
Merchant Shipping Act 1983

THE REPUBLIC OF KIRIBATI

THE MERCHANT SHIPPING ACT 1983

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REPUBLIC OF KIRIBATI
(No. 4 of 1983)

I assent,

I. Tabai
Beretitenti.
30 June 1983.

**AN ACT TO MAKE PROVISION FOR THE REGISTRATION OF SHIPS: AND FOR
PURPOSES INCIDENTAL THERETO AND CONNECTED THEREWITH**

Commencement: 30 June 1983.

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti.

PART I
PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Merchant Shipping Act, 1983.

(2) This Act shall come into operation upon such date as the Minister may, by notice published in the Gazette, appoint.

Definition

2. In this Act, unless the context otherwise requires -

"Court" means the High Court;

"government ship" means a ship that belongs to the Government or to an authority established by the Government or that is held by any person on behalf of or for the benefit of, the Government but does not include a ship belonging to the Defence Force;

"national flag" means the National Flag of Kiribati;

"qualified persons" means -

(a) a person referred to in section 7(a);

(b) a corporation referred to in 7(b); or

(c) the corporation referred to in section 7(c);

"ship" includes -

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

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

(i) a canoe; or

(ii) a vessel ordinarily propelled by oars; or

(iii) a vessel belonging to the Police Force or the Defence Force or to any of the defence forces of any other country;

"surveyor" means a surveyor of ships appointed by the Minister under section 57;

"the Registrar" means the Register of Ships referred to in section 4;

"the Registrar" means the Registrar of Ships;

"the Regulations" means the Regulations made under this Act;

"this Act" includes the Regulations;

"tonnage certificate" means a certificate of tonnage given under section 11.

PART II REGISTRATION OF SHIPS

Division 1 - The Registrar and Register of Ships

Registrar of Ships

3. There shall be a registrar of ships who shall be a public officer.

Register of ships

4. (1) The Registrar shall cause to be kept at Betio or as determined by the Minister a Register (to be known as the Register of Ships), in such form as the Registrar determines.

(2) The Registrar shall cause to be entered in the Register particulars of all ships registered under this Act and such other entries as may be required by this Act to be entered in the Registers.

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

Division 2 - Registration of Ships

Provisions relating to registration

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

-

- (a) the property in a ship shall be divided 64 shares;
- (b) subject to the provisions of this Act with respect to joint owners or owners by transmission, not more than 64 persons shall be entitled to be registered at the same time as owners of any ship but this provision shall not affect the beneficial title of any number of persons or of a company represented by or claiming under or through any registered owner or joint owner;
- (c) a person shall not be entitled to be registered as owner of a fractional part of a share in a ship but any number of persons not exceeding five may be registered as joint owners of a ship or of any share or shares in the ship;
- (d) joint owners shall be considered as constituting one person only as regards the persons entitled to be registered, and shall not be entitled to dispose severally of any interest in a ship, in respect of which they are jointly registered; and
- (e) a corporation shall be registered as owner by its corporate name.

Port of registry

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

Meaning of "qualified person"

7. For the purpose of this Act-

- (a) a person who is a citizen of Kiribati;
- (b) a corporation -
 - (i) that is established under, and is subject to the laws of, Kiribati; and
 - (ii) that has its principal place of business in Kiribati;
- (c) the Kiribati Shipping Corporation established by the Shipping Corporation Act, 1977; or
- (d) any other person or corporation certified by the Minister by Order as being a qualified person,

is a qualified person and no other person is a qualified person.

Registration of ships

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

- (a) is owned by -
 - (i) a person who is a qualified person; or
 - (ii) persons each of whom is a qualified person; and
- (b) is not registered in any other country,

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

(2) Where subsection (1) would apply in relation to a ship if it were not an exempt ship, the owner or owners of the ship may apply for registration of the ship under this Act.

(3) In this section, a reference to an exempt ship is a reference to a ship (defined in section 2):

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

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

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

Registration of Government ships

9. (1) The Regulations shall provide for the registration of Government ships.

(2) The Regulations may exempt a Government ship or class of Government ships from the whole or any of the provisions of this Act.

Restriction on registration ships

10. (1) Except as provided in sections 8 and 9, the Registrar shall not register a ship under this Act.

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

(3) If within such time as may be determined by the Minister, not being less than 30 days, the evidence referred to in subsection (2) is not produced, the ship is liable to forfeiture.

