

No. 1 of 2006

*The Antigua and Barbuda Merchant
Shipping Act, 2006.*

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ANTIGUA
AND
BARBUDA



[L.S.]

I Assent,

James B. Carlisle,
Governor-General.

29th March, 2006.

ANTIGUA AND BARBUDA

No. 1 of 2006

ANACT to consolidate and modernise the Antigua and Barbuda Merchant Shipping Act Cap. 28; to provide for the better implementation of international maritime conventions and agreements to which Antigua and Barbuda is a party; and matters connected with and incidental to the foregoing.

*[Published in the Official Gazette Vol. XXVI
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ENACTED by the Parliament of Antigua and Barbuda as follows—

**PART I
PRELIMINARY**

1. This Act may be cited as the Antigua and Barbuda Merchant Shipping Act, 2006. Short title.

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

“Administration” means maritime administration of the state whose flag the ship flies; and in relation to Antigua and Barbuda includes ADOMS and the Director;

“ADOMS” means the Antigua and Barbuda Department of Marine Services and Merchant Shipping;

“Antigua and Barbuda ship” means a ship which is registered or licensed under this Act;

“Antigua and Barbuda waters” means the internal waters and the territorial sea of Antigua and Barbuda;

“appropriate certificate” for the purposes of Part IV means a certificate issued and endorsed in accordance with the provisions of the STCW Convention and entitling the lawful holder thereof to serve in the capacity and perform the functions involved at the level of responsibility specified therein on a ship of the type, tonnage, power and means of propulsion concerned while engaged on the particular voyage concerned;

“assistant engineer officer” means a person under training to become an engineer officer and designated as such by national law or regulations;

“bareboat chartered” means a ship leased without master and crew for a certain period of time;

“bulk carrier” means a ship which is constructed generally with single deck, top side tanks and hopper side tanks in cargo spaces, and is intended primarily to carry dry cargo in bulk, and such types as ore carriers and combination carriers;

“cargo ship” means a ship which is not a passenger ship, a fishing vessel or a pleasure yacht;

“certificated” for the purposes of Part IV means properly holding a certificate;

“certificate of competency” means a valid document, issued by or under the authority of an Administration and recognised by ADOMS, authorising the holder to serve as stated in the certificate of competency or as authorised by national regulations;

“chemical tanker” means a ship constructed or adapted and used for the carriage in bulk of any liquid product listed in Chapter 17 of the IBC Code;

“chief engineer officer” means the senior engineer officer responsible for the mechanical propulsion and the

operation and maintenance of the mechanical and electrical installations of the ship;

“chief mate” means the officer next in rank to the master and upon whom the command of the ship will fall in the event of the incapacity of the master;

“Collision Regulations Convention” means the Convention on the International Regulations for Prevention of Collisions at Sea, 1972, as amended from time to time;

“company” means the owner of the ship or any other organisation or person such as the manager or the bareboat charterer who has assumed the responsibility for operation of the ship from the shipowner and who, on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed on the company by these regulations;

“crew” in relation to a ship includes seafarers and apprentices;

“deck officer” means an officer qualified in accordance with the provisions of Chapter II of the STCW Convention;

“directive” means a directive issued under section 7;

“Director” means the Director of ADOMS appointed under section 6;

“endorsement” means endorsement of a certificate of competency pursuant to section 72(2);

“engineer officer” means an officer qualified in accordance with the provisions of Chapter III of the STCW Convention;

“engineer officer in charge of a watch” means any person who is in charge of a ship’s main propulsion system and its associated equipment, maintaining direct control over the performance of all functions within the designated area of responsibility and under the direction of an individual serving in the management level for that area of responsibility;

“fishing vessel” means a ship used for catching fish, whales, seals, walrus or other living resources of the sea;

“foreign ship” means a ship which is not registered under this Act;

“function” means a group of tasks, duties and responsibilities as specified in the STCW Code, necessary for the ship operation, safety of life at sea or protection of the marine environment;

“Government ship” means a ship which belongs to the Government but does not include a ship which forms part of the Antigua and Barbuda defence force;

“GT” means gross tonnage in accordance with the Tonnage Convention;

“IACS” means the International Association of Classification Societies;

“IMO” and “Organization” means the International Maritime Organization;

“international coastal voyage” means voyages during which the ship is never more than 50 nautical miles off shore;

“IBC Code” means the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk adopted by the Marine Environment Protection Committee of IMO by resolution MEPC.19(22), as amended from time to time;

“IGC Code” means the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, 1993, as amended from time to time;

“IMDG Code” means the International Maritime Dangerous Goods Code adopted by IMO by Resolution A.716(17), as amended from time to time;

“international voyage” means a voyage from a port in one country to a port in another country;

“ISPS Code” means the International Code for the Security of Ships and of Port Facilities consisting of Part A (the provisions of which shall be treated as mandatory) and part B (the provisions of which shall be treated as recommendatory), as adopted, on 12 December 2002, by resolution 2 of the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974, as amended from time to time;

“liquefied gas tanker” means a ship constructed or adapted and used for the carriage in bulk of any liquid gas or other products listed in Chapter 19 of the IGC Code;

“Load Line Convention” means the International Convention on Load Lines, 1966, and its Protocol of 1988, as amended from time to time;

“management level” for the purposes of Part IV means the level of responsibility associated with:

- serving as master, chief mate, chief engineer officer or second engineer officer on board a ship, and
- ensuring that all functions within the designated area of responsibility are properly performed;

“MARPOL Convention” means the International Convention for the Prevention of Pollution from Ships, 1973, and its Protocol of 1978, as amended from time to time;

“master” means the person at the management level having command or charge of any ship other than a pilot;

“Member State” means a Member State of the Caribbean Community or the Organization of Eastern Caribbean States listed in the Third Schedule;

“Minister” means the Minister responsible for Merchant Shipping and Ship Registration;

“national” means a person who:

- (a) is a citizen of a Member State;
- (b) has a connection with a Member State of a kind which entitles that person to be regarded as belonging to or, if it be so expressed, as being a native or resident of that Member State for the purposes of the laws of that Member State relating to immigration; or
- (c) is a company or other legal entity constituted in a Member State in accordance with the laws of that Member State and which that Member State regards as belonging to it, if that company or other legal entity has been formed for gainful purposes and has its registered office and central administration, and carries on substantial activity within the Community and is substantially owned and effectively controlled by persons mentioned in paragraphs (a) and (b);

For the purposes of this definition, a company or other legal entity is:

substantially owned if more than 50 percent of the entity interest in the company or entity is beneficially owned by a person mentioned in paragraphs (a) and (b); and effectively controlled if the persons mentioned in paragraphs (a) and (b) have the power to name a majority of its directors or otherwise legally to direct its actions.

“near coastal voyages” means voyages from any port or place in Antigua and Barbuda to any other port or place in Antigua and Barbuda during which the ship is never more than 30 nautical miles from a safe haven in Antigua and Barbuda;

“officer” means any person at the operational level who belongs to the ship’s command, or is a member of its administration at a similar level;

“operational level” means the level of responsibility associated with:

- serving as officer in charge of a navigational or engineering watch or as designated duty engineer for periodically unmanned machinery spaces or as a radio operator on board a seagoing ship, and
- the designated area of responsibility in accordance with proper procedures and under the direction of an individual serving in the management level for that area of responsibility;

“officer in charge of a navigational watch” means any person who is in charge of the navigation or manoeuvring of ship maintaining direct control over the performance of all functions within the designated area of responsibility and under the direction of an individual serving at the management level for that area of responsibility;

“oil tanker” means a ship constructed and used for the carriage of petroleum or petroleum products in bulk or a combination of petroleum and petroleum products in bulk;

“owner” in relation to a ship means, in respect of a registered ship, the registered owner and includes a demise charterer and a managing owner or a managing agent;

“passenger” means any person carried on board a ship except:

- (a) a person employed or engaged in any capacity on board the ship on the business of the ship;
- (b) a person on board the ship either in pursuance of the obligations laid upon the master to carry shipwrecked, distressed or other persons or by reason of any circumstances which neither the master nor the charter, if any, could have prevented or forestalled;
- (c) a child under one year of age;

“passenger ship” means a ship carrying or capable of carrying more than twelve passengers;

“pleasure yacht” means a ship however propelled that is used exclusively for pleasure and does not carry passengers or cargo for hire or reward; but does not include a ship that is provided for the transport or entertainment of lodgers at any institution, hotel, private hotel, boarding house, guest house and other establishment;

“port of registry” in relation to any ship means the port at which she is for the time being registered;

“prescribed” means prescribed by regulations or directives or in the absence of regulations and directives, by a form approved by ADOMS;

“proper officer” means the officer designated by the Minister to be the proper officer at the port or place and in respect of the matter to which reference is made in the provisions of this Act in which the expression occurs;

“propulsion power” means the total maximum continuous rated output power in kilowatts of all the ship’s main propulsion machinery which appears on the ship’s certificate of registry and other official documents;

“Radio Regulations” means the Radio Regulations annexed to, or regarded as being annexed to, the most recent International Telecommunication Convention which may be in force at any time;

“rating” means a member of the ship’s crew at the support level;

“Recognised Organisation” means a classification society which is a member of IACS, entrusted by ADOMS with the survey of Antigua and Barbuda ships for the purposes of the SOLAS Convention;

“Registrar” means any Registrar of ships appointed under section 9 of this Act;

“Registrar General” means the Director;

“restricted international voyages” means voyages during which the ship is never more than 200 nautical miles off shore;

“salvage” includes all expenses properly incurred by the salvor;

“seafarer” means the master, officer and any other category of crew;

“seafarer’s book” or “seafarer’s identification records book” means a document issued to personnel serving aboard Antigua and Barbuda ships for the purpose of providing the holder with identity papers for travel to or from an assigned ship, providing a record of the holder’s sea service, and noting any certification which has been awarded to him; but it is not a passport and is issued without prejudice to and does not affect the national status of the holder;

“seagoing ship” means a ship which does not navigate exclusively in inland waters or in waters within, or closely adjacent to, sheltered waters or areas where port regulations apply;

“second engineer officer” means the engineer officer next in rank to the chief engineer officer and upon whom the responsibility for the mechanical propulsion and the operation and maintenance of the mechanical and electrical installations of the ship will fall in the event of the incapacity of the chief engineer officer;

“ship” includes every description of vessel used in navigation and not propelled by oars;

“SOLAS Convention” means the International Convention for the Safety of Life at Sea, 1974, and its Protocols of 1978 and 1988, as amended from time to time;

“STCW Code” means the Seafarers’ Code, as adopted by the 1995 Conference, which adopted the 1995 Amendments to the STCW Convention, resolution 2, as amended from time to time;

“STCW Convention” means the International Convention on Standards of Training, Certification and Watch-keeping, 1978, as amended in 1995 as amended from time to time;

“support level” means the level of responsibility associated with performing assigned tasks, duties or responsibilities on board a seagoing ship under the direction of an individual serving in the operational or management level;

“Tonnage Convention” means the International Convention on Tonnage Measurement of Ships, 1969 as amended from time to time;

“1992 CLC Protocol” means the 1992 amendments to the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended from time to time;

“1992 Oil Fund Protocol” means the 1992 amendments to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, as amended from time to time.

Reservation of
coastal trade.

3. (1) The coastal trade between Antigua and Barbuda ports shall be carried only by Antigua and Barbuda ships.

(2) The owner, agent or master of any ship contravening the provisions of this section commits an offence, and each is liable on conviction to a fine of three thousand dollars; in addition the ship shall be liable to detention.

Insurance
Requirement.

4. (1) Every Antigua and Barbuda ship shall carry insurance cover against risks of loss or damage to third parties, and in particular:

(a) in respect of the owner’s liabilities to a crew member under any provision of Part IX; and

(b) claims in respect of loss or damage caused by any cargo carried on board the ship.

(2) Every foreign ship anchoring in or trading in or from Antigua and Barbuda waters or entering a port in Antigua and Barbuda shall carry insurance cover against risks of loss or damage to third parties.

(3) Where any ship contravenes this section, the owner of that ship commits an offence and is liable on conviction to a fine not exceeding five thousand dollars.

PART II

ADMINISTRATION AND IMPLEMENTATION

5. The Minister shall have general powers for the administration and implementation of this Act in addition to the powers expressly conferred upon him under the various sections of this Act. Minister's powers.

6. (1) The Minister shall appoint a Director of ADOMS who shall be the Registrar General and who shall exercise general supervision over all matters arising under this Act. Appointment of officers.

(2) The Minister may appoint one or more Deputy Directors and such other technical and administrative personnel as may be considered necessary to assist the Director generally in the discharge of his duties or for the purposes of particular provisions of this Act or regulations made thereunder.

(3) Officers appointed under this section are authorised to issue endorsements and documents to all merchant marine personnel.

(4) The Director shall establish standards of certification and upgrading of merchant marine personnel, necessary and appropriate for the purpose and for the maintenance of high standards in the register of ships of Antigua and Barbuda.

7.(1) The Minister may make regulations for the implementation of this Act. In making regulations for any matter which is the subject of a Convention to which Antigua and Barbuda is a party he shall have full regard to the Convention and any amendments thereto. Regulations and directives.

(2) Without prejudice to the generality of subsection (1) or to section 8, the matters on which regulations may be made include those matters specified in the First Schedule.

(3) The Director may, after consultation with the Minister, issue directives for the implementation of the Act.

(4) Without prejudice to the generality of subsection (3) the previous such directives may relate to any matter on which there is power to make regulations.

Regulations and directives to give effect in Antigua and Barbuda to maritime conventions.

8. (1) Without prejudice to section 7(1), or any other provision of this Act, the Minister may make such regulations as may be considered necessary or expedient to give effect to, and carry out the objects and purposes of, the following conventions —

Tonnage Convention

SOLAS Convention

MARPOL Convention

Load Lines Convention

Collision Regulations Convention

STCW Convention

1992 CLC Protocol

1992 Oil Fund Protocol

(2) Subsection (1) shall also have effect in relation to any convention relating to maritime safety or security, prevention of pollution of the marine environment, or the health and welfare of seafarers, as may be ratified by Antigua and Barbuda.

Registrar of Antigua and Barbuda ships.

9. (1) The Minister may appoint Registrars of Antigua and Barbuda ships who shall perform such functions connected with the registration of ships as may be specified by this Act. In the performance of their functions the Registrars shall act under the direction of the Director.

(2) The Minister may appoint one or more Deputy Registrars to assist any Registrar in the performance of his functions under the Act. Such Deputy Registrars may perform any function conferred on a Registrar. In performing his functions a Deputy Registrar shall act under the direction of the Registrar he is appointed to assist.

(3) Individuals designated by the Minister as Registrars or Deputy Registrars may register Antigua and Barbuda ships in Antigua and Barbuda and in countries other than Antigua and Barbuda, and the registers must contain the particulars that are required to be entered in a register by this Act in respect of all ships registered by them.

10. No suit shall be maintained against any public officer or other person appointed or authorised under this Act in respect of anything done or omitted to be done by him in good faith in the exercise or performance, or in the purported exercise or performance, of any power, authority or duty conferred or imposed on him under this Act.

Protection of
public officers.

PART III

REGISTRATION OF SHIPS—MORTGAGES— MARITIME LIENS

CHAPTER 1

REGISTRATION OF ANTIGUA AND BARBUDA SHIPS

11. (1) A ship shall not be registered as an Antigua and Barbuda ship unless she is owned wholly by persons to whom one of the following descriptions applies;

Qualification to
own Antigua and
Barbuda ships.

- (a) citizen of Antigua and Barbuda;
- (b) public bodies of Antigua and Barbuda;
- (c) public bodies corporate authorised under subsection (2);
- (d) a corporation registered under the International Business Corporation Act;
- (e) an external company or a partnership concern registered under the Companies Act; or
- (f) a national of a Member State;
- (g) any other person approved by the Cabinet.

Cap. 222.

No. 18 of 1995.

(2) A public body corporate is authorised for the purposes of paragraph (c) of subsection (1) to register ships if:

- (a) it is established under and subject to the laws of Antigua and Barbuda; and
- (b) it has its principal place of business, or appoints a resident agent, in Antigua and Barbuda;

- (c) at least fifty-one percent of its share capital is held by citizens of Antigua and Barbuda;
- (d) the majority of directors, the Chairman of the Board of Directors and the Managing Director, if any, are citizens of Antigua and Barbuda. In case of a partnership concern, Antigua and Barbuda interests shall be deemed to be predominant in the capital and in the management, if the majority of the partners are Antigua and Barbuda citizens.

(3) Ships owned by multinational shipping enterprises or joint ventures between the Government of Antigua and Barbuda and the government of other member countries of the Caribbean Community or governments of other foreign countries, in which the Government of Antigua and Barbuda has a substantial interest and which are established by Acts of Parliament may be exempted from compliance with the requirements of subsections (1) and (2) in order to qualify for treatment as Antigua and Barbuda ships.

(4) Anything to the contrary notwithstanding, the ownership requirements referred to above may in exceptional cases be waived by the Minister where:

- (i) the ship meets all other requirements for registration; and
- (ii) it has been satisfactorily demonstrated that there is a genuine need for such a waiver; and
- (iii) the owner of the ship qualified for, secures and maintains registration in Antigua and Barbuda as a foreign maritime trust or corporation or other legal entity and where he either maintains at all times an operating office in Antigua and Barbuda or appoints a qualified resident business agent in the manner prescribed by law.

(5) The owner of any ship which is registered as an external company under the Companies Act and secures and maintains registration of that ship in Antigua and Barbuda shall be exempted from the payment of income tax, capital gains tax and other direct

tax or impost that may be levied or collected in Antigua and Barbuda in respect of his shipping business for fifty years.

12. (1) The port of St. John's shall be the port of registry for Antigua and Barbuda ships, and the port to which they belong. Port of registry

(2) In the case of bareboat chartered ships registered under Chapter 2 of Part III the port of St. John's shall be the port of registry, and the port to which they belong.

13. (1) The Register shall be divided into parts as follows: The register.

- (a) an International Ships Register;
- (b) a register for mega-yachts: that is to say pleasure ships of over 24 meters in length;
- (c) a local register.

(2) Subject to section 14, each Part of the register shall distinguish between:

- (a) merchant ships fitted with mechanical means of propulsion;
- (b) sailing ships and motor boats; and
- (c) mobile offshore drilling units, barges and pontoons.

(3) Entries in the register in relation to property in a ship shall be made in accordance with the following provisions:

- (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 individuals shall be entitled to be registered at the same time as owners of any one ship; but this rule shall not affect the beneficial title of any number of persons or of any 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 five may be registered as joint owners of a ship or of any share or shares therein;

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

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

Ships which may not be registered.

14. (1) No passenger ship, high speed craft or hovercraft shall be registered on the International Ships Register.

(2) No ship to which the SOLAS Convention applies shall be registered on the local register referred to in section 13(1)(c).

Office of Registrar General.

15. (1) The office of the Registrar General shall be situated in St. John's.

(2) The Registrar General shall designate a central registry office where details of all Antigua and Barbuda ships registered must be kept.

Survey.

16. (1) The owner of a ship applying for registry on the International Shipping Register under this Act shall cause such ship to be surveyed by ADOMS in order to ascertain compliance with all international maritime conventions and the Code of Safety for Caribbean Cargo Ships as may be applicable.

(2) The owner of every Antigua and Barbuda ship on the International Shipping Register shall cause such ship to be surveyed annually by ADOMS to ascertain compliance with all relevant international maritime conventions.

Tonnage.

17. (1) (a) Subject to paragraph (b), the tonnage of every ship applying to be registered on the International Ships Register shall be measured by Recognised Organisation or such other body as may be recognised by the Director in accordance with the Tonnage Convention, and a certificate of the tonnage shall be provided to the owner by the Organization or body in question. Such tonnage shall be entered in the certificate of the registry as the tonnage of the ship.

(b) Where the tonnage has previously been measured by a Classification Society which is a member of IACS, the certificate of tonnage issued by that Society may be accepted for the purposes of paragraph (a).

(2) The tonnage or length of every ship applying to be registered on the register for yachts shall be measured pursuant to subsection (1), or as the Director may provide.

18. (1) Every ship registered on the International Ships Register shall be entered with a Recognised Organisation. Class.

(2) If at any time a ship entered in accordance with subsection (1) ceases to be so entered, and is not then entered with another Recognised Organisation, the Registrar shall remove the ship from the register.

19. (1) The owner of an Antigua and Barbuda ship who applies for registration under this Act shall, before registration, cause her to be marked permanently and conspicuously in the prescribed manner and to the satisfaction of the Registrar and any ship not so marked may be detained by the Registrar. Marking of ships.

(2) (a) Subject to any other provision contained in this Act and to the provisions of any regulations or directives made thereunder, the owner and the master of an Antigua and Barbuda ship shall take all reasonable steps to ensure that the ship remains marked as required by this section and the owner or master shall not cause or permit any of the particulars thereby denoted to be altered except in the manner provided in this Act or except to evade capture by the enemy or by a foreign ship of war in the exercise of some belligerent right.

(b) Any contravention of this subsection is an offence by the owner and master, punishable on conviction by a fine of three thousand dollars.

20. A person shall not be registered as the owner of an Antigua and Barbuda ship or of a share therein until he, or in the case of a public body or an authorised body corporate the person Declaration of
ownership.

authorised to make declarations on its behalf, has made and signed a declaration of ownership in the prescribed form referring to the ship as described in the certificate of the surveyor and containing such particulars as may be prescribed.

Cancellation of
foreign registry.

21. A ship registered outside Antigua and Barbuda shall not be registered under this Act until her foreign registry is cancelled, or there is produced:

- (i) official permission from a proper officer in that country for the transfer of registration or a statement that such permission by the law of the country is not needed; and
- (ii) a recent certificate by such officer of any mortgages or liens recorded in the register of ships of such country:

Provided that the Registrar may direct that such requirements be waived on it being shown to his satisfaction that the owner has attempted to produce such documents but that due to wholly exceptional and abnormal circumstances prevailing in that foreign country inordinate delay has occurred due to reason beyond the control of the owner, but subject to the production of such other like documents as the Registrar may further direct.

Entry of
particulars in
register.

22. When the requirements of this Act preliminary to registration have been complied with the Registrar shall register the ship by entering in the register the prescribed particulars respecting the ship.

Certificate of
registry.

23. (1) On completion of the registration of a ship, the Registrar shall grant a certificate of registry comprising the particulars respecting the entries in the register, and including the date of expiry of the certificate.

(2) On completion of the registration of a chartered bareboat under Chapter 2 of this Part, the Registrar shall grant a certificate of registration in accordance with subsection (1), containing also the particulars of the owner, the charterer, and the foreign register of the ship, and the date of expiry of the certificate.

(3) The certificate of registry shall be used only for the lawful navigation of the ship, and shall not be subject to detention by reason of any title, lien, charge, or interest whatever had or claimed by any owner or mortgagee, or other person to, on or in the ship.

(4) A master or owner of an Antigua and Barbuda ship who uses or attempts to use for her navigation a certificate of registry not legally granted in respect of the ship, commits an offence, and liable on summary conviction by a fine not exceeding five thousand dollars; and the ship is liable to forfeiture.

24. (1) If at any place outside Antigua and Barbuda a ship becomes entitled to be registered as an Antigua and Barbuda ship, an Antigua and Barbuda diplomatic or consular officer there may grant to her master, on his application, a provisional certificate of registry in the prescribed form and shall forward a copy thereof to the Registrar of Antigua and Barbuda ships.

Provisional
certificate of
registry.

(2) Such a provisional certificate of registry shall be valid until the expiration of six months from its date or until the arrival of the ship at the Antigua and Barbuda port of registry, whichever happens earlier and on either of these events happening shall cease to have effect.

(3) A provisional certificate may be extended for a further period of six months; but after expiry of such extension a provisional certificate of registry shall not be granted in respect of that ship for a period of one year.

25. (1) Subject to subsection (2), no trust, express, implied, or constructive, shall be registered by the Registrar.

Trusts, equitable
interests and li-
abilities of benefi-
cial interests.

(2) Where on the bankruptcy of a registered owner or mortgagee his title is transmitted to his trustee in bankruptcy, that person may be registered as the owner or mortgagee of an Antigua and Barbuda ship or a share therein, provided the ship remains entitled to be registered as an Antigua and Barbuda ship pursuant to section 11.

26. (1) A copy of this Act, any amendments thereto and any regulations made thereunder, shall be carried on board each ship on the International Ships Register.

Carriage of
Antigua and
Barbuda
Merchant
Shipping Act.

(2) Any contravention of subsection (1) is an offence by the

owner and master, and punishable on conviction by a fine of three thousand dollars.

CHAPTER 2

REGISTRATION OF CHARTERED BAREBOATS

Registration of chartered bareboats.

27. (1) Notwithstanding sections 11 and 19, but subject to section 28, a chartered bareboat may be registered as an Antigua and Barbuda ship and may use the national colours when registered in a foreign register, if she is a bareboat chartered by a citizen of Antigua and Barbuda, or a person other than a citizen of Antigua and Barbuda, or a body corporate which is either Antigua and Barbuda or otherwise.

(2) Notwithstanding section 21, for the purposes of the registration of a chartered bareboat registered in a foreign register, it is not required that the registration in the foreign register be deleted and the preferred status of the foreign register remains.

(3) Registration of a chartered bareboat within the meaning of this Chapter is the registration in the Antigua and Barbuda register for such period of time as the Minister may approve and under fixed legal conditions, of a ship which continues to be registered in a foreign register.

(4) Bareboat chartering within the meaning of this Chapter is the chartering by virtue of which the charterer, for an agreed period of time —

- (a) acquires full control and possession of the ship;
- (b) has the shipping management and operation of the ship;
- (c) is responsible towards third parties as if he were the ship owner, and generally, so long as the chartering continues, he is substituted in all respects in place of the owner except that he has no right to sell or mortgage the ship.

Conditions for registration of chartered bareboats.

28. A chartered bareboat may be registered under this Chapter on the application of the charterer for such period as the Director may for a prescribed period approve if —

- (a) the law of the country of the foreign register allows registration out of chartered bareboats registered in its register, and
- (b) the following duly certified documents are submitted together with the application —
 - (i) a copy of the charter agreement in lieu of the title of ownership and declaration of ownership;
 - (ii) the written consent of the ship owner;
 - (iii) the written consent of the appropriate maritime authorities of the country of the foreign registry and containing a conformation as to the ownership of the ship and as to the mortgages or other encumbrances of the ship, if any; and
 - (iv) the written consent of the mortgagees.

- 29.** (1) (a) For purposes of the registration of chartered bareboat a new measurement of the tonnage of the ship is required; and the certificate of survey and the tonnage certificate provided for by this Act shall be issued on the basis of the corresponding documents of the foreign registry.
- (b) A subsequent alteration of the ship which affects the tonnage or the description of the ship shall be effected in accordance with the provisions of this Act relating to ships registered in the Antigua and Barbuda register and shall be notified by the Registrar to the appropriate maritime authorities of the country of the foreign registry.

Measurement in respect of a chartered bareboat

(2) For the registration of a chartered bareboat there shall be paid the fees payable under this Act in relation to the registration of an Antigua and Barbuda ship.

- 30.** (1) A chartered bareboat may keep the name under which it is registered in the foreign register.

