
Merchant Shipping (Amendment) Act (No 2) 1991

TUVALU

MERCHANT SHIPPING (AMENDMENT) ACT 1991

(Act 17 of 1991)

I assent

Toaripi Lauti PC GCMG
Governor-General

15th January 1992

AN ACT to amend the Merchant Shipping Act to make provision for bareboat charter registration, to give the force of law to certain Maritime Conventions, and other incidental matters thereto.

[Commencement 1/2/1992]
GN 11/92

ENACTED by the Parliament of Tuvalu -

Short title

1. This Act may be cited as Merchant Shipping (Amendment) Act 1991.

Commencement

2. This Act shall come into force on such date as the Minister may by notice appoint.

Amendment of s. 8 of Cap 64A

3. Section 8 of the Merchant Shipping Act is hereby amended by –

(1) repealing subsection 2 and substituting the following:

"(2) Where a ship, other than an exempt ship,

(a) is manned by officers and crew, not less than a satisfactory number of which, as determined by the Minister, are citizens of Tuvalu; and

(b) is not registered in any other country; and

(c) in respect of which the Minister's approval for registration has been obtained, the owner or owners of the ship may apply for registration of the ship under this Act."; and

(2) adding to the definition of "qualified person" in subsection (4) the following:

"(d) a person or corporation which maintains an office in Tuvalu, which is staffed by persons, accountable to the Government of Tuvalu on behalf of the owner or owners, at least one of whom is a citizen of Tuvalu."

Amendment of s. 9 of Cap 64A

4. Section 9 of the Merchant Shipping Act is amended by inserting before the word "Except" in subsection (1) the following:

"Subject to the provisions of Division 2A of this Part,".

Addition of new Division 2A to Cap 64A

5. The Merchant Shipping Act is amended by inserting after Division 2 of Part II, the following:

"Division 2A-Bareboat Charter Registration

Interpretation 22A. For the purposes of this Division unless the context otherwise requires:

"bareboat charter" means the contract for the lease or sub-lease of a ship, hereinafter referred to as charter, for a stipulated period of time, by virtue of which the Charterer shall acquire full control and complete possession of the ship, including the right to appoint her master and crew for the duration of the charter but excluding the right to appoint her master and crew for the duration of the charter but excluding the right to sell or mortgage the ship;

"bareboat charter registration" means the registration of a ship in a bareboat charter registry of a ship in a bareboat charter registry under the name of the charter;

"bareboat charter registry" means the registry of the state whose flag the ship is entitled to fly during the period in which the charterer is registered as the bareboat Charterer;

"compatible registry" means a ship of a foreign State declared by the Minister to be a compatible registry in terms of section 22B of this Act;

"day" means calendar day;

"underlying registry" means the registry of the State in which the Owners of a ship are registered as Owners and to which jurisdiction and control will revert upon termination of the bareboat charter registration; and 'underlying register' and 'underlying registration' shall be construed accordingly.

Compatible Registries

22B. Whenever it appears to the Minister that the provisions of the law of a State with regards to bareboat charter registration are compatible with the provisions of this Act, he may declare the ship registry of that State to be a compatible registry for the purposes of this Part of this Act.

Conditions for registration

22C. Notwithstanding anything contained in sections 8 and 9 of this Act, a ship shall be eligible to be registered as a Tuvaluan ship under this Part of this Act provided that:-

(a) the ship is bareboat chartered to a qualified person in terms of section 8 of this Act;

(b) the ship is not a Tuvaluan ship, and is registered in a compatible registry; and

(c) is not registered in another bareboat charter registry; and

(d) the following certified documents are submitted to the Registrar to his satisfaction:

(i) an application for the registration under this Part of this Act made by the Charterer or his authorised agent containing such information as may be required by the Registrar;

- (ii) a declaration of bareboat charter made by the Charterer accompanied by a copy of the charter agreement, which charter agreement shall not be available for public inspection;
- (iii) a transcript or an extract of the underlying registration of the ship which shall include a description of the ship, the owners and, where applicable, all registered mortgages and encumbrances of the ship; and
- (iv) the consent in writing for the ship to be bareboat charter registered in Tuvalu of:

(a) the appropriate authorities of the underlying registry who may be further required by the Registrar to declare that during the period of bareboat charter registration the ship will not be entitled to fly their flag;

(b) the owners of the ship; and

(c) all registered mortgagees.