Survey and measurement of ship

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

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

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

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

ship or, in the case of an unregistered ship, in the latest certificate of measurement relating to that ships.

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

Marking of ship

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

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

(3) An owner or master of a ship registered under this Act who fails to cause that ship to be marked as required by this section, or to keep that ship no marked, is guilty of an offence.

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

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

Application for registration

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

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

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

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

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

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

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

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

- (a) of the ownership; and
- (b) of the seaworthiness,

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

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

Declaration of ownership on registry

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

Registration of ships

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

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

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

Certificate of registry

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

(2) The certificate of registry of a ship -

- (a) shall be kept in a safe place on the ship;
- (b) shall be used only for the lawful navigation of the ship; and
- (c) shall not be subject to detention by reason of any title, lien, charge or interest had or claimed by any owner, mortgagee or other person to, on or in the ship.

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

(4) A person -

- (a) who has in his possession or under his control the certificate of registry of a ship and
- (b) who refuses or fails without reasonable cause, to deliver the certificate on demand to -
 - (i) the person entitled to ill custody for the purposes of the lawful navigation of the ship;
 - (ii) any other person entitled by law to require its delivery,

is guilty of offence.

Power to grant new certificate

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

Provisional registration

18. (1) Where, at a place outside Kiribati a ship becomes wholly owned by a qualified person, or by persons each of whom is a qualified person, the diplomatic representative of Kiribati in or for that place may grant to the master of the ship, on his written applications a provisional certificate of registry stating-

- (a) the name of the ship;
- (b) the time and place of the ship's purchase and the names of her purchasers;
- (c) the name of the ship's master;
- (d) the best particulars respecting the ship's tonnage, build and description which the representative is able to obtain.

(2) A diplomatic representative of Kiribati shall forward a copy of any provisional certificate of registry granted by him pursuant to Subsection (1) to the Registrar at the first convenient opportunity, and in any event within 21 days of the issue of such certificate.

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

- (a) until the expiry of 60 days after the date on which it was granted; or
- (b) until the expiry of 10 days after the arrival of the ship in Betio,

whichever is the earlier.

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

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

Loss of certificate of registry

19. (1) Where a certificate of registry of a ship is lost, mislaid or destroyed the Registrar shall grant a new certificate in its place, upon receiving satisfactory evidence of such loss, mislaying or destruction.

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

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

- (a) until the expiry of 60 days after the date on which it was granted; or
- (b) until a new certificate is granted in place of the certificate of registry,

whichever is the earlier.

Change in ownership

20. Where a change occurs in the ownership of a ship registered under this Act by reason of a transfer of the ship to a qualified person -

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

Delivery of certificate where ship is lost, etc.

21. (1) Where -

- (a) a ship registered under this Act is either actually or constructively lost, taken by the enemy, burnt or broken up;
- (b) a person who is the owner of a ship registered under this Act whether alone or jointly with other persons, ceases to be a qualified person; or
- (c) a person who is the owner of a ship registered under this Act transfers the ownership of the ship to a person who is not a qualified person.

the owner of the ship, or, if the ship is owned by more than one person, each of those persons shall, immediately on obtaining knowledge of the event (if notice thereof has not already been given to the Registrar), give notice to the Registrar.

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

(3) The Registrar shall, upon receipt of notice that a circumstance specified in subsection

(1)(b) or (1)(c) has arisen, make or cause to be made an entry in the Register that notice has been received and, subject to this section, the registry of the ship shall be deemed to be closed.

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

(5) If, within 30 days after notice is given to the mortgages under subsection (4), an application is not made to the Court for an order under subsection (6), the registry of the ship in the Register shall, subject to subsection (8), be deemed to be closed on the expiration of that period.

(6) If, before the expiration of the period of 30 days referred to in subsection (5), or within such further time as the Court, on an application made either before or after the expiration of that period, allows, an application is made to the Court for an order under this subsection, the Court may order the sale of the ship and direct that the proceeds of the sale, after deducting the expenses of the sale, be paid first to the mortgages or, if there are two or more mortgages, to the mortgagees in order of priority and, after satisfaction of the mortgage or mortgages, to the owner of the ship.

