



SAMOA

## SHIPPING ACT 1998

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**SHIPPING ACT 1998****1998****No. 31**

**AN ACT** to consolidate and amend the law relating to Shipping and Seamen and to control the registration, safety and manning of ships, and to give effect to various international maritime conventions, and for related purposes.

*[Assent date: 16 July 1998]*

**BE IT ENACTED** by the Legislative Assembly of Samoa in Parliament assembled as follows:

**PART 1  
PRELIMINARY**

**1. Short title and commencement**– (1) This Act may be cited as the Shipping Act 1998.

(2) This Act comes into force upon the publication by the Minister of a Notice in the *Gazette* to that effect: **PROVIDED THAT** different Parts or sections of this Act may be brought into force on different dates.

**2. Interpretation**– In this Act and in any regulations made under this Act, unless the context otherwise requires:

“administration” means the Ministry of Works, Transport and Infrastructure;

“aid” means a marine navigation aid;

“bareboat charter” or “charter” 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 her master and crew for the duration of the charter but excluding the right to sell or mortgage the ship:

“bareboat charter registration” means the registration of a ship in a bareboat charter registry under the name of the charterer;

“Bareboat Charter Registry” means the registry of the state whose flag the ship is entitled to fly during the period in which the Charterer is registered as the bareboat charterer:

“beneficial interest” (see s45);

“casualty” in relation to a vessel, means:

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

“certificate of competency” means a certificate issued on behalf of the Administration to a seaman under Part 5 which entitles the seaman to serve in a vessel in the designation or grade stated in that certificate;

“certificated pilot” means a person holding a current pilotage certificate that entitles him or her to have the lawful conduct of a ship in the pilotage area in respect of which it is issued;

“Chief Executive Officer” means the Chief Executive Officer of the Ministry;

“Code” means the South Pacific Maritime Code published by the Forum Secretariat, as amended, if that amendment has been accepted by Samoa;

“Collisions Convention” means the Convention on the International Regulations for Preventing Collisions at Sea 1972, together with the International Regulations for Preventing Collisions at Sea 1972, constituted by the Rules, and other Annexures attached to that Convention, as corrected by Process-Verbal of Rectification dated 1

- December 1973, and as amended, unless that amendment has been objected to by Samoa;
- “compatible registry” means a ship registry of a foreign State declared by the Minister to be a compatible registry in terms of section 50A;
- “corporation” means a body corporate registered under the laws of Samoa and includes a Company, partnership, sole proprietorship, association, institution, statutory authority or other entity whether incorporated and registered or not;
- “Court” means the Supreme Court;
- “crew” means those persons employed or engaged in any capacity on board a vessel, but does not include a master, or pilot or other person temporarily employed on board the vessel while it is in port;
- “dangerous goods” means any goods classified and dealt with as dangerous goods in the International Maritime Dangerous Goods Code, 1981, (IMDG Code), published by the International Maritime Organisation, London, as amended; “day” means calendar day;
- “discharge”, in relation to harmful substances,
- (a) means a release from a ship howsoever caused; and
  - (b) includes an escape, disposal, spilling, leaking, pumping, emitting or emptying; but
  - (c) does not include—
    - (i) “dumping” as defined in the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, adopted at London on 13 November 1972; or
    - (ii) the release of harmful substances directly resulting from the exploration, exploitation, and associated off-shore processing of seabed mineral resources; or
    - (iii) the release of harmful substances for purposes of legitimate research into pollution abatement or control;
- “disciplinary offence” includes an act or omission committed by a member of the crew, which causes or is likely to cause the loss, destruction or serious damage to a vessel, or death or injury to a person on board or which may negatively affect