(2) Any amendments or modifications to the bareboat charter shall within thirty days be produced to the Registrar by the Charterer.

(3) Whenever any amendments or modifications are effected to the underlying registration the charterer shall:-

(a) within seven days from such amendments being effected communicate to the Registrar any such amendments or modifications; and

(b) within thirty days if such amendments or modifications having been entered in the underlying register produce to the Registrar a transcript or an extract of the underlying registration showing such amendments or modifications.

(4) For the purposes of this section, all documents issued other than by government authorities shall be, either signed in the presence of the Registrar or of a Commissioner for Oaths or a Tuvaluan Consular Officer, or else certified by a Notary Public.

Ascertainment of tonnage

22D. The Tonnage of a ship to be registered under this part of this Act shall be ascertained in accordance with the Tonnage Regulations made under this Act:

Provided that at the request of the Charterer the Registrar may accept the tonnage of such ships to be that registered in the underlying registry if he is satisfied that the provisions of the Tonnage Measurement Convention, if applicable to such ship and unless such ship has been exempted from them, have been adhered to.

Name of ship bareboat chartered registered in Tuvalu

22E.(1) Subject to the provisions of subsection (2) of this section a ship shall be registered under this Part of this act by the name under which it is registered in the underlying registry, provided that such name is not already the name of a registered Tuvaluan Ship or a name so similar as to be calculated to deceive.

(2) The name of a ship to be registered or of a ship already registered under this Part of this Act, may be changed, prior or subsequent to registration under this Part of this Act as the case may be, provided the appropriate authorities of the underlying registry, the owners, and the registered mortgages, if any, have consented thereto and provided also that such change is made in accordance with the provisions of section 46 of this Act.

Bareboat charter registration

22F.(1) The Registrar, if satisfied that all conditions for registration specified in this Part and in other Parts of this Act where applicable, have been complied with, and on payment of the prescribed fee shall:-

(a) enter in the Register provided for in section 5 of this Act, all particulars of the ship and its underlying registration, owners and charterers, stating that it is a bareboat charter registration,

the expiry date of such registration, and that the register does not, contain an official record of any mortgages affecting the ship;

(b) inform the appropriate authorities of the underlying registry of the registration under this Part; and

(c) issue a certificate of bareboat charter registration, which shall include the name and particulars of the ship, the name of the home port Funafuti and the expiry date of the registration.

(2) Upon the issue of a certificate of bareboat charter registration all documents issued to the ship by the underlying registry, shall be surrendered to the appropriate authorities of that registry and, within thirty days of the issue of the certificate as aforesaid, the charterer shall make and deliver to the Registrar a declaration to that effect.

Duration of bareboat charter registration

22G. Subject to the provisions of section 22H of this Act the duration of such registration shall be for a period not exceeding the duration of the bareboat charter or the expiry date of the underlying registration, whichever is the shorter period, but in no case for a period exceeding two years.

Extension of bareboat charter registration

22H. (1) At the request of the Charterer or his authorized Agent the Registrar may extend registration and further extend the registration for the remaining period of the charter or until the expiry date of the underlying registry, whichever is the shorter period, but in no case for periods exceeding two years at a time, provided that he has not received any objections to this extension from the appropriate authorities of the underlying registry, the owners and the registered mortgages, if any, within seven days from the Registrar having informed them of such request for extension.

(2) Upon the grant of an extension in terms of subsection (1) of this section, the Registrar shall:-

(a) enter the new date of expiry in the register of the ship;

(b) issue a certificate of extension of bareboat charter registration which shall include the date of expiry thereof; and

(c) inform the appropriate authorities of the underlying registry.

International convention certificates of ship bareboat charter registered in Tuvalu

22I. A ship bareboat charter registered under this Division required to be used with international convention certificates in terms of an international convention to which Tuvalu is a party shall be issued with such certificates under the authority of the Government of Tuvalu:

Provided that where Tuvalu is not a party to such convention a certificate required under that convention may be issued, with the permission of the Registrar, under the authority of the government of the underlying registry.

