



MERCHANT SHIPPING (REGISTRATION OF FOREIGN VESSELS) ACT 2012

Act No. 316

Arrangement of Sections

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# MERCHANT SHIPPING (REGISTRATION OF FOREIGN VESSELS) BILL

A Bill for an Act to make provision for the registration of foreign ships; and for purposes incidental thereto and connected therewith

## PART I - PRELIMINARY

### 1 Short title

This Act may be cited as the Merchant Shipping (Registration of Foreign Vessels) Act 2012.

### 2 Commencement

- (1) This Act comes into force on a date to be appointed in an enactment of Cabinet made in accordance with Article 13 of the Constitution of Niue.
- (2) One or more enactments may be made under subsection (2) bringing different Parts into force on different dates.

### 3 Definitions

(1) In this Act, unless the context otherwise requires -

“agent” means an agent appointed under section 4 (3);

“appropriate tonnage certificate” means -

(a) in the case of a Tonnage Measurement Convention ship, an International Tonnage Certificate as specified in Annex II of the International Convention on Tonnage Measurement of Ships, 1969; and

(b) in any other case, a Niue Tonnage Certificate as prescribed;

“authorised officer”, in relation to any provision of this Act, means a person designated, under section 143 (b), as an authorised officer for the purpose of this Act, or for the purposes of that provision;

“bareboat charterer” means the contract for the lease or sub-lease of a ship for a stipulated period of time by virtue of which the charterer acquires full control and complete possession of the ship, including the right to appoint the master and crew for the duration of the charter but excluding the right to sell or mortgage the ship;”

“bankruptcy” includes insolvency;

“certificate of competency” means a certificate issued to a person under section 77 which entitles the person to be employed in the capacity stated in the certificate;

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



**"the Court"** means the High Court of Niue or as defined in the context of this Act;

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

**"crew agreement"** means an agreement entered into under section 87;

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

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

**"exemptions"** refer to any power conferred by this Act to provide for or grant an exemption includes power to provide for or grant the exemption subject to conditions;

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

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

**"foreign owner"** means a person or legal entity having the legal capacity to own a ship as the Cabinet may by regulations prescribe who, if a person, is not a resident of Niue and if a legal entity is not established under the laws of Niue; and in both instances, may not ordinarily reside or have a place of business in Niue, except that an International Company incorporated under an International Companies Act may be a foreign owner.

**"foreign trade"** means trade between Niue and a foreign country or between one foreign country and another and includes transportation of goods between the ports of Niue and ports of foreign countries and between the ports of one foreign country and another.

**"foreign vessel"** means a sea-going ship of any type, class, size or weight, including any exempt ship, engaged in any kind of trade, service or international maritime activity, including a ship for leisure and recreation, owned by a foreign owner.

**"foreign vessel administrator"** means the Authority appointed by the Niue Public Service Commission to administer the registration of foreign vessels under this Act;

**"going to sea"** in relation to a ship shall, for the purpose of this Act, be deemed to have -

- (a) gone to sea; or

(b) been taken or sent to sea.

if the ship has got under way for the purpose of -

(c) going to sea;

(d) plying or running; or

(e) proceeding on a voyage;

except if by reason only that the ship has been got under way for the purpose of moving the ship from one berth or place in a port to another berth or place in the port.

**"Government ship"** means a ship that belongs to the Government or to an authority or instrumentality of the Government, or that is held by any person on behalf of, or for the benefit of, the Government;

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

**"inspector"** means a person designated under section 143(a) as an inspector;

**"International Maritime Conventions"** has the meaning given in section 47;

**"international voyage"** means a voyage from a port or place in Niue to a port or place outside Niue, or conversely;

**"length"**, in relation to a ship, means -

(a) the length shown in the ship's certificate of registry or tonnage certificate; or where

(b) the ship does not possess either of those certificates or where the length is not shown on either of those certificates, the length as determined by an inspector;

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

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

**"Minister"** means the Minister responsible for the Registrar of Foreign Ships and Registrar of Seafarers (Foreign Ships) within the meaning of the Act.

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

**"National Flag"** means the National Flag of Niue;

**"near coastal voyages"** means voyages and trade within coastal waters up to 30 nautical miles from the coastlines of any land;

**"Official Log Book"**, in relation to a ship, means the Official Log Book kept under section 116;

**"owner"** means a person or legal entity having the legal capacity to own a ship as the Cabinet may by regulations prescribe and shall include "foreign owner" as defined in the Act;

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

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

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

**"prescribed fees"** means all fees in relation to the registration of foreign ships;

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

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

**"the Registrar"** means the person holding the office of Registrar of Ships;

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

**"the Registrar of Seafarers"** means the person holding the office of Registrar of Seafarers;

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

**"seafarer", "seafarers", "seaman" or "seamen"**, in relation to a ship, means a person, other than -

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

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

**"ship"** includes -

- (a) in relation to the ownership of a ship, a share in the ship and any interest in the ship or share; and
- (b) every description of vessel used, or capable of being used, in navigation by water, but does not include -

(c) a vessel ordinarily propelled by oars or paddles;

(d) a vessel belonging to the defense force of any other country; or

**"STCW"** means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, as amended;

**"suspended person"** means a person whose name is included in the list of suspended persons kept under section 108;

**"surveyor"** means a surveyor of ships appointed under section 142 and includes a person in respect of whom a notification given under section 142 (4) has been notified and has not been cancelled;

**"this Act"** means the Merchant Shipping (Registration of Foreign Vessels) Act 2012 and any amendment thereof and includes the Regulations;

**"Tonnage Measurement Convention"** means the International Convention on Tonnage Measurement of Ships 1969;

**"Tonnage Measurement Convention ship"** means a ship that is –

(a) of a kind to which the Tonnage Measurement Convention applies; and

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

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

**"Niue waters"** means the internal waters, territorial sea and, where applicable, archipelagic waters of Niue, all as defined by or under the Territorial Sea and Exclusive Economic Zone Act 1996;

**"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.

**"vessel"** means a sea-going ship of any type, class, size or weight engaged in any kind of trade, service or international maritime activity, including a ship for leisure and recreation, owned by an Owner and shall include any ship and foreign vessel as defined in the Act.

## PART II - REGISTRATION OF SHIPS

### *Division 1 – Establishment of the Niue Foreign Vessel Administration*

- (1) There is hereby created Niue Foreign Vessel Administration to be headed by the Foreign Vessel Administrator who shall be appointed by the Niue Public Service Commission.
- (2) The Foreign Vessel Administrator shall have the powers and functions of the Registrar and Registrar of Seafarers in relation to the registration of foreign vessels.
- (3) The Foreign Vessel Administrator may from time to time appoint such persons, as he may think fit, as agents.
- (4) The Foreign Vessel Administrator or his or her agent is authorised-
  - (a) to issue all such licenses, certificates or other documents as are necessary or proper for carrying out the purposes of this Act or of any international convention to which Niue is or may become a party;
  - (b) to suspend or to revoke any license, certificate, permit or document issued under this Act if their provisions are violated; and
  - (c) to operate the Register which shall be kept in an office at the place where the Foreign Vessel Administrator is located and also at the homeport.
- (5) The Foreign Vessel Administrator or an agent shall not be liable to damages or otherwise for any loss accruing to any person by reason of any act done or default by them in their official capacity.
- (6) The Foreign Vessel Administrator's office shall maintain all of the following documents -
  - (a) certificates of permanent and provisional registry and licences;
  - (b) bill of sale and other instruments of conveyance of vessel;
  - (c) mortgages of vessel;
  - (d) assignments of mortgages; and
  - (e) all other documents relating to a vessel which are entitled to be recorded.

*Division 2 - The Registrar and Register of Ships*

**5 The Registrar and Register of Ships**

- (1) There shall be an office of Registrar of Ships which shall be a public office.
- (2) The Registrar of Ships shall be appointed by the Niue Public Service Commission.
- (3) Subject to Section 4 (4) (c), the Registrar shall cause to be kept at Alofi and at the place where the Foreign Vessel Administrator is located a Register (to be known as the Register of Ships), in such form as the Registrar determines.

- (4) The Registrar shall cause to be entered in the Register particulars of all ships registered under this Act, the other entries which are required by this Act to be entered in the Register and particulars of such other matters as he thinks fit.

*Division 3 – Registration of Ships*

**6 Provisions relating to registration**

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

- (1) the property in a ship shall be divided into 64 shares;
- (2) 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;
- (3) a person shall not be entitled to be registered as owner of a fractional part of a share in a ship, but any number of persons not exceeding 5 may be registered as joint owners of a ship or of any share or shares in the ship;
- (4) joint owners shall be considered as constituting one person only as regards the person entitled to be registered, and shall not be entitled to dispose severally of any interest in a ship, in respect of which they are jointly registered;
- (5) a corporation shall be registered as owner by its corporate name;

**7 Port of registry**

The port of registry of every ship registered under this Act shall be Alofi, and the port of registry shall be shown on the Certificate of Registry.

**8 Registration of ships**

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

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

- (2) Where a ship, other than an exempt ship, -
  - (a) is a foreign vessel engaged in foreign trade as defined in this Act; and

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

(c) is owned by a person defined as a foreign owner or any legal entity having the legal capacity to own a vessel as the Cabinet may, by regulations prescribe,"

the owner or owners of the ship may apply for registration of the ship under this Act.

(3) A vessel registered in accordance with this Act shall be entitled to fly the Niue flag.

(4) In this section,

"exempt ship" means a ship

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

(b) that is engaged solely in domestic commerce;

"qualified person" means

(a) a person who is not a resident of Niue;

(b) a corporation not established by an Act of Niue;

(c) a corporation, except for an International Company incorporated under an International Companies Act,

(d) not established or registered in Niue; and

(e) not having a place of business in Niue.

## **9 Restriction on registration of ship**

(1) No vessel engaged in foreign trade shall be documented under the laws of Niue or be accorded the rights and privileges of a Niue vessel unless such vessel shall be registered in accordance with the provisions of this Act.

(2) A foreign vessel which is not registered under section 8 shall not be recognized -

(a) in Niue or for the purposes of this Act as a Niue ship; or

(b) as being entitled to the rights and privileges accorded to Niue ships.

## **10 Ship not entitled to be registered**

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

to produce evidence to the satisfaction of the Minister that the ship should continue to be so registered.

- (2) If within such time as may be determined by the Minister, not being less than 60 days, the evidence referred to in subsection (1) is not produced, the ship is liable to forfeiture.