Name of registered chartered bareboat

(2) The name of a chartered bareboat may be changed after registration in the Antigua and Barbuda register if —

- (a) the change is effected in accordance with the provisions of this Act relating to ships registered in the Antigua and Barbuda register;
- (b) it is on the application of the charterer;
- (c) it is with the written consent of the owner and the mortgagees; and
- (d) it is notified to the appropriate maritime authorities of the country of the foreign register.

Reregistration of a chartered bareboat.

31. At the expiry of a certificate issued under section 23(2), a chartered bareboat may be reregistered in the Antigua and Barbuda register if the conditions applicable at the time of the initial registration still apply.

Mortgages in respect of chartered bareboats registration.

32. (1) Where a chartered bareboat is registered under this Chapter, mortgages and other encumbrances which are a charge on the ship at the time of registration in the Antigua and Barbuda register continue to exist and to be a charge on the ship.

(2) Mortgages and encumbrances referred to in subsection (1) continue to be governed by the law of the country governing them at the time of their creation, and are not affected by the fact of the registration of the ship in the Antigua and Barbuda register; and such mortgages and other encumbrances shall be recorded in the Antigua and Barbuda register for purposes of information only.

(3) After a chartered bareboat has been registered under this Chapter, a mortgage or encumbrances may be created over the ship only by the owner and in accordance with the law of the country of the foreign register in which such mortgage or encumbrances is recorded.

(4) A mortgage in respect of a chartered bareboat registered under this Chapter may not be registered in the Antigua and Barbuda register.

33. (1) The Registrar shall de-register a chartered bareboat registered under this Chapter if —

De-registration of a chartered bareboat.

- (a) the charter is terminated;
- (b) the prescribed period of time of registration has expired; or
- (c) there exists any reason for de-registration under this Act.

(2) Where a chartered bareboat is de-registered under subsection (1), the Registrar shall delete the name of such ship from the register and may issue a deletion certificate.

CHAPTER 3

REGISTRATION OF ANTIGUA AND BARBUDA SHIPS: BAREBOAT CHARTERED OUT IN A FOREIGN REGISTER

34. (1) Notwithstanding any other provision of this Act, an Antigua and Barbuda ship may be registered as a chartered bareboat in a foreign register and may use the colours of the country of such foreign register.

Registration as chartered bareboats in a foreign register.

(2) Registration as a chartered bareboat within the meaning of this Chapter is the registration in a foreign register for such period of time as the Registrar may approve and under fixed legal conditions of a ship which continues to be registered in the Antigua and Barbuda register.

35. (1) A chartered bareboat may be registered under this Chapter in a foreign register on the application of the registered owner for such period as the Registrar may approve if —

Conditions of permission for registration of chartered bareboats in a foreign register.

- (a) the ship is registered as an Antigua and Barbuda ship under Chapter 1;
- (b) the law of the country of the foreign register allows the registration of chartered bareboats in its register;
- (c) the ship is chartered as a bareboat to a foreign individual or corporation; and

- (d) the following documents are submitted —
- (i) the written application of the owner for permission for the registration of the ship as a chartered bareboat in a foreign register;
 - (ii) a copy of the charter agreement;
 - (iii) the written consent of the appropriate maritime authorities of the country of the foreign registry;
 - (iv) the written consent of the mortgagees;
 - (v) the written undertaking by the owner to surrender the Certificate of Antigua and Barbuda registration issued under Chapter 1 within fifteen days from the date of the Registrar's consent under this Chapter.

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

Name of chartered bareboat registered in a foreign register.

36. (1) A ship registered under Chapter 1 when being registered in a foreign register under this Chapter may keep the name under which it is registered in Antigua and Barbuda.

(2) The name of a ship registered in Antigua and Barbuda and registered as a chartered bareboat in a foreign register may be changed with the written permission of the Registrar only if such change is being effected also in the foreign register; but such name may not be the same as that of a ship registered in the Antigua and Barbuda register.

Flag.

37. During the time an Antigua and Barbuda ship is registered as a chartered bareboat in a foreign register under the provisions of this Chapter such ship shall hoist the flag of the country of the foreign register and shall not hoist the Antigua and Barbuda Flag.

Exclusive application of Antigua and Barbuda law in respect of ownership and encumbrances.

38. (1) Notwithstanding that an Antigua and Barbuda ship may be registered as a bareboat in a foreign register, all matters with respect to title over the ship, mortgages and other encumbrances shall continue to be governed by Antigua and Barbuda law.

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

(3) Where a chartered bareboat is granted permission to be registered in a foreign register under this Chapter, mortgages and other encumbrances under Antigua and Barbuda law which are a charge on the ship at the time of registration in the foreign register shall continue to exist and be a charge on the ship.

(4) Mortgages and encumbrances referred to in subsection (3) continue to be governed by Antigua and Barbuda law and are not affected by the fact of the registration of the ship as a chartered bareboat in a foreign register; and such mortgages and other encumbrances may only be recorded in the foreign register for purpose of information.

(5) Notwithstanding the registration of a ship as a chartered bareboat in a foreign register under this Chapter a mortgage or encumbrance may be created over the ship only by the owner and in accordance with Antigua and Barbuda law.

(4) The owner shall immediately notify the Registrar of the closure or lapse of the registration as a chartered bareboat in the foreign register.

39. (1) A Registrar may withdraw the permission to the registration of the ship as a chartered bareboat in a foreign register if —

Withdrawal of
permission.

- (a) any of the conditions of subsection (1) of section 35 of this Act has not been fulfilled or ceases to be fulfilled; or
- (b) the owner fails to comply with any other applicable provision of this Act; or
- (c) the charter agreement terminates or is terminated by any of the parties to it; or
- (d) a mortgagee request so in writing.

(2) Upon the withdrawal of the permission of the Registrar under subsection (1) —

- (a) the Registrar shall endeavour to inform the appropriate authorities of the foreign register, the owner, the charterer and the mortgagees of such withdrawal; and
- (b) the owner shall forthwith cause the registration as chartered bareboat in the foreign register to be terminated.

(3) Upon termination of the permission to the registration of the ship as a chartered bareboat in a foreign register the Registrar shall make an entry thereof in the register, and the ship shall thereupon be again subject to all the provisions of this Act and other Antigua and Barbuda law applying to ships registered in Antigua and Barbuda and the Registrar shall again issue to the owner a certificate of an Antigua and Barbuda registration unless the owner fails to comply with any requirement under this Act for the issuance of such certificate.

CHAPTER 4

TRANSFERS, TRANSMISSION AND MORTGAGES

Transfer of
Antigua and
Barbuda ship or
share or interest
therein.

40. A ship registered in Antigua and Barbuda or a share therein shall be transferred only by an instrument in writing in the prescribed form called bill of sale executed in accordance with prescribed procedure.

Transmission on
death or insol-
vency.

41. The property in a ship registered in Antigua and Barbuda or a share therein may be transmitted to a person on the death or insolvency of any registered owner by any lawful means other than by a transfer under section 40.

Mortgage of ship
or share.

42. (1) A registered ship or a share therein may be made a security for a loan or other valuable consideration by means of mortgage to be executed in the form and manner approved by the Registrar.

(2) If there are more mortgages than one recorded in respect of the same ship or share, the mortgagees shall, notwithstanding any express, implied or constructive notice, have priority

according to the date on which each mortgage is recorded in the register book and not according to the date of each mortgage itself.

43. Except in so far as may be necessary for making a mortgaged ship or share available as a security for the mortgage debt, the mortgagee shall not, by reason of his mortgage, be deemed to be the owner of the ship or share, nor shall the mortgagor be deemed to have ceased to be owner thereof.

Mortgagee not deemed to be owner.

44. A registered mortgagee of a ship shall be entitled to sell or otherwise dispose of the mortgaged ship or share in order to recover the amount due under the mortgage and if he sells the ship, he shall hold the proceeds of the sale in excess of the amount due to him in trust for later mortgagees, if any, and the owner, but where there is more than one registered mortgagee of the same ship or share, a subsequent mortgagee shall not, except under the order of a court of competent jurisdiction, sell the ship or share therein without the concurrence of every prior mortgagee.

Rights of mortgagee.

45. A registered mortgage of a ship or share shall not be affected by any act of insolvency committed by the mortgagor after the date of the record of such mortgage and, subject to the provisions relating to maritime liens contained in sections 49 to 51, the mortgage shall be preferred to any right, claim or interest therein of the other creditors of the insolvent or any trustee or assignee on their behalf.

Mortgage not affected by insolvency.

46. (1) A registered mortgage of a ship or share may be transferred to any person and the instrument affecting the transfer shall be in the prescribed form or as near thereto as circumstances permit, and on the production of such instrument, the Registrar shall record it by entering in the register book the name of the transferee as the mortgagee of the ship or share and shall, by memorandum under his hand, notify on the instrument of transfer that it has been recorded by him stating the day and hour of record.

Transfer of mortgages and shares.

(2) The person to whom any such mortgage has been transferred shall enjoy the same right of preference as was enjoyed by the transferor.

47. (1) Where the interest of a mortgagee in a ship or share is transmitted on death or insolvency, or by any lawful means

Transmission of interest.

other than by transfer under section 46, the transmission shall be authenticated by a declaration of the person to whom the interest is transmitted containing a statement of the manner in which and the person to whom the property has been transmitted and shall be accompanied by the like evidence as is required in case of a corresponding transmission of the ownership of a ship or share.

(2) The Registrar, on receipt of the declaration and the production of the evidence aforesaid, shall enter the name of the person entitled under the transmission in the register book as mortgagee of the ship or share.

CHAPTER 5

MARITIME LIENS

Restriction on de-
registration.

48. A Registrar shall not permit the de-registration of a ship without the written consent of all the holders of mortgages and preference rights in the said ship registered under this Act.

Priority of
maritime liens-
claims secured by
maritime liens.

49. (1) Notwithstanding the protection enjoyed by a mortgagee under section 47, a maritime lien shall take priority over the mortgages and preferential rights registered under this Part or arising under the law relating to bankruptcy and no other claim shall take priority over them, except as provided in section 51

For the purpose of this section, the claims which give rise to maritime liens are the following:

- (a) wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship;
- (b) port, canal and other waterway dues and pilotage dues;
- (c) claims against the owner, based on tort and not capable of being based on contract, in respect of loss of or damage to property occurring, whether on land or on water, in direct connection with the operation of the ship;
- (d) claims against the owner in respect of loss of life or

personal injury, occurring, whether on land or on water, in direct connection with the operation;

- (e) claims for salvage, wreck removal and contribution in general average.

(2) In this section, “owner” includes the charterer, manager or operator of a ship.

50. (1) The maritime liens set out in section 49 (1) shall rank in the order listed therein, provided, however, that maritime liens securing claims for salvage, wreck removal and contribution in general average shall take priority over all other maritime liens which have attached to the ship prior to the time when the operations giving rise to the said liens were performed.

Order of priority
of maritime liens.

(2) The maritime liens set out in each of the paragraphs (a), (b), (c) and (d) of section 49 (1) shall rank *pari passu* as between themselves.

(3) The maritime liens set out in paragraph (e) of section 49 (1) shall rank in the inverse order of the time when the claims secured thereby accrued. Claims for contribution in general average shall be deemed to have accrued on the date on which the general average act was performed; claims for salvage shall be deemed to have accrued on the date on which the salvage operation was terminated.

51. In the event that preferential rights are granted, pursuant to the provisions of the law relating to bankruptcy, in respect of a ship in the possession of:

Rights of ship-
builders and ship
repairer.

- (a) a shipbuilder, to secure claims for the building of the ship; or
- (b) a ship repairer, to secure claims for repair of the ship effected during such possession, such lien or right of retention shall be postponed to all maritime liens set out in section 49 (1) but may be preferred to registered mortgages or preferential rights so long as the ship is in possession of the shipbuilder or the ship repairer, as the case may be.

Over-riding nature of maritime liens.

52. (1) The maritime liens set out in section 49 (1) arise whether the claims secured by such liens are against the owner or against the demise or other charterer, manager or operator of the ship.

(2) Subject to the provisions of section 47, the maritime liens securing the claims set out in section 49 (1) follow the ship notwithstanding any change of ownership or of registration.

No lien attaching to claims related to radioactive material.

53. No maritime liens shall attach to the ship securing claims as set out in paragraphs (c) and (d) of section 49 (1) which arise out of or result from the radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or of radioactive product or waste.

Limitation period.

54. The maritime liens set out in section 49 (1) shall be extinguished after a period of one year from the time when the claims secured thereby arose unless prior to the expiry of such period the ship has been arrested, such arrest leading to a forced sale.

Interruption of limitation period.

55. Prior to the forced sale of a ship, the executing officer shall give or cause to be given at least thirty days written notice of the time and place of such sale to —

- (a) all holders of registered mortgages and other preferential rights which have not been issued to bearer;
- (b) such holders of registered mortgages and rights issued to bearer and such holders of maritime liens set out in section 49 (1) whose claims have been notified to the officer;
- (c) the Registrar.

Effect of forced sale of ship.

56. (1) In the event of forced sale of the ship, preferential rights except those assumed by the purchaser with the consent of the holders, and all liens and other encumbrances of whatsoever nature shall cease to attach to the ship.

(2) No charter party or contract for the use of the ship shall be deemed a lien or encumbrance for the purpose of this section.

Proceeds of sale.

57. The costs awarded by the Court and arising out of the arrest and subsequent sale of the ship and the distribution of

the proceeds shall first be paid out of the proceeds of such sale. The balance shall be distributed among the holders of maritime liens under section 49 (1), the holders of preferential rights under section 51 and the holders of mortgages and other preferential rights registered under this Part in accordance with the provisions of this Part and to the extent necessary to satisfy their claims.

58. (1) When a ship registered in any State which has ratified or acceded to the International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages adopted in Brussels on 22nd May 1967, has been the subject of a forced sale in Antigua and Barbuda, the executing officer shall, at the request of the purchaser, and having ascertained that the provisions of this Part have been complied with, issue a certificate to the effect that the ship is sold free of all mortgages, liens and other encumbrances, except those assumed by the purchaser, provided that the proceeds of the said forced sale have been deposited with the competent authority to distribute them to the persons entitled to them.

Certificate to the purchaser.

(2) Upon receiving a certificate as described in subsection (1) relating to any ship registered under this Act, the Registrar shall be bound to delete all registered mortgages and other preferential rights except those assumed by the purchaser and to register the ship in the name of the purchaser or to issue a certificate of de-registration for the purpose of de-registration of the ship, as the case may be.

CHAPTER 6

NATIONAL CHARACTER AND FLAG

59. (1) The Minister shall by notification declare what shall be the proper national colours for all ships registered as Antigua and Barbuda ships.

National colours.

(2) Any officer authorised by the Minister in this regard may board any ship on which any colours are hoisted contrary to the provision in subsection (1) and seize and take away the colours which shall be forfeited to the Government.

60. (1) An Antigua and Barbuda ship shall hoist the national colours;

Housing national colours.

- (a) on a signal being made to her by any ship authorised for this purpose by the Government of Antigua and Barbuda;
- (b) on entering or leaving any port.

(2) This section applies also to a bareboat chartered ship registered under Part II.

Nationality and flag to be declared before clearance.

61. (1) A customs officer shall not grant clearance to any ship unless the master of that ship has declared to that officer the name of the country to which he claims that she belongs and produces in support thereof the relevant certificate of registry, and that officer shall thereupon inscribe that name on the clearance.

(2) If a ship attempts to proceed to sea without such clearance, she may be detained by any customs officer until the declaration is made.

Unlawful assumption of Antigua and Barbuda character.

62. No person on board a ship which is not an Antigua and Barbuda ship shall use the Antigua and Barbuda national colours, unless the assumption of Antigua and Barbuda character has been made (the burden of proving which shall lie on him) for the purpose of escaping capture by the enemy or by a foreign ship of war.

Concealment of Antigua and Barbuda character or assumption of foreign character.

63. No owner or master of an Antigua and Barbuda ship shall knowingly do anything, or permit anything to be done, or carry or permit to be carried, any paper or documents, with the intent to conceal the Antigua and Barbuda character of the ship from any person entitled by any law for the time being in force to enquire into the same or with the intent to assume a foreign character for the ship, or with intent to deceive any person so entitled as aforesaid.

PART IV

MASTERS, OFFICERS, SEAFARERS AND CADETS

CHAPTER 1

MANNING AND CERTIFICATES

STCW Convention.

64. (1) This Part gives full effect to the provisions of the STCW Convention in compliance with Antigua and Barbuda's obligation under that Convention.

(2) Until such time as Antigua and Barbuda is able to establish a mechanism for conducting national training or examination for seafarers or the issuing of certificates in its own right, it shall, pursuant to section 72, as a policy, endorse certificates issued by other Parties to the STCW Convention and recognised by Antigua and Barbuda and by IMO under the STCW Convention.

(3) Certificates shall be endorsed only if they are in accordance and in compliance with the requirements specified in this Act, and where the Administration issuing the certificate is recognised by Antigua and Barbuda.

(4) The Second Schedule shall have effect for the purposes of manning and qualification requirement of Antigua and Barbuda ship.

65. (1) The Director may, in circumstances of exceptional necessity, grant dispensation to a seafarer who is adequately qualified, to serve in a specified ship for a period not exceeding six months in a capacity for which he does not hold an appropriate certificate, but holds a recognised certificate to enable him to serve competently in the post immediately below the post in respect of which the grant of the dispensation permits him to serve.

Dispensations.

(2) No dispensation shall be granted to a seafarer to serve in the capacity of

- (a) a general officer (within the meaning of the relevant Radio Regulations);
- (b) a master or chief engineer officer, except in circumstances of *force majeure* and for the shortest period only.

(3) Where the STCW Convention does not require a certification of the post immediately below the post in respect of which the grant of dispensation permits service, a dispensation may be granted to a person who, in the opinion of Antigua and Barbuda Administration and the company, possesses the qualification and experience equivalent to the required qualification and experience of the vacant post.

(4) Where such a person as is mentioned in subsection (3) does not hold the appropriate certificate, he shall be required to

pass a test which ADOMS recognises as satisfying the qualification for the grant of dispensation.

(5) ADOMS shall endeavour to fill such vacant post as is mentioned in subsection (4) without delay.

(6) The Government of Antigua and Barbuda shall, after the 1st of January of each year, submit to the Secretary General of IMO a report of:

- (a) the total number of dispensations granted for that year to seagoing ships in respect of each capacity for which a certificate is required; and
- (b) the number of such seagoing ships above and below 3,000 GT respectively.

Uncertified and unauthorised officers.

66. Any person, who having been engaged in any of the capacities of a master, chief mate, officer in charge of a navigational watch, chief engineer or engineer officer in charge of a watch of any ship registered under this Act goes to sea in that capacity in such ship without being the holder of a valid certificate of competency or endorsement of a grade appropriate to his functions and level of responsibility or of a higher grade, commits an offence, and is liable on summary conviction to fine not exceeding one thousand dollars and imprisonment for three months.

Form of certificates and endorsement.

67. (1) Every endorsement granted under this Act shall be in the form prescribed by the STCW Convention, and shall be made in duplicate. One copy shall be delivered to the person entitled to the endorsement and the other shall be kept by and recorded with ADOMS.

(2) Each application for an endorsement at the management or operational level shall be submitted to the Director in the approved form and shall be accompanied by such supporting documentation, proofs and fees as are prescribed.

(3) Each applicant for an endorsement at the management or operational level, who qualifies under the provisions of the STCW Convention, will be issued an endorsement in the form prescribed by the Convention stating that he has been found duly qualified in accordance with the provisions of that Convention.

68. (1) Companies, masters and chief engineers are responsible for the assignment of seafarers for service on their ships in accordance with the provisions of the STCW Convention, and shall require that:

Responsibilities.

- (i) each seafarer assigned to any of its ships hold an appropriate certificate or endorsement of certificate in accordance with the provisions of the STCW Convention and as implemented by ADOMS;
- (ii) its ships are manned in compliance with the applicable safe manning certificate of ADOMS;
- (iii) documentation and data relevant to all seafarers employed on its ships are maintained and readily accessible, and include without being limited to, documentation and data on their experience, training, medical fitness, and competence in assigned duties;
- (iv) seafarers, on being assigned to any ship, are familiarised with their specific duties and with all ship arrangements, installations, equipment, procedures and ship characteristics that are relevant to their routine or emergency duties;
- (v) seafarers at the management level shall have an appropriate knowledge of the maritime legislation of Antigua and Barbuda relevant to the functions they are permitted to perform. Antigua and Barbuda shall, therefore, establish appropriate measures to ensure that seafarers who present, for recognition, certificates issued under the provisions of regulations II/2, III/2, or III/3, or issued under VII/1 of the Annex to the STCW Convention at the management level, as defined in the STCW Code, have an appropriate knowledge of such maritime legislation;

- (vi) such measures as are mentioned in paragraph (v) above shall include requirements that such seafarers make a statutory declaration that they have read and understood the relevant legislation, and also that the legislation be available on board ship;
- (vii) the ship's complement can effectively coordinate its activities in an emergency situation and in performing functions vital to safety or the prevention, or mitigation, of pollution;
- (viii) seafarers shall undergo familiarisation concerning elementary safety matters before being assigned their duties;
- (ix) more comprehensive training and instruction in safety and emergency matters shall be undertaken by seafarers with designated safety or pollution prevention duties;
- (x) rest periods in compliance with the STCW Code Section A-VIII/1 shall be established and enforced as an effective measure to prevent fatigue on board Antigua and Barbuda registered ships.
- (xi) The ship's watch system is so arranged that the efficiency of all watch-keeping personnel will not be impaired by fatigue and that the duties are so organised that the first watch at the commencement of a voyage and subsequent relieving watches are sufficiently rested and otherwise fit for duty.

(2) Any contravention of this section shall be an offence, punishable on conviction by a fine not exceeding ten thousand dollars.

Loss of certificates

69. (1) The holder of an endorsement which is lost or destroyed may apply to the Director for a replacement. The application must be supported by an affidavit duly sworn or affirmed before a Commissioner of Oaths or a Notary Public or a similar official authorised to administer oaths or affirmations.

(2) Affidavits referred to in subsection (1) must include a description of his national certificate and the endorsement sufficient to allow it to be recognised, state the circumstances of its loss or destruction, and be submitted together with two standard size passport photographs of the applicant, together with the prescribed fee.

70. (1) Ships, except —

Control
procedures.

- (a) state owned ships engaged only on governmental noncommercial service;
- (b) fishing vessels;
- (c) pleasure yachts not engaged in trade; or
- (d) wooden ships of primitive build, shall be subject, while in ports of Antigua and Barbuda, to control by officers duly authorised by the Director to verify that all seafarers serving on board who are required to be certificated by the STCW Convention are so certificated or hold an appropriate dispensation.

(2) Certificates mentioned in subsection (1) shall be accepted unless there are clear grounds for believing that a certificate has been fraudulently obtained or that the holder of a certificate is not the person to whom that certificate was originally issued.

(3) In the event that any deficiencies are found —

- (i) under subsection (1); or
- (ii) under the control procedures in accordance with Regulation I/4 of the Annex to the STCW Convention; or
- (iii) according to the quality management system of ADOMS, the officer carrying out the control shall forthwith inform in writing the master of the ship and the Consul of that State, or in his absence, the nearest diplomatic representative or the maritime authority, of that State whose flag the ship is entitled to fly, so that appropriate action may be taken.

(4) The notification referred to in subsection (3) shall specify the details of the deficiencies found and the grounds on which it is determined that these deficiencies pose a danger to persons, property or the environment.

(5) In exercising control under subsection (1), if, taking into account the size and type of the ship and the length and nature of the voyage, the deficiencies referred to in paragraph (3) of Regulation I/4 of the Annex to STCW Convention are not corrected and it is determined that these deficiencies pose a danger to persons, property or the environment, **ADOMS** shall ensure that the ship does not sail unless and until these requirements are met to the extent that the danger has been removed. The facts concerning the action taken shall be reported promptly to the Secretary General of IMO.

(6) When exercising control under this section, all possible efforts shall be made to avoid a ship being unduly detained or delayed. If a ship is to be detained or delayed the company shall be entitled to compensation for any loss or damage resulting therefrom.

(7) This section shall be applied as may be necessary to ensure that no more favourable treatment is given to ships entitled to fly the flag of a nonparty than is given to ships entitled to fly the flag of a Party of the STCW Convention.

Conduct of trials

71. (1) Trials or series of trials for purposes of experiments on Antigua and Barbuda registered ships are prohibited.

(2) Any person who contravenes the provisions of subsection (1) commits an offence, and is liable on conviction to a fine not exceeding ten thousand dollars.

Recognition of
certificates issued
abroad.

72. (1) ADOMS may recognise a certificate issued to a seafarer by or under the authority of a foreign country which is a Party to the STCW Convention if ADOMS is satisfied and has confirmed through necessary measures that:

- (a) the requirements of the STCW Convention concerning standards of competence, the issue and endorsement of certificates and record keeping are fully complied with; and

(b) ADOMS will be promptly notified of any significant change in the arrangements for training and certifications provided in compliance with the STCW Convention.

(2) Where ADOMS recognises a certificate pursuant to subsection (1), it shall endorse such a certificate to attest its recognition if it is satisfied that the requirements of the STCW Convention referred to in subsection (1) (a) and (b) have been and will be complied with.

(3) The endorsement, attesting the recognition of national certificates issued by a foreign country, shall be in the form of a separate document in accordance with section A-I/2 of the STCW Code.

(4) An endorsement issued under subsection (2) is valid for a period of up to five years from the date of issue and may be renewed on application in accordance with the provisions of subsection (1) and section 74.

(5) ADOMS shall not recognise any national certificate issued by a country which is not a party to the STCW Convention.

73. ADOMS shall not accept seafarers for service on Antigua and Barbuda registered ships, unless it is satisfied that:

Assessment of
seafarers.

- (a) the parties which conduct national training and assessment of seafarers conduct such training and assessment in full compliance with the provisions of the STCW Convention;
- (b) the training and assessment of seafarers, as required under the STCW Convention, are administered, supervised and monitored in accordance with the provisions of Section A-I/6 of the STCW Code;
- (c) the persons responsible for the training and assessment of competence of seafarers as required under the STCW Convention are appropriately qualified in accordance with the provisions of section A-I/6 of the STCW Code for the type and level of training or assessment involved.

Revalidation of
certificates.

74. (1) The endorsement of a master or other officer which has been issued under section 72(2) shall not be valid for seagoing service unless the certificate to which it relates is revalidated at intervals not exceeding 5 years in order to establish continued professional competence in accordance with section A-I/11 of the STCW Code.

(2) A certificate of a category referred to in paragraph 4 of the Second Schedule shall not be valid for seagoing service unless it has been revalidated, at intervals not exceeding 5 years, in order to establish continued professional competence in accordance with section A-I/11 of the STCW Code.

(3) Every master and officer shall, for continuing seagoing service on ships referred to in paragraph 5 of the Second Schedule, successfully complete approved refresher training at intervals specified by the Party issuing the certificate.

Offences relating
to certificates etc.