Jurisdiction over a ship registered under this Division

22J.(1) A ship registered under this Division of this Act shall be deemed to be a Tuvaluan ship and except where otherwise provided shall be under the jurisdiction and control of Tuvalu and shall comply with all the laws applicable to Tuvaluan ships.

(2) A ship registered under this Division shall only fly the National Flag as provided for in this Act.

(3) The home port of a ship registered under this Division of this Act shall be Funafuti and shall be shown on the certificate of bareboat charter registration and shall be marked on the stern in accordance with the provisions of the Act.

Ownership of ship registered under this Division

22K.(1) This Act shall not assert any ownership rights over a ship registered under this Division and it shall have no effect with regards to title and transfer and transmission of such ship or shares therein.

(2) Any transfer of ownership of a ship registered under this Division shall be notified by the charterers to the Registrar, and the registration of the ship under this Division shall be closed unless the new owners, within seven days, have informed the Registrar that they have no objection to the registration of the ship under this Division and, within thirty days of having made such declaration, delivered to the Registrar their consent in writing to such registration.

Payment of fees

22L. A ship registered under this Division shall be subject to the payment of the initial and annual registration fees and of any other fees set out in this Act, or in any regulations made thereunder.

Mortgages and encumbrances

22M. Mortgages and encumbrances may not be registered under this Act in respect of a ship registered under this Division of this Act, and the Registrar shall refuse to register any such mortgages and encumbrances; such power of registration shall remain vested in the underlying registry.

Closure of bareboat charter registration

22N. (1) The Minister may order that the registration of a ship under this Division shall be closed:-

- (a) if any of the provision of this Act, in as far as the same may be applicable to a ship registered under this Division are not complied with; or
- (b) for any reason specified in section 10 of this Act, in as far as the same may be applicable to a ship registered under this Division.

(2) Where the charterer of a ship, registered under this Division desires to close the bareboat charter registration of such ship, he shall make an application to that effect to the Registrar giving all such particulars and information as the Registrar may require for the purpose, and such application made and substantiated be as aforesaid shall be acceded to if all liabilities and obligations in respect of the ship towards the Government of Tuvalu whether for fees, charges, fines or otherwise have been paid.

(3) The Registrar shall close the registration of a ship under this Division and shall make an entry to that effect in the Register, if:-

- (a) the Minister has ordered such closure in terms of subsection (1) of this section;
- (b) a voluntary closure of registry has been requested and such request has been acceded to by the Registrar in terms of subsection (2) of this section;
- (c) the appropriate authorities of the underlying registry, or the owners, or any of the mortgages, if any, have withdrawn their consent to the bareboat charter registration in Tuvalu;
- (d) the registration in the underlying registry has for any reason be terminated;
- (e) the charter lapses or is terminated by any of the parties to it; or
- (f) the period for which the ship has been bareboat charter, registered lapses and no extension has been granted in accordance with 22H of this Act.

(4) Upon the closure of a registration in terms of subsection (3) of this section the ship shall cease to be a Tuvaluan ship and the Registrar shall immediately notify the appropriate authorities of the underlying registry, the owners and the mortgages, if any, of such closure.

(5) The Registrar may refuse to issue a deletion certificate or a transcript of registry showing the closure of registry until:-

- (a) the certificate of bareboat charter registration issued in terms of section 22F of this Act has been surrendered to him; and
- (b) all liabilities and obligations in respect of the ship towards the Government whether for fees, charges, fines or otherwise have been paid.

Bareboat charter registration in a foreign registry

22O. Notwithstanding any other provision of this Act a Tuvaluan ship registered under Division 2 of this Part may be bareboat charter registered in a foreign registry if the Registrar gives his consent in writing thereto in terms of section 22P of this Act.