## **11 Survey and measurement of ship**

- (1) Subject to subsection (4), a ship shall, before registry, be surveyed by a surveyor and, subject to subsection (3), its tonnage shall be ascertained by the surveyor in the prescribed manner, and the surveyor shall grant the appropriate tonnage certificate specifying the ship's tonnage and build and such other particulars as may be prescribed.
- (2) The appropriate tonnage certificate granted under subsection (1) in respect of a ship shall, before the ship is registered, be delivered to the Registrar.
- (3) Subject to subsection (4), where a ship which is not registered under this Act has been measured and registered under the law of a foreign country, or has already been measured without having been so registered, the surveyor may, for the purposes of subsection (1), accept and use any suitable figures of measurement contained in the latest register relating to that ship or, in the case of an unregistered ship, in the latest certificate of measurement relating to that ship.
- (4) Before acting under subsection (3), a surveyor shall satisfy himself that there have been no changes of measurement since the making of the register or certificate which he proposes to use, and where any such changes have been made, he shall remeasure the ship to the extent made necessary by those changes.

## **12 Names, numbers and marking of ship**

- (1) Every registered ship shall have her name marked upon each bow and upon the stern. The homeport of ship shall also be carved upon the stern. These names shall be painted or gilded, or consist of cut or carved or cast Roman letters in light colour on a dark background, or in a dark colour on a light background, secured in place and distinctly visible. The smallest letter used shall not be less than one hundred millimetres in height.
- (2) The draft of every registered vessel shall be marked on each side of her stem and upon the sternpost, in metres or in decimetres, in either Arabic or Roman numerals. The bottom of each numeral shall indicate the draft to that line.
- (3) Upon initial registration of a vessel, the Registrar shall assign to the vessel an official number.
- (4) 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.



- (5) 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.
- (6) An owner or master of a ship registered under this Act who fails to keep permanently continued the marks placed on a ship under this section is guilty of an offence.
- (7) 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.
- (8) 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.
- (9) The Minister may, by notice, exempt the owner or master of any ship or class of ships from complying, either in whole or in part, with the requirements of this section.

### 13 **Application for registration**

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

**14 Declaration of ownership on registry**

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

**15 Registration of ships procedure**

- (1) Where the requirements of this Act relating to a ship before registry have been complied with, the Registrar shall, on payment of the prescribed fee, register the ship by allotting to the ship an official number and by entering in the Register the name of the ship, the official number allotted to the ship and such other particulars in respect of the ship as are prescribed.
- (2) The Registrar shall not register a ship by a name by which a ship is already registered under this Act or, except in accordance with the direction of the Minister, by a name that is, in the opinion of the Registrar, undesirable.
- (3) Where a ship has been registered under subsection (1), the registrar shall retain those of the documents submitted in connection with the application for registration as are prescribed.

**16 Certificate of registry**

- (1) The vessel's document shall be called the "Certificate of Registry".
- (2) The Registrar or his or her duly authorized agent shall prescribe and furnish forms of Provisional and Permanent Certificate of Registry.
- (3) The Registrar may prescribe endorsements that may be made on vessel documents from time to time with or without issuance of a new document or surrender of the old document.
- (4) 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.
- (5) 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.
- (6) A master or owner of a ship who used for the navigation of a ship, a certificate of registry not legally granted in respect of the ship is guilty of an offence.

- (7) A person -
- (a) who has in his possession or under his control the certificate of registry of a ship; and
  - (b) who refuses, or fails without reasonable cause, to deliver the certificate on demand to -
    - (i) the person entitled to its custody for the purposes of the lawful navigation of the ship;
    - (ii) any other person entitled by law to require its delivery,
- is guilty of an offence.
- (8) The Certificate of Registry shall be used only for the lawful navigation of the vessel.
- (9) The Certificate of Registry shall not be subject to detention by reason of any title, lien, charge or interest whatsoever had or claimed by an owner, mortgagee or another person to, on or in the vessel.
- (10) Except as otherwise provided therein, section 19 (4) shall apply where the Certificate of Registry of a Niue vessel is mislaid, lost or destroyed.
- (11) The owner of a Niue vessel may make written application to close its registry if there is no:
- (a) unsatisfied mortgage entered in its register;
  - (b) unpaid fees under this Act with respect to the vessel; and
  - (c) outstanding claims of the master or seamen of the vessel in respect of wages which have been notified to the Registrar or the agent.
- (12) The application shall specify the name of the vessel, the intended port and country or registry (if applicable) or otherwise the reason for the closure. On receipt of the application, and satisfied of the matters mentioned above, the Registrar or the Agent shall close the registry of the vessel.
- (13) Any officer designated by the Registrar may at all times inspect the Certificate of Registry. A Master who fails to exhibit the same, when required by such officer, shall be liable to a penalty of ten penalty units, and if his failure is willful shall be liable to a penalty of not more than 1,000 penalty units or imprisoned for not more than one year, or both.

#### **17 Power to grant new certificate**

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

18 **Provisional and permanent registration**

- (1) Where, at a place outside Niue, a ship becomes wholly owned by a qualified person, or by persons each of whom is a qualified person, or becomes a Government ship, a person authorised by the Minister for that purpose, may grant to the master of the ship, on his application, a provisional certificate of registry stating -
  - (a) the name of the ship;
  - (b) the best particulars respecting the ship's tonnage, build and description which the representative or person is able to obtain.
- (2) A person granting a provisional certificate of registry shall forward a copy of any provisional certificate of registry granted by him under subsection (1) to the Registrar at the first convenient opportunity.
- (3) A provisional certificate of registry granted under subsection (1) is deemed to be a certificate of registry granted under section 16 until the expiry of up to 180 days after the date on which it was granted.
- (4) The Registrar 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) for up to another 180 days.
- (5) An application for permanent registration of a vessel under this Act shall be submitted to the Registrar who may issue a permanent Certificate of Registry for the vessel provided that the owner furnishes satisfactory proof to the issuing officer -
  - (a) as to the vessel's ownership;
  - (b) that any foreign marine document for the vessel has been surrendered with the consent of the government that issued it or has been legally cancelled;
  - (c) that the vessel, and in the case if it is over fifteen years old, has passed an inspection report and meets the highest classification requirements of one of the Classification Societies under section 142(1);
  - (d) that the owner has paid to the Registrar or his or her designee a sum equal to the initial registration fee;
  - (e) that the markings of name, official number, homeport and draft required by this Act have actually been made; and
  - (f) certificate of measurement has been issued.
- (6) There shall be no documents granted or papers issued to a vessel until all applicable provisions of this Act and regulations have been complied with.

- (7) Any person who wilfully and with intent to defraud destroys makes or concurs in making any false entry in or omits or alters or concurs in omitting or altering any particulars under this Act shall be liable to a fine of 50 penalty units, and in the case of a continuing offence, to further fine of 20 penalty units for each day, subsequent to the days on which he is convicted, during which the offence continues.

## 19 Oaths and Loss of certificate of registry

- (1) In order to register a vessel under this Act, the owner shall declare, in the prescribed manner, the name of the vessel, its tonnages, the place where built, the date when built, the name and residence of any other owner and his citizenship, each owner's proportion, and the name of the affiant and his citizenship.
- (2) The oath shall be taken before a notary public or an officer authorised to administer oaths pursuant to the Oaths and Statutory Declarations of the laws of the place where the oath is administered.
- (3) The oath of any other person interested and concerned in the vessel shall not be required. An agent or attorney who purchases any vessel shall take oath as to the ownership of the vessel and that he is the agent or attorney for the owner and in such capacity has made such purchase in good faith.
- (4) If the document of a vessel is lost or destroyed, the Master, or other person in command, may take the following oath at or nearest to the port where the vessel is first located after such loss or destruction before any person as prescribed in subsection (2) of this regulation:

"I, (insert name of the person swearing) being Master or in command of the (insert type of vessel) or vessel called the (insert name of the vessel) Official No. (insert No.) owned by (insert name of the owner) of (insert domicile of the owner) do swear (or affirm) that the said vessel has been, as I verily believe, registered according to the laws of Niue by the name of (insert again name of vessel), and that a Permanent (or Provisional) Certificate of Registry bearing No. (insert No. of lost Certificate) was issued for such vessel pursuant to the laws of Niue at (insert date of issuance of lost certificate), which certificate has been lost (or destroyed); and that the same, if found, and within my power, will be delivered up to the Registrar of Ships."

- (5) Where an oath is taken in the foregoing form, the officer or person administering such oath shall grant to the vessel a temporary Provisional Certificate of Registry and insert therein that it is issued in lieu of the one lost or destroyed. The officer or person shall forthwith send to the Registrar a written notice, accompanied by a copy of the oath, advising that such oath has been taken and such temporary Provisional Certificate issued. Upon receipt of such notice the Registrar, upon being satisfied that the vessel is entitled to a Certificate of Registry, may grant a new Certificate of Registry, identical with that which was lost or destroyed. As soon as practicable after the issuance of such a Certificate of registry, the temporary Provisional Certificate hereinbefore referred to must be surrendered to the Registrar.

20      **Lost of Ship or Change in ownership**

(1) Where -

(a) a ship registered under this Act is either actually or constructively lost, taken by the enemy, burnt or broken up;

(b) there is such a change in the ownership or in the qualification of any owner;

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

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

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

(4) If, within 60 days after notice is given to the mortgagee under subsection (3), an application is not made to the Court for an order under subsection (5), the registry of the ship in the Register shall, subject to subsection (7), be deemed to be closed on the expiration of that period.

(5) If, before the expiration of the period of 60 days referred to in subsection (4), or within such further time as the Court, on an application made either before or after the expiration of that period allows, an application is made to the Court for an order under this subsection, the Court may order the sale of the ship and direct that the proceeds of the sale, after deducting the expenses of the sale, be paid first to the mortgagee or, if there are two or more mortgages, to the mortgagees in order of priority and, after satisfaction of the mortgage or mortgages, to the owners of the ship.

(6) Where the Court grants an application for an extension of time within which an application for an order under subsection (5) may be made, it may grant the extension on such terms and conditions as to costs and otherwise as it thinks just.

(7) On an application for an order under subsection (5), 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.

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

## 21 Change of Ship Particulars

- (1) Where a ship registered under this Act is so altered as not to correspond with the particulars relating to the appropriate tonnage certificate or to the description of the ship contained in the Register, the owner of the ship shall, within 21 days, make, or cause to be made, to the Registrar an application in writing to register the alteration.
- (2) An owner of a ship who refuses or fails to comply with the provisions of subsection (1) is guilty of an offence.
- (3) An application made under subsection (1) shall be accompanied by the appropriate tonnage certificate.
- (4) The Registrar, upon receipt of an application under subsection (1) and upon receipt of the prescribed fee (if any), shall cause the alteration to be registered.
- (5) In causing the alteration of a ship to be registered, the Registrar shall cancel the certificate of registry and shall grant a new certificate of registry.
- (6) The Registrar may change the name of a Niue vessel on application of the owner and the payment of the prescribed fee. In the event of change of the vessel name the Registrar shall issue a new Certificate of Registry to the owner.
- (7) The Registrar shall establish necessary rules and procure necessary evidence as to age, condition, where built, and pecuniary liability of the vessel so as to prevent injury to public or private interests. The person desiring the change of name shall pay the prescribed fee of procuring evidence.
- (8) If the name of a Niue vessel is changed by any device or contrivance with intent to deceive as to its true name or character such vessel shall be liable to be struck off from the Register.