75. Any person who:

- (a) fraudulently makes use of or forges any certificate, endorsement, dispensation, or document evidencing any qualification or acceptance of a qualification of any official copy thereof or,
- (b) fraudulently makes use of any such document which is forged, altered, cancelled or suspended or to which he is not justly entitled, or
- (c) fraudulently lends such a document or seafarer's book to, or allows the same to be used by any other person, commits an offence, and is liable on conviction to a fine not exceeding five thousand dollars or to imprisonment for three months, or both.

CHAPTER 2

DISQUALIFICATION OF SEAFARERS AND INQUIRIES

Inquiry into fit-
ness or conduct of
officer.

76. (1) If it appears to the Director that an officer —

- (a) is unfit to discharge his duties, whether by reason of incompetence or misconduct or for any other reason; or

- (b) has been seriously negligent in the discharge of his duties; or
- (c) has failed to render such assistance or give such information as required by section 122; or
- (d) obtained his endorsement by reason of false or erroneous information the Director may refer the matter to the Tribunal established for the purposes of this Part and, if he does so, may if he thinks fit, suspend, pending the outcome of the inquiry, any endorsement issued to the officer and require the officer to deliver it to him.

(2) The Tribunal holding an inquiry under this section into the fitness or conduct of an officer —

- (a) may, if satisfied of any of the matters mentioned in paragraphs (a) to (d) of subsection (1), cancel or suspend any endorsement issued to him or censure him;
- (b) may make such order with regard to the costs of the inquiry as they think just; and
- (c) shall make a report on the case to the Minister, and if the endorsement is cancelled or suspended the officer (unless he has delivered it to the Director in pursuance of subsection (1)) shall deliver it forthwith to the Tribunal or the Director.

(3) If the officer fails to deliver an endorsement as required by subsection (2) he commits an offence, and is liable on summary conviction to a fine not exceeding one thousand dollars.

(4) Any costs which a person is ordered to pay under subsection (2) (b) may be recovered from him by the Director.

(5) Where an endorsement is suspended or cancelled under this section, the Director shall send a copy of the report on the case and of the evidence to the government of the country which issued the certificate of the officer concerned.

(6) On the coming into force in Antigua and Barbuda of the provisions of the STCW Convention affecting the implementation

of examination and assessment of officers, this section shall apply to certificates issued to officers as it applies to endorsements.

Disqualification of holder of certificates other than officer's certificate.

77. (1) Where it appears to the Director that a person who is the holder of a dispensation issued under section 65, or a qualification accepted under section 73, is unfit to be the holder of such a certificate or acceptance, whether by reason of incompetence or misconduct or for any other reason, the Director may give him notice in writing that he is considering the suspension or cancellation of the dispensation or acceptance.

(2) The notice must state the reasons why it appears to the Director that that person is unfit to be the holder of such a dispensation or acceptance and must state that within a period specified in the notice, or such longer period as the Director may allow, he may make written representations to the Director or claim to make oral representations to the Director.

(3) After considering any representations made in pursuance of subsection (2) the Director shall decide whether or not to suspend or cancel the dispensation or acceptance and shall give the holder of it written notice of his decision.

(4) Where the decision is to suspend or cancel the dispensation or acceptance the notice shall state the date from which the cancellation is to take effect, or the date from which and the period for which the suspension is to take effect, and shall require the holder to deliver the dispensation or acceptance to the Director not later than the date so specified.

Further power to cancel, suspend or withdraw endorsements etc.

78. (1) Any endorsement, dispensation or acceptance may be cancelled, suspended or withdrawn for a specified period by the Tribunal in the following cases —

(a) if, on any investigation or inquiry made by any court, tribunal or other authority for the time being authorised by the legislative authority in any country outside Antigua and Barbuda and the court, tribunal or other authority reports that the seafarer is:

(i) incompetent or has been guilty of any act of gross misconduct;

- (ii) or in the case of collision, has failed to render assistance or to give such information as is referred to in Part V; or
 - (iii) the loss, stranding or abandonment or damage to any ship, or loss of life, has been caused by his wrongful act or default;
- (b) if the seafarer is proved to have been convicted:
- (i) of any offence under this Act or of any non-bailable offence committed under any other law for the time being in force in Antigua and Barbuda; or
 - (ii) of an offence committed outside Antigua and Barbuda which if committed in Antigua and Barbuda would be a non-bailable offence.

CHAPTER 3

ENGAGEMENT AND DISCHARGE OF CREWS

79. (1) No seafarer may be engaged or carried out to sea to work in any capacity in any ship unless he possesses the prescribed qualifications for complete seagoing service and any related compulsory training and meets the standards of medical fitness.

Physical fitness and medical standards.

(2) Physical fitness in accordance with medical standards are required for seafarers as a prerequisite for holding a certificate of competency with particular regard to eyesight and hearing and in accordance with Section BI/9-1 and 9-2 of the STCW Code.

(3) On completion of the physical examination a report shall be issued on behalf of the Government of Antigua and Barbuda which complies with the requirements of the Medical Examination Convention 1946 (ILO N°. 73) and the STCW Convention.

(4) The physical examination report may be cancelled or suspended if an authorised and approved medical practitioner has reasonable grounds for believing that there has been a

significant change in the physical fitness of a seafarer or his condition was not such as to be considered fit for the purpose of the certificate at the time the certificate was issued.

(5) The physical examination report shall remain in force for a period not exceeding two years from the date on which it was established. In so far as a physical examination report relates to colour vision it shall remain in force for a period not exceeding six years from the date on which it was granted.

(6) Any person who wilfully conceals any medical history or mental or physical disability, which might render the applicant unfit for service on board a ship commits an offence, and is liable on summary conviction to a fine not exceeding one thousand dollars; and a certificate of competency or endorsement which may have been issued to him shall *bevoid ab initio* and be immediately cancelled.

Crew agreement

80. (1) The master of every ship of over 80 GT shall enter into an agreement in accordance with this Act with every seafarer whom he engages and carries to sea as one of his crew.

(2) The agreement made under this section with the several members of the crew employed on a ship shall be contained in one document (in this Act referred to as “crew agreement”) except that in such cases as the Director may approve:

- (a) the agreement to be made under this section with the members of the crew in a ship may be contained in more than one crew agreement;
- (b) one crew agreement may relate to more than one ship.

(3) The agreement with the crew shall be in the prescribed form and shall contain the terms and conditions of the employment of the members of the crew, the duration of the intended voyage, an indication whether the agreement is for one voyage or a running agreement covering two or more voyages, and such other particulars as may be prescribed.

(4) Subject to the following provisions of this section, a crew agreement shall be carried in the ship to which it relates, whenever the ship proceeds to sea.

(5) The Director may also grant exemptions from the requirements of this section (whether with respect to particular seafarers or with respect to seafarers employed by a specified person or in a specified ship or in the ship of a special person) in cases where he is satisfied that the seafarers to be employed otherwise than under a crew agreement will be adequately protected.

(6) If a ship goes to sea or attempts to go to sea in contravention of the requirements of this section —

- (i) the master or the person employing the crew commits an offence, and is liable on summary conviction to a fine not exceeding one thousand dollars; and
- (ii) the ship, if in Antigua and Barbuda, may be detained.

81. (a) If a seafarer, having signed an agreement, is discharged otherwise than in accordance with the terms thereof without fault on his part justifying the discharge, and without his consent, he shall be entitled to receive from the master, owner or agent of the ship, in addition to any wages which he may have earned, due compensation for the damage caused to him by the discharge, not exceeding one month's wages if the discharge has taken place before the commencement of the voyage and two months' wages, if it has taken place after the commencement of the voyage.

Compensation to seafarers improperly discharged.

(b) The compensation payable may be recovered as wages duly earned.

82. (1) No child, which expression for the purposes of this section means a person under fifteen years of age, shall be employed in any Antigua and Barbuda ship.

Employment of children and young persons as seafarers.

(2) This section does not apply to a ship in which only members of one family are employed.

(3) No young person under the age of eighteen years shall be employed in any capacity in any ship unless there has been

delivered to the master of the ship a certificate granted by a duly qualified medical practitioner certifying that such person is fit to be employed in that capacity.

(4) Every such certificate:

- (a) shall be valid for one year from the date of issue unless revoked under the provisions of this section; and
- (b) may at any time be revoked by a duly qualified medical practitioner if he is satisfied that a young person is no longer fit for work.

(5) No young person under the age of eighteen years shall be employed or work on any ship as a trimmer or stoker.

No derogation from international law relating to employment of children and young persons.

83. The provisions relating to the employment of children and young persons as seafarers shall in no case derogate from international law in the same field.

No ousting of jurisdiction.

84. In no case may crew agreements and contracts of employment of persons under eighteen years of age on board ship deprive the courts of Antigua and Barbuda from hearing and determining disputes relating to them.

CHAPTER 4

PAYMENT OF WAGES

Time and manner of payment.

85. The master or owner of an Antigua and Barbuda ship shall pay to each seafarer belonging to that ship his wages, if demanded, within two days after the arrival of the ship at the port where the crew is to be discharged or upon the seafarer's discharge, whichever first happens.

Master to deliver account of wages.

86. (1) The master of every ship shall, before paying off or discharging a seafarer, deliver at the time and in the manner provided by this Act a full and true account of the seafarer's wages and of all deductions to be made therefrom for any reasons whatever.

(2) The account shall be delivered to the seafarer not less than twenty-four hours before his discharge or payment off.

87. (1) A deduction from the wages of a seafarer shall not be allowed unless it is included in the account delivered in pursuance of section 86, except in respect of a matter happening after the delivery.

Deductions

(2) The master shall, during the voyage, enter the various matters in respect of which the deductions are made, with the amount of the respective deductions as they occur in a book kept for that purpose, and shall if required produce the book at the time of the payment of wages and also upon the hearing before any competent authority of any complaint or question relating to that payment.

88. (1) When a seafarer is discharged, and the settlement of his wages completed, he shall sign a release, in an approved form, of all claims in respect of the past voyage or engagement, and the release shall be signed by the master or owner of the ship.

Settlement of
wages

(2) The release, so signed and attested, shall operate as a mutual discharge and settlement of all demands between the parties thereto in respect of the past voyage or engagement.

(3) The release shall be delivered to and retained by the owner for a period of seven years after the expiration of the agreement and shall be produced on demand made therefor by a Registrar or other proper officer.

89. Where any question, of whatever nature and whatever the amount in dispute, between a master or owner and any of his crew is raised before the Director, and both parties agree in writing to submit the same to him, the Director shall hear and decide the question so submitted; and an award made by him on the submission shall be conclusive as to the rights of the parties, and a document purporting to be the submission or award shall be admissible in evidence in the manner provided by this Act.

Director's deci-
sion as to wages.

90. (1) In any proceeding under this Act before the Director relating to wages, claims or discharge of a seafarer, the Director may require the owner or his agent or the master or any mate or other member of the crew to produce any logbooks, papers or other documents in his possession or power relating to a matter in question in the proceeding, and may require the attendance of and examine any of those persons who are then at or near the place on the matter, and may administer oaths.

Director may re-
quire ship's pa-
pers.

(2) In any proceedings under this Act before the Director relating to the wages, claims or disputes or discharge of seafarers, all travelling and other expenses incurred by the Director shall be met by the owner or master of the ship in dispute.

Rate of exchange.

91. Where a seafarer has agreed with the master of an Antigua and Barbuda ship for payment of his wages in a specific currency, any payment of or on account of his wages if made in any other currency than that stated in the agreement, shall, notwithstanding anything in the agreement, be made at the rate of exchange for the money stated in the agreement for the time being current at the place where the payment is made, and such rate of exchange shall be endorsed on the agreement by a consular officer at that place.

Restriction on assignment of and charge upon wages.

92. (1) Subject to subsections (2) and (3), the following provisions shall have effect with respect to the wages due or accruing to a seafarer employed in a ship registered in Antigua and Barbuda, that is to say:

- (a) the wages shall not be subject to any form of attachment;
- (b) assignments of wages before they have accrued shall not bind the seafarer and the payment of the wages shall be in any case valid notwithstanding any previous assignment or charge;
- (c) a power of attorney or authority for the receipt of wages shall not be irrevocable.

(2) Nothing in this section shall affect the provisions of this Act with respect to allotment notes.

(3) Nothing in this section applies to application of wages:

- (a) in the payment of contributions to a fund designated by regulations ;
- (b) in the payment of contributions in respect of a body designated by regulations.

Power of court to award interest on wages due otherwise than crew agreement.

93. In any proceedings by the master of a ship or person employed in a ship otherwise than under a crew agreement for the recovery of any sum due to him as wages, the court, unless it appears to it that the delay in paying the sum was due to a

mistake, to a reasonable dispute as to liability or to the act or default of the person claiming the amount or to any other cause not being the wrongful act or default of the person liable to make the payment or his servant or agents, may order them to pay in addition to the sum due, interest on it at the rate of twenty percent per annum or such lower rate as the court may specify, for the period beginning seven days after the sum became due and ending when the sum is paid.

94. Subject to any regulations made pursuant to section 7, a seafarer may, by means of an allotment note, allot to any person part of the wages to which he will become entitled in the course of his employment in a ship or ships registered in Antigua and Barbuda.

Allotment notes.

95. (1) Where the service of any seafarer engaged under this Act terminates before the date contemplated in the agreement by reason of the wreck, loss or abandonment of the ship or by reason of his being left on shore at any place outside Antigua and Barbuda under a certificate granted under this Act of his unfitness or inability to proceed on the voyage, the seafarer shall be entitled to receive:

Wages on termination of service by wreck, illness, etc.

- (a) in the case of wreck, loss or abandonment of the ship;
 - (i) wages at the rate to which he was entitled on the date of termination of his service for the period from the date his service is so terminated until he is returned to and arrived at a proper return port; provided that the periods for which he shall be entitled to receive wages shall be not less than one month; and
 - (ii) compensation for the loss of his effects in the case of a seafarer employed on a home trade ship, of not less than one month's wages; and in the case of a seafarer employed on a foreign going ship, of not less than three months wages;
- (b) in the case of unfitness or inability to proceed on the voyage, wages for the period from the date his service is terminated until he is returned to and arrives at a proper return port.

(2) A seafarer shall not be entitled to receive wages under subsection (1) (a) in respect of any period during which:

- (a) he was or could have been suitably employed; or
- (b) through negligence he failed to apply to the proper authority for relief as a distressed or destitute seafarer.

(3) Any amount payable by way of compensation under subsection (1) (a) (ii) shall be deposited with the Director or proper officer at the port of engagement in Antigua and Barbuda for payment to the seafarer or, in the case of a deceased seafarer, to his legal heirs.

(4) When a ship registered in Antigua and Barbuda is sold while outside Antigua and Barbuda or ceased to be so registered and a seafarer's employment in the ship is thereby terminated before the date contemplated in the agreement under which he is so employed, unless it is otherwise provided in the agreement, he shall, subject to the following provisions of this section, be entitled to wages at the rate payable under the agreement on the date on which his employment is terminated for the period for which he remains unemployed, subject to a maximum period of two months.

(5) A seafarer shall not be entitled to wages under subsection (4) for any period for which he was unemployed if it is shown:

- (a) that the unemployment was not due to the termination of his employment on the sale of the ship or its ceasing to be registered in Antigua and Barbuda; or
- (b) that the seafarer was able to obtain suitable employment for that period but unreasonably refused or failed to take it.

Protection of
rights and remedies.

96. (1) A seafarer's lien, his remedies for the recovery of his wages, his right to wages in case of the wreck or loss of his ship, and any right he may have or obtain in the nature of salvage shall not be capable of being renounced by any agreement.

(2) Subsection (1) does not affect such of the terms of any agreement made with the seafarers belonging to a ship which in accordance with the agreement is to be employed on salvage service, with respect to the remuneration to be paid to them for salvage services rendered by that ship.

97. The master of a ship shall have the same rights, liens and remedies for the recovery of his wages as a seafarer has under this Act as well as for the recovery of all disbursements or liabilities properly made or incurred by him on account of the ship.

Remedies of master.

98. (1) A deduction from the wages of a seafarer shall not be allowed unless it is included in the account delivered in pursuance of section 86, except in respect of a matter happening after such delivery.

Deduction from wages.

(2) The master shall, during the voyage, enter the various matters in respect of which the deductions are made, with the amounts of the respective deductions, as they occur, in a book kept for that purpose, and shall, if required, produce the book at the time of payment of wages, and also upon the hearing before any competent authority of any complaint of question relating to that payment.

99. (1) The right to wages shall not depend on the earning of freight, and every seafarer who would be entitled to demand and recover any wages if the ship in which he has served had earned freight, shall, subject to all other rules of law and conditions applicable to the case, be entitled to demand and recover the same, notwithstanding the freight has not been earned, but in all cases of wreck, or loss of ship, proof that the seafarer has not exerted himself to the utmost to save the ship, cargo and stores shall bar his claim for wages.

Wages not to depend on freight.

(2) Where a seafarer who would be entitled by virtue of this section to demand and recover any wages dies before the wage is paid, the wages shall be paid and applied in the same way as the wages of a seafarer who dies during a voyage.

100. (1) A seafarer shall not be entitled to wages for any time during which he unlawfully refuses or neglects to work when required, whether before or after the time fixed by the agreement for his commencement of such work, or for any period during

Refusal to work and illness caused by his own default.

which he is lawfully imprisoned for any offence committed by him, unless the court hearing the case otherwise directs.

(2) Where a seafarer is, by reason of illness, incapable of performing his duty, and it is proved that the illness had been caused by his own wilful act or default, he shall not be entitled to wages for the period during which he is, by reason of the illness, incapable of performing his duty.

CHAPTER 5

PROVISIONS AS TO DISCIPLINE

Endangering
safety of ship or
of persons on
board.

101. If any seafarer, on a ship registered in Antigua and Barbuda, by breach of duty:

- (a) does any act tending to the loss or destruction of or serious damage to the ship, or tending to endanger the life of or cause injury to any person belonging to, or on board, the ship; or
- (b) refuses or omits to do any lawful act proper and requisite to be done by him for preserving the ship from immediate loss, destruction or serious damage, or for preserving any person belonging to, or on board, the ship from immediate danger to life or from injury; he commits an offence, punishable on summary conviction to a fine not exceeding five thousand dollars or imprisonment for a term not exceeding two years, or both.

General offences
against discipline.

102. (1) A seafarer engaged on an Antigua and Barbuda ship who does any of the following acts commits an offence

- (a) if he quits the ship without leave after her arrival at a port and before she is placed in security;
- (b) if he wilfully disobeys any lawful command;
- (c) if he assaults the master or any mate or officer of the ship;
- (d) if he combines with any of the crew to disobey lawful commands or to neglect duty or to impede the navigation of the ship or the progress of the voyage;

- (e) if he wilfully damages his ship or dishonestly misappropriates or converts to his own use, or commits criminal breach of trust in respect of, or wilfully damages, any of her stores or cargo;
- (f) if he commits an act of smuggling whereby loss or damage is occasioned to the master or owner of the ship;

(2) Any person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding three thousand dollars, and in the case of an offence under paragraph (c), (d) or (e) to imprisonment for three months or both.

103. A seafarer who refuses to join the ship or proceed to sea, if the ship on which he is engaged or to which he belongs is unseaworthy, shall not be deemed to have committed an offence against discipline, if the seafarer has, before refusing to do so, complained to the master or the proper officer that the ship is unseaworthy.

Refusal to serve on unseaworthy ship.

104. Notwithstanding anything in any agreement a seafarer employed in a ship registered in Antigua and Barbuda may terminate his employment in that ship by leaving the ship in contemplation on furtherance of a trade dispute after giving to the master not less than forty-eight hours' notice of his intention to do so, and shall not be compelled (unless the notice is withdrawn) to go to sea in the forty-eight hours following the giving of such notice; but such a notice shall be of no effect unless at the time it is given the ship is in Antigua and Barbuda and securely moored in a safe berth.

Trade disputes involving seafarers.

105. If any offence, within the meaning of this Act, of desertion or absence without leave or against discipline is committed, or if any act of misconduct is committed for which the offender's agreement imposes a fine, and it is intended to enforce the fine

Entry of offences in log-book.

- (a) an entry of the offence or act shall be made in the official logbook and signed by the master and the mate or one of the crew;
- (b) the offender, if still in the ship, shall, before the next subsequent arrival of the ship at any port or if she is at the time in port before her departure therefrom,

either be furnished with a copy of the entry or have the same read over distinctly and audibly to him, and may thereupon make such reply thereto as he thinks fit;

- (c) a statement of a copy of the entry having been so furnished, or of the entry having been so read over, and in either case, the reply, if any, made by the offender shall likewise be entered and signed in the manner aforesaid; and
- (d) in any subsequent legal proceedings the entries by this section required shall, if practicable, be produced or proved, and, in default of that production or proof, the court hearing the case may, in its discretion, refuse to receive evidence of the offence or act of misconduct.

Offence of making false statement.

106. (1) Any seafarer, who on or before being engaged wilfully and fraudulently makes a false statement of the name of the ship on which he served last, or wilfully and fraudulently makes a false statement of his own name, commits an offence, punishable on conviction to a fine not exceeding two thousand dollars.

(2) Any fine imposed pursuant to subsection (1) may be deducted from any wages which the seafarer may earn by virtue of his engagement and shall, subject to reimbursement of the loss and expenses, if any, occasioned by any desertion previous to the engagement, be paid and applied in the same manner as any other fine under this Act.

Suspension of certificate of discharge.

107. If it is shown to the satisfaction of the Registrar that a seafarer is unfit to discharge his duties, whether by reason of incompetence or misconduct or for any other reason or has been seriously negligent in the discharge of his duties, the Registrar may direct that the Seafarer's Certificate of Discharge which entitles him to work as seafarer shall be withheld for such period as may be specified in the direction.

CHAPTER 6

RELIEF AND REPATRIATION OF SEAFARER LEFT BEHIND

Maintenance and repatriation of seafarers left behind.

108. (1) Where a seafarer serving in a ship registered in Antigua and Barbuda —

- (a) is left behind in any country outside that of his port of engagement or is taken to such a country on being shipwrecked;
- (b) is discharged without his consent other than at his port of engagement before the expiration of the period for which the seafarer was engaged or apprentice was bound;
- (c) is discharged at a port outside his port of engagement by reason of transfer of registry or sale of the ship as provided for in section 95 (4) the master or owner of the ship shall, in addition to any other relative obligation imposed on either of them by this Act, make adequate provision for the maintenance of the seafarer and for the return to a proper port.

(2) The provision to be made may include, in the case of a shipwrecked seafarer, the repayment of expenses incurred in bringing him ashore and maintaining him until he is brought ashore and the payment of the expenses of the burial or cremation of a seafarer who dies before he can be returned.

(3) If the master or owner fails, without reasonable cause, to comply with subsection (1), the expenses of maintenance and of the journey to the proper return port shall, if defrayed by the seafarer, be recoverable as wages due to him and, if defrayed by an Antigua and Barbuda diplomatic or consular officer, be regarded as expenses falling within the scope of section 109.

109. The Antigua and Barbuda diplomatic or consular officer at or near the place where the seafarer is in distress shall, on application being made to him by the distressed seafarer, provide for his return to a proper port and also for his maintenance until his arrival at such port.

Relief of distressed seafarers.

CHAPTER 7

LOG BOOKS APPROVED BY THE IMO

110. (1) An official logbook meeting international standards shall be kept in the prescribed form in every Antigua and Barbuda ship except a ship of less than two hundred GT.

Form, maintenance and custody of log-book.

(2) An entry required by this Act in an official logbook shall be made as soon as possible after the occurrence to which it relates, and if not made on the same day as that occurrence, shall be made and dated so as to show the date of the occurrence and of the entry respecting it and if made in respect of an occurrence happening before the arrival of the ship at her final port of discharge, shall not be made more than twenty-four hours after that arrival.

(3) Every entry in the official logbooks shall be signed by the master and by an officer or some other member of the crew and also, if it is an entry of illness, injury or death, shall be signed by the surgeon or medical practitioner on board, if any.

(4) Every entry made in an official logbook in the manner provided by this Act shall be admissible in evidence.

Entries required in
official log-book.

111. The master of a ship for which an official logbook is required shall enter or cause to be entered in the official logbook at least the following matters, namely:

- (a) every conviction by a court of competent jurisdiction of a member of his crew and the punishment inflicted;
- (b) every offence committed by a member of his crew for which it is intended to prosecute or to enforce a forfeiture or to exact a fine together with such statement concerning the copy or reading over of that entry and concerning the reply, if any, made to the charge as required by this Act;
- (c) every offence for which punishment is inflicted on board and the punishment inflicted;
- (d) every case of illness or injury happening to a member of the crew with the nature thereof and the medical treatment adopted, if any;
- (e) every refusal of a member of the crew to take anti-scorbutics or medicines;
- (f) every birth of a child and death of a person happening on board together with such particulars of those occurrences as may be prescribed;

- (g) the name of every seafarer who ceases to be a member of the crew otherwise than by death, with the place, time, manner and cause thereof;
- (h) the wages due to any seafarer who dies during the voyage and the gross amount of all deductions to be made therefrom;
- (i) the money and other property taken over of any seafarer who dies during the voyage;
- (j) the sale of the effects of any seafarer who dies during the voyage including a statement of each article sold and the sum received for it;
- (k) every collision with any other ship and the circumstances under which the same occurred and other accidents causing damage to the ship or cargo;
- (l) the date and time of posting up in the ship of a notice containing particulars of the ship's draught and freeboard;
- (m) any matter required by the ISPS Code to be entered in the official log book;
- (n) any act or attempted act of piracy;
- (o) any extreme or unusual weather; and
- (p) any other matter directed by this Act or required by a Convention to which Antigua and Barbuda is a party.

112. (1) If a ship is lost or abandoned, the master or owner thereof shall, if practicable, and as soon as possible, deliver or transmit to the Director the official logbook duly made out to the time of the loss or abandonment.

Delivery of official logbook to Director when not required.

(2) The owner or master of a ship who fails, without reasonable cause, to comply with this section commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

113. (1) If an official logbook is not kept in the manner required by this Act, or if any entry directed by this Act to be made

Offences in respect of logbook.

therein is not made at the time and in the manner directed by this Act, the master of the ship commits an offence.

(2) Any person who makes, or procures to be made, or assists in making an entry in an official log book in respect of any occurrence happening previous to the arrival of the ship at her final port of discharge more than twenty-four hours after that arrival commits an offence.

(3) Any person who wilfully destroys or mutilates or renders illegible an entry in an official log book, or wilfully makes or procures to be made or assists in making a false or fraudulent entry in, or omission from, an official log book, commits an offence.

(4) Any person convicted of an offence under this section is liable to a fine not exceeding one thousand dollars.

Seafarer's book

114. (1) Every person employed on an Antigua and Barbuda ship shall have in his possession an official Antigua and Barbuda seafarer's identification book, containing any certificates, endorsements or entries of special qualification issued to the holder.

(2) Subsection (1) does not apply to any person who is employed on a passenger ship where he is not assigned or required to perform ship safety and pollution related shipboard duties.

(3) Every applicant making first application for a seafarer's book must show evidence of having received basic training or instruction as applicable in personal survival, fire prevention and fire fighting, elementary first aid, and personal safety and social responsibilities, in accordance with section A VI/1 of STCW Code.

(4) Any seafarer serving aboard an Antigua and Barbuda ship, being the holder of a valid seafarer's identity document issued by another State, is eligible to apply for an Antigua and Barbuda seafarer's book.