Consent of the Registrar

22P. (1) The Registrar may give his consent referred to in section 22O of this Act if:-

(a) the ship is registered as a Tuvaluan ship under Division 2 of this Part:

Provided that a ship provisionally registered under Division 2 of this Part shall not be considered as registered for the purpose of this paragraph;

(b) the bareboat charter registry where the ship is to be registered is a compatible registry; and

(c) the following documents are submitted to him;

(i) an application for bareboat charter registration in a foreign registry made by the owners containing such information as may be required by the Registrar;

(ii) the consent in writing to such registration of all registered mortgagees, if any;

(iii) a written undertaking by the owners to surrender the certificate of registration issued under this Act within fifteen days from entry into the bareboat charter registry;

(iv) a written undertaking by the charterer that the Tuvaluan Flag shall not be hoisted during the period of bareboat charter registration; and

(v) a copy of the bareboat charter.

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

(3) For the purposes of this section, all documents issued by the government authorities shall be, either signed in the presence of the Registrar or of a Commissioner for Oaths or of a Tuvaluan Consular Officer, or else certified by a Notary Public.

Name of ship bareboat charter registered in a foreign registry

22Q. (1) Subject to the provisions of subsection (2) of this section a ship registered under Division 2 of this Part shall be bareboat charter registered in a foreign registry by the name under which it is registered under this Act.

(2) The name of a Tuvaluan registered ship bareboat charter registered in a foreign registry may be changed with the written permission of the Registrar, only if such change is being effected also in the bareboat charter registry.

Registration in a foreign bareboat charter

22R. The registration in a foreign bareboat charter registry of a ship registered under this Act not made in accordance with the provisions of this Division shall be null and void.

Bareboat charter registration of a Tuvaluan ship in a foreign registry

22S. (1) Upon the bareboat charter registration of a Tuvaluan ship in a foreign registry:-

(a) the owners shall immediately notify the Registrar of such registration, and within thirty days surrender to the Registrar the certificate of registration issued to the ship under this Act and deliver to the Registrar a transcript or an extract of the foreign bareboat charter registrations; and

(b) the Registrar, if satisfied that such registration has been effected according to the provisions of this Act, shall make an entry thereof in the register of the said ship.

(2) The owners shall immediately notify the Registrar of the closure or lapse of the bareboat charter registration in a foreign registry, and shall within thirty days of the closure of such registry deliver to the Registrar a transcript or an extract of the foreign bareboat charter registration showing such closure.

Obligations while a ship is in a foreign bareboat charter registry

22T. (1) Unless otherwise provided for in this Division, the owners of a Tuvaluan ship bareboat charter registered in a foreign registry shall comply with all the provisions of this Act as if the ship were not so registered in the foreign registry.

(2) During the time a Tuvaluan ship is bareboat charter registered in a foreign registry in terms of the provisions of this Division of this Act:-

(a) notwithstanding the provisions of Division 5 of this Part of this Act, such ship shall not hoist the Tuvaluan Flag; and

(b) notwithstanding the provisions of section 7 of this Act, the home port of such ship shall be that of the foreign bareboat charter registry.

(3) The owners shall, within fifteen days from entry into the foreign bareboat charter registry, make and deliver to the Registrar a declaration to the effect that the name of the foreign home port has been marked on the stern of the ship in lieu of the name Funafuti.

Payment of fees while ship is in a foreign bareboat charter registry

22U. A Tuvaluan ship bareboat charter registered in a foreign registry shall, notwithstanding such registration, continue to be subject to the payment of all the fees set out in this Act, or in any regulation made thereunder, in respect of Tuvaluan ships.

International convention certificates ship bareboat charter registered in foreign registry.

22V. A Tuvaluan ship bareboat charter registered in a foreign registry required to be issued with international convention certificates in terms of an international convention to which Tuvalu is a party shall be issued with such certificates under the authority of the Government of the bareboat charter registry:

Provided that where the State of the bareboat charter registry is not a party to such convention the certificate required under such convention may be issued under the authority of the Government.

Title, mortgages and encumbrances of ship bareboat charter registered in a foreign registry.

22W. (1) Notwithstanding that a Tuvaluan ship may be bareboat charter registered in a foreign registry, all matters with respect to title over the ship, mortgages and encumbrances shall continue to be governed by Tuvaluan 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 persons specified therein.

(3) The registration of any mortgages or encumbrances in the bareboat charter registry shall be null and void.