## 22 Bareboat Charters

- (1) This section applies to any ship which –
  - (a) is registered under the law of a country other than Niue; and
  - (b) is chartered on bareboat charter terms to a bareboat charterer who is a qualified person.
- (2) Subject to subsection (3), a ship to which this section applies may be registered as a foreign vessel upon application from the charterer.
- (3) No ship to which this section applies may be registered as a foreign vessel without the prior approval in writing of the underlying registry.
- (4) The registration of a ship registered under this section shall remain in force (unless terminated earlier under this Act) until the end of the charter period and shall then terminate.

(5) During the period of registration under this section, no title, deed, mortgage or other document shall be registered with the Registrar, and all such documents shall be registered at the vessel's underlying registry.

(6) Where -

(a) a foreign vessel registered under this Act is chartered on bareboat charter terms; and

(b) the Registrar receives a request in writing from the owner or owners of such ship for the Registrar's consent to such ship being registered in a country other than Niue in a manner similar to that provided for under this section,

the Registrar may give his consent in writing.

#### *Division 4 - Transfers and Transmission*

### **23 Transfers by Bill of Sale**

(1) The ownership of a ship registered under section 8 (1) or 8 (2) shall be transferred by a bill of sale followed by the delivery of the vessel to the purchaser.

(2) A bill of sale shall -

(a) be in the prescribed form;

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

(c) be authenticated by a notary public in the place where the bill of sale is executed

before the bill of sale can be registered at the office of the Registrar.

(3) The execution by the purchaser of a protocol of delivery and acceptance shall be deemed sufficient evidence that the vessel has been delivered to the purchaser.

(4) The registration of the title to the vessel at the office of the Registrar shall be necessary to complete the vessel's registration and the permanent registration of a mortgage thereon.

### **24 Declaration of transfer**

(1) Where a ship registered under this Act is transferred, the transferee is not entitled to be registered as owner of the ship until he or in the case of a corporation, a person authorised by this Act to make declarations on behalf of the corporation, has made and signed a declaration of transfer in the prescribed form referring to the ship and

(a) containing -



- (i) statements that show that the transferee is a qualified person, or, where there is more than one transferee, that each transferee is a qualified person; and
  - (ii) a statement that to the best of his knowledge and belief, only a qualified person, or persons each of whom is a qualified person, is or are entitled as owner to any legal or beneficial interest in the ship or a share in the ship; or
- (b) as the case may be, containing a statement that paragraphs (a) and (b) of section 8 (2) apply in relation to the ship.
- (2) This section does not apply in relation to a ship registered under this Act which, on transfer, becomes a Government ship.

**25 Registration of transfer**

- (1) Every bill of sale for the transfer of a ship registered under this Act, when duly executed, shall be produced to the Registrar with the declaration of transfer referred to in section 24 for sighting and entry into the Register.
- (2) Bills of sale of a ship registered under this Act shall be entered in the Register in the order of their production to the Registrar.

**26 Transmission of ship without bill of sale to qualified person**

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

**27 Transmission of ship without bill of sale to unqualified person**

- (1) Where the property in a ship registered under this Act is transmitted on death or bankruptcy or otherwise and as a result the ship would not if application were than made, qualify for registration under section 8 (1) or 8 (2), the Court may, on application by or on behalf of that person or one or more of those persons, order a sale of the property so transmitted, and direct that the proceeds of the sale, after

deducting the expenses of the sale, be paid to the person or persons entitled under the transmission or otherwise as the Court directs.

- (2) The Court may require any evidence it thinks fit in support of the application and may make the order on any terms and conditions it thinks just or may refuse to make the order, and generally may act in the case as the justice of the case requires.
- (3) An application under this section shall be made within 60 days after the occurrence of the event on which the transmission has taken place, or within such further time (not exceeding in the whole one year from the date of the occurrence) which the Court allows.
- (4) If the application is not made within the time specified in subsection (3) or if the Court refuses an order for sale, the ship transmitted is liable to forfeiture.

**28 Transmission of ship due to Court sale**

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

**29 Transmission of ship prohibited by Court**

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

*Division 5 - Mortgages*

**30 Record of mortgage**

- (1) The vessel registered under this Act may be made a security for a loan or other valuable consideration or to meet any lawful obligation in the present or future, and the instrument creating the security (in this Act referred to as "a mortgage") shall be in the prescribed form.

- (2) The mortgage, duly executed by the owner or his or her authorized representative, shall be registered at the office of the Registrar in order to create *in rem* rights against the vessel.
- (3) The Registrar, on the production to him of a mortgage, shall register the mortgage by making an entry of the mortgage in the Register.
- (4) 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.
- (5) The deed of the mortgage may be executed in the form prescribed by the Registrar made hereunder and shall contain the following information-
  - (a) names and addresses of the mortgagor and the mortgagee;
  - (b) maximum amount secured by the mortgage, including (in addition to the capital) all interest accrued, costs, collection expenses, any amounts resulting from currency fluctuations and other sums agreed between the parties;
  - (c) maturity dates of both capital and interest or the manner of determining these dates, unless the mortgage has been executed as security for obligations repayable on demand or as security for future obligations or for obligations which have not arisen at the date of execution of the mortgage;
  - (d) rate of interest payable (in cases where the parties have agreed on the payment of interest), or the manner of determining such rate of interest;
  - (e) full description of the vessel, including its tonnage, dimensions, registrations number and radio call sign;
  - (f) any other provisions that may be agreed between the parties.
- (6) The signature(s) on the deed of mortgage shall be authenticated in like manner as provided under section 23 (2) (c) before the deed can be registered at the office of the Registrar.
- (7) The mortgage deed, and/or the underlying loan agreement between the mortgagor and the mortgagee, and/or the deed of covenants or other equivalent document collateral to the mortgage deed between the mortgagor and the mortgagee may stipulate:
  - (a) that the mortgagee may proceed to the private sale of the vessel in the event of default by the mortgagor; and
  - (b) that the legal relationship, rights and obligations of the mortgagor and mortgagee shall be governed by the laws of a state other than Niue to the extent that the laws of the designated state are not contrary to good morals, public order or public policy in Niue.

- (8) A vessel which is subject to a registered mortgage in its previous registry shall deliver the mortgagee's written consent to the transfer of flag not later than sixty calendar days after its provisional registration with the Registrar. A notary public shall notarise such document.
- (9) The mortgagee's written consent, duly notarized, shall also be required for the issue of new certificate of registry due to the transfer of ownership, or the change of name of the vessel or its owner, as well as for the vessel's deregistration.

### **31 Discharge of mortgage**

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

### **32 Priority of mortgages**

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

### **33 Powers of mortgagee**

- (1) Except as may be necessary for making a mortgaged ship available as a security for the mortgage debt, a mortgagee shall not, by reason of the mortgage, be deemed to be the owner of the ship nor shall a mortgagor be deemed to have ceased to be the owner of the ship.
- (2) Subject to subsections (3) and (4), a registered mortgagee shall have power absolutely to dispose of the ship in respect of which he is registered and to give effectual receipts for the purchase money.
- (3) Where there are more persons than one registered as mortgagees of the same ship, a subsequent mortgagee shall not, except under an order of the Court, sell the ship without the concurrence of every prior mortgagee.
- (4) A mortgagee shall not sell the ship subject to the mortgage without the leave of the Court.

- (5) For the purposes of this section, "Court" shall mean any court of competent jurisdiction in a place where a registered mortgagee has filed legal proceedings for the disposal of a vessel or enforcement of a mortgage.

**34 Transfer of mortgage**

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

**35 Transmission of interest in mortgage**

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

*Division 6 - National Character and Flag*

**36 Unduly assuming Niue character**

- (1) If a person uses the National Flag or assumes the Niue national character for or on board a ship which is not registered under this Act for the purpose of making the ship appear to be a ship registered under this Act, the ship is liable to forfeiture unless the use or assumption has been made for the purpose of escaping capture by an enemy or by a foreign ship of war in the exercise of some belligerent right.
- (2) In any proceeding for the enforcement of the forfeiture of a ship under subsection (1), the burden of proving a right to use the National Flag or to assume the Niue national character lies on the person using that flag or assuming that character.

**37 Concealment of Niue character**

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 Niue character of the ship from a person entitled by law to inquire into the character of the ship;
- (d) deceive a person referred to in paragraph (c); or
- (e) assume a foreign character.

is guilty of an offence.

**38 Forfeiture for offence under section 37**

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

**39 National colours**

- (1) The National Flag shall be the proper national colours for a ship registered under this Act.
- (2) A Niue vessel shall hoist the proper national colours on entering or leaving any port.
- (3) 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.
- (4) Where, except with the consent of the Minister or as a courtesy flag when in the waters of a foreign country, any distinctive national colours other than the National Flag are hoisted on board a ship registered under this Act -
  - (a) the master of the ship;
  - (b) the owner if he is on board the ship; and
  - (c) any person hoisting those colours,

are each guilty of an offence.

*Division 7 - Miscellaneous*

**40 Registrar's right to request for information**

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

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

#### **41 Notice of Trust**

- (1) No notice of any trust express, implied or constructive, shall be entered in the Register 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.

#### **42 Beneficial interest**

- (1) The expression "beneficial interest" where used in this Act includes interests, and the intention of this Act is that without prejudice to –
  - (a) the provisions of this Act for preventing notice of trusts from being entered in the Register or received by the Registrar: and
  - (b) the powers of disposition and of giving receipts conferred by this Act on registered owners and mortgagees; and
  - (c) the provisions of this Act relating to the exclusion of unqualified persons from the ownership of ships registered under this Act, interests arising under contract or other equitable interests may be enforced by or against the owner or mortgagee of any ship in respect of his interest in the ship in the same manner as in respect of any other personal property.
- (2) Subject to subsection (3), 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.
- (3) Subsection (2) does not apply to a person having a beneficial interest by way of mortgage, except in the case of a mortgage in possession of a ship.

#### **43 Managing owner**

- (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 master or other person to whom the management of the ship is entrusted by or on behalf of the owner, and any person whose name is so registered shall, for the purposes of this Act, be under the same obligations and subject to the same liabilities as if he were the managing owner.