- the safety and good order of the operation of the vessel;
- “equipment”, for a vessel, includes a thing or article belonging to or used in connection with, or necessary for the navigation, safety and working of, the vessel;
- “exempt person” means a person holding a current pilotage exemption certificate that entitles that person to pilot a particular vessel, or a vessel of a particular class, within the pilotage area for which the exemption certificate is issued;
- “existing vessel” means a vessel that is not a new vessel;
- “fishing vessel” means a vessel used, or intended to be used, wholly or principally for the catching or taking of marine organisms, including fish, whales, seals, aquatic plants or other living resources of the sea on a commercial basis, and includes:
- (a) a vessel engaged in fisheries research; and
  - (b) a vessel that is wholly or principally used or intended to be used as a carrier, or mother vessel, supply or bunker vessel or any other vessel used in support of fishing vessels;
- “Government” means the Government of Samoa;
- “government vessel” means a vessel that is:
- (a) wholly owned by the Government and engaged in non-commercial services; or
  - (b) chartered to the Government is wholly under its management and control;
- “gross tonnage”, of a ship having alternative gross tonnages, is taken to be the larger of those tonnages;
- “harmful substance” means a substance which, if introduced to the sea, may create hazards to human health, harm living resources or marine life, damage amenities, or interfere with other legitimate uses of the sea, and includes a substance subject to control by the MARPOL or London Conventions;
- “IMDG Code” means the International Maritime Dangerous Goods Code published by IMO under the Safety Convention;
- “IMO” means the International Maritime Organisation;
- “incident” means an event involving the actual or probable discharge into the sea from a ship of a harmful substance, or effluent’s containing such a substance;

“Law of the Sea Convention” means the United Nations Convention on Law of the Sea 1982;

“left behind” in relation to a seaman:

(a) means the leaving behind of a seaman belonging to a vessel at a port other than the port to which the Seaman was to be returned as set forth in the Articles of Agreement or Employment Contract; but

(b) does not include the leaving behind of a seaman, who without the consent of the master, has left the vessel to which he or she belongs with the intention of not returning to that vessel;

“length” of a vessel, means:

(a) the length shown in the vessel’s Certificate of Registry, or Tonnage Certificate; or

(b) in the case of a vessel which does not possess either of those certificates or where the length is not shown on either certificate, the length of the vessel as determined by the Principal Surveyor;

“Limitation of Liability for Maritime Claims Convention” means the International Convention for Limitation of Liability for Maritime claims 1976, including any Protocols, as amended, unless objected to by Samoa;

“light” includes a fire, lamp, street light or other illuminating device, or reflected light;

“list of suspended persons” means a list of persons who have been declared by the Principal Shipping Officer to be suspended persons as a result of discipline imposed in the manner prescribed under this Act;

“load line” means a line marked on the hull of a vessel indicating the depth to which a vessel may safely be loaded;

“Load Lines Convention” means the International Convention on Load Lines, 1966 and the Supplement of 1981, as amended unless that amendment has been objected to by Samoa;

“Load Line Convention ship” means a vessel that is:

(a) of a kind to which the Load Lines Convention applies; and

- (b) registered in a State which is a party to the Load Lines Convention;
- “marine navigation aid” includes lights, lighthouses, beacons, radio beacons, electronic position or lining devices, buoys, fixed structures, illuminating and reflecting devices and any other apparatus the purpose of which is to assist in the navigation of vessels and small crafts;
- “MARPOL 73/78 Convention” means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended, unless that amendment has been objected to by Samoa;
- “master” means the person appointed by the owner having lawful command or charge of the vessel but does not include a pilot;
- “Minister” means the Minister responsible for Transport;
- “National Flag” means the flag of Samoa;
- “new vessel” means a vessel:
- (a) the keel of which was laid or which was at a similar stage of construction; or
  - (b) that has been substantially altered or reconstructed, on or after the date of coming into force of the applicable provision of this Act in respect of the vessel;
- “officer” means an employee of, or a person acting for and on behalf of, the Ministry responsible for Transport;
- “official log book” means the official log book of a vessel required to be kept under section 4(5), in a form and containing particulars as required by this Act or by the Chief Executive Officer;
- “offshore vessel” means a vessel which is not registered under this Act, but on which Samoan seamen are employed;
- “outrigger vessel” means a vessel built of traditional materials and to a traditional Samoan design;
- “owner”, in relation to a vessel, means the owner of a vessel, a share in a vessel, or a legal, as opposed to equitable, interest in a vessel or an interest in a share of a vessel; other than as mortgagee;
- “owner”, in relation to a wrecked vessel, means a person to whom the wrecked vessel:

- (a) belongs; or
  - (b) belonged at the time at which it became wrecked; or
  - (c) has belonged at any time after the time at which it became wrecked;
- “Part” means a Part of this Act;
- “part of a vessel” includes the hull, machinery and equipment of a vessel;
- “passenger” means a fare-paying person carried on board a vessel with the knowledge or consent of the owner or master of the vessel; but does not include:
- (a) a person engaged in a capacity on board the vessel in the business of the vessel; or
  - (b) a person on board the vessel under an obligation laid upon the master to carry ship-wrecked, distressed, or other persons who by reason of any circumstances that neither the master, nor owner, nor charterer, could have foreseen or prevented;
  - (c) a child under the age of 1 year;
- “passenger vessel” means a vessel which is carrying more than 12 passengers on a voyage;
- “permanent resident” means a person who has been granted a certificate conferring on him or her the status of a permanent resident of Samoa under the Immigration Act 2004;
- “person” means natural or legal person; and includes a corporation;
- “pilot” means a person not belonging to the vessel who has the lawful conduct of the vessel;
- “pleasure craft” means a vessel that is exclusively used for pleasure, and not used for hire or reward or a commercial purpose; but does not include:
- (a) a vessel which is provided for transport, sport or recreation by or on behalf of an institution, hotel, resort, or place of entertainment, or other establishment or business; or
  - (b) a vessel that is used on a voyage for pleasure if it is normally, used for fishing or for the carriage of passengers or cargo for hire or reward;

- “pollution” means the discharge or release into the sea of a harmful substance;
- “prescribed” means prescribed by regulation made under this Act;
- “proper return port”, for a seaman, means the port named in the Articles of Agreement or Employment Contract as agreed upon by the employer and seaman as the Port to which the seaman is to be returned at the expiration of Agreement or Contract;
- “Principal Shipping Officer” means the person appointed under section 93;
- “qualified seaman” means a person on board a vessel who holds a certificate appropriate to the capacity in which he or she is serving in the vessel;
- “qualified person” means:
- (a) a person who is a permanent resident of Samoa; or
  - (b) a corporation that is subject to the laws of Samoa whose principal place of business is in Samoa;
- “radio installation” means a radiotelegraphy or radio-telephony installation, including VHF radio-telephony, (as defined in the Annex to the 1974 SOLAS Convention and the 1978 Protocol relating thereto, incorporating the 1981 and 1983 amendments, Chapter IV); but does not include a radio navigation aid;
- “receiver” means the Receiver of Wreck;
- “register” means the Register of Vessels maintained by the Registrar;
- “Register of Seamen” means the Register of Seamen maintained by the Principal Shipping Officer;
- “Registrar” means the Registrar of Vessels;
- “related interests” means interests directly affected or threatened including (but without limiting the generality of the foregoing) fishing, maritime, coastal, port or estuarine activities, tourist attractions, public health and welfare, and conservation of living marine resources and wildlife
- “Safety Convention” means the International Convention for the Safety of Life at Sea, 1974, and all Protocols, including the IMDG Code, and (SOLAS), as amended, but excluding an amendment that has been objected to by Samoa;
- “Safety Convention ship” means a vessel that is:

- (a) of a kind to which the Safety Convention applies; and
  - (b) registered in a State which is a party to the Safety Convention;
- “salvage” includes all expenses properly incurred by the salvor in the performance of the salvage services;
- “Salvage Convention” means the (International Convention on Salvage 1989), including any Protocols, as amended, but excluding an amendment that has been objected to by Samoa;
- “Samoan vessel” means a vessel that is, or is required to be, registered or licensed under this Act;
- “Samoan waters” means all waters appertaining to Samoa and includes the territorial sea as defined in the Maritime Zones Act 1999;
- “seaman” means a person who is employed or engaged on a vessel in a capacity for gain or reward, but does not include a pilot or a person temporarily employed on board while the vessel is in port;
- “ship” means a vessel which is self-propelled; but does not include a vessel ordinarily propelled by oars or sails;
- “STCW Convention” means the International Convention on Standards of Training, Certification and Watch-keeping for Seafarers 1978, as amended, but excluding any amendment that has been objected to by Samoa;
- “suspended seaman” means a seaman whose name appears on the List of Suspended seaman under this Act by reason of the operation of a relevant provision of this Act;
- “tonnage” means tonnage as defined by the International Convention on Tonnage Measurement of Ships 1969, as amended, but excluding an amendment that has been objected to by Samoa;
- “Tonnage Certificate” means:
- (a) where a vessel is a vessel to which the Tonnage Measurement Convention would apply if the vessel were engaged on an international voyage, an International Tonnage Certificate (1969); or