CHAPTER 8

RIGHTS AND DUTIES OF MASTER

Rights and duties
of master.

115. The master shall exercise command of the ship and have, among others, the following rights and duties:

- (a) he shall be responsible for maintaining order and discipline on board;
- (b) he shall ensure compliance, so far as they relate to his ship, with the laws of Antigua and Barbuda, and with maritime conventions to which Antigua and Barbuda is a party;
- (c) he shall assume full responsibility for the safety and security of the ship, passengers, crew and cargo, and shall take all necessary and appropriate steps in this behalf;
- (d) he shall assume full responsibility for navigation at all times and he is bound to be in personal control of the ship when entering or leaving ports, canals and rivers and also while within port areas; the employment of a pilot or tug boat on such occasions, as required under the local laws, does not relieve him of his responsibility for the safety of the ship;
- (e) he shall take care at the beginning of and during the voyage that the ship is seaworthy in all respects, that the cargo has been properly loaded and secured and that all reasonable measures have been taken to protect the cargo from damage, pilferage or loss;
- (f) while away from home port, he shall have authority, if necessary, to raise loans and enter into contracts in the name of the owners or take such other steps as may be considered necessary, for carrying out repairs, for supplying the ship with bunkers, provisions, stores and similar articles in order to avoid detention to the ship on its voyage;
- (g) he shall ensure that the ship's log book are properly and correctly maintained and shall keep in his custody the log book and all other ship's documents;
- (h) he shall render, so far as he can do so without jeopardising the safety of the ship and persons on board, every assistance to ships and persons in distress at sea as required under section 122;

- (i) in the event of the ship encountering foul weather or any other accident during a voyage causing damage to or loss of cargo, he shall, at the next port of call, file a marine protest with the prescribed authority giving a detailed description of the accident;
- (j) when the ship is at sea, he is authorised to —
 - (i) issue birth certificates for children born at sea;
 - (ii) bury persons who have died on board the ship;
- (k) he shall, when the ship is in imminent danger of loss or destruction, take all possible measures to save first the passengers and then the crew; he should be the last to leave the ship, and shall take care, if possible, to save the log book and other documents of the ship and valuables and money belonging to the ship.

PART V

SAFETY OF NAVIGATION

CHAPTER 1

GENERAL

Prescribed
complement of
certificated crew.

116. The company and the master shall ensure that every ship is manned with the prescribed complement of crew, duly certificated, applicable to the intended voyage, and that during such voyage it is kept so manned.

Record of boat
drill or fire drill.

117. (1) The master of every Antigua and Barbuda ship shall cause to be entered in the official log book a statement or, if there is no official log book, cause other record to be kept, of every occasion on which boat drill or fire drill is practised on board the ship; and if—

- (a) in the case of a passenger ship, boat drill or fire drill is not practised on board the ship in any week;

- (b) in the case of any other ship, boat drill or fire drill is not practised on board the ship in any two weeks, the master shall cause a statement to be entered or other record to be kept as aforesaid of the reasons why the drill was not practised in that week or two-weeks period, as the case may be.

(2) The master of a ship who fails to comply with the requirements of this section commits an offence and liable on summary conviction to a fine not exceeding one thousand dollars.

118. (1) Without prejudice to Regulation I/11 of the SOLAS Convention, when any ship to which this section applies —

Report of accident and loss of ship.

- (i) has sustained or caused any accident, or a defect is discovered, which affects the efficiency or completeness of its lifesaving appliances or other equipment; or
- (ii) has been in collision with another ship, the master shall transmit to the Director a report of the accident or defect, and of the probable cause thereof, stating the name of the ship, her official number, if any, and the port at which she is registered.

(2) Without prejudice to Regulation I/11 of the SOLAS Convention —

- (a) if the managing owner, or in the event of there being no managing owner or no such owner resident in Antigua and Barbuda, the agent, of any ship to which this section applies has reason to believe that the ship has sustained or caused any such accident, or any such defect has occurred, he shall satisfy himself that the accident or damage has been reported by the master as required by subsection (1); and
- (b) if any such managing owner or agent has reason to apprehend that the accident or damage has not been so reported, he shall as soon thereafter as possible, send to ADOMS notice in writing stating the name of the ship, her official number if any, and the port at which she is registered or to which she belongs, and stating also, to the best of his knowledge and

belief, the nature and extent of the accident or damage, the probable cause thereof and the place where the ship then is.

(3) This section applies to any ship to which any such accident or damage as is mentioned in the foregoing provisions of this section occurs or is believed to have occurred, on or near the coasts of Antigua and Barbuda.

(4) The master or managing owner or agent who fails, without reasonable cause, to comply with this section commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars.

Apprehended loss
of the ship.

119. (1) If the managing owner or, in the event of there being no managing owner, or no such owner resident in Antigua and Barbuda, the agent of any ship to which this section applies, has reason, owing to the nonappearance of the ship or to any other circumstance, to apprehend that the ship has been totally lost, he shall, as soon thereafter as possible, send to ADOMS notice in writing stating —

- (i) the name of the ship,
- (ii) her official number, if any, and
- (iii) the port at which she is registered, and stating also to the best of his knowledge and belief, the probable cause of the loss.

(2) This section applies to:

- (a) Antigua and Barbuda ships; and
- (b) other ships which are lost or are supposed to have been lost on or near the coasts of Antigua and Barbuda.

(3) A managing owner or agent who fails without reasonable cause to comply with this section within a reasonable time commits an offence and is liable on summary conviction to a fine of two thousand dollars.

CHAPTER 2**PREVENTION OF COLLISIONS**

120. (1) This section applies to —

Collision Regula-
tions.

- (a) ships which are registered in Antigua and Barbuda;
- (b) other ships while they are in Antigua and Barbuda waters;
- (c) seaplanes on the surface of the water which are registered in Antigua and Barbuda;
- (d) other seaplanes on the surface of the water while they are in Antigua and Barbuda waters.

(2) In this section, “master” includes pilot of a seaplane.

(3) Ships and seaplanes to which this section applies shall use the signals of distress set out in Annex IV of the Collision Regulations Convention.

(4) Ships and seaplanes to which this section applies shall comply with the provisions of the Collision Regulations Convention:

Provided that nothing in this subsection shall be taken to require compliance by any ship or class of ships, which in pursuance of the Collision Regulations Convention or a provision thereof has been exempted from compliance with the same.

(5) Where subsection (3) or (4) is contravened, the owner of the ship or seaplane and the master commits an offence and is liable on summary conviction —

- (a) in the case of a contravention of Rule 10 (b) (i) of the Rules annexed to the Collision Regulations Convention, to a fine not exceeding fifty thousand dollars or a term of imprisonment not exceeding two years or to both;
- (b) in all other cases, to a fine not exceeding five thousand dollars or to a term of imprisonment not exceeding six months or to both;

(6) If any damage to property arises from the nonobservance of Collision Regulations Convention, the damage shall be deemed to have been caused by the wilful default of the person in charge of the ship, seaplane or other craft at the time, unless it is shown to the satisfaction of the court that the circumstances of the case made a departure from the Collision Regulations Convention necessary.

Collisions to be entered in the official log-book.

121. (1) In every case of collision involving an Antigua and Barbuda ship, in which it is practicable to do so, the master of the ship shall, immediately after the occurrence, cause a statement thereof, and of the circumstances under which the same occurred, to be entered in the official log book, and the entry shall be signed by the master, and also by the mate or one of the crew.

(2) Any master who fails to comply with this section commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars.

Duty to assist in case of collision.

122. (1) In every case of collision between two ships, it shall be the duty of the master or person in charge of each ship, if and so far as he can do so without danger to his own ship, crew and passengers (if any)

- (a) to render to the other ship, and to her master, crew and passengers (if any), such assistance as may be practicable and as may be necessary to preserve them from the danger caused by the collision, and to stay by the other ship until he has ascertained that she has no need of further assistance; and also
- (b) to give to the master or person in charge of the other ship the name of his own ship and the port to which she belongs, and also the names of the ports from which she comes and to which she is bound.

(2) If the master or person in charge fails without reasonable cause to comply with this section, he commits an offence and is liable on conviction to a fine not exceeding three thousand dollars and imprisonment for three months.

(3) This section applies in relation to Antigua and Barbuda ships wherever they be, and other ships when in Antigua and Barbuda waters.

(4) The failure of the master or person in charge of a ship to comply with the provisions of this section shall not raise any presumption of law that the collision was caused by his wrongful act, neglect or default.

CHAPTER 3

SAFETY AND SECURITY AT SEA

123. The provisions of the articles of, and the Annex and Protocols to, the SOLAS Convention shall have the force of law. International convention on the safety of life at sea (SOLAS)

124. Notwithstanding anything to the contrary in Regulation 1 of Part A of Chapter I of the Annex to the SOLAS Convention, the SOLAS Convention shall apply *mutatis mutandis* to ships entitled to fly the flag of a country or territory to which the SOLAS Convention does not apply or is not yet in force while such ships are in Antigua and Barbuda engaged on international voyages. Application of SOLAS to non-Convention ships.

125. Any Antigua and Barbuda ship to which the SOLAS Convention applies shall be subject to such initial, renewal, additional, periodical, annual, enhanced and other surveys as the SOLAS Convention requires. Surveys.

126. (1) Every Antigua and Barbuda ship which has been satisfactorily surveyed may be issued with an appropriate SOLAS Convention certificate issued by or on behalf of the Director. Certification.

(2) No Antigua and Barbuda ship shall proceed to sea on international voyage unless there is in force in respect of the ship such valid SOLAS Convention certificates as it is required to have, and the ship is marked with an identification number as required by the SOLAS Convention.

(3) If a ship proceeds or attempts to proceed to sea in contravention of subsection (2), the owner and master commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment not exceeding three months, or to both.

127. In any case where a ship does not comply with the SOLAS Convention, the ship shall be liable to be detained. Detention.

provided that a ship shall not be unreasonably delayed or detained.

General compli-
ance duty, and of-
fences.

128. (1) It shall be the duty of the owner and the master of the ship to comply with and ensure compliance with the provisions of the SOLAS Convention.

(2) It shall be the duty of any person —

(a) upon whom an obligation is imposed by the SOLAS Convention; or

(b) to whom a direction is given in pursuance of the SOLAS Convention (whether under subsection (1) or otherwise), to comply or ensure compliance with the SOLAS Convention.

(3) Where any natural or legal person other than a person specified in subsection (1) has control of the matter to which the subsection relates because he has responsibility for the operation of the ship, then any duty imposed by that subsection shall extend to the person who has control of that matter.

(4) Where a person specified in subsection (1), (2) or (3) contravenes the respective subsection that person commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to a term of imprisonment of three months or to both.

(5) In proceedings for an offence under subsection (4), it shall be a defence —

(a) for the accused to prove that he used all due diligence to ensure compliance; or

(b) for an owner or master to prove that he did not have control of the matter to which the offence relates because he did not have responsibility for the operation of the ship and that duty was imposed by subsection (3) on a person who had control of that matter.

129. (1) No person shall —Fraud, misuse of
certificates etc.

- (a) intentionally alter a certificate issued for the purposes of the SOLAS Convention;
- (b) falsely make a certificate referred to in the SOLAS Convention;
- (c) in connection with any survey required by the SOLAS Convention, knowingly or recklessly furnish false information;
- (d) with intent to deceive, use, lend, or allow to be used by another, a certificate referred to in the SOLAS Convention;
- (e) fail to surrender a certificate to be surrendered issued for the purposes of the SOLAS Convention.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment not exceeding three months, or to both.

130. Before a ship proceeds to sea from any port in Antigua and Barbuda the master of that ship shall produce to a customs officer from whom a clearance for the ship is demanded for an international voyage

Customs clearance

- (a) in respect of a ship to which the SOLAS Convention applies, certificates required to be issued to such a ship complying with the relevant provisions of the SOLAS Convention, and in the case of any qualified certificate, the corresponding valid exemption certificate;
- (b) in respect of an Antigua and Barbuda ship required to possess a local safety certificate, a valid local safety certificate.

131. In the case of any ship —Breach of safety
rules: offences by
owners.

- (a) if the ship is required, by the SOLAS Convention or under this Act, to be provided with safety appliances and proceeds on any voyage or excursion without being so provided in accordance with the rules applicable to the ship;

- (b) if any of the safety appliances with which the ship is so provided are lost or rendered unfit for service in the course of the voyage or excursion through the wilful or negligence of the owner or master;
- (c) if the owner or master wilfully neglects to replace or repair, at the first opportunity, any such appliances lost or injured in the course of the voyage or excursion;
- (d) if such appliances are not kept so as to be at all times fit and ready for use;
- (e) if any provision relating to safety of life at sea applicable to the ship, save such provisions as relate to the carriage of dangerous goods, is contravened or not complied with;

the owner of the ship commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

Penalty for non-compliance with conditions of exemption certificate.

132. Where an exemption certificate, issued in respect of an Antigua and Barbuda ship, specifies any conditions on which the certificate is issued and any of these conditions is not complied with, the owner or master of the ship commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars.

Exemption for non-SOLAR convention ships from compliance with this part.

133. (1) The Director may relieve any Antigua and Barbuda or the owner of any ship to which this section applies from compliance with any of the provisions of this Part or regulations made under this Act relating to inspection, in any specified case of emergency where the Director may deem it necessary or advisable in the public interest, to such extent and in such manner and upon such terms as he may consider proper in the circumstances;

but the Director shall not relieve the ship or owner from compliance with any such provision to such extent or in such manner as would permit any ship to proceed to sea or to make any voyage or trip in an unseaworthy or unsafe condition.

(2) This section does not apply to ships to which the SOLAS Convention or Load Lines Convention applies.

CHAPTER 4

LOAD LINES

134. The provisions of the articles of, and the Annexes and Protocol to, the Load Line Convention shall have the force of law.

International convention on load lines 1966 to have the force of law.

135. For the purposes of the Load Line Convention and this Chapter

Interpretation of load line convention.

“Assigning Authority” shall in reference to Antigua and Barbuda means the Director and any other person or organisation appointed or authorised by the Director for the purpose of the Load Line Convention.

136. Notwithstanding anything to the contrary in Article 4 of the Load Line Convention, the Load Line Convention shall apply *mutatis mutandis* to ships entitled to fly the flag of a country to which the Load Line Convention does not apply while such ships are in Antigua and Barbuda and engaged on international voyages.

Application of load Line convention to nonconvention ships.

137. (1) The Assigning Authority shall assign freeboards to an Antigua and Barbuda ship in accordance with the requirements of Annex I of the Load Line Convention.

Assignment of freeboards.

(2) The Assigning Authority shall —

- (a) determine the particulars of the freeboard to be assigned;
- (b) determine which of the load lines described in Annex I of the Load Line Convention are to be marked on the sides of the ship in accordance with the requirements of that Annex;
- (c) determine the position where the load lines, to deck-line and the load line mark are to be so marked; and

- (d) complete a copy of the record of particulars relating to the conditions of assignment.

General
compliance.

138. (1) It shall be the duty of the owner and the master of the ship to comply with and ensure compliance with the provisions of the Load Line Convention.

(2) It shall be the duty of any person —

- (a) upon whom an obligation is imposed by the Load Line Convention; or
- (b) to whom a direction is given in pursuance of the Load Line Convention (whether under subsection (1) or otherwise), to comply or ensure compliance with the Load Line Convention.

(3) After the appropriate load line marks have been made on a ship —

- (a) it shall be the duty of the owner and master to keep the ship so marked;
- (b) the marks shall not be concealed, removed, altered, defaced or obliterated except with the authority of the Assigning Authority.

(4) Where any natural or legal person other than a person specified in subsection (1) or (3) has control of the matter to which the subsection relates because he has responsibility for the operation of the ship, then any duty imposed by that subsection shall extend to the person who has control of that matter.

Fraud, misuse etc
of certificates.

139. No person shall —

- (a) intentionally alter a certificate referred to in the Load Line Convention;
- (b) falsely make a certificate referred to in the Load Line Convention;
- (c) in connection with any survey required by the Load Line Convention, knowingly or recklessly furnish false information;

- (d) with intent to deceive, use, lend, or allow to be used by another, a certificate referred to in the Load Line Convention;
- (e) fail to surrender a certificate required to be surrendered under the Load Line Convention.

140. (1) Where a person specified in section 138 or 139 contravenes the respective section, that person commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or imprisonment for a term not exceeding six months, or to both.

(2) Where a ship:

- (a) is in salt water and has no list and is so loaded that the appropriate load line is submerged;
- (b) if not in salt water, is so loaded that if it were in salt water and had no list it would be submerged;

the owner and the master commits an offence and each is liable on summary conviction to a fine not exceeding fifty thousand dollars and an additional fine not exceeding five thousand dollars for each complete centimetre by which the appropriate load line on each side of the ship is submerged or would be submerged as the case may be.

(3) Where a person is charged with an offence under subsection (1), it shall be a defence

- (a) for the accused to prove that he used all due diligence to ensure compliance;
- (b) for an owner or master to prove that he did not have control of the matter to which the offence relates because he did not have responsibility for the operation of the ship and that duty was imposed by subsection (4) of section 138 on a person who had control of that matter.

(4) Where a person is charged with the offence referred to in subsection (2), it shall be a defence (in addition to the defences available under subsection (3), to prove that the contravention

was due solely to deviation or delay and that the deviation or delay was caused solely by stress of weather or other circumstances which neither the master nor the owner nor the charterer (if any) could have prevented or forestalled.

Clearance

141. (1) Notwithstanding anything to the contrary in Article 21 of the Load Line Convention, before any ship subject to the Load Line Convention proceeds to sea from any port in Antigua and Barbuda the master of that ship shall produce to a customs officer from whom a clearance for the ship is demanded for an international voyage

- (i) an International Load Line Certificate;
- (ii) an International Load Line Exemption Certificate.

Detention

142. In any case where a ship does not comply with the Load Line Convention she may be detained, provided that the ship shall not be unreasonably detained or delayed.

CHAPTER 5

DANGEROUS GOODS

Carriage of dangerous goods.

143. (1) The master or owner of any ship may refuse to take on board any package or parcel which he suspects to contain any dangerous goods, and may require it to be opened to ascertain the fact.

(2) When any dangerous goods, or any goods which, in the judgment of the master or owner of the ship, are dangerous goods, have been sent on board any ship without the marking or the notice required by the IMDG Code, the master or owner of the ship may cause the goods, together with any packaging or container thereof, to be thrown overboard, and neither the master nor the owner of the ship shall be subject to any liability, civil or criminal, in any court in respect thereof.

(3) For the purposes of this section, “dangerous goods” means any goods defined as such in the IMDG Code.

(4) This section shall apply to —

- (a) Antigua and Barbuda ships;
- (b) other ships while they are within any port in Antigua and Barbuda, or are embarking or disembarking passengers, or loading or discharging cargo or fuel, within Antigua and Barbuda waters.

CHAPTER 6

UNSEAWORTHY SHIPS

144. (1) Any person, who sends or attempts to send, or is party to sending or attempting to send, an Antigua and Barbuda ship to sea in such an unseaworthy state that the life of any person is likely to be thereby endangered, commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding six months, or to both, unless he proves either that he used all reasonable means to ensure her being sent to sea in a seaworthy state, or that her going to sea in such an unseaworthy state was, under the circumstances, reasonable and justifiable.

Sending unseaworthy ship to sea.

(2) The master of an Antigua and Barbuda ship who knowingly takes the ship to sea in such an unseaworthy state that the life of any person is likely to be thereby endangered commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars and imprisonment to a term not exceeding six months, unless he proves that her going to sea in such an unseaworthy state was, in the circumstances, reasonable and justifiable.

145. (1) Where, whether on complaint or representation made to him or otherwise, an inspector has reason to believe that any Antigua and Barbuda ship, or any foreign ship in a port in Antigua and Barbuda, is an unsafe ship he may cause her to be detained, until he is satisfied that she is fit to proceed to sea.

Unseaworthy ship to be detained etc.

(2) Where a ship has been dealt with under subsection (1), the inspector may inspect or survey, or cause to be inspected or surveyed, the ship to investigate any defects believed to exist.

(3) The owner or master of a ship or an appropriate consular officer may require that a person of his choice shall accompany any person making an inspection or survey under this section.

(4) An inspector acting under this section, shall, as soon as practicable after action is completed therein, forward a full report thereof to the Director together with copies of any reports made upon inspection or survey.

(5) Any complaint in respect of the seaworthiness of a ship shall be in writing, stating the name and address of the complainant, and a copy of such complaint, including the name and address of the complainant, shall be given to the owner or master of the ship if action is taken under this section.

(6) Before any action is taken under this section as a result of a complaint, the inspector shall assure himself, by all means at his disposal, that the complaint is not of a trivial, frivolous or vexatious nature.

(7) In this section, “unsafe ship” means a ship which is, by reason of the defective condition of her hull, equipment or machinery, or by reason of undermanning, overloading or improper loading, unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which she is intended.

Liability for costs
and damages.

146. (1) If it appears that there was not reasonable and probable cause, by reason of the condition of the ship or the act or default of the owner, for the detention of a ship under this Part as an unsafe ship, ADOMS shall be liable to pay to the owner of the ship his costs of any incidental to the detention and survey of the ship, and also compensation for any loss or damage sustained by him by reason of the detention or survey.

(2) If a ship is detained under this Act, and the ship was, at the time of detention, an unsafe ship within the meaning of this Part, the owner of the ship shall be liable to pay to ADOMS any costs of, and incidental to, the detention and survey of the ship, and those costs shall, without prejudice to any other remedy, be recoverable as salvage is recoverable.

Power to require
from complainant
security for costs.

147. (1) Where a complaint is made to the Director, or an inspector that an Antigua and Barbuda ship is unsafe, the Director or inspector may, if he thinks fit, require the complainant to give security to his satisfaction for the costs and compensation which he may become liable to pay as hereinafter mentioned:

Provided that such security shall not be required where the complaint is made by one-fourth, being not less than three, of the seafarers belonging to the ship, and is not in the opinion of the Director or inspector frivolous or vexatious, and the Director or inspector shall, if the complaint is made in sufficient time before the sailing of the ship, take proper steps for ascertaining whether the ship ought to be detained.

(2) Where a ship is detained in consequence of any complaint, and the circumstances are such that the Director is liable under this Act to pay to the owner of the ship any costs or compensation, the complainant shall be liable to pay to the Director all such costs and compensation as the Director incurs or is liable to pay in respect of the detention and survey of the ship.

PART VI

MARITIME SECURITY

CHAPTER 1

PRELIMINARY

148. (1) The purpose of this Part is to supplement section 123 (SOLAS Convention to have force of law) in providing special measures to enhance maritime security.

Interpretation of
Part VI

(2) Words used in this Part have the same meaning as they have in, or for the purposes of, Chapter XI-2 of the SOLAS Convention.

(3) In this Part —

“Designated Authority” means the organisation or the administration within the Government of Antigua and Barbuda identified, as responsible for ensuring the implementation of the provisions of Chapter XI-2 of the SOLAS Convention pertaining to port facility security and ship/port interface, from the point of view of the port facility;

“port facility operator” means any person operating a port facility or such other person as may be designated for the purposes of this Part as port facility operator for one or more port facilities by the Designated Authority;

“recognised security organisation” means an organisation with appropriate expertise in security matters and with appropriated knowledge of ship and port operations authorised to carry out an assessment, or a verification, or an approval or a certification activity, required by this Chapter or by Part A of the ISPS Code;

“restricted zone” means a zone to which access is restricted for security reasons pursuant to this Part.

(4) For the purposes of this Part a person is permitted to have access to a restricted zone of a port facility if he is permitted to enter that zone or if arrangements exist for permitting any of his employees or agents to enter that zone.

Application

149. (1) Subject to subsection (5), this Part applies to —

- (a) the following ships engaged on international voyages:
 - (i) passenger ships, including high-speed passenger craft;
 - (ii) cargo ships, including high-speed craft, of 500 tons or more; and
 - (iii) mobile offshore drilling units; and
- (b) port facilities serving such ships engaged on international voyages.

(2) This Part shall also apply to any port facility specified in a Notice issued by the Minister which, although used primarily by ships not engaged on international voyages, is required, occasionally, to serve ships arriving or departing on international voyages.

(3) A Notice referred to in subsection (2) shall not be issued without a port facility security assessment for that port facility having been done in accordance with the ISPS Code. The Notice shall specify the extent of application of this Part and the relevant sections of Part A of the ISPS Code to the facility.

(4) Any Notice under subsection (2) shall not compromise the level of security intended to be provided by this Part and by the ISPS Code.

(5) This Part does not apply to —

- (a) warships;
- (b) naval auxiliaries; or
- (c) other ships owned or operated by parties to the SOLAS Convention and use only on Government noncommercial service.

CHAPTER 2

SHIPS

150. (1) Companies shall comply with the relevant requirements of this Part with the ISPS Code. In particular, and without prejudice to any other duties the Company shall ensure that:

Requirements for
companies.

- (a) a company security officer is appointed, and is properly trained and qualified in his duties and responsibilities;
- (b) a ship security officer is appointed for each of its ships and is properly trained and qualified in his duties and responsibilities;
- (c) each ship has a ship security plan;
- (d) the master has available on board, at all times, information through which officers duly authorised by any State can establish:
 - (i) who is responsible for appointing the members of the crew or other persons currently employed or engaged on board the ship in any capacity on the business of that ship;
 - (ii) who is responsible for deciding the employment of the ship; and

- (iii) in cases where the ship is employed under the terms of charter party or parties, who are the parties to such charter party or parties.

(2) Any Company which fails to comply with this section commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

Ship security
Plans.

151. (1) (a) Every ship security plan and amendment there to shall be submitted to the Director, or to a recognised security organisation he authorises on his behalf, for approval in accordance with the ISPS Code.

- (b) A recognised security organisation authorised under paragraph (a) shall not have been involved in the preparation of the ship security plan or the amendment in question.

(2) The Director shall determine which changes to an approved ship security plan or to any security equipment specified in an approved plan shall not be implemented unless the relevant amendments to the plan are approved by the Director or the relevant recognised security organisation. Any such changes shall be at least as effective as those measures prescribed in Chapter XI-2 of the SOLAS Convention and in the ISPS Code.

(3) Any company which does not comply with subsection (1), or otherwise fails to comply with the ISPS Code, commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

Company security officer.

152. (1) The company security officer shall perform the responsibilities and duties specified in this Part and in the ISPS Code.

(2) Any contravention of this section by the company security officer is an offence and liable on summary conviction to a fine not exceeding two thousand dollars.

Ship security officer.

153. (1) The ship security officer shall perform the responsibilities and duties specified in this Part and in the ISPS Code.

(2) Any contravention of this section by the ship security officer shall be an offence and liable on summary conviction to a fine not exceeding two thousand dollars.

154. (1) Ships shall comply with the relevant requirements of this Part and of the ISPS Code.

Requirements for ships.

(2) Prior to entering a port or whilst in a port within the territory of any other State, a ship shall comply with the requirements for the security level set by that State, if such security level is higher than the security level set by the Director for that ship.

(3) Ships shall respond without undue delay to any change to a higher security level.