Termination of bareboat charter registration in foreign registry

22X. (1) The Registrar may withdraw the consent referred to in section 22O of this Act, if any of the applicable provisions of this Act, are not complied with:

Provided that the Registrar shall withdraw such consent if,

(a) the Minister, in the national interests or in the interest of Tuvalu shipping and after giving the owners and the charterers of the ship a reasonable opportunity to make representation has ordered the Registrar to withdraw his consent;

(b) any of the conditions required to be fulfilled in terms of subsection (1) of section 22P of this Act is not so fulfilled;

(c) the charter terminates or is terminated by any of the parties to it.

(2) Upon the withdrawal of the consent of the Registrar in terms of subsection (1) of this section:-

(a) the Registrar shall inform the appropriate authorities of the bareboat charter registry, the owners, the charterers, and the mortgagees, if any, of such withdrawal; and

(b) the bareboat charter registration shall be terminated.

(3) Upon the termination of the bareboat charter registration:-

(a) the Registrar shall make an entry thereof in the register, and the ship shall thereupon be again subject to all the provisions of Tuvaluan law;

(b) within thirty days from the termination of such registration the owners shall make and deliver a declaration to the Registrar that the certificates of a bareboat charter registration has been surrendered to the foreign bareboat charter registry, and thereupon the Registrar, unless the registration of the ship under Division 2 of this Part is also closed, shall again deliver to the owners the certificate of registration which had been surrendered to him in terms of section 22S(1)(a) of this Act; and

(c) within thirty days from the termination of such registration the owners shall deliver to the Registrar a transcript or an extract of register showing that the bareboat charter registration has been cancelled.

Regulations

22Y. Regulations made under this Act shall apply to vessels registered under this Division with such amendments or additions, and to such extent, as may be determined by the Registrar after consultation with the Minister.

Amendment of Part III of Cap 64A

6. The Merchant Shipping Act is hereby amended by repealing Part III and a substituting the following:

"PART III-INTERNATIONAL MARITIME CONVENTIONS

International maritime conventions

47.(1) Subject to this Act, the Safety Convention, the Load Line Convention, the Tonnage Measurement Convention, the Collisions Convention and the Limitation of Liability Convention shall have the force of law in Tuvalu.

(2) Upon notice being given by the Minister in the Gazette the STCW Conventions shall have the force of law in Tuvalu.

Regulations.

48. (1) Regulations made under this Act may make provision for the implementation of any or all of the Conventions referred to in section 47 of this Act.

Penalties

(2) Regulations made under this Act may provide for:-

(a) the payment of fees; and

(b) penalties for failure to observe or comply with requirements of any of the conventions referred to in section 47 of this act.

Transitional.

49. For the avoidance of doubt, where any of the International Conventions referred to in section 47 of this Act has been purportedly brought into effect by regulations made under the Act, then that Convention shall be deemed to have been given the force of law from the date, and all actions taken pursuant to the terms of that Convention shall be deemed to have been validly taken, and any such regulations shall be deemed to have been validly promulgated".

Amendment of s.84 of Cap 64A

7. Section 84 of the Merchant Shipping Act is amended by inserting after the word "agreement" in paragraph (a), the following:

"including a requirement that the agreement receive the approval of the Minister:".

Amendment s.139 of Cap 64A

8. Section 139 of the Merchant Shipping Act is amended by repealing subsection (1) and substituting the following:-

"(1) The Minister may by notice, appoint surveyors of ships for the purposes of this Act, from societies which are members of the International Association of Classification Societies".

Amendment of Schedule 1 of Cap 64A

9. Schedule 1 of the Merchant Shipping Act is hereby amended by:

(1) inserting after the word "length" and its definition the following:-

"Limitation of Liability Convention" means the International Convention relating to the Limitation of the Liability of the Owners of Sea-Going Ships, signed at Brussels on 10th October 1957.

(2) inserting after the word "ship" and its definition, the following:

"STCW Convention" means the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers 1978."

I certify that this is a correct copy of the Bill passed by the Parliament of Tuvalu on the 17 December 1991.

A lelemia
Clerk of Parliament

I certify that his Bill is in order for the assent of the Governor-General as Head of State.

F P Teo
Acting Attorney-General
15th January 1992

Published by exhibition at the Public Office of the Government this 16th day of January 1992.

A Kilei
Acting Secretary to Government