(3) This section does not apply in relation to a Government ship.

**44 Punishment for offences**

Unless otherwise stated, any person who is convicted by a court of competent jurisdiction of a violation of any of the provisions of this Act shall, upon conviction, be liable to a fine up to the sum of US\$50,000 or to imprisonment for a term not exceeding five (5) years or both.

**45 Registration fees**

(1) The owner of a vessel shall pay the prescribed fee upon first registration and an annual fee.

(2) The Minister, on the recommendation of the Foreign Vessel Administrator, may by notice amend the prescribed fee.

**46 Annual tonnage tax**

(1) The owner of a vessel shall pay the prescribed fee as an annual tonnage tax on his or her vessel on the anniversary of the date of its registration.

(2) If the owner fails to pay the tonnage tax as provided under sub-section (1), the Registrar may cancel the Certificate of Registry of the vessel with respect to which such tax has not been paid.

(3) An unpaid tonnage tax and any other charges including penalties owing under this Act due to Foreign Vessel Administrator shall constitute a maritime lien on the vessel and such lien shall have priority over all others save those for wages and salvage.

**PART III - INTERNATIONAL MARITIME CONVENTIONS**

**47 International maritime conventions**

(1) Subject to this Act, the following International Maritime Conventions shall have the force of law in Niue:

(a) IMO Convention 48

(b) IMO Convention amendments 91

(c) IMO Convention amendments 93

(d) International Convention on Maritime Search and Rescue, 1979 (SAR Convention 1979)

(e) International Convention on Salvage, 1989 (SALVAGE Convention 89)



- (f) Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC Convention 1976)
- (g) Protocol of 1996 to the Convention on Limitation of Liability for Maritime Claims (LLMC) 1976
- (h) International Convention for the Safety of Life at Sea 1974 (SOLAS 1974)
- (i) Protocol of 1978 relating to the International Convention for the Safety of Life at Sea 1974 (SOLAS Protocol 1978)
- (j) Protocol of 1988 relating to the International Convention for the Safety of Life at Sea 1974 (SOLAS Protocol 1988)
- (k) International Convention on Load Lines, 1966, as amended (LOAD LINES Convention 1966)
- (l) Protocol of 1988 relating to the International Convention on Load Lines 1966 (LOAD LINES Protocol 1988)
- (m) International Convention on Tonnage Measurement of Ships, 1969 (TONNAGE Convention 1969)
- (n) International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW Convention 1978), as amended
- (o) Convention on the international Regulations for Preventing Collisions at Sea, 1972 (COLREGS Convention 1972)
- (p) International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 relating thereto (MARPOL 73/78) for Annex I to V
- (q) Protocol of 1997 relating to the International Convention for the Prevention of Pollution from Ships 1973, as Modified by the Protocol of 1978 Relating Thereto (MARPOL Protocol 1997) (Annex VI)
- (r) Protocol of 1992 relating to the International Convention on Civil Liability for Oil Pollution Damage (CLC Protocol 1992)
- (s) Protocol of 1992 relating to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND Protocol 1992)
- (t) International Convention on the Control of harmful Anti-Fouling Systems on ships, 2001 (ANTI FOULING 2001)
- (u) International Convention for the Control and Management of Ship's Ballast Water and Sediments, 2004 (BALLLASTWATER 2004)

(v) International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001

(2) Where under the Convention the countries which are parties to the Convention, as listed in subsection (1) have a discretion as to whether any, and if so what, action should be taken under it, that discretion may be exercised by the Minister.

(3) Where under the Convention the countries which are parties to the Convention, as listed in subsection (1), are required to do any act or thing that act or thing shall be done by the Minister.

#### **48 Regulations**

Cabinet may make regulations for the purposes of the implementation of any or all of the Conventions referred to in section 47 of this Act.

#### **49 Transitional**

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 this 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.

#### **50 Compliance with International Conventions and Agreements**

(1) It shall be the duty of the owner and the Master to ensure that their vessel is in compliance with the requirements of the International Maritime Organisation Conventions, the International Labour Organisation Conventions and other relevant International Instruments as may be specified under this Act.

(2) It shall be the duty of the owner and the Master to ensure that their vessel's personnel are provided with publications, instruction booklets and manuals or other information sufficient to enable their vessel to be operated in accordance with the Conventions referred to in subsection (1).

(3) In the event of failure to comply with subsection (1) or any Conventions or Agreements entered into by Niue, the Registrar may suspend or cancel a vessel's Certificate of Registry and impose a monetary penalty not to exceed US\$50,000, and such other conditions as may be necessary to bring about compliance with maritime or maritime-related Conventions and others which are in force, or the provisions of which are applied by Niue in advance of entry into force.

### **PART IV - SAFETY**

#### *Division 1 - Unsafe Ships*

#### **51 Survey and Safety**

(1) Surveyors of ships are appointed under section 142.

- (2) Every ship shall be surveyed or inspected in accordance with section 11 of the Act.
- (3) No Niue vessel shall proceed to sea unless the required safety certificates are carried on board.
- (4) The Master of a Niue vessel shall produce to the Port Officer at the port from which clearance for the ship is sought for an international voyage the certificate required by the foregoing conventions to be in force when the ship proceeds to sea. A clearance shall not be granted, and the ship may be detained, until the said certificate or certificates are so produced.

## 52 Detention of unsafe ships

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

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

**53 Notice for detention of unsafe ships**

- (1) Where a ship is detained under section 52, the Harbour Master or, as the case may be, the inspector shall give notice in writing to the master setting out the reasons for the detention.
- (2) Where a ship that is registered in a foreign country is detained under section 52, the Harbour Master or, as the case may be, the inspector shall so inform the Minister and the Minister shall -
  - (a) if that foreign country has diplomatic relations with Niue, cause the Consul or other diplomatic representative of that foreign country; or
  - (b) in any other case, cause the Government of that foreign country,to be informed of the detention and of the reasons for the detention.
- (3) Where a ship is detained under section 52, the master may make written representation to the Minister with respect to the release of the ship, and the Minister may, if he considers that in all the circumstances he is justified in doing so, either order the release of the ship or refuse to do so.

**54 Offences in relation to unsafe ships**

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

(b) having regard to the circumstances, the sending or taking, or attempted sending or taking, of the ship to sea was reasonable and justifiable.

(4) The provisions of section 52 (3) and (4) apply for the purposes of this section as they apply for the purposes of section 52.

**55 Failure to carry equipment**

(1) This section applies in relation to a ship registered under this Act.

(2) Where -

(a) a ship referred to in subsection (1) does not carry the equipment which is required to be carried on or fitted to the ship on the voyage by -

(i) any International Maritime Convention implemented in Niue under regulations made for the purposes of section 48, or otherwise having effect in Niue, and applying in relation to the ship; or

(ii) any of the Regulations so applying; or

(b) carries any such equipment which is not in good order and ready for use,

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

*Division 2 - General Safety and Precautions*

**56 Reporting of danger to Navigation**

(1) The master of a ship, not being an exempt ship, shall make a report of any serious danger to navigation on or near the course of the ship in accordance with this section.

(2) A report under subsection (1) shall -

(a) be given -

(i) as soon as possible by radio; and

(ii) to any ship in the vicinity of the danger, to the nearest land earth station in the vicinity of the danger; and

(b) give details of the position and nature of the danger.

(3) The master of a ship who refuses, or fails without reasonable cause, to comply with subsection (1) is guilty of an offence.

(4) The Minister may, by order, exempt any ship, or class of ships, from the requirements of subsection (1), and the reference in subsection (1) to "an exempt ship" shall be construed accordingly.

- (5) In this section - "land earth station" means a facility that routes calls from mobile stations via satellite to and from terrestrial telephone networks

**57 Obligation to provide assistance**

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

**58 Duty to provide assistance in case of collision**

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

**59 Right to salvage**

Compliance by the master of a ship with the requirements of section 57 or 58 shall not affect his right, or the right of any other person, to salvage.

*Division 3 – Carriage of Dangerous Goods*

**60 Definitions for the purposes of Division 3**

In this Division –

- (a) “dangerous goods” means any goods listed as such for the purposes of the IMDG Code;
- (b) “IMDG Code” means the International Maritime Dangerous Goods Code published by the International Maritime Organisation, as amended from time to time.

**61 Power to deal with goods suspected of being dangerous**

The master or owner of a ship registered under this Act may –

- (a) refuse to take on board any package which he suspects may contain dangerous goods;
- (b) open and inspect any package which on reasonable grounds he suspects may contain dangerous goods; and
- (c) discharge, destroy, render innocuous or otherwise deal with any goods which –
  - (i) in his opinion are dangerous goods; and
  - (ii) have been shipped on board the ship without his knowledge and consent,and shall not be subject to any liability of any kind for doing so.

**62 Restriction on carriage of dangerous goods**

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

(iv) the name and address of the shipper;

is guilty of an offence.

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

### **63 Packing of dangerous goods**

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

#### *Division 4 - Carriage of Bulk Cargoes and Grain Cargoes*

### **64 Definitions for the purposes of Division 4**

In this Division -

- (a) "bulk cargo" means a cargo prescribed in the International Maritime Solid Bulk Cargoes (IMSBC) Code;
- (b) "IMSBC Code" means the International Maritime Solid Bulk Cargoes Code, as amended from time to time;
- (c) "grain" includes wheat, maize, oats, rye, barley, rice, pulse and processed forms thereof, whose behaviour is similar to that of grain in its natural state.



65 **Storage and carriage of bulk and grain cargoes**

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

*Division 5 – Marine Casualties and Marine Incidents*

66 **Definitions for the purposes of Division 5**

In this Division –

- (1) “marine casualty” means an event, or a sequence of events, that has resulted in any of the following which has occurred directly in connection with the operations of a ship:
- (a) the death of, or serious injury to, a person;
  - (b) the loss of a person from a ship;
  - (c) the loss, presumed loss or abandonment of a ship;
  - (d) material damage to a ship;
  - (e) the stranding or disabling of a ship, or the involvement of a ship in a collision;
  - (f) material damage to marine infrastructure external to a ship, that could seriously endanger the safety of the ship, another ship or an individual; or
  - (g) severe damage to the environment, or the potential for severe damage to the environment, brought about by the damage of a ship or ships.

However, a marine casualty does not include a deliberate act or omission, with the intention to cause harm to the safety of a ship, an individual or the environment.

- (2) "marine incident" means an event, or sequence of events, other than a marine casualty, which has occurred directly in connection with the operations of a ship that endangered, or, if not corrected, would endanger the safety of the ship, its occupants or any other person or the environment.