(4) Where a ship is not in compliance with the requirements of this Part or of the ISPS Code, or cannot comply with the requirements of the security level set by the Director or by another contracting government and applicable to that ship, then the ship shall notify the appropriate competent authority prior to conducting any ship/port interface or prior to entry into port, whichever occurs earlier.

155. (1) Ships shall be provided with a ship security alert system in accordance with Chapter XI-2 of the SOLAS Convention.

Ship security alert system.

(2) The ships security alert system shall comply with Chapter XI-2 of the SOLAS Convention.

(3) The ship security alert system shall:

- (a) be capable of being activated from the navigation bridge and in at least one other location; and
- (b) conform to performance standards not inferior to those adopted by IMO.

(4) The ship security alert system points shall be designed so as to prevent the inadvertent initiation of the ship security alert.

(5) The requirement for a ship security alert system may be complied with by using the radio installation fitted for compliance with the requirements of Chapter IV of the SOLAS Convention, provided all requirements of this section are complied with.

(6) Any contravention of subsections (1) to (4) is an offence by the company and the master and on summary conviction are liable to a fine not exceeding ten thousand dollars.

Master's discretion for ship safety and security.

156. (1) (a) The master of an Antigua and Barbuda ship shall not be constrained by the Company, the charterer or any other person from taking or executing any decision which, in the professional judgment of the master, is necessary to maintain the safety and security of the ship.

(b) This includes denial of access to persons (except those identified as duly authorised by a Contracting Government) or their effects and refusal to load cargo, including containers or other closed cargo transport units.

(2) (a) Where, in the professional judgment of the master, a conflict between any safety and security requirements applicable to the ship arises during its operations, the master shall give effect to those requirements necessary to maintain the safety of the ship.

(b) In such cases, the master may implement temporary security measures and shall forthwith inform the Director and, if appropriate, the Contracting Government in whose port the ship is operating or intends to enter.

(c) Any such temporary security measures under this section shall, to the highest possible degree, be commensurate with the prevailing security level.

(d) When such cases as are referred to in this subsection are identified, the director shall ensure that such conflicts are resolved and that the possibility of recurrence is minimised.

Verification for ships.

157. (1) All Antigua and Barbuda ships to which this Part applies shall be subject to initial, renewal and intermediate verifications in accordance with the ISPS Code.

(2) The verification of ships shall be carried out by an officer authorised by the Director, or, if he entrusts it, by a recognised security organisation.

(3) The security system and any associated security equipment of the ship after verification shall be maintained to conform with the provisions of sections 154 and 155 and the ISPS Code and of the approved ship security plan.

(4) After any verification under subsection (1), no changes shall be made in the security system and in any associated security equipment or the approved ship security plan without the sanction of the Director.

(5) Any contravention of subsection (1) or (3) is an offence by both the Company and master, punishable on conviction by a fine of five thousand dollars.

158. (1) When an initial or renewal verification is satisfactorily completed pursuant to section 157 the Director or a recognised security organisation acting on his behalf shall issue or, as the case may be, endorse an International Ship Security Certificate.

Issue, endorsements, duration and validity of certificate.

(2) The International Ship Security Certificate shall be drawn up in a form corresponding to the form prescribed in the ISPS Code.

(3) The duration and validity of an International Ship Security certificate shall be in accordance with the ISPS Code.

159. (1) After 1 July 2004, for the purposes of:

Interim certificates.

- (a) a ship without a Certificate, on delivery or prior to its entry or re-entry into service;
- (b) transfer of a ship from the flag of another State to the Antigua and Barbuda register;
- (c) a company assuming the responsibility for the operation of a ship not previously operated by that company;

until the Certificate referred to in section 158 (1) is issued, the Director may cause an Interim International Ship Security Certificate to be issued, in a form corresponding to the form prescribed in the ISPS Code.

(2) An Interim International Ship Security Certificate shall only be issued if the Director or a recognised security organisation on his behalf is satisfied that the conditions specified in the ISPS Code are met.

(3) An Interim International Ship Security Certificate may be issued by the Director or by a recognised security organisation authorised to act on his behalf.

(4) An Interim International Ship Security Certificate shall be valid for 6 months, or until the Certificate required by section 158 is issued, whichever comes first, and may not be extended.

(5) No subsequent consecutive Interim International Ship Security Certificate shall be issued to a ship if, in the judgment of the Director or the recognised security organisation, one of the purposes of the ship or a Company in requesting such certificate is to avoid full compliance with this Part beyond the period of the initial Interim Certificate as specified in subsection (1).

(6) For the purposes of sections 161, 162 and 163 the Minister may, prior to accepting an Interim International Ship Security Certificate as a valid Certificate, ensure that the relevant requirements of the ISPS Code have been met.

Prohibition on proceeding to sea without an appropriate certificate.

160. (1) No Antigua and Barbuda ship required to be verified under this Part shall proceed, or attempt to proceed to sea unless there is in force a valid International Ship Security Certificate or an Interim International Ship Security Certificate.

(2) Where a ship proceeds, or attempts to proceed to sea in contravention of subsection (1) the company and the master commits an offence and are liable on summary conviction to a fine not exceeding ten thousand dollars.

CHAPTER 3

CONTROL AND COMPLIANCE MEASURES

Control of ships in port.

161. (1) (a) For the purpose of this Part, every ship to which this Part applies is subject to control when in a port in Antigua and Barbuda by officers duly authorised by the Minister (who may be officers appointed under section 258).

- (b) Such control shall be limited to verifying that there is on board a Certificate, which, if valid, shall be accepted, unless there are clear grounds for believing that the ship is not in compliance with the requirements of this Part or the ISPS Code.

(2) When there are such clear grounds, or where no valid certificate is produced when required, the duly authorised officers shall impose any one or more of the control measures provided in subsection (3) in relation to that ship.

- (3) (a) The control measures referred to in subsection (1) are as follows:
- (i) inspection of the ship,
 - (ii) delaying the ship,
 - (iii) detention of the ship,
 - (iv) restriction of operations, including movement within the port, or
 - (v) expulsion of the ship from port.
- (b) The control measures may, additionally or alternatively, include other lesser administrative or corrective measures.

162. (1) The Designated Authority may require that ships intending to enter ports in Antigua and Barbuda provide the following information to duly authorised officers to ensure compliance with this Part prior to entry into port with the aim of avoiding the need to impose control measures or steps:

Ships intending to enter a port.

- (a) that the ship possesses a valid Certificate and the name of its issuing authority;
- (b) the security level at which the ship is currently operating;
- (c) the security level at which the ship operated in any previous port where it has conducted a ship/port interface within the time frame specified in subsection (4);

- (d) any special or additional security measures that were taken by the ship in any previous port where it has conducted a ship/port interface within the timeframe specified in subsection (4);
- (e) that the appropriate ship security procedures were maintained during any ship-to-ship activity within the time frame specified in subsection (4); or
- (f) other practical security related information (but not details of the ship security plan), taking into account the guidance given by the ISPS Code.

(2) The Designated Authority may request the ship or the company to provide confirmation, acceptable to it, of the information required pursuant to subsection (1).

(3) Every Antigua and Barbuda ship to which this Part applies intending to enter the port of another Contracting Government shall provide the information described in subsection (1) on the request of the officers duly authorised by that Government. The master may decline to provide such information on the understanding that failure to do so may result in denial of entry into port.

(4) The ship shall keep records of the information referred to in subsection (3) for the last 10 calls at port facilities.

- (5) (a) Where, after receipt of the information described in subsection (1), the officers duly authorised by the Designated Authority have reasonable grounds for believing that the ship is not in compliance with the requirements of this Part or the ISPS Code, such officers shall attempt to establish communication with and between the ship and its Administration in order to rectify the noncompliance.
- (b) Where such communication does not result in rectification, or where such officers have clear grounds otherwise for believing that the ship is not in compliance with the requirement of this Part or the ISPS Code, such officers may take steps in relation to that ship as provided in subsection (6).

(6) The steps referred to in subsection (5) are as follows:

- (a) a requirement for the rectification of the noncompliance;
- (b) a requirement that the ship proceed to a location specified in the territorial sea or internal waters of Antigua and Barbuda;
- (c) inspection of the ship, if the ship is in the territorial sea of Antigua and Barbuda; or
- (d) denial of entry into port.

(7) The Designated Authority shall prior to taking any such steps, inform the ship of its intentions. Upon receipt of this information the master may withdraw the intention to enter that port. In such cases, this section shall not apply.

163. (1) In the event:

- (a) of the imposition of a control measure, other than a lesser administrative or corrective measure, referred to in section 161(3); or
- (b) any of the steps referred to in section 162(6) are taken, an officer duly authorised by the Designated Authority shall forthwith inform in writing the Administration specifying which control measures have been imposed or steps taken and the reasons thereof. He shall also notify the recognised security organisation which issued the Certificate relating to the ship concerned and the IMO when any such control measures have been imposed or steps taken.

Additional control
and compliance
provisions.

(2) When entry into port is denied or the ship is expelled from a port in Antigua and Barbuda, the Designated Authority shall communicate the appropriate facts to the authorities of the State of the next appropriate ports of call, when known, and any other appropriate coastal States, taking into account any guidelines developed by IMO. Confidentiality and security of such notification shall be ensured.

(3) Denial of entry into port, pursuant to section 162 (3) and (6), or expulsion from port, pursuant to section 161(1) to (3), shall only be imposed where the duly authorised officers have

reasonable grounds to believe that the ship poses an immediate threat to the security or safety of persons, or of ships or other property and there are no other appropriate means for removing that threat.

(4) The control of measures referred to in section 161(1) and the steps referred to in section 162(6) shall only be imposed, pursuant to sections 161 and 162, until the noncompliance giving rise to the control measures or steps has been corrected to the satisfaction of the Designated Authority, taking into account actions proposed by the ship or the Administration, if any.

(5) When control is exercised under section 161 or steps taken under section 162:

- (a) all possible efforts shall be made to avoid a ship being unduly detained or delayed. If a ship is thereby unduly detained, or delayed, it shall be entitled to compensation for any loss or damage suffered; and
- (b) necessary access to the ship shall not be prevented for emergency or humanitarian reasons and for security purposes.

CHAPTER 4

PORT FACILITIES

Port facilities: duties of port facility operator.

164. (1) Port facility operators shall ensure that port facilities shall comply with the relevant requirements of this Part and the ISPS Code.

- (2) (a) In particular the port facility operator shall appoint a suitably qualified port facility security officer, and ensure that he receives appropriate training, as specified in the ISPS Code.
- (b) The port facility operator shall provide the port facility security officer with the resources, assistance and support necessary to enable him to carry out his duties.

(3) The port facility operator shall ensure that port facility personnel having specific security duties have appropriate knowledge and receive appropriate training as specified in the ISPS Code.

(4) The port facility operator shall ensure that other port facility personnel have appropriate knowledge as specified in the ISPS Code.

(5) A port facility operator who fails to comply with the requirements of this section commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars.

165. (1) A port facility security officer shall carry out the duties and responsibilities placed on him by this Part and Part A of the ISPS Code, in particular those listed in the ISPS Code.

Port facility security officer.

(2) A port facility security officer who fails to comply with the requirement of this Part and Part A of the ISPS Code, commits an offence and is liable on conviction to a fine of five thousand dollars.

166. (1) The port facility operator shall —

Drills and exercises.

(a) ensure the effective implementation of the port facility security plan;

(b) carry out drills at appropriate intervals,

and taking into account the types of operation of the port facility, port facility personnel changes, the type of ship the port facility is serving, other relevant circumstances and the taking into account guidance given in Part B of the ISPS Code.

(2) The port facility security officer shall ensure the effective coordination and implementation of the port facility security plan by participating in exercises at appropriate intervals, taking into account the guidance given in Part B of the ISPS Code.

(3) The port facility operator and the port facility security officer commits an offence if they fail to comply with the requirements of subsection (1) and are liable on conviction to a fine of two thousand dollars.

(4) The port facility security officer commits an offence if he fails to comply with the requirement of subsection (2) and is liable on conviction to a fine not exceeding one thousand dollars.

CHAPTER 5

ENFORCEMENT

Requirement to
provide informa-
tion.

167. (1) Without prejudice to section 162, but subject to the relevant provisions of Part A of the ISPS Code (ship security plans not subject to inspection except in limited circumstances) the Designated Authority may, by notice in writing served on —

- (a) the owner, charterer, manager or master of any ship which is in, or appears to the Designated Authority to be likely to enter, a port facility,
- (b) a port facility operator,
- (c) any person who carries on operations in a port facility, and
- (d) any person who is permitted to have access to a restricted zone of a port facility for the purposes of the activities of a business carried on by him,

require that person to provide the Designated Authority with such information specified in the notice as the Designated Authority may require in connection with the exercise by the Designated Authority of its functions under this Part.

(2) A notice served pursuant to subsection (1), shall specify a date on which the information required is to be furnished to the Designated Authority.

(3) Any such notice may also require the person on whom it is served, after he has furnished to the Designated Authority the information required by the notice, to inform the Designated Authority if at any time the information previously furnished to the Designated Authority (including any information furnished in pursuance of a requirement imposed by virtue of this subsection) is rendered inaccurate by any change of circumstances (including the taking of any further measures for purposes of

this Part or the alteration or discontinuance of any measures already being taken).

(4) Where a notice served pursuant to subsection (1) requires further information to be furnished to the Designated Authority in accordance with subsection (3), it shall require that information to be furnished within such time as is specified in the notice.

(5) The Designated Authority may, at any time by a notice in writing —

(a) revoke any notice served pursuant to subsection (1).

(b) vary any notice served pursuant to subsection (1).

(6) The Director may, in like manner, require the owner, charterer, manager or master of any Antigua and Barbuda ship to provide him with information, and subsections (1) to (5) shall apply as if references to the Designated Authority were references to the Director.

(7) Any person who —

(a) without reasonable excuse, fails to comply with a requirement imposed on him by a notice under this section, or

(b) in furnishing any information so required, makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular,

commits an offence and is liable on conviction to a fine not exceeding five thousand dollars.

168. (1) An authorised person shall have power, on production (if required) of his credentials, to inspect

Powers of Inspection.

(a) any Antigua and Barbuda ship,

(b) any part of any port facility, or

- (c) any land outside a port facility which is occupied for the purposes of a business by a person who
 - (i) carries on (or appears to the authorised person to be about to carry on) harbour operations in a port facility for the purposes of that business, or
 - (ii) is permitted (or appears to the authorised person to be about to be permitted) to have access to a restricted zone of a port facility for the purposes of the activities of that business.

(2) An authorised person inspecting a ship or any part of a port facility or any land outside a port facility under subsection (1) shall have power

- (a) to subject any property found by him on the ship or, as the case may be, to subject that part of the port facility or any property found by him there or on that land, to such tests,
- (b) to take such steps —
 - (i) to ascertain what practices or procedures are being followed in relation to security, or
 - (ii) to test the effectiveness of any practice or procedure relating to security, or
- (c) to require the owner, charterer, manager or master of the ship, the port facility operator or the occupier of the land to furnish to him such information,

as the authorised person may consider necessary for the purpose for which the inspection is carried out.

(3) Subject to subsection (4), an authorised person shall, for the purpose of exercising any power conferred on him by subsection (1) or (2), have power

- (a) to go on board any Antigua and Barbuda ship and to take all such steps as are necessary to ensure that it is not moved, or

- (b) to enter any building or works in the port facility or enter upon any land in the port facility, or
- (c) to enter upon the land and to enter any building or works on the land.

(4) The powers conferred by subsection (3) shall not include power for an authorised person to use force for the purpose of going on board any ship, entering any building or works or entering upon any land.

(5) Any person who —

- (a) without reasonable excuse, fails to comply with a requirement imposed on him under subsection (2) (c), or
- (b) in furnishing any information so required, makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular,

commits an offence and is liable on conviction to a fine not exceeding five thousand dollars.

169. (1) A person commits an offence, punishable on conviction by a fine not exceeding five thousand dollars if, in answer to a question which

False statements relating to baggage, cargo etc.

- (a) relates to any baggage, cargo or stores (whether belonging to him or to another) that is or are intended for carriage by sea
 - (i) by an Antigua and Barbuda ship, or
 - (ii) by any other ship to or from Antigua and Barbuda, and
- (b) is put to him for purposes of this Part
 - (i) by any of the persons mentioned in subsection (2),
 - (ii) by any employee or agent of such a person in his capacity as employee or agent, or

(iii) by a police officer,

he makes a statement which he knows to be false in a material particular, or recklessly make a statement which is false in a material particular.

(2) The persons referred to in subsection (1) (b) are —

(a) a port facility operator,

(b) the owner, charterer or manager of any ship, and

(c) any person who —

(i) is permitted to have access to a restricted zone of a port facility for the purposes of the activities of a business carried on by him, and

(ii) has control in that restricted zone over the baggage, cargo or stores to which the question relates.

(3) In this section —

“cargo” includes mail;

“ship” does not include a ship used in naval, customs or police service; and

“stores” means any goods intended for sale or use in a ship, including fuel and spare parts and other articles of equipment, whether or not for immediate fitting.

False statements
in connection
with identity docu-
ments.

170. (1) A person commits an offence if —

(a) for the purpose of, or in connection with, an application made by him or another for the issue of an identity document to which this subsection applies, or

(b) in connection with the continued holding by him or another of any such document which has already been issued,

he makes to any of the persons specified in subsection (3), or to any employee or agent of such a person or to a police officer, a statement which he knows to be false in a material particular, or recklessly makes to any of those persons, to any such employee or agent or to a police officer, a statement which is false in a material particular.

(2) Subsection (1) applies to any identity document which is to be or has been issued by any of the persons specified in subsection (3) for the purposes of a ship security plan or a port facility security plan.

(3) The persons referred to in subsection (1) are —

- (a) a port facility operator,
- (b) the owner, charterer or manager of any ship, and
- (c) any person who is permitted to have access to a restricted zone of a port facility for the purposes of the activities of a business carried on by him.

171. (1) A person shall not

- (a) go, with or without a vehicle or ship, onto or into any part of a restricted zone of a port facility except with the permission of the port facility operator or a person acting on behalf of the port facility operator and in accordance with any conditions subject to which that permission is for the time being granted, or
- (b) remain in any part of such a restricted zone after being requested to leave by the port facility operator or a person acting on behalf of the port facility operator.

Unauthorised
presence in
restricted zone.

(2) Subsection (1)(a) does not apply unless it is proved that, at the material time, notices stating that the area concerned was a restricted zone were posted so as to be readily seen and read by persons entering the restricted zone.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding five thousand dollars.

Offences relating
to authorised
persons.

172. A person who —

- (a) intentionally obstructs an authorised person acting in exercise of a power conferred on him by or under this Part, or
- (b) falsely pretends to be an authorised person,

commits an offence and is liable on conviction to a fine not exceeding five thousand dollars.

PART VII

PREVENTION OF POLLUTION

CHAPTER 1

MARPOL

The MARPOL
Convention to
have the force of
law in Antigua and
Barbuda.

173. The provisions of the articles of, and Annexes I to V and Protocols to, the MARPOL Convention shall have the force of law in Antigua and Barbuda.

Antigua and
Barbuda ships.

174. Without prejudice to section 173, Antigua and Barbuda ships shall be subject to the surveys required by the MARPOL Convention, and on being satisfactorily surveyed, may be issued with the certificates specified in the MARPOL Convention.

General compli-
ance duty and Of-
fences.

175. (1) It shall be the duty of the owner and the master of the ship to comply with and ensure compliance with the provisions of the MARPOL Convention.

(2) It shall be the duty of any person —

- (a) upon whom an obligation is imposed by the MARPOL Convention; or
- (b) to whom a direction is given in pursuance of the MARPOL Convention (whether under subsection (1) or otherwise) to comply or ensure compliance with the MARPOL Convention.

(3) Where a person specified in subsection (1) or (2) contravenes that subsection, that person commits an offence and is liable on conviction to a fine not exceeding fifty thousand dollars.

176. Any person who —

Fraud, misuse of certificates, etc.

- (a) intentionally alters a certificate issued for the purposes of the MARPOL Convention;
- (b) falsely makes a certificate referred to in the MARPOL Convention;
- (c) in connection with any survey required by the MARPOL Convention, knowingly or recklessly furnishes false information;
- (d) with intent to deceive, uses, lends, or allows to be used by another, a certificate referred to in the MARPOL Convention;
- (e) fails to surrender a certificate to be surrendered issued for the purposes of the MARPOL Convention;

commits an offence and is liable on conviction to a fine not exceeding five thousand dollars.

177. Where the Director has reason to believe that a ship proposing to enter an Antigua and Barbuda port or offshore terminal, or territorial waters, is not in compliance with the requirements of this Part, and he is satisfied that the ship presents an unreasonable threat of harm to the marine environment, he may deny entry of such ship to any Antigua and Barbuda port or offshore terminal or territorial waters.

Ships presenting threat to marine environment.

178. (1) Subject to subsection (2), a certificate issued by a MARPOL member State in accordance with the MARPOL Convention shall be accepted by the Director and regarded for all purposes of the MARPOL Convention as having the same validity as a corresponding certificate issued under this Act.

Certificates and special rules on inspection of ships.

(2) A ship holding a certificate referred to in subsection (1) shall, while in a port or offshore terminal of Antigua and Barbuda, be subject to inspection by officers authorised by the Director for that purpose.

(3) Any inspection referred to in subsection (2) shall be limited to verifying that there is on board a valid certificate, unless there are clear grounds for believing that the condition of the ship or its equipment does not correspond substantially with the particulars of that certificate, in which case, or if the ship does not carry a valid certificate, the Director shall, subject to subsection (4), cause the ship to be detained and prevent it from sailing until it can proceed to sea without presenting an unreasonable threat of harm to the marine environment.

(4) The Director may grant a ship subject to a detention order referred to in subsection (3), permission to leave the port or offshore terminal for the purpose of proceeding to the nearest appropriate repair yard available.

(5) Notwithstanding subsection (2), an inspection may include an investigation of any operation regulated by this Part if there are reasonable grounds for believing that the master or crew are not familiar with essential ship board procedures for preventing pollution, and if such inspection reveals any deficiencies, the Director shall take such steps as may be necessary to ensure that the ship does not sail until the situation has been brought to order in accordance with the requirements of this Part.

Detection of violations and enforcement of the Part.

179. (1) The Director shall cooperate with Governments of other States in the detection of violations and enforcement of this Part, using all appropriate and practicable measures of detection and environmental monitoring, adequate procedures for reporting and accumulation of evidence.

(2) A ship to which this Part applies may, in any port or offshore terminal of Antigua and Barbuda, be subject to inspection by officers appointed or authorised by the Director for the purpose of verifying whether the ship has discharged any harmful substances in violation of this Part, and if such inspection indicates a violation by a ship of another State, a report shall be

forwarded to the Government of the State concerned for any appropriate action.

- (3) (a) Where it is alleged that a ship of another State has discharged harmful substances or effluents containing such substances in violation of this Part, the Director shall furnish to the Government of the State concerned, evidence, if any, of the alleged violation, and if it is practicable, notify the master of the ship concerned.
- (b) Where the Director receives from another State such evidence as is referred to in paragraph (a) in respect of an Antigua and Barbuda ship, it may request the Government of such State to furnish further or better evidence of the alleged violation.
- (c) Where the Director is satisfied that sufficient evidence is available to enable proceedings to be brought in respect of the alleged violation, he shall cause such proceedings to be taken as soon as possible, and shall promptly inform the Government of the State which has reported the alleged violation, and the Organisation of the action taken.

(4) Where the Government of another State furnishes sufficient evidence that a ship to which the MARPOL Convention applies has discharged harmful substances or effluents containing such substances in any place and requests an investigation, the Director may inspect such ship when it enters a port or offshore terminal of Antigua and Barbuda, and shall send the report of such investigation to the Government of the State requesting it and to the Government of the flag State of the ship so that appropriate action may be taken under the MARPOL Convention.

180. (1) In any case where a ship is suspected of being in violation of the requirements of this Part, the ship shall be liable to be detained.

Detention

(2) The Director shall make every possible effort to avoid unduly detaining or delaying a ship under sections 177 to 180.

(3) A ship that is unduly detained or delayed under sections 177 to 180 shall be entitled to compensation for any loss or damage suffered.

Reporting pollution and other incidents.

181. In the event of an incident referred to in Protocol I in the MARPOL Convention the same report as is required by that Protocol shall also be made to the Administrations as is to be made to the coastal state.

Customs clearance.

182. Before a ship proceeds to sea from any port in Antigua and Barbuda, the master of that ship shall produce to a customs officer from whom a clearance for the ship is demanded for an international voyage —

- (a) in respect of a ship to which the MARPOL Convention applies, certificates required to be issued to such a ship complying with the relevant provisions of the MARPOL Convention, and in the case of any qualified certificate, the corresponding valid exemption certificate.
- (b) in respect of Antigua and Barbuda ship required to possess a local safety certificate, a valid local safety certificate.

CHAPTER 2

CIVIL LIABILITY FOR OIL POLLUTION

International Convention on Civil liability for oil Pollution damage, 1992, to have the force of law.

183. The provisions of Articles I to XI of and the Annex to 1992 CLC Protocol shall have the force of law in Antigua and Barbuda.

International convention on the establishment of an international fund for compensation for oil pollution damage, 1992 to have the force of law.

184. The provisions of Articles 1 to 36 *quater* and the Annex to the 1992 Oil Fund Protocol shall have the force of law in Antigua and Barbuda.

Meaning of state of ship's registry.

185. Where the registry of an Antigua and Barbuda ship is suspended and that ship is registered in a foreign country for the duration of a bareboat charter in accordance with section 34,

notwithstanding anything to the contrary in Article I of the 1992 CLC Protocol (or Article 1 of the 1992 Oil Fund Protocol), the “State of the ship’s registry” is such foreign country.

186. (1) This section applies to any ship carrying in bulk cargo of more than 2,000 tons of persistent hydrocarbon mineral oil.

Compulsory insurance against liability for pollution.

(2) A ship shall not enter or leave a port in Antigua and Barbuda or arrive at or leave an offshore terminal in the territorial sea of Antigua and Barbuda nor, if the ship is an Antigua and Barbuda ship, a port in any other country or a terminal in the territorial sea of any other country, unless there is in force a certificate complying with the following provisions:

- (a) the certificate must show that there is in force in respect of that ship a contract of insurance or other security satisfying the requirements of Article VII of the 1992 CLC Protocol; and
- (b) if the ship is an Antigua and Barbuda ship, a certificate issued by ADOMS;
- (c) if the ship is registered in a country to which the 1992 CLC Protocol applies, other than Antigua and Barbuda, a certificate issued by or under the authority of the government of that country.
- (d) if the ship is registered in a country which is not a country to which the 1992 CLC Protocol applies, a certificate issued by the Administration or by or under the authority of the government of any country to which the 1992 CLC Protocol applies other than Antigua and Barbuda.

187. (1) A certificate required by section 186 to be in force in respect of a ship shall be carried in the ship and shall be produced on demand by the master to any customs officer or the Director and if the ship is an Antigua and Barbuda ship also to any registrar, inspector, or consular officer.

Enforcement of compulsory insurance requirements.