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

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

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

Registry of alterations

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

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

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

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

(5) In causing the alteration of a ship to be registered, the Registrar shall cancel the certificate

of registry and shall grant a new certificate of registry and shall make the prescribed entries in the Register.

Division 3 - Transfers and Transmissions

Transfer to be by bill of sale

23. (1) Where a ship registered under this Act is disposed of to a qualified person, or to persons each of whom is qualified person, the ship shall be transferred by a bill of sale.

(2) A bill of sale shall -

(a) be in the prescribed form; and

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

Declaration of transfer

24. Where a ship registered under this Act is transferred, the transferee is not entitled to be registered as owner of the ship until he, or in the case of a corporation, a person authorized by this Act to make declarations on behalf of the corporation, has made and signed a declaration of transfer in the prescript form referring to the ship find containing -

(a) statements that show that the transferee is a qualified person, or, where there is more than one transferee, that each transferee is a qualified person; and

(b) a statement that, to the best of his knowledge and belief, only a qualified person, or persons each of whom is a qualified person, is or are entitled as owner to any legal or beneficial interest in the ship or a share in the ship.

Registration of transfer

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

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

Transmission of ship on death, bankruptcy, etc.

26. (1) Where the property in a ship registered under this Act is transmitted to a qualified person, or to persons each of whom is a qualified person, on the death or bankruptcy of any registered owner, or by any lawful means other than by a transfer made under this Act, that person shall authenticate the transmission by making and signing a declaration of transmission in the prescribed form identifying the ship, and the declaration of transmission

shall contain such statements and shall be accompanied by such documents as are prescribed.

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

Order for sale on transmission to unqualified person

27. (1) Where the property in a ship registered under this Act is transmitted on death or bankruptcy or otherwise to a person who is not a qualified person, or to persons one or more of whom is not a qualified person, the Court may, on application by or on behalf of that person or one or more of those persons, order a sale of the property so transmitted, and direct that the proceeds of the sale, after deducting the expenses of the sale, be paid to the person or persons entitled under the transmission or otherwise as the Court directs.

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

(3) An application under this section shall be made within 30 days after the occurrence of the event on which the transmission has taken place, or within such further time (not exceeding in the whole one year from the date of the occurrence) which the Court allows.

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

Transfer of ship or sale by order Court

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

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

Court may prohibit transfer

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

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

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

Division 4. - Mortgages

Method of mortgage of ship

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

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

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

Entry of discharge of Mortgage

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

Priority of mortgages

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

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

Powers of Mortgagee

33. (1) Except as may be necessary for making a mortgaged ship available as a security for the mortgage debt, a mortgagee shall not by reason of the mortgage, be deemed to be the owner of the ship nor shall a mortgagor be deemed to have ceased to be the owner of the ship.

(2) Subject to subsection (3) and (4), a registered mortgagee shall have power absolutely to

dispose of the ship in respect of which he is registered and to give effectual receipts for the purchase money.

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

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

Transfer of Mortgage

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

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

Transmission of interest in mortgage by death, etc.

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

(2) A declaration referred to in subsection (1) shall be in the prescribed form and shall contain a statement of the manner in which, and the person to whom, the interest has been transmitted, and shall be accompanied by such evidence as is prescribed.

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

Division 5 - National Character and Flag

Penalty for unduly assuming Kiribati character

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

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

Penalty for concealment of Kiribati character, etc.

37. (1) A master or owner of a ship registered under this Act who -

- (a) does anything or permits anything to be done; or
- (b) carries or permits to be carried on a ship, any papers or documents,

with intent to -

- (c) conceal the Kiribati character of the ship from a person entitled by Kiribati law to enquire into the character of the ship;
- (d) deceive a person referred to in paragraph (d); or
- (e) assume a foreign character,

is guilty of an offence.

(2) Where the master or owner of a ship is convicted of an offence under subsection (1), the ship is liable to forfeiture.

Penalty for acquiring ownership if unqualified

38. If a person, other than a qualified person, acquired as owner any interest, either legal or beneficial, otherwise than by such transmission as is provided for in this Act, in a ship registered under this Act, that interest is liable to forfeiture.

Liabilities of unregistered ship

39. (1) Where a ship that is required to be registered under this Act is not so registered, the ship shall not be entitled to any benefit, privilege, advantage or protection usually enjoyed by a ship registered under this Act or to use the National Flag or to assume Kiribati national character.