- (b) such other tonnage measurement certificate as the Regulations prescribe is issued in respect of the vessel;
- “Tonnage Measurement Convention” means the International Convention on Tonnage Measurement of Ships 1969 including the Protocol of 1988 in respect of Harmonisation, as amended unless that amendment has been objected to by Samoa;
- “Tonnage Measurement Convention ship” means a vessel that is:
- (a) of a kind to which the Tonnage Measurement Convention applies; and
  - (b) registered in a State which is a party to the Tonnage Measurement Convention;
- “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” are to be construed accordingly;
- “unsafe vessel” means a vessel which in the opinion of the Principal Surveyor Officer is unfit to go to sea in its present condition without danger to human life or damage to cargo, or otherwise deemed to be unseaworthy;
- “vessel” means a description of craft used, or capable of being used, in marine transportation and includes fishing vessels, hovercraft, non-displacement vessels and mobile offshore units; but does not include seaplanes and vessels under construction but not yet launched;
- “wreck” includes jetsam, flotsam, lagan, and derelict found in or on the shores or bottom of the sea or a tidal water;
- “wrecked vessel” means a vessel that is wrecked, stranded, sunk or abandoned or which is lying on the seabed within the limits of the jurisdiction of Samoa.

**3. Application** – (1) This Act applies to all vessels registered or required to be registered or licensed under this Act or Regulations on a voyage and in any waters, and to a vessel in Samoan waters or in a Samoan port or harbour, and to a vessel on which Samoan seamen are employed, but does not apply to a vessel belonging to the defence force of a country, including but

not limited to, warships, naval auxiliaries, patrol vessels and other similar vessels.

(2) Subject to this Act and to any other law, and subject to any such reservations as Samoa may make, the following International Conventions have the force of law in Samoa:

- (a) International Convention on Load Lines, 1966 and any amendments adopted (known as the "Load Lines Convention") including all amendments in the Supplement of 1981, and the Protocol of 1988, in respect of the International Conference on the Harmonised System of Survey and Certification;
- (b) International Convention on Tonnage Measurement of Ships, 1969, known as the "Tonnage Convention", with any amendments from time to time adopted, including the Protocol of 1988 in respect of Harmonisation;
- (c) Convention on the International Regulations for Preventing Collisions at Sea, 1972, known as the "Collision Convention", including the Rules for Preventing Collision at sea, and all amendments adopted under the tacit acceptance procedures unless specifically rejected by Samoa;
- (d) International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, incorporating the 1981 and 1983 amendments known as "MARPOL 73/78";
- (e) International Convention for the Safety of Life at Sea, 1974, known as "Safety Convention" and "SOLAS 1974", and SOLAS Protocol 1978, including the IMDG Code, and all amendments adopted under the tacit acceptance procedures unless specifically rejected by Samoa, and including the Protocol of 1988 in respect of Harmonisation;
- (f) International Convention of Standards on Training, Certification and Watchkeeping for Seafarers 1978, and all the relevant Protocols and Amendments of 1995 and a further amendments



thereto, known as the “STCW Convention”, as amended;

- (g) Convention on Limitation of Liability for Maritime Claims, 1976, known as the “LLMC”;
- (h) International Convention on Salvage, 1989, known as the “Salvage Convention”;
- (i) International Convention on Maritime Liens and Mortgages, 1993, known as the “MLM Convention”;
- (j) International Telecommunication Convention Geneva 1992 as amended.

(3) Where, under any of the Conventions listed in subsection (2), States-Party have discretion to take an action, that discretion may be exercised by the Minister.

(4) Where, under any of the Conventions listed in subsection (2), States-Party are under a duty to do an act or thing, that act or thing is to be done by the Chief Executive Officer.

(5) Where a vessel comes under the provisions of a Convention, the provisions of this Act apply only in so far as they are applicable to and relevant to such a vessel.

(6) In the event of an inconsistency between the Convention and this Act or the Regulations, the Convention prevails to the extent of the inconsistency.

## **PART 2**

### **NATIONAL CHARACTER AND FLAG**

**4. Nationality and National colours – (1)** A vessel registered under this Act is taken to be a Samoan vessel and shall have Samoan nationality.

(2) The National Flag of Samoa is to be the proper national colours for a vessel registered under this Act.

(3) The master of a vessel registered under this Act shall, in Samoan waters, on the high seas, on the approach of another vessel and in the territorial sea or port of any other state, cause the National Flag to be flown on the vessel at all times during the hours of daylight. A master who fails to do so commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units.