(2) If any ship enters or leaves or attempts to enter or leave a port, or arrives at or leaves or attempts to arrive at or leave a

terminal in contravention of section 186(2), the master and owner commits an offence and are liable on conviction to a fine not exceeding twenty thousand dollars.

(3) If a ship fails to carry or the master of a ship fails to produce, a certificate as required by subsection (1), the master commits an offence and is liable on conviction to a fine not exceeding two thousand dollars.

(4) If a ship attempts to leave a port in Antigua and Barbuda in contravention of section 186 or this section the ship may be detained.

(5) Nothing in section 186 or this section applies in relation to any warship or any ship for the time being used by the government of any State for other than commercial purposes.

(6) In relation to a ship owned by a State and for the time being used for commercial purposes, it shall be sufficient compliance with section 186(2) if there is in force a certificate issued by the government of that State and showing that the ship is owned by that State and that any liability for pollution damage as defined in Article I of the 1992 CLC Protocol will be met up to the limit prescribed by Article V of the 1992 CLC Protocol.

Issue of certificate
by Administra-
tion.

188. (1) If the Director is satisfied on application for a certificate mentioned in section 186 in respect of an Antigua and Barbuda ship or a ship registered in any country to which the 1992 CLC Protocol does not apply, that there will be in force in respect of the ship, throughout the period for which the certificate is to be issued, a contract of insurance or other security satisfying Article VII of the 1992 CLC Protocol, the Director may issue such a certificate to the owner.

(2) If the Director is of opinion that there is a doubt whether the person providing insurance or other security will be able to meet his obligations thereunder, or whether the insurance or other security will cover the owner's liability under the 1992 CLC Protocol in all circumstances, the Director may refuse the certificate.

Cancellation and
delivery up of cer-
tificates.

189. (1) Where the person to whom a certificate has been issued under section 186 ceases to be the owner of the ship to which the certificate relates the certificate shall cease to be valid

and he shall immediately deliver up the certificate to the Director for cancellation.

(2) Where, at any time while a certificate issued under section 188 is in force, it is established in any legal proceedings that the contract of insurance or other security in respect of which the certificate was issued is or may be treated as invalid, the certificate may be cancelled by the Director and, if so cancelled, shall on demand immediately be delivered up to the Director by the person to whom the certificate was issued.

(3) Where, at any time while a certificate issued under section 186 is in force, circumstances arise in relation to the insurer or guarantor named in the certificate (or where more than one is so named, to any of them) such that, if the certificate were applied or at that time, the Director would be entitled to refuse the application under subsection (2) of section 186 the certificate may be cancelled by the Director and, if so cancelled, shall on demand immediately be delivered up to the Director by the person to whom the certificate was issued.

190. (1) For the purpose of converting an amount from special drawing rights into dollars where no sum in dollars has been fixed by the International Monetary Fund as being equivalent of one Special Drawing Right for any relevant date referred to in the 1992 CLC Protocol and the 1992 Oil Fund Protocol, the last day before such relevant date for which a sum has been so fixed shall be used to determine the relevant amount.

Conversion of
Special drawing
rights.

(2) A certificate by or on behalf of the Ministry of Finance stating that a particular sum in dollars had been fixed for a relevant date, or that no sum had been fixed for such relevant date but a particular sum had been fixed for a day which was the last day for which a sum had been fixed prior to such relevant date, shall be conclusive evidence of those matters for the purposes of this subsection, the 1992 CLC Protocol or the 1992 Oil Fund Protocol;

(3) A document purporting to be such a certificate shall, in any proceedings, be received in evidence and unless the contrary is proved, be deemed to be such a certificate.

191. For the purposes of Article 10(2) of the 1992 Oil Fund Protocol an “Associated Person” is —

Definition of “as-
sociated persons”.

- (a) where the person referred to in Article 10(1) is a member of a group of companies, all the other members of that group;
- (b) where two or more companies have been amalgamated into a single company and the person referred to in Article 10(1) is one such company, the other companies amalgamated;
- (c) any subsidiary company of the person referred to in Article 10(1).

Power to obtain information.

192. (1) For the purposes of transmitting to the International Oil Pollution Compensation Fund the names and addresses of the persons who are liable to make contributions to the Fund for any year, and the quantity of oil in respect of which they are so liable, the Director may require any person engaged in producing, importing, receiving, treating, distributing, or transporting oil to furnish such information as may be specified.

(2) The Director may require a company to give such information as may be required to ascertain whether its liability is affected by the 1992 Oil Fund Protocol.

(3) The Director may specify a way in which and a time within which such information is to be supplied.

(4) In proceedings by the Fund against any person to recover any amount due under the 1992 Oil Fund Protocol, particulars contained in any list transmitted by the Director to the Fund shall, so far as those particulars are based on information obtained under this section, be admissible as evidence of the facts stated in the list; and so far as particulars which are so admissible are based on information given by the person against whom the proceedings are brought, those particulars shall be presumed to be accurate until the contrary is proved.

Jurisdiction of the courts and registration of foreign judgements.

193. For the purposes of Article IX of the 1992 CLC Protocol, an action brought in Antigua and Barbuda under paragraph 1 of that Article for pollution damage caused —

- (a) in Antigua and Barbuda;
- (b) in the territorial waters of Antigua and Barbuda; or

- (c) in the exclusive economic zone of Antigua and Barbuda, may be brought in the courts of Antigua and Barbuda.

194. The Admiralty jurisdiction of the courts of Antigua and Barbuda shall extend to — Admiralty jurisdiction.

- (a) actions for compensation under the 1992 CLC Protocol; and
- (b) actions (referred to in Article 7(1) of the 1992 Oil Fund Protocol) against the International Oil Pollution Compensation Fund 1992.

195. (1) The Reciprocal Enforcements of Judgements Act Cap. 369 shall apply, whether or not it would so apply apart from this subsection, to any judgment given by — Reciprocal enforcement of foreign judgements.

- (a) a court in a country to which the 1992 CLC Protocol applies to enforce a claim in respect of a liability incurred under any provision implementing the 1992 CLC Protocol;
- (b) a court in a country to which the 1992 Oil Fund Protocol applies to enforce a claim in respect of a liability incurred under any provision implementing the 1992 Oil Fund Protocol.

(2) No steps shall be taken to enforce a judgment referred to in subsection (1)(b) unless and until the court in which the judgment is registered gives leave to enforce it and —

- (a) the Fund has notified such court either that the amount of the claim is not to be reduced under section 4 of Article 4 of the Oil Fund Convention or that it is to be reduced to a specified amount;
- (b) in the latter case, the judgment shall be enforceable only for the reduced amount.

PART VIII
WRECK AND SALVAGE
CHAPTER 1
PRELIMINARY

196. In this Part, unless the context otherwise requires; Interpretation of Part VIII.

“Receiver” means a Receiver of Wreck and includes a deputy Receiver;

“salvage” includes all expenses properly incurred by a salvor in the performance of salvage services;

“shipwrecked persons” means persons belonging to any ships referred to in section 199;

“vehicles” includes any vehicle of any description, whether propelled by mechanical power or otherwise, and whether used for drawing other vehicles or otherwise;

“wreck” includes jetsam, flotsam, lagan and derelict found in or on the shores of the sea or any tidal water.

Principal receiver
of wreck and re-
ceivers.

197. (1) The Director shall be the Principal Receiver of Wreck for Antigua and Barbuda and shall have all the powers of a Receiver throughout Antigua and Barbuda.

(2) The Principal Receiver of Wreck shall exercise general direction and supervision over all matters relating to receivers, wreck and salvage.

(3) The Minister shall by notice published in the *Gazette*, appoint any person to be a Receiver in any district or order that all or any of the functions of the Receiver shall be exercised by such persons as may be specified in the order.

Fees of receiver of
wreck

198. (1) There shall be paid to every Receiver the expenses properly incurred by him in the performance of his duties, and also in respect of any such other matters as may be specified and such fees as the Minister may prescribe by regulation.

(2) A Receiver shall, in addition to all other rights and remedies for the recovery of his expenses and fees referred to in subsection (1), have the same rights and remedies in respect thereof as a salvor has in respect of salvage due to him.

(3) Whenever any dispute arises as to the amount payable to any Receiver in respect of expenses or fees, such dispute shall be determined by the Minister whose decision shall be final.

(4) All fees received by a Receiver in respect of any services performed by him as such receiver shall be accounted for to the

Government, and shall be applied in defraying any expenses duly incurred in the performance of his duties and, subject to such application, shall be paid into the Consolidated Fund of Antigua and Barbuda.

CHAPTER 2

SHIPS IN DISTRESS:

FUNCTIONS OF RECEIVER OF WRECK

199. (1) Where any ship is wrecked, stranded or in distress at any place on or near the coasts of Antigua and Barbuda, the Receiver for the district in which that place is situated shall, upon being made acquainted with the circumstances, forthwith proceed there and upon his arrival shall:

Duty of receiver on receipt of report of wreck.

- (a) take the command of all persons present, and
- (b) assign such duties and give such directions to each person as he thinks fit for the preservation of the ship and of the lives of the shipwrecked persons, and of the cargo and apparel of the ship;

but the Receiver shall not interfere between the master and the crew of the ship in reference to the management thereof, unless he is requested to do so by the master.

(2) Any person who wilfully disobeys the directions of the Receiver commits an offence and is liable on conviction to a fine not exceeding two thousand dollars.

200. (1) The Receiver may, with a view to such preservation as aforesaid of ship wrecked persons, or of the ship, cargo or apparel—

Power of receiver of wreck.

- (a) require such persons as he thinks necessary to assist him;
- (b) require the master or other person having the charge of any ship near at hand to give such aid with his men or ship, as may be in his power;

- (c) demand the use of any pumps, machinery or vehicles that may be obtainable.

(2) The Receiver may cause to be apprehended and kept in custody until he can be conveniently taken before a magistrate to be dealt with in accordance with the law, any person who plunders, creates disorder or obstructs the preservation of a ship wrecked, stranded or in distress on or near the coasts of Antigua and Barbuda and may use reasonable force for the suppression of such plundering, disorder or obstruction and may command all persons in the vicinity to assist him.

(3) Every person who wilfully impedes or obstructs a Receiver or any person acting under his orders in the execution of his duty commits an offence and is liable on conviction to imprisonment for a term not exceeding twelve months.

Power to pass
over adjoining
land.

201. (1) Whenever a ship is wrecked, stranded or in distress as aforesaid, all persons may, subject to subsections (3) and (4) for the purpose of

- (a) rendering assistance to the ship,
(b) saving the lives of shipwrecked persons, or
(c) saving the cargo or equipment of the ship,

pass and repass over any adjoining land without being subject to interruption by the owner or occupier and deposit on the land any cargo or other article recovered from the ship.

(2) The right of passage conferred by subsection (1) is a right of passage with or without vehicles.

(3) No right of passage is conferred by subsection (1) where there is some public road equally convenient.

(4) The rights conferred by subsection (1) shall be so exercised as to do as little damage as possible.

(5) Any damage sustained by an owner or occupier of land in consequence of the exercise of the rights conferred by this section shall be a charge on the ship, cargo or articles in respect of or by which the damage is caused.

(6) Any amount payable in respect of such damage shall, in case of dispute, be determined and shall, in default of payment, be recoverable in the same manner as the amount of salvage is determined and recoverable under this Part.

(7) Any owner or occupier of any land who

- (a) impedes or hinders any person in the exercise of the rights conferred by this section;
- (b) impedes or hinders the deposit on the land of any cargo or other article recovered from the ship; or
- (c) prevents or attempts to prevent any cargo or other article recovered from the ship from remaining deposited on the land for a reasonable time until it can be removed to a safe place of public deposit;

commits an offence and is liable on conviction to a fine not exceeding two thousand dollars.

202. (1) Where any Antigua and Barbuda or foreign ship is or has been in distress on the coasts of Antigua and Barbuda, a Receiver or, in his absence, a magistrate, shall, as soon as is convenient, examine on oath (which he is hereby empowered to administer) any person belonging to the ship or any other person who is able to give any account thereof or of the cargo or stores thereof as to the following matters

Examination in
respect of ship in
distress.

- (a) the name and description of the ship;
- (b) the name of the master and of the owners;
- (c) the names of the owners of the cargo;
- (d) the ports, from and to which, the ship was bound;
- (e) the occasion of the distress of the ship;
- (f) the services rendered; and
- (g) such other matters or circumstances relating to the ship or to the cargo on board the ship as the person holding the examination thinks necessary.

(2) The person holding the examination under subsection (1) in relation to any ship shall make a record thereof in writing, and shall send one copy to the Minister and another to the Director.

CHAPTER 3

MEASURES TO BE TAKEN IN RESPECT OF WRECK

Duties of persons
finding wreck

203. (1) Where any person finds or takes possession of any wreck within the seaward limits of the territorial sea of Antigua and Barbuda or brings within such seaward limits any wreck found outside these limits he shall —

- (a) if he is the owner thereof, give notice to the Receiver of the district stating that he has found or taken possession of the same and describing the marks by which the same may be recognised; or
- (b) if he is not the owner thereof, as soon as possible deliver the same to the Receiver of the district.

Notice of wreck.

204. Where a Receiver takes possession of any wreck, he shall, within forty- eight hours —

- (a) cause to be posted at the nearest police station and otherwise publish in such manner as he may deem fit, a description of the wreck, the time at which and the place where it was found and of any marks by which it could be distinguished; and
- (b) if in his opinion the value of the wreck exceeds five hundred dollars, send a copy of such description to the Director.

Claims of owners
to wreck.

205. (1) The owner of any wreck in the possession of the Receiver who establishes his claim to the wreck to the satisfaction of the Receiver within one year from the time when the wreck came into the Receiver's possession shall, on paying the salvage, fees and expenses due, be entitled to have the wreck delivered or the proceeds of sale paid to him.

(2) Where —

- (a) a foreign ship has been wrecked on or near the coasts of Antigua and Barbuda, or

- (b) any articles belonging to or forming part of or of the cargo of a foreign ship which has been wrecked on or near the coasts of Antigua and Barbuda are found on or near the coast or are brought into any port,

the appropriate consular officer shall, in the absence of the owner and of the master or other agent of the owner, be treated as the agent of the owner for the purposes of the custody and disposal of the wreck and other articles.

(3) In subsection (2) “the appropriate consular officer”, in relation to a foreign ship, means the consul of the country to which the ship or, as the case may be, the owners of the cargo, may have belonged or any consular officer of that country authorised for the purpose by any treaty or arrangement with that country.

206. (1) A Receiver may at any time sell any wreck in his custody, if in his opinion —

Sale of wreck in certain cases.

- (a) it is under the value of five hundred dollars;
- (b) it is so much damaged or of so perishable a nature that it cannot with advantage be kept; or
- (c) it is not of sufficient value for warehousing.

(2) The proceeds of any sale made under subsection (1) shall, after defraying the expenses thereof, be held by the Receiver for the same purposes and subject to the same claims and liabilities as if the wreck had remained unsold.

CHAPTER 4

UNCLAIMED WRECK

207. The Government of Antigua and Barbuda is entitled to all unclaimed wreck found in any port of Antigua and Barbuda or in Antigua and Barbuda waters.

Unclaimed wreck property of government.

208. Where no owner establishes a claim to any wreck in the possession of a Receiver within one year after it came into his possession, the Receiver may sell the same and shall pay the

Sale of wreck by receiver.

proceeds of the sale into the Consolidated Fund of Antigua and Barbuda after —

- (a) deducting from the proceeds the expenses of the sale and any other expenses incurred by him; and
- (b) paying to the salvors out of the proceeds such amount of salvage as the Minister may in each case determine.

Discharge of receiver.

209. Upon delivery of wreck or payment of the proceeds of sale of wreck by a Receiver in pursuance of the provisions of this Part, the Receiver shall be discharged from all liability in respect thereof but such delivery or payment shall not prejudice or affect any question which may be raised by third parties concerning such wreck.

CHAPTER 5

REMOVAL OF WRECKS

Powers of harbour and conservancy authorities in relation to wrecks.

210. (1) Where any ship is sunk, stranded or abandoned in, or in or near any approach to, any Antigua and Barbuda harbour or tidal water in such a manner as, in the opinion of the competent authority, to be, or be likely to become, an obstruction or danger to navigation, that authority may —

- (a) take possession of, and raise, remove or destroy the whole or any part of the ship and any other property found on board the ship;
- (b) light or buoy the ship or part of the ship and any other property until it is raised, removed or destroyed; and
- (c) subject to subsections (5) and (6), sell, in such manner as the authority thinks fit, the ship or part of the ship so raised or removed and any other property recovered in the exercise of the powers conferred by paragraph (a) or (b) on the competent authority;
- (d) reimburse itself out of the proceeds of the sale, for the expenses incurred by it in relation to the sale.

(2) The other property to which the powers conferred by subsection (1) extend is every article or thing or collection of things being or forming part of the equipment, cargo, stores or ballast of the ship.

(3) Any surplus of the proceeds of a sale under subsection (1) (c) shall be held by the Authority in deposit for payment to the person thereafter establishing his right thereto; but the deposit shall be paid into the Consolidated Fund of Antigua and Barbuda unless such person makes his claim within three years of the sale.

(4) Except in the case of property which is of a perishable nature or which would deteriorate in value by delay, no sale shall be made under subsection (1) (c) until at least seven clear days notice of the intended sale has been published in the *Gazette*.

(5) At any time before any property is sold under subsection (2) (c), the owner of the property shall be entitled to have it delivered to him on payment of its fair market value.

(6) The market value of property for the purposes of subsection (6) shall be that agreed on between the authority and the owner or, failing agreement, that determined by a person appointed for the purpose by the Director.

(7) The sum paid to the authority in respect of any property under subsection (5) shall, for the purposes of this section, be treated as the proceeds of sale of the property.

(8) If the proceeds of any such property as is mentioned in this section are less than the costs incurred by the authority referred to in subsection (1), that authority may recover such difference from the owner of the ship by civil action.

211. (1) If any person being the owner of any ship or any wrecked, submerged, sunken or stranded ship, or the duly authorised agent or servant of such owner, is desirous of breaking up such ship prior to removal thereof from Antigua and Barbuda, such person shall, before commencing salvage or breaking up operations, obtain the written permission of the Receiver who shall be entitled to grant permission and in his discretion, require security in such reasonable amount as he may consider necessary

Breaking up and
removing wreck.

or hinder the saving of any ship stranded or in danger of being stranded or otherwise in distress on or near any coast or tidal water or of any part of the cargo or apparel thereof or of any wreck;

- (b) conceal any wreck or deface or obliterate any marks thereon; or
- (c) wrongfully carry away or remove any part of a ship stranded or in danger of being stranded or otherwise in distress on or near any coast or tidal water or any part of the cargo or apparel thereof, or any wreck.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding two thousand dollars.

216. (1) Where a Receiver suspects or receives information that any wreck is secreted or in the possession of some person who is not the owner thereof, or that any wreck is otherwise improperly dealt with, he may apply to any magistrate for a search warrant and that magistrate shall have power to grant such a warrant and the Receiver, by virtue thereof, may enter any house or other place wherever situated and also any ship and search for, seize and detain any wreck there found.

Summary
procedure for
concealment of
wreck.

(2) If any such seizure of wreck is made in consequence of information given by any person to the Receiver on a warrant being issued under this section, the informer shall be entitled by way of salvage to such sum not exceeding in any case two hundred dollars as the Receiver may allow.

217. (1) Where a ship is wrecked, stranded or in distress at any place on or near the coast of Antigua and Barbuda or any tidal water within Antigua and Barbuda, any cargo or other articles belonging to or separated from the ship which are washed on shore or otherwise lost or taken from the ship shall be delivered to a Receiver.

Taking wreck at
the time of casu-
alty.

(2) Any person (whether or not the owner of any cargo or article) referred to in the subsection (1) who —

- (a) conceals or keeps possession of any cargo or article;
or

(2) Salvage in respect of the preservation of life shall be payable in priority to all other claims for salvage.

(3) Where a ship, cargo and apparel are destroyed or the value thereof is insufficient after payment of the actual expenses incurred to pay the amount of salvage payable in respect of the preservation of life, the Minister of Finance may, in his discretion, award to the salvor out of the Consolidated Fund of Antigua and Barbuda, such sum as he, with the concurrence of the Minister, may determine, in whole or part, satisfaction of any amount of salvage left unpaid.

220. Nothing in section 219 entitles any person to remuneration—

Cases when
remuneration
not admissible.

- (a) in respect of services rendered contrary to an express and reasonable prohibition of such services on that part of the ship to which such services are rendered;
- (b) in respect of services rendered by a tug or in respect of the ship which she is towing or the cargo thereof, except where such services are of exceptional character such as are outside the scope of the contract of towage;
- (c) if he has caused the distress giving rise to the salvage, either intentionally or through negligence;
- (d) if and to such extent as it appears that he has concealed or unlawfully disposed of any property salvaged.

221. (1) A dispute as to the amount of salvage, whether of life or property and whether the services for which it is claimed to have been rendered be within or outside Antigua and Barbuda arising between the salvor and the owner of any ship, cargo, apparel or wreck, shall, if not settled by agreement, arbitration or otherwise, in the following cases

Settlement of sal-
vage dispute.

- (a) in any case where the parties in the dispute consent;
- (b) in any case where the amount claimed does not exceed fifteen thousand dollars;

- (c) in any case where the value of the property saved does not exceed one hundred and fifty thousand dollars;

be referred to and determined by a court of competent jurisdiction at or near the place where the wreck was found, or in the case of services rendered, at or near the port in Antigua and Barbuda into which the ship is first brought after the occurrence by reason whereof the claim of salvage arises.

(2) Subject to subsection (1), any dispute as to salvage shall be determined by the High Court but if the claimant does not recover in that court more than one thousand dollars, he shall not be entitled to recover any costs, charges or expenses incurred by him in the prosecution of his claim, unless the Court certifies that the case was a fit one to be tried otherwise than in manner provided under subsection (1).

(3) A dispute relating to salvage may be determined on the application either of the salvor or of the owner of the property saved or of their respective agents.

(4) The court or arbitrators to whom a dispute as to salvage is referred for determination may be for the purpose of determining any such dispute call into their assistance as assessor, any person conversant with maritime affairs and there shall be paid as part of the cost of the proceedings to ever such assessor in respect of his services such sum as the Minister may direct.

Rescission of salvage agreements.

222. Every agreement relating to salvage entered into at the moment and under the influence of danger may be at the request of either party, be annulled or modified by the High Court if the High Court considers that the conditions of such agreement are not equitable.

Jurisdiction in relation to disputes.

223. The Minister shall designate the Courts having jurisdiction to adjudicate disputes regarding salvage to be determined summarily as set out in section 221.

Appeal in salvage dispute.

224. Where a dispute relating to salvage has been determined by the High Court, any party aggrieved by the decision may appeal therefrom in accordance with rules of Court; but no such

appeal shall be allowed unless the sum in dispute exceeds thirty thousand dollars.

225. (1) Where any dispute as to salvage claim is made, the Receiver may, on the application of either party, appoint a valuer to value that property and shall give copies of the valuation to both parties.

Valuation of property by the receiver.

(2) A copy of the valuation purporting to be signed by the valuer and certified as a true copy by the Receiver shall be admissible as evidence in any subsequent proceedings.

(3) There shall be paid in respect of the valuation by the person applying for the same such fee as the Minister may direct.

226. (1) Where salvage is due to any person under the Act, the Receiver shall –

Detention of property liable to receiver.

- (a) if the salvage is due in respect of services rendered in assisting any ships or in saving the cargo or apparel thereof, detain the ship and cargo or apparel; and
- (b) if the salvage is due in respect of the saving of any wreck and the wreck is not sold unclaimed under this Act, detain the wreck.

(2) Subject as hereinafter mentioned, the Receiver shall detain the ship and the cargo and apparel or the wreck, hereinafter referred to as detained property, until payments are made for salvage or warrants are issued for the arrest or detention thereof by a court of competent jurisdiction.

(3) A Receiver may release any detained property if security is given to his satisfaction or if the claim for salvage exceeds one thousand dollars and any question is raised as to the sufficiency of the security to the satisfaction of the High Court.

(4) Any security given for salvage in pursuance of this section to an amount exceeding two thousand dollars may be enforced by the court in the same manner as if bail had been given in that court.

Sale of detained
property by Re-
ceiver.

227. (1) The Receiver may sell any detained property if the persons liable to pay the salvage in respect of which the property is detained are aware of the detention in the following cases, namely:

- (a) where the amount is not disputed and payment of the amount due is not made within twenty days after the amount is due;
- (b) where the amount is disputed, but no appeal lies from the decision of the first court to which the dispute was referred and payment is not made within twenty days after the decision of the first court; or
- (c) where the amount is disputed and an appeal lies from the decision of the first court to which the dispute was referred to some other court and within thirty days of the decision of the first court, neither payment of the sum due is made nor proceedings are commenced for the purpose of the appeal.

(2) The proceeds of sale of detained property shall, after payment of the expenses of the sale, be applied by the Receiver in payment of the expenses, fees and salvage, and, so far as not required for that purpose, shall be paid to the owners of the property or any other persons entitled to receive the same.

Apportionment
of salvage in rela-
tion to foreign
ship.

228. Where any dispute arises as to the apportionment of any amount of salvage among the owners, masters, pilot, crew and other persons in the service of any foreign ship, the amount shall be apportioned by the court or person making the apportionment in accordance with the law of the country to which the ship belongs.

Apportionment
of salvage by re-
ceiver.

229. (1) Where the aggregate amount of salvage payable in respect of salvage services rendered in Antigua and Barbuda has been finally determined, either summarily in the manner provided by this Chapter or by agreement, and does not exceed five thousand dollars but a dispute arises as to the apportionment thereof among several claimants, the person liable to pay the amount may apply to the Receiver for liberty to pay such amount to him.

(2) The Receiver shall, if he thinks fit, receive the amount referred to in subsection (1) accordingly, and shall grant to the person paying the amount a certificate of the amount paid and of the services in respect of which it is paid.

(3) A certificate granted under subsection (2) in respect of any amount shall be a full discharge and indemnity to the person by whom the amount is paid and to his ship, cargo, apparel and effects, against the claims of all persons in respect of the services mentioned in the certificate.

(4) The Receiver shall with all convenient speed distribute any amount received by him under this section among the persons entitled thereto on such evidence and in such shares and proportions as he thinks fit and may retain any money which appears to him to be payable to any person who is absent.

(5) A distribution of any amount made by a Receiver in pursuance of this section shall be final and conclusive as against all persons claiming to be entitled to any portion of the amount distributed.

230. Whenever the aggregate amount of salvage payable in respect of salvage services rendered in Antigua and Barbuda has been finally ascertained and exceeds five thousand dollars, and whenever the aggregate amount of salvage payable in respect of salvage services rendered outside Antigua and Barbuda has been finally ascertained (whatever that amount may be), then if any delay or dispute arises as to the apportionment thereof, the High Court

Apportionment
by the High
Court.

- (a) may cause such amount to be apportioned amongst the persons entitled thereto in such manner as it thinks just and may for that purpose, if it thinks fit, appoint any person to carry that apportionment into effect;
- (b) may compel any person in whose hand or under whose control the amount may be to distribute such amount or to bring it into Court to be dealt with as the Court directs; and
- (c) may for the purpose aforesaid issue such processes as it thinks fit.

Salvage services rendered by Government.