(2) In the case of a ship to which subsection (1) applies, the owner and the master of the ship shall, in relation to -

- (a) the payment of
- (b) the liability to fines and forfeiture;
- (c) the punishment of offences committed on board the ship; and
- (d) offences committed by persons belonging to the ship,

be dealt with in the same manner in all respects as if the ship were registered under this Act.

(3) The Regulation may make provision with respect to the application of any provisions of this Act, specified in the Regulation, to any ships to which subsection (1) applies and to masters and seamen employed in them, with such exceptions, adaptations and modifications as may be so specified

National colours

40. (1) The National Flag shall be the proper national colour for a ship registered under this Act.

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

(3) Where, except with the consent of the Minister, any distinctive national colours other than the National Flag are hoisted on board a ship registered under this Act -

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

are each guilty of an offence.

Division 6 - Miscellaneous

Registrar may require information

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

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

Notice of trusts not received

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

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

Equities not excluded by Act

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

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

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

Liability of owners

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

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

Ship's managing owner to be registered

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

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

Names of registered ships

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

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

Annual registration fees

47. (1) The owner of a ship registered under this Act is liable, on the expiration of a period of 12 months after the date of registration of the ship and on the expiration of similar period thereafter to pay the prescribed annual registration fee.

(2) Where an annual registration fee is not paid within 30 days of the date on which the fee becomes due and payable, the Court may, upon application by the Registrar, direct the amount remaining unpaid to be levied by distress or by the sale of the ship or the equipment of the ship

PART III GENERAL

Mode of declaration

48. (1) A declaration required by this Act may be made before the Registrar, a magistrate, a notary public or a diplomatic representative of Kiribati.

(2) A declaration required by this Act may be made on behalf of a corporation by any person so authorised under the common seal of the corporation.

Power of Registrar to dispense with evidence

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

False declaration

50. (1) A person who, in a declaration made under or for the purposes of this Act, or in any document or other evidence produced to the Registrar -

- (a) wilfully makes or assists in making, or procures to be made a false statement concerning the title to, or ownership of, or the interest existing in, a ship registered under this Act; or
- (b) utters, produces or makes use of any declaration or document containing any false statement, knowing the same to be false,

is guilty of an offence.

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

Proof of documents

51. (1) All certificates or other documents (including endorsements on certificates or other documents) to which this section applies are admissible in evidence in the manner provided by section 52.

(2) This section applies to -

- (a) a certificate or other document issued, granted, given, or made under this Act or purporting to be issued, granted, given or made under this and signed, or purporting to be signed, by any person required or authorised by this Act to issue, grant, give or make any such certificate or document;
- (b) an endorsement made, or purporting to be made, under this Act and signed, or purporting to be signed, by any person required or authorised by this Act to make any such endorsement; and
- (c) a certificate given or made by the Registrar asserting the negative of any circumstances, fact or thing.

Admissibility of documents in evidence

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

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

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

Proceedings on forfeiture of ship

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

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

Automatic registration of certain ships

54. A ship -

- (a) that was, immediately before the commencement of this Act, registered in accordance with the Merchant Shipping Acts of the United Kingdom in Kiribati; and
- (b) that is wholly owned by a qualified person or by persons each of whom is a qualified person,

shall immediately upon receipt by the Registrar of an application under this section by the owner or owners' accompanied by evidence to the satisfaction of the Registrar that registry under the Merchant Shipping Acts of the Parliament of the United Kingdom has been closed, be deemed to be registered under this Act, and the Registrar shall issue a certificate of registry accordingly.

Offences

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

Proportion of crew to be citizens

56. The master or owner of a ship registered under this Act who suffers or permits the ship to go to sea knowing the ship to have a crew consisting of less citizens of Kiribati than the prescribed proportion of the crew, is guilty of an offence.

Surveyors

57. (1) The Minister may, by notice published in the Gazette, appoint as many persons, including corporations and unincorporated bodies of persons, to be surveyors of ships as, in his opinion, are necessary for the purposes of this Act.

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

(3) A nomination under subsection (2) shall be notified to the Registrar and on receiving such notification the Registrar shall cause to be published in the Gazette notice of that nomination.

Recovery of fines or distress

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

Application

59. Subject to this Act, all laws in force in Kiribati at the date of commencement of this Act relating to Merchant Shipping shall continue in force after the commencement of this Act and shall have full force and effect except where they are inconsistent with any of the provisions of this Act and to the extent of any inconsistency the provisions of this Act prevail.