However, a marine incident does not include a deliberate act or omission, with the intention to cause harm to the safety of a ship, an individual or the environment.

- (3) "marine safety investigation" means an investigation or inquiry, into a marine casualty or marine incident, conducted with the objective of preventing marine casualties and marine incidents in the future. The investigation includes the collection of, and analysis of, evidence, the identification of causal factors and the making of safety recommendations as necessary.
- (4) "ship" means a ship which, when a casualty occurs in relation to the ship –
- (a) is registered under this Act; or
  - (b) is within Niue waters.
- (5) "Casualty Investigation Code" means the Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident.

#### **67 Investigations and inquires**

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

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

#### **68 Preliminary investigation**

Where the Minister causes a preliminary investigation to be carried out under section 67 the person carrying out the preliminary investigation –

- (a) may –
  - (i) go on board any ship involved in the casualty;
  - (ii) require any person to answer questions relating to the casualty, and
  - (iii) require the production to him/her of any certificate relating to any ship involved in the casualty;
- (b) shall, upon conclusion of the investigation, send to the Minister a report containing a full statement of the case and of his opinion on the case,

accompanied by such report on, or extracts from, the evidence and such observations as he thinks fit.

**69 Marine Inquiry**

- (1) Where the Minister causes a Marine Inquiry to be held under section 67 he shall –
  - (a) appoint a person to conduct the Marine Inquiry, and
  - (b) may nominate assessors to assist the person.
- (2) In any such case where a question as to the cancellation or suspension of a certificate of competency is likely to arise, the assessors nominated under subsection (1) (b) shall hold certificates of equivalent or higher rank to those held by the person whose certificate may be cancelled or suspended; but the proceedings before a Marine Inquiry shall not be challenged on the ground of any alleged failure to comply with the requirement of this subsection.
- (3) The person appointed and any assessor nominated under subsection (1) may –
  - (a) go on board any ship;
  - (b) require any person to answer questions relating to the casualty; and
  - (c) require the production to him/her of any document or certificate relating to any ship involved in the casualty.
- (4) On the conclusion of an inquiry under section 67, the person appointed under subsection (1) shall make a full report in writing to the Minister setting out the results of the inquiry.
- (5) The Regulations may make provisions with respect to proceedings in any Marine Inquiry.

**70 Power of Marine Inquiry as to certificates**

- (1) Where, as a result of a Marine Inquiry, the Inquiry is satisfied that a master or a qualified officer or seafarer –
  - (a) is unfit to discharge his duties because of –
    - (i) incompetence;
    - (ii) misconduct; or
    - (iii) any other reason;
  - (b) has been seriously negligent in the discharge of his duties, or

- (c) has failed to give assistance and information as required by section 58, and, in a case coming under paragraph (a) or (b), is further satisfied that the unfitness or negligence caused or contributed to the casualty, the Marine Inquiry may -
  - (i) order the cancellation or suspension of any certificate of competency or certificate of endorsement, in accordance to STCW Regulation I/10, of the master, qualified officer or other seafarer; or
  - (ii) censure the master, qualified officer or other seafarer.
- (2) Where a cancellation or suspension is ordered under subsection (1) (c) (i) the master, qualified officer or seafarer concerned shall forthwith deliver the certificate to the Registrar of Seafarer for cancellation or suspension.

**71 Failure to deliver certificate for cancellation**

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

**72 Restoration of certificates**

- (1) Where a Marine Inquiry has been held under this Division the Minister may order the whole or part of a case to be reheard, and shall do so if -
  - (a) new and important evidence which could not be produced at the inquiry has been discovered; or
  - (b) there appears to the Minister to be other grounds for suspecting that a miscarriage of justice may have occurred.
- (2) Where a certificate has been cancelled or suspended under this Division by a Marine Inquiry under section 70 the Minister may -
  - (a) on the recommendation of the Marine Inquiry, or
  - (b) if he is of the opinion that the circumstances of the case require it,cause the issue of a new certificate of a lower grade in place of the cancelled or suspended certificate.

**73 Appeals**

- (1) Subject to subsection (2), where under this Division -
  - (a) the certificate of a master, qualified officer or other seafarer is cancelled or suspended;
  - (b) any such person is censured;

(c) the costs or part of the costs of an inquiry are awarded by a Marine Inquiry against any person; or

(d) the Marine Inquiry has found that the casualty has been caused or contributed to by the wrongful act of any person,

the master, qualified officer or other seafarer in the case of (a) or (b), and in the case of (c) or (d) any person who has appeared at the hearing and is affected by the decision of the Marine Inquiry, may appeal to the Court and the Court may make such order as the justice of the case requires.

(2) Where a rehearing has been ordered under section 72, no appeal may be made until the decision of the rehearing has been given.

## **PART V - MASTERS AND SEAFARERS**

### *Division 1 - Introductory*

#### **74 Application**

Subject to this Part and to any exception granted under section 75, -

(a) the provisions of this Part apply in relation to a ship registered under this Act;

(b) the provision of section 76 apply in relation to such vessels as may be prescribed;

#### **75 Exemptions**

(1) Subject to subsection (3), the Minister may, by order, exempt a particular ship or a particular class or description of ships, from any requirement of this Part which would otherwise apply in relation to the ship.

(2) An exemption under subsection (1) may be given in respect of -

(a) a particular period;

(b) one, or more than one, particular voyage; or

(c) generally.

(3) No exemption shall be given under subsection (1) in relation to any prohibition in the Regulations against employing any identified class of persons.

### *Division 2 - Manning and Certification*

**76 Manning**

- (1) A ship shall be manned by such number and grades of persons as Regulations may prescribe.
- (2) An owner or master of a ship who suffers or permits the ship to go to sea without being manned in the manner prescribed is guilty of an offence.

**77 Certificate of competency**

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

**78 Unqualified person going to sea as qualified officer or seafarer**

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

**79 Production of certificate of competency**

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

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

is guilty of an offence.

**80 Disqualification of officer or seafarer**

- (1) Where, in the opinion of the Minister, a master or a qualified officer or seafarer -
  - (a) is unfit to discharge his duties because of -
    - (i) incompetence;
    - (ii) misconduct; or
    - (iii) any other reason;
  - (b) has been seriously negligent in the discharge of his duties; or

- (c) has failed to give assistance and information after a collision, the Minister may cause an inquiry to be held and –
  - (d) shall appoint a person to conduct the inquiry; and
  - (e) may, if he thinks fit, suspend the certificate of competency of the master, officer or seafarer pending the outcome of the inquiry.
- (2) Where a certificate is suspended under subsection (1), the Registrar of Seafarers may direct the master, officer or seafarer to deliver up the certificate to him/her.
  - (3) A master or an officer or seafarer who refuses or fails without reasonable cause, to comply with a direction given under subsection (2) is guilty of an offence.

**81 Inquiry under section 80**

- (1) Where the Minister has caused an inquiry to be held under section 80, the person appointed for the purpose of that inquiry, may –
  - (a) go on board any ship;
  - (b) require any person to answer questions relating to the subject of the inquiry; and
  - (c) require the production to him/her of any document or certificate which, in his opinion is relevant to the inquiry.
- (2) A person appointed for the purpose of an inquiry –
  - (a) may, if satisfied as to any of the matters referred to in section 80 –
    - (i) order the cancellation or suspension of any certificate of competency of the master, officer or other seafarer; or
    - (ii) censure the master, officer or other seafarer.
  - (b) may make such order with regard to the costs of the inquiry as he thinks fit; and
  - (c) shall make a report on the inquiry to the Minister.
- (3) Where a person appointed for the purpose of an inquiry orders the cancellation or suspension of a certificate of competency, the Minister may –
  - (a) cancel or suspend the certificate, as the case requires; or
  - (b) if the Minister considers the administration of a censure more appropriate, censure the master, officer or other seafarer.
- (4) Where, under this section –

- (a) a certificate of competency is cancelled or a censure is administered; or
  - (b) costs of an inquiry are awarded against a master, officer or other seafarer,
- the master, officer or other seafarer concerned may, within 30 days, appeal to the Court which shall make such order as the justice of the case requires.

(5) A person, in holding an inquiry -

- (a) may be assisted by one or more assessors with such qualifications as are prescribed; and
  - (b) shall be assisted, in such circumstances as are prescribed, by two or more such assessors,
- nominated by the Minister.

## 82 Regulations for certificates of competency

Cabinet may make regulations to make provision for and in relation to -

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

## 83 Recognition of certificates

Where a certificate is issued by -

- (a) a member country in accordance with the provisions of the STCW relating to certification of seafarers;
- (b) a party to the STCW in accordance with national legislation giving effect to that Convention; or



- (c) a party to a bilateral or regional treaty, or other arrangement, in accordance with its national legislation,

the Registrar of Seafarers may recognise the certificate for the purpose of issuing a Niue certificate of equivalent or lower grade and validity, and may issue an appropriate certificate of endorsement without the necessity of the applicant for the certificate having to meet the various requirements of that section other than medical fitness in accordance with the provisions of STCW Regulation I/10.

#### **84 Seafarers to hold proper certificates**

- (1) Every person serving on a Niue ship registered under this Act shall hold the appropriate certificate or other qualification for his position in accordance with the provisions of this Act and any regulations made thereunder.
- (2) Where subsection (1) is contravened, the owner of the ship, its master and the person contravening that subsection each commits an offence and shall be liable on conviction -
  - (a) in the case of the owner, to a fine not exceeding US\$10,000 or to a term of imprisonment not exceeding 2 years or to both such fine and imprisonment;
  - (b) in the case of the master, to a fine not exceeding US\$5,000 or to imprisonment for a term not exceeding 1 year or to both such fine and imprisonment; and
  - (c) in the case of the person referred to in subsection (1), to a fine not exceeding US\$1,000 or to a term of imprisonment not exceeding 6 months or to both such fine and imprisonment.
- (3) Certificates and endorsements under this Act shall be in the English language and shall be in such forms as may be prescribed.
- (4) The Registrar of Seafarers may issue a certificate of endorsement under section 83 -
  - (a) subject to such conditions as he considers appropriate; and
  - (b) for any period of validity not exceeding 3 years as he considers appropriate.

#### **85 Continuing fitness and competence**

- (1) The holder of a certificate of competency to be a master or officer who is serving at sea, or who intends to return to sea after a period ashore, shall, in accordance with regulations made under this Act, satisfy the Registrar of Seafarers at regular intervals not exceeding 5 years as to his continuing medical fitness and professional competence for the capacity in which the holder of such certificate intends to serve.
- (2) Where more than 5 years have elapsed since the certificate holder referred to in subsection (1) has -

(a) satisfied the Registrar of Seafarers to his continuing fitness and competence as required by subsection (1); or

(b) performed in a substantial manner, sea-going service,

then without prejudice, but in addition, to subsection (1), the Registrar of Seafarers may require that person to produce evidence that he has performed sea-service, pass tests, oral or otherwise, or attend courses, before certifying that the holder is qualified for sea-going service.