231. (1) Where salvage services are rendered by or on behalf of the Government or with the aid of government property, the Receiver on behalf of the Government is entitled to claim salvage in respect of those services to the same extent as any other salvor and shall have the same rights and remedies in respect of those services as any other salvor.

(2) No claim shall be made for a Receiver's fee or expenses if salvage is claimed on behalf of the Government other than fees or expenses which may be included in such salvage claim.

(3) Any salvage award due to a Receiver in any salvage award to Government shall be for the Receiver's own remuneration.

Provisions as to duties on wrecked goods.

232. (1) All wreck being foreign goods coming into Antigua and Barbuda shall be subject to the same duties as those to which such goods would be subject if they were imported into Antigua and Barbuda.

(2) If any question arises as to the origin of any goods referred to in subsection (1), they shall be deemed to be the product of such country as the Customs department may on investigation determine.

(3) The Customs department shall permit all goods, wares or merchandise saved from any ship stranded or wrecked on her outward voyage to be returned to the port at which they were shipped, but the Customs department shall take security for the due protection of the Consolidated Fund of Antigua and Barbuda in respect of those goods.

PART IX

SHIPOWNERS' LIABILITY AND CARRIAGE OF GOODS

CHAPTER 1

PASSENGER SHIPS

Issue of contract ticket.

233. (1) If any person receives money from any person for or in respect of a passage in any ship proceeding from any place in Antigua and Barbuda, he shall give to the person paying the same a contract ticket signed by or on behalf of the owner or charterer of the ship.

(2) The contract ticket required by this section shall set out —

- (a) the amount of the fare paid;
- (b) the places between which the passenger is to be carried;
- (c) whether the passenger is to be berthed or unberthed;
- (d) whether the passenger is entitled to be supplied with food or must purchase his own food for the journey;
- (e) the amount of baggage the passenger is permitted to carry free of charge; and
- (f) any other rights or obligations of the parties.

(3) Such contract ticket shall not —

- (a) contain any clause, condition or stipulation or
- (b) refer to any clause, condition or stipulation, not contained therein which —
 - (i) purports to indemnify the owner or charterer of the ship from the consequences of any neglect to ensure that the ship was seaworthy or
 - (ii) of the consequence of any neglect in the management or navigation of the ship or
 - (iii) which would deprive the passenger of any right or remedy which he would have enjoyed were it not for such clause, condition or stipulation or reference.

(4) If any clause, condition or stipulation or reference specified in subsection (3) is contained in any contract ticket in contravention of this section, it shall be void.

(5) Any question which arises, respecting the breach or nonperformance of any stipulation in any such contract ticket at the option of the passenger interested, may be tried before a magistrate and the magistrate may award the complainant such damages and costs as he thinks just not exceeding three times the amount of the passage money specified in the contract ticket.

Athens Convention relating to carriage of passengers and their luggage by sea, 1974.

234. The Minister may, after notice in the *Gazette* of the ratification of the Athens Convention relating to Carriage of Passengers and their Luggage by Sea, 1974, apply the provisions of that Convention regarding liability for damage suffered as a result of death or personal injury to passengers' luggage, to passenger services operating to and from Antigua and Barbuda.

CHAPTER 2

LIMITATION OF LIABILITY

Interpretation of chapter 2 of part IX.

235. For the purposes of this Chapter —

- (a) “ship” includes any structure launched and intended for use in navigation as a ship or as a part of a ship;
- (b) “gold franc” means a unit consisting of sixty-five and one half milligrams of gold of millesimal fineness 900;
- (c) “occurrence” means an occurrence referred to in subsection (1) of section 236;
- (d) “property claim” means any claim other than a personal claim arising from an occurrence.

Limitation of liability.

236. (1) The owner of a ship may limit his liability in accordance with the provisions of section 237 in respect of any claim arising from any of the following occurrences unless the occurrence giving rise to the claim resulted from the actual fault or privity of the owner

- (a) loss of life, or personal injury to, any person being carried in the ship or loss of, or damage to any property on board the ship;
- (b) loss of life, or personal injury to, any other person (whether on land or on water), loss of or damage to any other property or infringement of any rights

- (i) which is caused by the act, neglect or default for which the owner is responsible.
- (ii) which is caused by the act, neglect or default of any person not on board the ship for whose act, neglect or default the owner is responsible;

but the owner is entitled to limit his liability in respect of any claim arising out of any act, neglect or default as is referred to in subparagraph (b)(ii) only when the act, neglect or default is one which occurs in the management of the ship or in the loading, carriage or discharge of cargo or in the embarkation, carriage or disembarkation of its passengers.

(2) The burden of proving that the occurrence giving rise to a claim against the owner of a ship did not result from his actual fault or privity shall be on the owner.

(3) Nothing in this section applies to —

- (a) any obligation or liability imposed by any law relating to the removal of wreck and arising from or in connection with the raising, removal or destruction of any ship which is sunk or stranded (including anything which may be on board such ship), and any obligations or liability arising out of damage caused to harbour wrecks, navigation and navigable waterways;
- (b) claims for salvage or to claims for contribution in general average;
- (c) any claim by the master or a member of the crew of the ship or any servant of the owner who is on board the ship or whose duties are connected with the ship (including any claim by the legal representative of such master, member of the crew or servant) if the contract of service between the owner and such master or member of the crew or servant is governed by the law of any foreign country and that law either does not set any limit to the liability in respect of such claims or sets a limit exceeding that set to it by section 237.

(4) Any action on the part of the owner of a ship to limit his liability under subsection (1) shall not merely by reason of such action constitute an admission of liability.

(5) An owner of a ship shall be entitled to limit his liability under subsection (1) in respect of any occurrence even in cases where his liability arises without proof of negligence on the part of the owner or of persons for whose conduct he is responsible by reason of his ownership, possession, custody or control of the ship.

Limits of Liability.

237. (1) The amounts to which the owner of a ship may limit his liability under subsection (1) of section 236 shall be —

- (a) where the occurrence has given rise to property claims only, an aggregate amount not exceeding the amount equivalent to one thousand gold francs for each ton of the ship's tonnage;
- (b) where the occurrence has given rise to personal claims only, an aggregate amount not exceeding the amount equivalent to three thousand and one hundred gold francs for each ton of the ship's tonnage;
- (c) (i) where the occurrence has given rise to both personal claims and property claims, an aggregate amount not exceeding the amount equivalent to three thousand and one hundred gold francs for each ton of the ship's tonnage of which the first portion of the amount equivalent to two thousand and one hundred gold francs for each ton of the ship's tonnage shall be appropriated to the payment of personal claims, and of which a second amount shall be appropriated to the payment of property claims;
- (ii) in cases where the first portion is insufficient to pay the personal claims in full, the unpaid balance of such claims shall rank rateably with the property claims for payments against the second portion of the amount.

(2) The limits set by subsection (1) to the liabilities mentioned therein apply to the aggregate of such liabilities which are incurred on any distinct occasion, and so apply in respect of each distinct occasion without regard to any liability incurred on another occasion.

(3) Where the owner of a ship is entitled to make a claim against a claimant arising out of the same occurrence, their respective claims shall be set off against each other and the provisions of this Part only apply to the balance, if any.

(4) Where the aggregate of the liabilities which are incurred on any distinct occasion exceeds the limits provided for in this section, the total sum representing such limits of liability may be constituted as one distinct limitation fund to be deposited by the owner with a court of competent jurisdiction.

(5) The fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.

(6) After the fund has been constituted, no claimant against the fund shall be entitled to exercise any right against any other assets of the owner in respect of his claim against the fund, if the limitation fund is actually available for the benefit of the claimant.

238. (a) Where any liability is alleged to have been incurred by the owner of a ship in respect of any loss of life or personal injury or any loss of or damage to property or any infringement of any right in respect of which liability is limited by section 237 and several claims are made or apprehended in respect of that liability, the court may, on the application of that owner, determine the amount of his liability and distribute that amount rateably among the several claimants.

Power of the
Court to consoli-
date claims.

(b) Such court may stay any proceedings pending in any court in relation to the same matter and the court may proceed in such manner and subject to such rules of court as to making persons interested parties to the proceedings and as to the exclusions of any claimants who do not

apply to be joined in the proceedings within a certain time and as to requiring security from the owner and as to the payment of any costs, as the court thinks just.

Extension of limitation of liability.

239. The provisions of sections 236 and 237 extend and apply to —

- (a) the charterer of a ship;
- (b) any person having an interest in or possession of a ship from and including the launching thereof;
- (c) the manager or operator of a ship where any of the events mentioned in paragraphs (a) and (b) of subsection (1) of section 236 occur without their actual fault or privity; and
- (d) any person acting in the capacity of master or member of the crew of a ship and to any servant of the owner or any person, where any of the events described in paragraphs (a) and (b) of subsection (1) of section 236 occur whether with or without his actual fault or privity.

Ships less than 300 tons.

240. For the purposes of sections 236 and 237, the tonnage of any ship that is less than three hundred shall be deemed to be three hundred tons.

Calculation of tonnage.

241. (1) For the purposes of sections 235 to 239 inclusive, the tonnage of a steamship is the registered tonnage with the addition of any engine room space deducted for the purpose of ascertaining that tonnage and the tonnage of a sailing ship is her registered tonnage.

(2) There shall not be included in such tonnage any space occupied by seafarers and appropriated to their use.

(3) The measurement of such tonnage in the case of a foreign ship shall be according to the provisions of this Act if it is capable of being so measured.

(4) In the case of any ship which is incapable of being measured under the provisions of this Act, the Director shall, on

receiving from or by direction of the court hearing the case such evidence concerning the dimensions of the ship as it is found practicable to furnish, give a certificate under his hand stating what would in his opinion have been the tonnage of such ship if she had been duly measured according to the provisions of this Act and the tonnage so stated in such certificate shall for the purposes of sections 237 and 238 be deemed to be the tonnage of such ship.

242. The limitation of liability under sections 237 and 239 shall relate to the whole of any losses and damages which may be sustained by more than one person and shall apply whether the liability arises at common law or under any statute and notwithstanding anything contained in such statute.

Several claims arising on one occasion.

243. (1) In this section —

Release of ship on security.

“Convention country” means any country in respect of which the International Convention relating to the Limitation of the Liability of Owners of Seagoing Ships signed in Brussels on the 10th day of October, 1957 is in force (including any country to which the Convention extends by virtue of Article 14 thereof);

“relevant port”

(a) in relation to any claim, means the port where the event giving rise to the claim occurred or if that event did not occur in a port, the first port of call after the event occurred; and

(b) in relation to a claim for loss of life or personal injury or damage to cargo includes the port of disembarkation or discharge.

(2) Where a ship or other property is arrested in connection with a claim which appears to the court to be founded on a liability to which a limit is set by sections 237 and 239 of this Act or security is given to prevent or obtain release from such an arrest, the court may, and in the circumstances mentioned in subsection (4) shall, order the release of the ship, property or security if the conditions specified in subsection (3) are satisfied;

and where the release is ordered the person on whose application it is ordered is deemed to have submitted to the jurisdiction of the Court to adjudicate on the claim.

(3) The conditions referred to in subsection (2) are —

- (a) that security, which in the opinion of the Court is satisfactory, in this section referred to as the guarantee, has previously been given whether in Antigua and Barbuda or elsewhere in respect of the said liability or any other liability incurred on the occasion and the Court is satisfied that if the claim is established the amount for which the guarantee was given or such part there of as corresponds to the claim would be actually available to the claimant; and
- (b) that either the guarantee is for an amount not less than the said limit, or further security is given which, together with the guarantee, is for an amount not less than that limit.

(4) The circumstances mentioned in subsection (2) shall be that the guarantee was given in a port which in relation to the claims is the relevant port or, as the case may be, a relevant port and that such port is in a Convention country.

(5) For the purposes of this section —

- (a) a guarantee given by the giving of security in more than one country shall be deemed to have been given in the country in which the security was last given;
- (b) any question whether the amount of any security is either by itself or together with any other amount not less than any limit set under the provisions of this Part shall be decided as at the time when the security is given;
- (c) where part only of the amount for which a guarantee was given will be available to a claimant, that part shall not be taken to correspond to his claim if any other part may be available to a claimant in respect of a liability to which no limit is set as mentioned in subsection (2).

CHAPTER 3**DIVISION OF LIABILITY**

244. (1) Where by the fault of two or more ships, damage or loss is caused to one or more of those ships, to 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 at fault.

Division of liability.

(2) Where 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.

(3) Nothing in this section operates so as to render any ship liable for any loss or damage to which her fault has not contributed.

(4) Nothing in this section affects the liability of any person under contract of carriage or any contract, or is to be construed as imposing any liability upon any person from which he is exempted by any contract or by law or as affecting the right of any person to limit his liability in the manner provided by law.

(5) For the purposes of this section, the expression “freight” includes passage money and hire, and references to damages or loss caused by the fault of a ship shall be construed as including references to any salvage or other expenses consequent upon that fault recoverable at law by way of damages.

245. (1) Where loss of life or personal injuries are 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.

Joint and several liabilities.

(2) Nothing in this section is to 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 or persons entitled to sue in respect of such loss of life or shall affect the right of any person to limit his liability in cases to which this section relates in the manner provided by law.

Right of Contri-
bution.

246. (1) (a) Subject to paragraph (b), where loss of life or personal injuries are 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 damages is recovered from the owner of one of the ships that exceeds the proportion in which she was at fault, the owner 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 these ships were respectively at fault.

(b) No amount shall be so recovered that could not by reason of any statutory or contractual limitation of, or exemption from liability, or could not for any reason have been recovered in the first instance as damages by the persons entitled to sue therefor.

(2) In addition to any other remedy provided by law, the persons entitled to any contribution under subsection (1) have, for the purpose of recovering the same subject to the provisions of this Act, the same rights and powers as the persons entitled to sue for damages in the first instance.

Meaning of
“owner”

247. The provisions of sections 244 to 246 inclusive apply to all persons other than the owners responsible for the fault of the ship as though the expression “owners” included such persons and as though such expression included all persons responsible for the navigation and management of the ship pursuant to a charter or demise.

CHAPTER 4

CARRIAGE OF GOODS BY SEA

Brussels Protocol,
1968

248. The Minister may, after notice in the *Gazette* of the ratification of the Brussels Protocol, 1968 (which amends the International Convention for the Unification of certain Rules relating of Bills of Lading, 1924) take such measures as may be considered necessary to implement the provisions of that Protocol.

Code of conduct
for liner
conferences.

249. The Minister may, after notice in the *Gazette* of the ratification of the United Nations Convention on a Code of Conduct for Liner Conferences, 1974, take such measures as may be considered necessary to implement the provisions of that Convention.

250. An owner of a ship registered in Antigua and Barbuda shall have a lien on the goods carried, for — Lien on goods.

- (a) freight;
- (b) general average contributions;
- (c) salvage expenditure.

251. The losses admissible in General Average shall be assessed and apportioned in accordance with the York Antwerp Rules, as amended from time to time. General average.

PART X

INQUIRIES AND INVESTIGATIONS INTO MARINE CASUALTIES

252. (1) Where any of the following casualties occur, that is to say — Investigations of shipping casualties.

- (a) the loss or presumed loss, stranding, grounding, abandonment of, or damage to, a ship;
- (b) a loss of life or serious injury to any person, caused by fire on board, or by any accident to a ship or ship's boat, or by any accident occurring on board a ship or ship's boat; or
- (c) any damage caused by a ship,

and, at the time it occurs, the ship was an Antigua and Barbuda ship or the ship or ship's boat was in Antigua and Barbuda waters, the Director may cause a preliminary inquiry into the casualty to be held by a person or a recognised organisation appointed for the purpose by the Director, who shall have the powers conferred on an inspector by section 259.

(2) Whether or not a preliminary inquiry into the casualty has been held under subsection (1), the Minister may cause a Formal Investigation to be held by a Board appointed for that purpose.

253. (1) A Board holding a Formal Investigation under section 252 shall consist of a legally qualified person of high standing, assisted by one or more assessors appointed by the Minister; Formal investigations.

such assessors being persons with requisite skills and knowledge in maritime matters.

(2) Where as a result of the investigation the Board is satisfied, with respect to any officer, or any of the matters mentioned in paragraphs (a) to (c) of section 76 (1) and, if it is a matter mentioned in paragraph (a) or (b) of that section, is further satisfied that the officer caused or contributed to the accident, the Board may cancel or suspend any endorsement issued to the officer under section 72 or censure him; and where the Board cancels or suspends the endorsement the officer shall deliver the endorsement to the Board or the Director.

(3) Any Officer who fails to deliver an endorsement as required under subsection (2) commits an offence and is liable on conviction to a fine not exceeding one thousand dollars.

(4) Where an endorsement has been cancelled or suspended under this section, the Director, if of the opinion that the justice of the case requires it, may reissue the endorsement or, as the case may be, reduce the period of suspension and return the endorsement, or may grant a new endorsement of the same or a lower grade in place of the cancelled or suspended endorsement.

(5) The Board may make such awards as it thinks just with regard to the costs or, as the case may be, expenses of the investigation, and with regard to the parties by whom those costs or expenses are to be paid; and any such award of the Board may, on the application of any Party named in it, be made an Order of the Court.

(6) The Board shall make a report on the investigation to the Minister.

Rehearings and
appeals.

254. (1) Where a Formal Investigation has been held under section 253, the Minister may order the whole or part of the case to be reheard and shall do so if

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

(2) An order under subsection (1) may provide for the rehearing to be made by the Board which held the investigation or by the High Court.

(3) Any rehearing under this section shall be conducted in accordance with rules made under the First Schedule, and section 254 shall apply in relation to a rehearing of an investigation by a Board as it applies in relation to the holding of an investigation.

(4) Where the Board holding the investigation has decided to cancel or suspend the endorsement of any person, or has found any person at fault, then if no application for an order under subsection (1) has been made, or if such application has been refused, that person or any other person who, having an interest in the investigation has appeared at the hearing and is affected by the decision or finding, may appeal to the Court.

255. Rules of court made for the purpose of rehearings under section 254 which are held by the High Court, or of appeals to the High Court, may require the Court, subject to such exceptions, if any, as may be allowed by the rules, to hold such a rehearing or hear such an appeal with the assistance of one or more assessors.

Rules relating to rehearings of inquiries and investigations.

256. Where —

Inquiries into causes of deaths.

- (a) any person dies in an Antigua and Barbuda ship or in a boat or life-raft from such a ship, or
- (b) the master of, or a seafarer employed in such a ship dies in a country outside Antigua and Barbuda

the Director may inquire into the cause of death, and may make in the official log book an endorsement to the effect that the statement as to the cause of death in the log book is, in his opinion, true or untrue according to the result of any inquiry.

PART XI

SURVEYORS AND INSPECTORS

257. (1) The Director may appoint, in any port or place within or outside Antigua and Barbuda, duly qualified persons to be

Appointment of surveyors.

(2) An inspector in Antigua and Barbuda, where he considers it necessary in consequence of accident or for any other reason, may require any ship to be taken into dock, at the expense of the owner of the ship, for a survey of her hull or machinery.

(3) The powers conferred upon an inspector by subsection (1), except paragraph (b), and subsection (2) may be exercised by an inspector on or in respect of an Antigua and Barbuda ship outside Antigua and Barbuda.

(4) Powers conferred by this section shall not be exercised so as to unnecessarily detain or delay any ship.

(5) Where any person is summoned under paragraph (b) of subsection (1), the law for the time being in force in relation to magistrates' courts shall apply to such person as if he was a witness summoned by a magistrate and the inspector was the magistrate by whom he was summoned.

(6) Any person who —

- (a) obstructs any inspector in the exercise of his powers under this section or under any other power conferred by this Act or any regulations made or deemed to be made thereunder; or
- (b) without reasonable excuse fails to comply with any requirement made under this section; or
- (c) knowingly gives a false answer to any question put to him by an inspector commits an offence and is liable on conviction to a fine not exceeding five hundred dollars.

260. An inspector shall keep a record of the inspections he makes in such form and with such particulars respecting them as the Director may direct, and shall furnish copies thereof and any other information pertaining to the duties of his office which the Director may require.

Record of inspection and certificate.

261. The powers conferred on inspectors by this Part shall be exercised in conformity with the provisions contained in sections 70, 133, 136, 161, 162, 167, 168 and 178.

Control and compliance measures in conventions.

Further powers of
inspectors.

262. (1) An inspector, in exercise of his powers under section 257 —

- (a) may at any reasonable time or, in a situation which in his opinion is or may be dangerous, at any time —
 - (i) enter any premises, or
 - (ii) board any ship,

if he has reasons to believe that it is necessary for him to do so;
- (b) may, on entering any premises by virtue of paragraph (a) or on boarding a ship by virtue of that paragraph, take with him any other person authorised for the purpose by the Director, and any equipment or materials he requires;
- (c) may make such examination and investigation as he considers necessary;
- (d) may give a direction requiring that the premises or ship or any part of the premises or ship or any thing in the premises or ship or such a part shall be left undisturbed, whether generally or in particular respects, for so long as is reasonably necessary for the purposes of any examination or investigation under paragraph (c);
- (e) may take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under paragraph (c);
- (f) may take samples of any articles or substances found in the premises or ship and of the atmosphere in or in the vicinity of the premises or ship;
- (g) may, in the case of any article or substance which he finds in the premises or ship and which appears to him to have caused or to be likely to cause danger to health or safety, cause it to be dismantled or subjected to any process or test, but not so as to

damage or destroy it unless that is in the circumstances necessary;

- (h) may, in the case of any such article or substances as is mentioned in paragraph (g), take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely —
 - (i) to examine it and do to it anything which he has power to do under that paragraph,
 - (ii) to ensure that it is not tampered with before his examination of it is completed,
 - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under this Act or any instrument made under it;
- (i) require persons on board a ship to carry out such work as may be requisite for testing any equipment the inspector considers it necessary to test;
- (j) may require any person who he has reasonable cause to believe is able to give any information relevant to any examination or investigation under paragraph (c)—
 - (i) to attend at a place and time specified by the inspector, and
 - (ii) to answer, in the absence of persons other than a any persons whom the inspector may allow to be present and a person nominated to be present by the person on whom the requirement is imposed, such questions as the inspector thinks fit to ask, and
 - (iii) to sign a declaration of the truth of his answers;
- (k) may require the production of, and inspect and take copies of, or of any entry in —
 - (i) any books or documents which by virtue of any provision of this Act are required to be kept; and

- (ii) any other books or documents which he considers it necessary for him to see for the purposes of any examination or investigation under paragraph (c);
- (l) may require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as the inspector considers are necessary to enable him to exercise any of the powers conferred on him by this subsection.

(2) It is hereby declared that nothing in the subsection (1) of this section authorises a person unnecessarily to prevent a ship from proceeding on a voyage.

(3) Where an inspector proposes to exercise the power conferred by subsection (1) (g) in the case of an article or substance found in any premises or ship, he shall, if so requested by a person who at the time is present in, and has responsibilities in relation to the premises or ship, cause anything which is to be done by virtue of that power to be done in the presence of that person unless the inspector considers that its being done in that person's presence would be prejudicial to the safety of that person.

(4) Before exercising the power conferred by subsection (1) (g), an inspector shall consult such persons as appear to him appropriate for the purpose of ascertaining what danger if any, there may be in doing anything which he proposes to do under that power.

(5) Where under the power conferred by subsection (1) (h), an inspector takes possession of any article or substance found in any premises or ship, he shall leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that article or substance sufficient to identify it and stating that he has taken possession of it under that power; and before taking possession of any such substance under that power an inspector shall, if it is practicable for him to do so, take a sample of the substance and give to a responsible person at the premises or on board the ship a portion of the sample marked in a manner sufficient to identify it.

(6) No answer given by a person in pursuance of a requirement imposed under subsection (1) (i) shall be admissible in evidence against that person or the husband or wife of that person in any proceedings except proceedings in pursuance of subsection (1) (c) of section 259 in respect of a statement in or a declaration relating to the answer; and a person nominated as mentioned in the said subsection (1) (i) shall be entitled, on the occasion on which the questions there mentioned are asked, to make representations to the inspector on behalf of the person who nominated him.

PART XII

JURISDICTION AND LEGAL PROCEEDINGS

CHAPTER 1

JURISDICTION

263. (1) For the purpose of giving jurisdiction under this Act, every offence shall be deemed to have been committed and every cause of complaint to have arisen, either in the place in which the same actually was committed or arose, or in any place in which the offender or person complained against may be.

Jurisdiction

(2) Where, in any legal proceedings under this Act, a question arises whether any ship or person is or is not within the provisions of this Act or of some Part of this Act, the ship or person shall be deemed to be within those provisions unless the contrary is proved.

264. Where any district within which any court has jurisdiction either under this Act or any other enactment or at common law for any purpose whatsoever is situated on the coast of any sea or abutting on or projecting into any bay or other navigable water, every such court shall have jurisdiction over any ship being in or near that bay or navigable water, and over all persons on board that ship or for the time being belonging thereto, in the same manner as if the ship or persons were within the limits of the original jurisdiction of the court.

Jurisdiction over
ship lying or pass-
ing off the coast.

265. Notwithstanding anything contained in any other law in force in Antigua and Barbuda but subject to the provisions of section 264 —

Jurisdiction to
try offences
committed on
board ships.

- (a) where any person being a citizen of Antigua and Barbuda is charged with having committed any offence on board any Antigua and Barbuda ship wherever the ship may be;
- (b) where any person not being a citizen of Antigua and Barbuda is charged with having committed any offence on board an Antigua and Barbuda ship, in the territorial sea of Antigua and Barbuda or on the high seas;
- (c) where any person not being a citizen of Antigua and Barbuda is charged with having committed any offence on board a ship, other than an Antigua and Barbuda ship, at any port in Antigua and Barbuda or in the territorial sea of Antigua and Barbuda;

and that person is found in Antigua and Barbuda, any court that would have heard the offence if it had been committed within the limits of its ordinary jurisdiction shall have jurisdiction to try the offence as if it had been so committed.

Offences by
Antigua and
Barbuda
Seafarers.

266. Any offence against property or person committed on any Antigua and Barbuda ship at any place outside Antigua and Barbuda by any master, seafarer, or apprentice, who at the time when the offence is committed is employed in any Antigua and Barbuda ship, shall be —

- (a) an offence of the same nature respectively and be liable to the same punishments respectively, and
- (b) be inquired into, heard, tried, determined and adjudged in the same manner and by the same courts and in the same places,

as if that offence had been committed within the country of the port of registry of their ship.

Jurisdiction in
collision and
other cases.

267. (1) No court in Antigua and Barbuda shall entertain an action *in personam* to enforce a claim to which this section applies unless —

- (i) the defendant has his habitual residence or a place of business within Antigua and Barbuda;

- (ii) the cause of action arose within the waters of Antigua and Barbuda or within the limits of a harbour or port of Antigua and Barbuda; or
- (iii) an action arising out of the same incident or series of incidents is proceeding in the court, or has been heard and determined by the court.

(2) No court in Antigua and Barbuda shall entertain an action *in personam* to enforce a claim to which this section applies until any proceedings previously brought by the plaintiff in any court outside Antigua and Barbuda against the same defendant in respect of the same incident or series of incidents have been discontinued or otherwise come to an end.