Contravention of International Conventions

60. When, in respect of a ship that is registered under this Act, there is any contravention of any of the International Conventions set forth in the Second Schedule, the Registrar may suspend the certificate of registry for the ship until the contravention is rectified.

Regulations

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

- (a) the manner of doing, and the fees payable in respect of, any matter or thing that is required or permitted to be done under this Act;
- (b) forms to be used for or in connection with this, Act;
- (c) the means by which, and the conditions subject to which, a ship of a class of ship may be exempted from compliance with the Regulations or any provisions of the Regulations; card
- (d) the level of manning on reships registered under this Act and the extent to which those manning any such ship or class of ships shall be citizens of Kiribati, subject to such exceptions as may be prescribed.

(2) The Regulations may make provision for and in relation to the application in Kiribati of any of the International Conventions set forth in the Second Schedule, and any other International Conventions in force from time to time and for that purpose may apply (subject to such modifications, adoptions or exclusion as may be prescribed) any of the Merchant Shipping Acts of the Parliament of the United Kingdom, or of any regulations or rules an made make any such Act, as are specified in the Regulations.

FIRST SCHEDULE

(See 55)

OFFENCES

Section 1
Offence II
Penalty III
12(3)

Marking, and continuation of marks on, ship.
\$1,000 or three months imprisonment or both

12(4)

Concealing, etc., marks on ship

| | |
|--|-------|
| \$2,000 or three months imprisonment or both | 16(3) |
| Illegal use of certificate of registry | |
| \$3,000 or six months imprisonment or both | 16(4) |
| Refusal to deliver certificate of registry | |
| \$1,000 or three months imprisonment or both | 18(5) |
| Failure to deliver | |
| Same | 21 |
| Failure to comply with section | |
| Same | 37(1) |
| Concealment of character of ship | |
| \$3,000 or six months imprisonment or both | 40(2) |
| Failure to hoist National Flag | |
| \$1,000 fine | 40(3) |
| Hoisting of colours other than National Flag | |
| \$1,000 fine | 41 |
| Failure to comply with directions | |
| \$2,000 or three months imprisonment or both | 46 |
| Incorrect name of ship | |
| Same | 50 |
| False declaration | |
| \$2,000 or six months imprisonment or both | 56 |
| Preparation of crew to be citizens | |
| \$2,000 or three months imprisonment or both | |

SECOND SCHEDULE

(See 60 and 61(2))

INTERNATIONAL CONVENTIONS

The International Convention for Safety of Life at Sea, 1960, as amended.

The International Convention on Load Lines.

The International Regulations for Preventing Collisions at Sea, 1972.

THE MERCHANT SHIPPING ACT 1983

EXPLANATORY MEMORANDUM

1. This Act creates a Shipping Register in Kiribati, and will come into operation on a day to be appointed.
2. The Register will be kept in Betio or in such other place as the Minister may determine, and will be kept by the Registrar of Ships who has yet to be appointed.
3. The Port of Registry under the Act is Betio.
4. Sections 7 and 8 deal with registration and provide that only a qualified person as defined may apply. The Minister has power by Order to certify any person or corporation as a qualified person. Where a ship is owned by qualified person then there has to be an application for registration.
5. Certain ships are exempt under S.8 but generally an owner may apply in his discretion.
6. Further, Government ships or class of Government ships be exempted by Regulation from all or part of the Acts
7. Before city ship even be registered the Act, it has to be surveyed, and fees are to be as prescribed.
8. Section 12 deals with markings of each registered ship.
9. After registration a certificate of registry shall be issued.
10. A registration fee as prescribed is required to be paid on first registration. Thereafter annual registration fees prescribed are payable.
11. Any ship registered under the Act must fly the Kiribati flag.
12. The Act contains the usual provisions as to offences, penalties, legal matters such as registration of mortgages, and generally.
13. The Act also contains provision for minimum manning requirements i.e. for a minimum number or percentage of crew to be citizens of Kiribati. Details to be as prescribed.
14. Under S.61(1) the Minister may make Regulations and these will deal with all matters to be prescribed e.g. as to fees and manning requirements; forms required cord generally.

Michael N. Takabwe
Attorney General