(3) Where the Registrar of Seafarers is satisfied that the holder is fit and competent as required by subsections (1) or (2) for the position, he shall certify that the holder is qualified for sea-going service in the capacity in which the holder intends to serve, and the Registrar of Seafarers may only certify to that effect if satisfied that it will not adversely affect safety of life at sea or harm the public interest.

## 86      **Dispensations**

(1) Subject to the conditions specified in subsection (2), the Registrar of Seafarers may issue a dispensation, to the extent and on such conditions he considers appropriate, permitting a seafarer to serve in a capacity for which he is not properly certificated.

(2) The conditions referred to in subsection (1) are as follows:-

(a) a dispensation shall only be issued in circumstances of exceptional necessity;

(b) the Registrar of Seafarers must be of the opinion that granting the dispensation will not cause danger to persons, property or the environment;

(c) a dispensation shall only be issued to a named individual seafarer to serve on a named specified ship for a fixed period or voyage not exceeding 6 months;

(d) where a dispensation is to be granted to a radio officer or to a radio-telephone operator, the dispensation shall be granted in accordance with the relevant Radio Regulations of the STCW;

(e) the Registrar of Seafarers must be of the opinion that the person to whom the dispensation is to be granted is otherwise suitably qualified to fill the vacant post in a safe manner;

(f) where the dispensation will allow a person to serve as master or chief engineer officer, it shall only be granted in circumstances of force majeure, and only for the shortest possible period;

(g) subject to paragraph (h), a dispensation shall be granted to a person who is properly certificated to fill the post immediately below the vacant one; and

- (h) where a certificate is not required for a lower post, the applicant for the dispensation shall satisfy the requirements of subsection (3) before he is granted the dispensation.
- (3) For the purposes of subsection (2) (h), the applicant for the dispensation shall possess the qualifications and experience that, in the opinion of the Registrar of Seafarers, are of a clear equivalence to the requirements of the post to be filled, and where the person holds no appropriate certificate, he shall pass a test, oral or otherwise, accepted by the Registrar of Seafarers as demonstrating that the dispensation may be safely issued.
- (4) The post referred to in subsection (3) shall be filled by a properly certificated person as soon as possible.
- (5) The Registrar of Seafarers may issue a dispensation in such form as he thinks fit and, where he considers it appropriate, require an applicant for a dispensation to provide evidence of qualification in relevant subjects.

### *Division 3 - Crew Agreements*

#### **87 Crew agreements**

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

#### **88 Prohibition on seeking rewards for employment**

A person who demands or receives, directly or indirectly, from another person seeking employment as a seafarer any remuneration or reward, whether in cash or otherwise, for providing employment to that other person is guilty of an offence.

**89 Regulations for crew agreements**

Cabinet may make regulations to make provision for and in relation to –

- (a) the conditions and particulars to be included in a crew agreement including a requirement that the agreement receive the approval of the Minister;
- (b) the form of a crew agreement and the manner in which an agreement shall be made;
- (c) the manner in which a crew agreement shall be –
  - (i) added to;
  - (ii) amended; or
  - (iii) lodged with the Registrar of Seafarers;
- (d) the circumstances in which a crew agreement or a copy of an agreement, shall be carried in a ship;
- (e) the requirements for a crew agreement, or a copy of an agreement, to be delivered to an authorised officer;
- (f) the requirement for a crew agreement or a copy of an agreement, to be made available for perusal by an authorised officer;
- (g) the notice required to be given to the Register of Seafarers before a crew agreement is entered into or terminated;
- (h) the procedures and practices to be followed on the termination of a crew agreement; and
- (i) the circumstances under which, other than by reason of termination of a crew agreement, a seafarer may be left behind from a ship.

*Division 4 – Wages*

**90 Agreements as to wages**

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

**91 Account of wages**

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

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

**92 Right of seafarer to wages**

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

**93 Seafarer cannot waive protection of Act**

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

**94 Regulations relating to wages**

Cabinet may make regulations to make provision for and in relation to -

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

*Division 5 - Crew Accommodation*

**95 Crew accommodation**

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

**96 Regulations for crew accommodation**

Cabinet may make regulations to make provision for and in relation to -

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

*Division 6 - Welfare*

**97 Provisions and water**

- (1) An employer or master of a ship shall ensure that the provisions and water supplied for the use of seafarers are as prescribed.
- (2) Where three or more seafarers are of the opinion that the provisions or water supplied for the use of seafarers are not as prescribed, they may complain to the master and if they are dissatisfied with the action if any taken by the master or with the master's failure to act they may complain to the Registrar of Seafarers.
- (3) Where a complaint is made the Registrar of Seafarers shall forthwith cause the complaint to be investigated.
- (4) For the purposes of an investigation under this section the Registrar of Seafarers may cause the provisions or water to be examined.
- (5) Where, after an investigation under this section, the Registrar of Seafarers is of the opinion that the provisions or water are not as prescribed he shall direct the employer or the master to replace them.
- (6) An employer or a master shall comply with a direction given under this section.

**98 Medical stores**

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

**99 Complaints**

(1) Where, in the opinion of a seafarer, the seafarer has cause to complain about –

- (a) the master;
- (b) any other seafarer on a ship: or
- (c) the conditions on board a ship.

he may complain to the master.

(2) Where a seafarer –

- (a) has made a complaint under subsection (1); and
- (b) is dissatisfied with –
  - (i) the action taken by the master on that complaint: or
  - (ii) the failure of the master to take any action,

the seafarer may –

- (c) state his dissatisfaction to the master; and
- (d) may request the master to make adequate arrangements for the seafarer to complain to the Registrar of Seafarers, as soon as the service of the ship permits.

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

**100 Regulations for welfare**

Cabinet may make regulations to make provision for and in relation to –

- (a) the quality and quantity of the provisions and water to be supplied for the use of seafarers;
- (b) the manner of checking and inspecting provisions and water supplied for the use of seafarers;
- (c) the manner and conduct of medical examinations of seafarers and of persons seeking employment as seafarers;
- (d) the medicines and medical and surgical stores (including books containing instructions and advice) to be carried in a ship and the manner in which such medicines and stores are to be carried, stored and used in a ship;

- (e) the appointment and certification of first-aid attendants and the circumstances in which first-aid attendants are to be carried on a ship;
- (f) the manner in which medical expenses incurred in respect of a seafarer while at a place outside the country may be recovered from an employer;
- (g) the circumstances and the manner in which the Minister shall make provision for the relief, maintenance and return to a proper return port of a seafarer;
- (h) the manner in which any wages due to a distressed seafarer and any property left on board a ship by a distressed seafarer are to be dealt with;
- (i) the manner in which any expense incurred in bringing ashore a seafarer who has been ship-wrecked, or in maintaining him/her after he has been brought ashore, may be recovered from the person who last employed him/her as a seafarer; and
- (j) the manner in which the property of a deceased seafarer is to be -
  - (i) held in custody; or
  - (ii) sold, converted into cash or otherwise disposed of.

*Division 7 - Discipline*

**101 Misconduct endangering ship or persons on board**

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

the seafarer is guilty of an offence.



**102 Continued or concerted disobedience, neglect of duty**

Where a seafarer on a ship -

(a) persistently and wilfully -

- (i) neglects his duty; or
- (ii) disobeys a lawful command; or

(b) combines with other seafarers to -

- (i) neglect his duty; or
- (ii) disobey a lawful command; or
- (iii) impede the navigation of the ship or the progress of a voyage,

he is guilty of an offence.

**103 Absence without leave**

Where a seafarer on a ship -

(a) a seafarer is absent without leave from a ship at a time when he is required to be on board;

(b) his absence is -

- (i) due to his recklessness; or
- (ii) deliberate and without reasonable cause; and

(c) a ship -

- (i) is thereby delayed; or
- (ii) goes to sea without him/her;

the seafarer is guilty of an offence.

**104 Persons deemed to be seafarers**

Notwithstanding any other provision of this Act, where -

(a) a person is carried unintentionally to sea in a ship without the consent of the master or of any other person authorised to give consent to his being so carried; or

- (b) a distressed seafarer is carried on a ship for the purpose of being returned to his proper return port,

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

#### 105 Defence of drugs taken for medical purposes

It is a defence to a charge for an offence against section 101 if the person charged proves that -

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

#### 106 Disciplinary offences

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

(2) Where -

- (a) two or more reports under subsection (1) have been made within the prescribed time in respect of a seafarer; or
- (b) a seafarer has committed an offence under section 101, 102, or 103,

the Registrar of Seafarers may declare the seafarer to be a suspended person.

#### 107 Appeal

(1) Where -

- (a) the Registrar of Seafarers has declared a seafarer to be a suspended person; and
- (b) the period of suspension exceeds 12 months,

the seafarer may within 30 days of receiving the prescribed notification of his suspension, appeal to the Court.

(2) Where an appeal is made under subsection (1), the Court shall make such orders as the justice of the case requires.

**108 List of suspended persons**

(1) The Registrar of Seafarers shall keep a list known as the list of suspended persons.

(2) Where a seafarer is suspended for a period -

(a) of 12 months or less; or

(b) exceeding 12 months and -

(i) no appeal to the Court is made within the period of 30 days referred to in section 107; or

(ii) an appeal is made under that section and the Court orders that the appeal be dismissed,

the Registrar of Seafarers shall include the name of the seafarer in the list of suspended persons.

**109 Regulations for disciplinary offences**

Cabinet may make regulations to make provision for and in relation to -

(a) misconduct on board a ship which is a disciplinary offence;

(b) the procedures under which a master may find that a seafarer has committed a disciplinary offence;

(c) the manner in which a declaration of suspension shall be made and the manner in which that declaration shall be notified to -

(i) a suspended person; and

(ii) the person who last employed him/her as a seafarer;

(d) the manner in which the name of a suspended person shall be included in a list of suspended persons; and

(e) the manner in which a list of suspended persons is -

(i) to be kept; and

(ii) to be made available for inspection by any person appearing to the Registrar of Seafarers to be interested.

*Division 8 - General*

**110 Stowaways and Unauthorised persons**

(1) A person who, without the consent of -

(a) the master of a ship; or

(b) a person authorised by the master to give that consent,

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

(2) A person, not being an authorised person or an inspector, who –

(a) without the consent of the master of a ship or of a person authorised by the master to give that consent goes on board a ship; or

(b) remains on board a ship after being requested to leave by the master, a police officer or a customs officer,

is guilty of an offence.

