions

Original	Current

Table of Endnote References