(3) The provisions of subsection (1) and (2) apply to counterclaims in proceedings arising out of the same incident or series of incidents, as they apply to actions *in personam*, but as if the references to the plaintiff and the defendant were respectively references to the plaintiff on the counterclaim and the defendant to the counterclaim.

(4) The provisions of subsections (1), (2) and (3) do not apply to any action or counterclaim if the defendant thereto submits or has agreed to submit to the jurisdiction of the court.

(5) Subject to the provisions of subsection (2), where a court has jurisdiction for the purposes of this Act, the jurisdiction shall extend to entertain an *action in personam* to enforce a claim to which this section applies whenever any of the conditions specified in paragraph (a) of subsection (1) is satisfied; and the rules of court relating to the service of process outside the jurisdiction apply as appropriate having regard to the provisions of this subsection.

(6) Nothing in this section shall —

- (a) prevent an action or counterclaim which is brought under this section from being transferred to some other court of competent jurisdiction; or
- (b) affect proceedings in respect of any cause of action arising before the coming into operation of this section.

officer of customs or other officer named by the Judge requiring him to detain the ship until such time as the owner, or agent thereof—

- (i) has made satisfaction in respect of the damage or injury, or
- (ii) has given security to be approved by the Judge to abide the event of any action, suit or other legal proceedings that may be instituted in respect of the damage or injury, and pay all costs and damages that may be awarded thereon.

(2) Any officer of customs or other officer to whom the order is directed shall detain the ship accordingly.

(3) Where it appears that before an application can be made under this section the ship in respect of which the application is to be made will have departed from the limits of Antigua and Barbuda, the ship may be detained for such time as will allow the application to be made and the result thereof to be communicated to the officer detaining the ship, and that officer shall not be liable for any costs or damages in respect of the detention, unless the same is proved to have been made without reasonable grounds.

(4) In any legal proceedings in relation to any such damage or personal injury, the person giving security shall be made defendant and shall be stated to be the owner of the ship that has occasioned the damage or injury; and the production of the order of the judge made in relation to the security shall be conclusive evidence of the liability of the defendant to the proceeding.

270. (1) Where, under this Act, a ship is to be, or may be detained, any person generally or specially authorised by this Act or by the Director may detain the ship.

Enforcement of
detention of ship.

(2) If the ship, after detention or after service on the master of any notice of an order for detention, proceeds to sea before it is released by a competent authority, the master of the ship, and also the owner and any person who sends the ship to sea, if that owner or person is party or privy to the master's offence, commits

an offence and is liable on conviction to a fine not exceeding five thousand dollars.

(3) Where under this Act a ship is to be detained, the Comptroller of Customs shall refuse to grant port clearance; and in any other case authorising the detention of a ship, the Comptroller of Customs may refuse port clearance.

Seizure and sale of ship in default of payment of penalty.

271. (1) In every case in which a conviction has been secured against the owner of a ship for a contravention of any of the provisions of this Act, and a fine has been imposed, the ship shall, if the fine is not paid forthwith, be liable to be seized and, after such reasonable notice as the Director may, in each case, prescribe, may be sold by any person authorised for that purpose in writing by the Director.

(2) Any person authorised under subsection (1) may, by bill of sale, give to the purchaser a valid title to the ship free from any mortgage or other claim thereon which at the time of the sale may be in existence.

(3) Any surplus money remaining from the proceeds of sale after paying the amount of the fine and the costs of conviction, together with the costs of the seizure and sale, shall be paid over to any person who has a maritime lien or other preferential claims in respect of the ship or the mortgagee, or the owner as the case may be.

Notice to consular office in case of detention of foreign ship.

272. Where any foreign ship is detained under this Act, and any proceedings are taken under this Act against the owner or master of any such ship, notice shall forthwith be given to the consular officer for the country to which the ship belongs, at or nearest to the port where the ship is for the time being, and such notice shall specify the grounds on which the ship has been detained or the proceedings have been taken.

Cost of detaining ship.

273. Where a ship is held under any provision of this Act requiring detention until the happening of a certain event, the ship shall be deemed to be finally detained for the purposes of section 269; and the owner of the ship shall be liable to pay to the Government the costs of and incidental to the detention and survey, if any, of such ship, and these costs shall, without prejudice to any other remedy, be recoverable as salvage is recoverable.

274. (1) Where any court may make an order under this Act directing payment to be made of any seafarer's wages, fines or other sums of money, then, if the party who is so directed to pay the same is the owner or master of a ship, and the same is not paid at the time or in the manner prescribed in the order, the court which made the order may direct the amount remaining unpaid to be realised by distress sale of the ship, her tackle, furniture and apparel; or the order may be removed into any other court for the purpose.

Distress sale.

(2) The remedy made available by this section is in addition to any other powers for compelling the payment of money ordered to be paid.

CHAPTER 3

LEGAL PROCEEDINGS

275.(1) (a) Subject to the provisions of this section, no action shall be maintainable:

Limitation of actions in civil proceedings.

- (i) to enforce any claim or lien against a ship or her owners in respect of any damage or loss to another ship, her cargo or freight, or any property on board, or damages for loss of life or personal injuries suffered by any person on board, caused by the fault of the former ship, whether such ship be wholly or partly at fault; or
- (ii) in respect of any salvage services,

unless proceedings therein are commenced within one year from the date when the damage or loss or injury was caused or the salvage services were rendered.

- (b) An action shall not be maintainable 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 therein are commenced within one year from the date of payment.

(2) Any court of competent jurisdiction 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 during the period there has not been a reasonable opportunity of arresting the defendant ship

- (i) at any port in Antigua and Barbuda, or
- (ii) within twelve miles of the coast thereof, or
- (iii) locally within the jurisdiction of the country to which the ship of the plaintiff belongs, or
- (iv) in which the plaintiff resides or has his principal place of business,

extend the period to the extent necessary to give such a reasonable opportunity.

(3) Nothing in this section shall affect statutory provisions as to compensation for workmen.

Depositions in cases in which witnesses cannot be produced.

276. (1) Subject to the provisions of this section, where in the course of any proceedings instituted under this Act before any court or person authorised to receive evidence, the testimony of any witness is required in relation to the subject matter of the proceedings and the witness cannot be found in Antigua and Barbuda, any deposition that the witness has previously made on oath in relation to the same subject matter before any judge or magistrate in any country other than Antigua and Barbuda or before any diplomatic or consular officer of Antigua and Barbuda in any foreign country shall be admissible in evidence.

(2) No deposition shall be admissible in criminal proceedings unless the deposition was taken in the presence of the person accused, and the judge, magistrate or diplomatic or consular officer when authenticating the deposition made before him certifies that the accused was present at the taking thereof.

(3) A deposition admissible for the purposes of this section shall be deemed to be duly authenticated if it purports to have been signed by the judge, magistrate or diplomatic or consular officer before whom it was taken.

(4) It shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition; and in any criminal proceeding, a certificate purporting to have been signed by the judge, magistrate or diplomatic or consular officer before whom the deposition was taken that the accused was present at the taking of the deposition shall, unless the contrary is proved, be sufficient evidence of the fact.

(5) Nothing in this section shall affect any case in which depositions taken in any proceedings are rendered admissible in evidence by any other enactment.

277. Notwithstanding anything in any other enactment where any document is required by this Act to be executed in the presence of, or to be attested by, any witness, that document may be proved by the evidence of any person who is able to bear witness to the requisite facts, without calling the attesting witness.

Evidence and service of document.

278. (1) Where a document is under this Act declared to be admissible in evidence, such document shall, on its production from the proper custody.

Admissibility of documents in evidence.

(a) be admissible in any court or before any person having proper authority to receive evidence, and

(b) unless admission is refused on any other ground, be evidence of the matters stated therein in pursuance of this Act or by any officer in pursuance of his duties as such officer.

(2) A copy of any such document or extract therefrom shall also be admissible in evidence —

(a) if proved to be a copy or extract made from or compared with the original, or

(b) if it purports to be signed and certified as a true copy or extract by the officer to whose custody the original document was entrusted.

(3) Any person having authority to receive evidence shall have the same powers as a court to impound any document to

which this section applies, which has a false or counterfeit seal, stamp or signature attached thereto, and the restrictions which apply for the admission of secondary evidence shall have effect accordingly.

Service of documents.

279. (1) Where, for the purposes of this Act, a document is to be served on any person, that document may be served —

- (a) in any case, by delivering a copy thereof personally to the person to be served, or by leaving the same at his last place of abode;
- (b) if the document is to be served on the master of a ship, where there is one, or on a person belonging to a ship, by leaving the same for him on board that ship with the person being, or appearing to be, in command or charge of the ship;
- (c) if the document is to be served on the master of the ship, where there is no master, and the ship is within Antigua and Barbuda, on the managing owner of the ship, or, if there is no managing owner, on some agent of the owner residing in Antigua and Barbuda, or where no such agent is known or can be found by affixing a copy thereof in some conspicuous place in the ship.

(2) If any person obstructs the service on the master of the ship of any document under the provisions of this Act relating to the detention of ships as unseaworthy, that person commits an offence; and, if the owner or master of the ship is party to the obstruction, he commits an offence, in either case is liable on conviction to a fine not exceeding two thousand dollars.

CHAPTER 4

OFFENCES

Prosecution of offences and instituting of action.

280. (1) Proceedings in respect of an offence under this Act shall be instituted and conducted summarily.

(2) Any person who commits an offence under this Act or does anything or omits to do anything in contravention of the provisions of this Act or of any rule or regulation made

thereunder, for which no specific penalty is provided, shall be liable on conviction to a fine not exceeding five thousand dollars or to a term of imprisonment not exceeding three months or to both such fine and imprisonment.

(3) Where an offence under this Act is a continuing one, and no penalty is provided in respect of the continuance thereof elsewhere than in this section, every person who commits that offence is, in addition to any other liability, liable to a fine not exceeding one hundred dollars for every day or part of a day during which the offence continues.

281. (1) Fines incurred or imposed under this Act may, except as otherwise provided by this Act, be recovered in a court of summary jurisdiction.

Recovery of fines.

(2) Except as otherwise provided, expressions in this Act that any person is liable to a fine shall be held to imply that that person has committed an offence under this Act, and in the absence of any express provision relating to imprisonment in case of nonpayment of any fine imposed, the offender may, upon default of payment of any such fine imposed, be imprisoned for a term not exceeding six months unless such a fine is sooner paid.

(3) Any reference in this Act to liability for a fine for a specific amount is a reference to a fine not exceeding that amount.

282. Where any court imposes a fine under this Act for which no specific application is provided in this Act, that court may direct the whole or any part of the fine to be applied in compensating any person for any wrong of damage that he may have sustained by the offence in respect of which the fine is imposed, or to be applied in or towards payment of the expenses of the proceedings.

Application of
fines.

283. (1) Neither a conviction for an offence nor an order for payment of money shall be made under this Act in any summary proceedings instituted in any Magistrate's Court —

Limitation of
time as to
summary
proceedings.

- (a) unless such proceedings are commenced within six months after the commission of the offence or after the cause of complaint arises, as the case may be; or

(b) if any of the parties to the proceedings happens during that time to be out of Antigua and Barbuda unless the proceedings are commenced, in the case of

(i) a conviction, within two months; and

(ii) an order, within six months

of the parties being together in Antigua and Barbuda.

(2) No written law for the time being in force which limits the time within which the proceedings may be instituted in any Magistrate's Court affects any proceedings under this Act.

Offences by bodies corporate.

284. Where an offence under this Act, or any regulations made thereunder, which has been committed by a body corporate, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, commits an offence, and is liable to be proceeded against and punished accordingly.

PART XIII

SUPPLEMENTAL AND FINAL

CHAPTER 1

SHIPPING POLICY

Principles international law.

285. Antigua and Barbuda shall follow recognised principles of international law; and in particular —

(i) the principle of the freedom of the high seas shall be duly recognised;

(ii) Antigua and Barbuda ships on the high seas are subject to the law of Antigua and Barbuda;

(iii) foreign merchant ships shall have the right of innocent passage through the territorial sea of Antigua and Barbuda;

- (iv) while in the territorial sea of Antigua and Barbuda, foreign ships shall be within the jurisdiction of the Government of Antigua and Barbuda and be subject to its control, particularly in matters pertaining to regulation by Intranational Conventions, such as on pollution, safety and maritime security;
- (v) foreign ships shall have free access to Antigua and Barbuda ports in the matter of port facilities such as allocation of berths, loading and unloading facilities as well as dues and charges of all kinds levied in the name of Government or public authorities, in accordance with the provisions of the Convention and Statute on International Regime of Maritime Ports, 1923.

286. (1) Development of a national shipping industry shall be accorded high priority in national policies and programmes.

Measures to assist shipping industry.

(2) For such purposes, the Cabinet may adopt from time to time all or any of the following measures of assistance to the industry—

- (i) direct participation of Government in the shipping industry and the establishment of shipping enterprises in the public sector;
- (ii) grant of loans on concessionary terms to the shipping industry for the acquisition of ships;
- (iii) grant of Government guarantees to commercial loans raised by shipowners;
- (iv) grant of bonus to shipowners on the foreign exchange earned by operation in overseas trade;
- (v) conclusion of bilateral agreements with neighbouring countries for the sharing of the export and import trade exclusively by the national shipping lines of the two countries;

- (vi) tax concessions by way of tax holidays, accelerated depreciation, investment allowance, and tax free reserves;
- (vii) tax concessions to exporters and importers who patronise national shipping;
- (viii) control of terms of sale and purchase of commodities moving in the export and import trade so as to channel as much as possible of such commodities to national ships;
- (ix) exemption from customs duty of ships imported from abroad;
- (x) exemption from customs duty of equipment and spare parts of ships and material required for ship repair;
- (xi) exemption from tax on proceeds of sale of ships when invested in the acquisition of replacement ships;
- (xii) imposition of obligation on foreign lines to appoint Antigua and Barbuda lines as their agents in Antigua and Barbuda.

Coastal trade.

287. The provisions of this Act may be modified in their application to coastal-trade ships in such manner and to such extent as the Minister may prescribe.

CHAPTER 2

FINAL CLAUSES

Implementation of treaties.

288. For the purpose of giving effect to any international agreement or other international treaty instrument relating to shipping or the prevention of pollution of the marine environment, to which Antigua and Barbuda is a party, the Minister may by order make such amendment to any provision of this Act as appear to him to be necessary.

Conventions to prevail.

289. Where an international convention or other international instrument applies to Antigua and Barbuda and a provision of that convention or instrument and a provision of this Act conflict

in any manner, the provision of the convention or instrument shall prevail unless the Minister otherwise provides.

290. Where, in respect of any Antigua and Barbuda ship, there is any contravention of a requirement of any international convention or other international instrument which applies to Antigua and Barbuda, the Director may suspend the certificate of registry of the ship until the contravention is rectified. Contravention of international conventions.

291. Any act carried out under the repealed Antigua and Barbuda Merchant Shipping Act Antigua and Barbuda shall be treated as carried out under this Act. Transitional
Cap 28.

292. The Antigua and Barbuda Merchant Shipping Act is hereby repealed. Repeals.
Cap 28.

FIRST SCHEDULE

Section 7

**MATTERS *INTER ALIA* ON WHICH REGULATIONS,
RULES OR DIRECTIVES MAY BE MADE**

No.	Matter
	<i>Preliminary</i>
1	Reservation of coastal trade
	<i>Registration etc</i>
2	Registration: all matters for and in connection with registration
3	Licensing of unregistered ships
4	Marking
5	Tonnage
6	Transfer of ownership
7	Transfer of property
8	Mortgages
	<i>Master etc</i>
9	STCW certificates, criteria and mandatory minimum training requirements.

SECOND SCHEDULE*Section 64***APPROPRIATE CERTIFICATES, CRITERIA AND
MANDATORY MINIMUM TRAINING REQUIREMENTS
PRESCRIBED BY THE STCW CONVENTION****1. QUALIFICATION AS AN OFFICER**

A person is qualified as an officer for the purpose of Part IV if as an officer he holds a certificate of competency in one of the following capacities:

- (a) (i) master
- (ii) chief mate, or
- (iii) officer in charge of a navigational watch, or

- (b) (i) chief engineer officer
- (ii) second engineer officer, or
- (iii) engineer in charge of an engineering watch, or

- (c) radio operator.

2. APPROPRIATE CERTIFICATES

Any officer serving in the capacity set out in column one of the table below shall hold an appropriate certificate for that capacity. A person shall be entitled to be issued with such an appropriate certificate only if he complies with the criteria in regulations annexed to the STCW Convention, and specified in column two of the table in relation to that entry, and other requirements specified and laid down in the relevant rules and procedures of the Antigua and Barbuda Management System.

3. SAFE MANNING CERTIFICATES

- (a) ADOMS shall issue a "Safe Manning Certificate" to each ship according to the standards prescribed by the STCW Convention and IMO Resolution A. 890 (21).
- (b) The grades and numbers of personnel listed in the Safe Manning certificate shall reflect the minimum level of manning necessary for the safety of navigation and operation. Additional personnel as may be necessary for maintenance, cargo handling or watch keeping are the responsibility of the company, master and chief engineer.

4. SEAFARERS AT THE SUPPORT LEVEL AND HOLDERS OR OTHER QUALIFICATIONS

- (a) Every seafarer at the support level forming part of a navigational watch on a ship of 500 GT or more, other than seafarers at the support level under training and seafarers at support level whose duties while on watch are of an unskilled nature, shall hold a certificate issued in accordance with Regulation II/4.2 of the STCW Convention, by an Administrations, the certificates of which are recognised by Antigua and Barbuda.
- (b) Every seafarer at the support level forming part of an engine room watch or designated to perform duties in a periodically unmanned engine room on a ship powered by main propulsion machinery of 750 kW propulsion power or more, other than seafarers at the support level under training and seafarers at the support level whose duties are of an unskilled nature, shall hold a certificate issued in accordance with Regulation III/4.2 of the STCW Convention, by an Administrations, the certificates of which are recognised by Antigua and Barbuda.
- (c) The qualifications of seafarers serving on ships less than 500 GT and powered by main propulsion machinery of 350 kW or more, but less than 750 kW shall be specified by the Director.

5. RADIO-PERSONNEL ON GMDSS SHIPS

- (a) Every person in charge of, or performing, radio duties on a ship required to participate in the GMDSS, shall hold an appropriate certificate issued under the relevant provisions of the STCW Convention and the requirements of Chapter IV of the SOLAS Convention, by an Administration, the certificates of which are recognised by Antigua and Barbuda.

**7. MANDATORY MINIMUM REQUIREMENTS FOR FAMILIARISATION,
BASIC SAFETY TRAINING AND INSTRUCTION FOR ALL SEAFARERS**

All seafarers shall receive familiarisation and basic safety training or instruction in accordance with Section A-VI/1 of the STCW Code and shall meet the appropriate standard of competence specified therein.

**8. MANDATORY MINIMUM REQUIREMENTS FOR CERTIFICATES OF
PROFICIENCY IN SURVIVAL CRAFT, RESCUE BOATS AND FAST RESCUE
BOATS ISSUED UNDER THE RELEVANT PROVISIONS OF THE
CONVENTION, BY AN ADMINISTRATION, THE CERTIFICATES OF
WHICH ARE RECOGNISED BY ANTIGUA AND BARBUDA.**

- (a) Every person designated to launch or take charge of survival craft or rescue boats other than fast rescue boats shall hold a certificate of proficiency issued under the provisions of regulation VI/2 paragraph 1 of the Annex of the STCW Convention by an Administration, the certificates of which are recognised by Antigua and Barbuda.
- (b) Every person designated to launch or take charge of a fast rescue boat shall hold a certificate of proficiency issued under the provisions of regulation VI/2 paragraph 2 of the Annex of the STCW Convention by an Administration, the certificates of which are recognised by Antigua and Barbuda.

**9. MANDATORY MINIMUM REQUIREMENTS FOR TRAINING IN
ADVANCED FIRE FIGHTING**

- (a) Seafarers designated to control fire fighting operations shall have successfully completed advanced training in techniques for fighting fire with particular emphasis on organisation, tactics and command in accordance with the provisions of Section A-VI/3 of the STCW Code and shall meet the standard of competence specified therein.
- (b) Where training in advanced fire fighting is not included in the certificate of the seafarer, the seafarer must be furnished with a special certificate or documentary evidence, as appropriate, issued in accordance with the provisions of Section A-VI/3 of the STCW Code, by an Administration, the certificates of which are recognised by Antigua and Barbuda.

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*The Antigua and Barbuda Merchant
Shipping Act, 2006.*

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AND
BARBUDA

Passed the House of Representatives this
25th day of January, 2006.

Passed the Senate this 7th day
of February, 2006.

D. Giselle Isaac-Arrindell,
Speaker.

Hazlyn M. Francis,
President.

J. Vanessa Nicholas,
Acting Clerk to the House of Representatives.

J. Vanessa Nicholas,
Acting Clerk to the Senate.

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Directors who will be administrative and technical managers of the Department of Marine Services.

Under clause 7 of the Bill, the Minister would be empowered to make regulation generally to enable the provisions on the Act to be implemented the Minister is authorised under this clause to make regulations in respect of the matters specified in the First Schedule.

In addition to the specified subjects in the First Schedule, the Minister has certain powers under clause 8 to make regulations to implement and give effect to certain international conventions affecting shipping operation and maritime affairs.

Registration of Antigua and Barbuda ships is required to be carried out by registrars appointed by the Minister who would be required to function under the Director. Public officers appointed under this Act are protected against acts carried in good faith in the performance of their functions.

Part III addresses the registration of ship-mortgages and Maritime liens. It contains no new policy changes. In Chapter 1, clause 11 sets out the criteria for registration of ship as Antigua and Barbuda ship. This qualification includes owners who are Antigua and Barbuda citizens and companies incorporated under the Companies Act, corporations incorporated under the International Business Corporation Act, external companies and partnerships registered under the Companies Act. The Cabinet is also empowered under the legislation to allow registration of ships owned by entities not qualified under the criteria sets out in clause 11. The Bill retains the existing provision which exempts external companies and corporations incorporated under the International Business Corporations Act from the payment of income tax, capital gains tax and other direct taxes imposed by law for a period of fifty years.

Clauses 12 and 13 declare the port of St. John's the port of registry and the site of the office of the Registrar General.

The ships register created under this legislation is divided into three parts, namely the International Ships Register which is maintained in Germany, the register for megayachts that is pleasure yachts of over 24 meters in length and the local register are maintained in Antigua and Barbuda. No ship which is subject to the Safety Convention (the International Convention on the Safety at Sea, 1974, as amended, known as ('SOLAS') may be registered on the local registry.

The Bill proposes that ships which are registered on the International Ships Register must be entered in with a Classification Society, which is a member of the International Association of Classification Societies.

Chapters 2 permits ships registered on a foreign registry which are bareboat chartered for a period of at least 6 months, to be registered on the International Ships Register and to operate as Antigua and Barbuda ships.

Chapters 3 contains provisions enabling Antigua and Barbuda ships which are bareboat chartered to be registered as a chartered bareboat in a foreign register and use the colours of the country of such foreign register.

Chapters 4, 5, and 6 contain standard provisions on transfers of property in ships or interest in such property. Chapter 4 proposes that such transfers may be effected only by an instrument in writing. A property in a ship may also be transmitted on the death or insolvency of the registered owner by any lawful means. Provision is also made to use a registered ship or interest in such registered ship as security for a loan and sets out the manner of determining preferences in case there is more than one mortgage on the same ship.

Chapter 5 addresses the question of maritime liens and specifies the claims which may give rise to maritime liens. Clause 48 provides that no ship shall be registered without the consent of the holders of the mortgages and other preferential rights.

Part IV which contains eight chapters provides for the implementation and compliance of Antigua and Barbuda's obligation under the International Convention on Standard Training, Certification and Watch Keeping 1978 (STCW).

Chapter 1 of Part IV consolidates the existing amendments which give effect to the International Convention on Standards of Training, Certification and Watch-keeping 1978/1995 ('STCW'). For the time being Antigua and Barbuda does not issue its own certificates to officers and other seafarers because it lacks the resources to do so. It however endorses certificates issued by other Parties to SCTW Convention and which is recognised by Antigua and Barbuda and the International Maritime Organization under the STCW Convention.

Chapters 2 of Part IV makes provision for the disqualification of seafarers and holders of certificates other than other certificates of officers. That chapter retains the provisions of the existing legislation on disqualification and certification as well as the proposals for Procedures for disqualification of seafarers.

Chapters 3 to 8 provide the guidelines for the employment or dismissal of the shipcrew, the contents of the terms and conditions of engagement, discipline of seafarers, the payment of wages and compensation for seafarers improperly dismissed. The employment of children on ships and the protection of the rights and remedies of seafarer's lien are also addressed under these chapters.

Part V provides for the safety of navigation and security at sea. The rules and

Part IX would make provision for the contractual terms and conditions under which ships would be required to carry passengers and their luggage. The liability of ship owners for loss, injury or damage for carrying persons and luggage are provided in the Athens Convention relating to the Carriage of Passengers and their luggage at Sea 1974. This Convention has not been ratified by Antigua and Barbuda. Provision is made to enable the Minister to apply the provisions of this Convention in Antigua and Barbuda whenever it is ratified Chapter 2 of Part IX allows ship-owners to limit their liability for the carriage of passengers and their luggage in certain circumstances.

Chapter 4 would enable ratification and implementation of the Brussels Protocol, 1968 (which amends the International Convention for the Unification of certain Rules relating to Bills of Lading, 1924) and the United Convention on a Code of Conduct for Liner Conferences, 1974.

Part X prescribes the procedure for holding inquiry and investigation into marine casualties. The provisions of this Part have specified these casualties which includes loss or presumed loss, grounding, damage or abandonment of ship or loss of life, serious injury to any person caused by fire on board or accident occurring on board a ship belonging to Antigua and Barbuda waters. These are procedures approved and recorded by the International Maritime Organization.

The appointment of surveyors and inspectors for surveying and inspecting ships for purposes of this legislation is addressed in Part XI. The duties of inspectors are set out in clause 259 and include the enforcement and compliance of the Act, the regulations and directives made under the Act as well as the observance of International Conventions to which Antigua and Barbuda is a party.

Part XII which addresses matters relating to jurisdiction and legal proceedings affecting persons, properties and places where certain occurrences take place, is a re-enactment Part VII of the existing Act.

Part XIII deals with supplemental matters and declares Antigua and Barbuda's commitment to the principles of international law and would recognise in particular the freedom of the high seas and the right of innocent passage through the territorial sea of Antigua and Barbuda. The jurisdiction of Antigua and Barbuda over foreign ships within its waters, particularly in matters pertaining to international convention on pollution, safety at sea and marine security are restated. Antigua

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BARBUDA

and Barbuda would continue to uphold the right of foreign ships to have access to Antigua and Barbuda Ports.

Finally, the Bill declares the Government's policy to develop the shipping registry into a world class registry.

Justin L. Simon, Q.C.
*Attorney General and
Minister of Legal Affairs.*

No. 1 of 2006

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ANTIGUA AND BARBUDA

ANTIGUA AND BARBUDA MERCHANT SHIPPING ACT, 2006

ARRANGEMENT OF SECTIONS

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8. Regulations and directives to give effect in Antigua and Barbuda to maritime conventions.
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