**111 Master's power of arrest**

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

**112 Report of births and deaths**

(1) In this section, "ship" means a ship registered under this Act.

(2) The master of a ship who refuses, or fails without reasonable cause, to make a report in the prescribed form to the Registrar of any –

(a) birth occurring in; or

(b) death occurring, or presumed to have occurred in,

the ship is guilty of an offence.

**113 Registrar of Seafarers**

(1) There shall be an office of Registrar of Seafarers which shall be a public office.

(2) The Registrar of Ships shall be appointed by the Niue Public Service Commission.

(3) The same person may, but need not, hold the offices of Registrar of Seafarers under this section and Registrar of Ships under section 5.

**114 Register of Seafarers**

(1) Subject to Section 4 (4) (c), the Registrar of Seafarers shall cause to be kept at Alofi and at the place where the Foreign Vessel Administrator is located a book to be known as the Register of Seafarers.

- (2) The Registrar of Seafarers shall cause to be entered into the Register of Seafarers –
- (a) particulars of any Seaman's Book issued under section 115;
  - (b) particulars of any period during which a person is a suspended person; and
  - (c) such other particulars as may be prescribed.

**115 Seaman's Book**

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

**116 Official Log Book**

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

**117 Crew and Passenger Lists**

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

**118 Inquiries into death or serious Injury**

- (1) Where –
- (a) a person dies or suffers a serious injury in a ship; and

- (b) the master of the ship fails, without reasonable cause, to notify the Registrar of the death or serious injury,

the master of the ship is guilty of an offence.

(2) Where -

- (a) a person dies or suffers a serious injury in a ship; or
- (b) a seafarer belonging to a ship dies or suffers a serious injury away from the ship,

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

#### 119 Holding of inquiry

(1) For the purpose of holding an inquiry under section 118, the person authorised under that section may -

- (a) go on board a ship at any time and inspect the ship or any article on board the ship;
- (b) summon any person to appear before him/her; and
- (c) require the production of any document which in his opinion is relevant to the inquiry.

(2) Where an inquiry has been held the person who held it shall make a report in writing of the findings to the Minister who may make a copy of the report available -

- (a) in the case of a person who has died -
  - (i) to the next of kin of the deceased person; or
  - (ii) to any other person who requests such a copy and who appears to the Minister to be interested; and
- (b) in the case of a person who has suffered a serious injury -
  - (i) to that person or to a person acting on his behalf; or
  - (ii) to any other person who requests such a copy and who appears to the Minister to be interested.

#### 120 Absence without official leave

(1) In this section, "seafarer" means a seafarer who is absent from a ship at a time when, under a crew agreement he is required to be on board.

(2) Where a seafarer proves -

(a) that his absence from a ship was due to -

(i) accident

(ii) mistake: or

(iii) some cause beyond his control; and

(b) that he took all reasonable precautions to avoid being absent,

his absence is not a breach of contract.

(3) Where, in an action for breach of contract arising from the absence of a seafarer from a ship, a seafarer fails to prove the matters referred to in subsection (2), if special damages are -

(a) not claimed by his employer, his civil liability is limited to US\$ 5,000; or

(b) claimed by his employer, his civil liability is limited to US\$ 5,000 dollars.

#### **121 Apprehension of seafarers**

(1) Where it appears to the Minister that due facilities will be given by the government of a country for apprehending and receiving seafarers who desert in that country from ships registered under this Act, the Minister may, by order, declare that this section shall apply in relation to that country, subject to any conditions stated in the order.

(2) Where a seafarer deserts from a ship registered under this Act, the master of the ship may apply to the Court for aid in apprehending the deserter, and the Court and its officers shall give all aid within their power, and for that purpose the Court may, on information given on oath, issue a warrant for the deserter to be conveyed on board the ship, or delivered to the master, or owner of the ship or his agent, to be so conveyed.

#### **122 Detention of ships**

(1) Where the Registrar or inspector is of the opinion that the owner or the master of the ship or an employer, has failed to comply with a requirement of this Act, the ship may be detained.

(2) Where a ship is detained under subsection (1), the ship may be detained until such time as the Registrar issues a certificate showing that -

(a) the Harbour Master is satisfied that the owner, the employer and the master have complied with the provisions of this Act; and

(b) the ship may go to sea without a contravention of any provision of this Act.

**123 Regulations with regards to Seafarers**

Cabinet may make regulations to make provision for and in relation to -

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

**PART VI - DIVISION OF LIABILITY**

**124 Rules for division of liability**

- (1) Where by the fault of two or more ships damage or loss is caused to one or more of those ships, any of their cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each ship was in fault, but -
  - (a) if having regard to all the circumstances of the case, it is not possible to establish different degrees of fault the liability shall be apportioned equally;
  - (b) nothing in this section operates so as to render any ship liable for loss or damage to which the fault of the ship has not contributed; and



(c) nothing in this section affects the liability of any person under a contract of carriage or any contract, or shall be construed as imposing upon any person any liability from which he is exempted by any contract or by any law, or affecting the right of any person to limit his liability in the manner provided by law.

(2) In this section, "freight" includes passage money and hire, and reference to damage or loss caused by the fault of a ship includes a reference to any salvage or other expenses consequent upon that fault recoverable at law by way of damages.

#### **125 Joint and several liability**

(1) Where loss of life or personal injury is suffered by any person on board a ship owing to the fault of that ship and of any other ship or ships, the liability of the owners of the ships shall be joint and several.

(2) Subsection (1) shall not be construed as depriving any person of any right of defense on which, independently of this section, he might have relied in any action brought against him/her by the person injured, or any person entitled to sue in respect of the loss of life, nor shall it affect the right of any person to limit his liability in cases to which this section relates in the manner provided by law.

#### **126 Right of contribution**

(1) Where loss of life or personal injury is suffered by any person on board a ship owing to the fault of that ship and any other ship or ships, and a proportion of the damage is recovered against the owners of one of the ships that exceeds the proportion in which the ship was in fault, they may recover by way of contribution the amount of the excess from the owners of the other ship or ships to the extent to which those ships were respectively in fault.

(2) No amount shall be recovered if, by reason of any statutory or contractual limitation of or exemption from liability or for any other reason, it could not have been recovered in the first instance as damages by the person entitled to sue for that amount.

#### **127 Additional rights of person entitled to contribution**

In addition to any other remedy provided by law, the person entitled to any contribution under section 126 shall have, for the purpose of recovering contribution subject to this Act, the same rights and powers as the persons entitled to sue for damages in the first instance.

### **PART VII - LEGAL PROCEEDINGS**

#### *Division 1 - Offences and Limitations*

#### **128 Penalties**

- (1) An offence under a provision of this Act specified in column 1 of the Schedule is punishable as indicated in column 3 (where a period of time indicates the maximum term of imprisonment, and a monetary amount indicates the maximum fine for the offence in question).
- (2) Where both a period of time and a monetary amount are indicated in column 3 of the Schedule both a fine and imprisonment, not exceeding the maximum indicated in that column, may be imposed in respect of an offence.
- (3) The description of an offence given in column 2 of the Schedule is illustrative only and not definitive or exhaustive.

**129 Limitation of actions**

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

**130 Interpretation for purposes of section 129**

For the purposes of section 129 –

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

*Division 2 – Jurisdiction*

**131 Jurisdiction in case of offences**

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

**132 Jurisdiction over ship lying off coast**

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

**133 Jurisdiction in case of offence on board ship**

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

**PART VIII - GENERAL**

**134 Mode of declaration**

- (1) A declaration required by this Act, except under sections 106 and 121, may be made before the Registrar of Ships, a magistrate, a notary public, a Commissioner for Oaths or a diplomatic representative of Niue.
- (2) A declaration required by this Act, except under sections 106 and 121, may be made on behalf of a corporation by any person authorised in that behalf under the common seal of the corporation.

**135 Waiver of declaration**

When under this Act, except under sections 106 and 121, any person is required to make a declaration on behalf of himself or of any corporation, or any evidence is required to be produced to the Registrar of Ships and it is shown to the satisfaction of the Registrar of Ships that for any reasonable cause that person is unable to make the declaration, or that the evidence cannot be produced, the Registrar of Ships, may, on the production of such other evidence and subject to such terms as he may see fit, dispense with the declaration or evidence.

**136 False declaration**

- (1) A person who, in a declaration made under or for the purposes of this Act, except under sections 106 and 121,, or in any document or other evidence produced to the Registrar of Ships or the Registrar of Seafarers -
  - (a) wilfully makes or assists in making, or procures to be made a false statement concerning the title to, or ownership of, or the interest existing in, a ship registered under this Act or
  - (b) utters, produces or makes use of any declaration or document containing any false statement, knowing the same to be false,is guilty of an offence.
- (2) Where, in a declaration made under or for the purposes of this Act, except under sections 106 and 121,, 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.

**137 Proof of documents**

- (1) All certificates or other documents (including endorsements on certificates or other documents) to which this section applies are admissible in evidence in the manner provided by section 138.
- (2) This section applies to -
  - (a) a certificate or other document issued, granted, given or made under this Act or purporting to be issued, granted, given or made under this Act and signed, or purporting to be signed, by any person required or authorised by this Act to issue, grant, give or make any such certificate or document;
  - (b) an endorsement made, or purporting to be made, under this Act and signed, or purporting to be signed, by any person required or authorized by this Act to make any such endorsement; and
  - (c) a certificate given or made by the Registrar of Ships asserting the negative of any circumstance, fact or thing.

**138 Admissibility of documents in evidence**

- (1) Where a certificate or other document is by this Act declared to be admissible in evidence, it shall on its production from proper custody, be admissible in evidence in any court, and, subject to all just exceptions, shall be conclusive evidence of the matters stated in it.
- (2) A copy of any certificate or other document referred to in subsection (1) or extract from any such certificate or document is also admissible in evidence if proved to be an examined copy or extract, or if it purports to be signed and certified as a

true copy or extract by the officer or person to whom custody of the certificate or other documents entrusted.

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

#### **139 Proceedings on forfeiture of ship**

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

#### **140 Recovery of penalties**

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

#### **141 Inspections**

- (1) For the purpose of seeing that the provisions of this Act and of any International Maritime Convention implemented in Niue under regulations made for the purposes of section 48, or otherwise having effect in Niue, are complied with, the Foreign Vessel Administrator, an inspector or an authorised officer in relation to any of those provisions or any such Convention may exercise all or any of the powers specified in subsection (7).
- (2) for the purpose of the effective exercise or performance of his functions under this Act or for the purposes of any Convention referred to in subsection (1), the Foreign Vessel Administrator, an inspector or an authorised officer may exercise all or any of the powers specified in subsection (7).
- (3) The Foreign Vessel Administrator or an inspector may, if he considers it necessary in consequence of an accident or for any other reason, require a ship to be taken into dock for a survey of its hull or machinery.
- (4) The powers under subsection (1), (2) or (3) may be exercised by the Foreign Vessel Administrator or an authorised officer in respect of a ship registered under this Act, notwithstanding that the ship is outside the jurisdiction of Niue.
- (5) A person exercising a power under subsection (1) or (2) shall not unnecessarily delay a ship.

- (6) Any person who obstructs a person in the exercise of his powers under this section or who fails to comply with a requirement made under subsection (3) is guilty of an offence.
- (7) For the purposes of subsections (1) and (2), the specified powers are powers -
  - (a) at all reasonable times, to go on board a ship and inspect the ship or any part of the ship, or any part of the machinery, boats, equipment of the ship, or any articles on board the ship;
  - (b) to require the production of, and to inspect, any document or certificate carried in the ship in pursuance of this Act or any Convention referred to in subsection (1); or
  - (c) to require any person to answer questions relevant to the exercise of a power, being exercised under paragraph (a) or (b) for a purpose referred to in subsection (1) or (2).

#### **142 Surveyors of ships**

- (1) The Foreign Vessel Administrator 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 (IACS) and any other Classification Societies of reasonable standards.
- (2) The appointment of a surveyor of ships under this section may be restricted to either or both certain types or classes of ship or certain kinds of survey.
- (3) Where a corporation or an unincorporated body of persons is appointed under subsection (1), it may nominate a person to carry out surveys, issue certificates and do all other things necessary on its behalf.
- (4) A nomination under subsection (3) shall be notified to the Foreign Vessel Administrator and on receiving such notification the Foreign Vessel Administrator shall cause to be published a notice of the matter in the notification.
- (5) The power under this section includes a power to appoint persons, including corporations and unincorporated bodies of persons, outside Niue to be surveyors of ships.

#### **143 Inspectors and authorised officers**

The Minister may delegate the Foreign Vessel Administrator to designate any person

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

144 Regulations

- (1) Cabinet may make regulations prescribing all matters that are required or permitted by this Act to be prescribed for the carrying out or giving effect to this Act and in particular for prescribing -
  - (a) the manner of doing and the fees payable in respect of any matter or thing that is required or permitted to be done under this Act;
  - (b) forms to be used for or in connection with this Act and;
  - (c) the means by which, and the conditions subject to which, a ship or a class of ship may be exempted from compliance with the regulations or any provisions of the regulations.
- (2) Cabinet may make regulations to prescribe the manner in which the tonnage of any ship shall be ascertained and may -
  - (a) make different provision for different descriptions of ships or for the same description of ships in different circumstances;
  - (b) make any provision in the regulations dependent on compliance with such condition, to be evidenced in such manner, as may be specified in the Regulations; and
  - (c) prohibit or restrict the carriage of goods or stores in spaces not included in the registered tonnage of a ship.
- (3) Cabinet may make regulations to make provision -
  - (a) prescribing safety requirements and providing for the issue of non-convention safety certificates in prescribed cases;
  - (b) prescribing matters relating to load lines and providing for the issue of local load line certificates in prescribed cases;
  - (c) prescribing the period during which any such certificate is to remain in force, and providing for the renewal and cancellation of any such certificate.
- (4) Regulations made under subsection (3) may make provision for and in relation to -
  - (a) the requirements with which the hull, machinery and equipment of ships shall comply;
  - (b) the appliances to be carried, and the measures to be observed, on ships for the saving of life at sea and for the prevention, detection and extinction of fires on ships;

- (c) the requirements for the holding and recording of musters and drills for crew and passengers;
  - (d) the requirements with respect to the equipping of ships with radio telephones and radio navigational aids, the operation, maintenance and use of radio telephones and radio-navigational aids in ships, and the number and qualifications of the radio telephone operators to be carried on ships;
  - (e) the measures and procedures to be followed and the equipment to be carried on ships to ensure safety of navigation;
  - (f) the requirements which must be complied with in respect of the stowage and carriage of livestock, deck cargo, grain, dangerous goods and hazardous cargoes in ships;
  - (g) the observance of safety standards and procedures on board ships;
  - (h) safety and safe-working practices on board ships;
  - (i) the measures to be observed for the prevention of collisions;
  - (j) requirements related to the provision and use on ships of lights and signals;
  - (k) the requirements which must be complied with in respect of lights and signals from the shore to ships;
  - (l) the manner of determining freeboards to be assigned to ships;
  - (m) the manner of determining, in relation to a ship, the deck which is to be the freeboard deck and for requiring the position of that deck to be indicated on each side of the ship by a mark;
  - (n) the manner of determining, by reference to a mark, the freeboards assigned to a ship and the position in which each side of a ship is to be marked with a line indicating the maximum depths to which the ship may be loaded;
  - (o) the requirements in respect of hull, superstructure, fittings and appliances which are relevant to the assignment of freeboards to ships;
  - (p) the manner of recording particulars of the requirements under paragraph (o) and the methods of determining the extent of compliance with the conditions of assignment; and
  - (q) the information relating to the stability of a ship required to be provided by the owner of the ship to the master of the ship.
- (5) Cabinet may make regulations, in relation to a ship carrying passengers, to make provision for and in relation to -
- (a) the accommodation of passengers;



- (b) the manner of notification of the carriage of unberthed passengers;
  - (c) provisions, water, medical stores and medical inspection;
  - (d) the carriage of medical staff and the provision of hospital accommodation;
  - (e) sanitary facilities;
  - (f) sale of alcohol;
  - (g) passenger lists;
  - (h) the cargo which may be carried and the method of stowing cargo;
  - (i) the maintenance of good order in respect of the passengers;
  - (j) the prevention of wilful damage and injury to the machinery or equipment of a ship by a passenger;
  - (k) the prevention of any obstruction to any crewman in the execution of his duty;
  - (l) the prevention of the molesting of or interference with any person on board the ship.
- (6) Regulations made under this section shall apply only in relation to a ship registered under this Act.
- (7) Cabinet may make regulations to make provision with respect to non-convention vessels employed in navigation on near coastal voyages and manning of such vessels.
- (8) Cabinet may make regulations to make provision for and in relation to -
- (a) the extent of the ownership of a ship or class of ships eligible to be registered under this Act; and
  - (b) the proper administration and management of the registration of ships owned by any person other than a resident of Niue; and
  - (c) the appointment of a person or a corporation not registered in Niue, to administer the registration of foreign ships.

**SCHEDULE**

(Section 128)

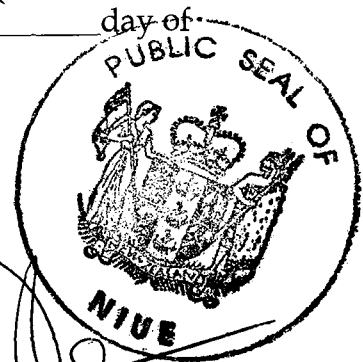
**PENALTIES**

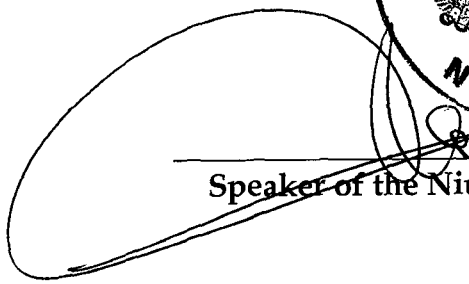
1	2	3
<i>Section</i>	<i>Description of Offence</i>	<i>Penalty Imprisonment or Fine (in US\$) or both</i>
12 (6)	Failure to keep marks	\$1,000
12 (7)	Concealing, Removal, Alteration of marks etc.	\$1,000
12 (8)	Illegal change of ship name	\$1,000
16 (6)	Using an illegal certificate of registry	2 years; \$5,000
16 (7)	Failing to deliver certificate of registry person entitled	\$1,000
20 (8)	Failing to give notice on loss of ship or change of	\$1,000
21 (2)	Failing to report alteration of ship	\$1,000
37	Concealing Niue character	2 years; \$5,000
39 (3)	Failing to hoist National Flag	\$1,000
39 (4)	Using improper national colors	\$1,000
40 (2)	Failing to provide information to Registrar of Ships	\$1,000
54 (2)	Taking unsafe ship to sea	2 years; \$5,000
55 (2)	Failure to carry equipment by convention	\$1,000
56 (3)	Failing to report danger to navigation	2 years; \$5,000
57 (3)	Failure to provide assistance to person lost at sea	2 years; \$5,000
58 (3)	Failure to provide assistance after collision	2 years; \$5,000
62 (1)	Unauthorised carriage of dangerous goods	2 years; \$5,000
62 (2)	Falsely describing dangerous goods	\$1,000
71	Failure to deliver suspended certificate	\$1,000
76 (2)	Failure to ensure proper manning	\$1,000
78	Operating in the wrong capacity	2 years; \$5,000
79	Failure to produce certificate of competency	\$1,000
80 (3)	Failure to return suspended certificate	2 years; \$5,000
88	Seeking rewards for employment	2 years; \$5,000
91 (b)	Failure to provide account of wages	\$5,000
95 (3)	Failure to provide proper crew accommodation	\$5,000
98	Failure to provide proper medical stores	\$5,000
99 (3)	Master failure to make arrangement for complaints	\$1,000
101 (2)	Misconduct endangering ship	2 years; \$5,000
102	Continued or concerted disobedience	2 years; \$5,000
103	Absence without leave	3 months; \$3,000
110 (1)	Stowing away on ship	3 months; \$3,000
110 (2)	Unauthorised presence on ship	3 months; \$3,000
112 (2)	Failure to make report of birth or death on ship	\$1,000
116 (2)	Failure to carry or keep Official Log Book	\$1,000
116 (3)	Destroying of Official Log Book	\$1,000
118 (1)	Master failure to notify death or serious injury	\$1,000
136 (1)	Making false declaration	2 years; \$5,000
141 (6)	Obstructing an inspector	\$5,000

I, AHOHIVA LEVI, Speaker of the Niue Assembly, hereby certify that the requirements of Article 34 of the Niue Constitution have been duly complied with.


SIGNED AND SEALED at the Assembly Chambers this 2nd day of

July 2012



  
\_\_\_\_\_  
Speaker of the Niue Assembly

COUNTERSIGNED in the presence of the Speaker

  
\_\_\_\_\_  
Clerk of the Niue Assembly

This Act was passed by the Niue Assembly on the 14<sup>th</sup> day of March 2012.

This Act is administered by the Niue Foreign Vessel Administration.