(4) If, except with the consent of the Chief Executive Officer, or as a courtesy ensign, a distinctive national colours other than the National Flag are flown on board a vessel registered under this Act:

- (a) the master of the vessel; and
  - (b) the owner if he or she is on board the vessel; and
  - (c) a person hoisting those colours, –
- commits an offence and is liable upon conviction to a fine not exceeding 20 penalty units.

(5) A vessel registered under this Act shall carry on board an Official Log Book.

**5. Improper assumption or concealment of Samoa nationality or character –** (1) A person who is not a qualified person shall not, in respect of a vessel which is owned in whole or in part by that person, use the National Flag or assume the nationality or character of Samoa on board that vessel. A person so doing commits an offence and is liable, upon conviction, a fine not exceeding 250 penalty units and the vessel is liable to be forfeited to the Government.

(2a) Where the registration of a vessel has terminated, any marks prescribed by this Act displayed on the vessel are removed or obliterated, or if still visible after a period of 14 days beginning with the date of termination of that registration such marks are to be disregarded for the purposes of subsection (1).

(2b) In a proceeding for the forfeiture of a vessel, the burden of proving a right to use the National Flag or to assume the nationality character of Samoa lies on the person using or assuming that flag or nationality.

(3) The master or owner of a vessel registered under this Act shall not do anything or permit anything to be done in respect of the vessel or carry or permit to be carried on a vessel any papers or documents, with intent to:

- (a) conceal the national character of Samoa with respect to the vessel from a person entitled by the law of Samoa to inquire into the nationality, registration or character of the vessel; or
- (b) deceive a person referred to above; or

- (c) give the vessel the appearance of a ship of foreign nationality, registration or character, or not being a registered ship, –

and a person so doing commits an offence and upon conviction is liable to a fine not exceeding 150 penalty units.

(4) If the master or owner of a vessel is convicted of an offence under this section, the vessel is liable to forfeiture to the Government.

**6. Ownership interest subject to forfeiture if unqualified**

– If a person other than a qualified person acquires as owner an interest in a vessel registered under this Act, and fails to divest himself or herself of that interest or fails to become a qualified person within 30 days after acquiring it, that interest is liable to forfeiture.

**7. Liabilities of unregistered vessels** – (1) If a vessel that is required to be registered under this Act is not so registered, the vessel is not entitled:

- (a) to a benefit, privilege, advantage or protection usually enjoyed by a vessel registered under this Act; or
  - (b) to use the National Flag or to assume the national character, or in any other way indicate that it is a registered vessel.
- (2) For the purpose of a law of Samoa, for:
- (a) the payment of dues, fees or other charges; and
  - (b) the liability to fines and forfeiture; and
  - (c) the punishment of offences committed on board a vessel; and
  - (d) offences committed by persons belonging to the vessel, –

a vessel to which subsection (1) applies is treated in the same manner in all respects as if the vessel were registered.

**8. Declaration of vessel's nationality before clearance** –

(1) No officer shall grant port clearance in respect of a vessel about to leave a port in Samoa for a port outside Samoa until the master of the vessel has declared the nationality of the vessel and produced a Certificate of Registry.

(2) If no Certificate of Registry is produced, the officer may refuse to grant clearance and the vessel may be detained until the declaration is made and a Certificate of Registry is produced.

### **PART 3 REGISTRATION OF VESSELS**

**9. Qualifications of owner to register a vessel – (1)** No vessel is to be registered under this Act unless the vessel is owned wholly by a qualified person, or by persons each of whom is a qualified person, and is not registered in any other country.

(2) If the Chief Executive Officer has reasonable cause to believe, and does believe, that a vessel registered under this Act is not in compliance with this section, he or she may direct the Registrar to require the master or owner of the vessel to produce evidence to the satisfaction of the Chief Executive Officer that the vessel should continue to be registered.

(3) If within such time as may be determined by the Chief Executive Officer, not being less than 30 days, the evidence referred to in subsection (2) is not produced, the vessel is liable to be forfeited to the Government.

**10. Obligation to register and license vessels – (1)** A vessel which is owned by a qualified person and having a length of 15 metres or more must be registered in accordance with this Act.

(2) A vessel engaged in the carriage of passengers a commercial basis from a port or place in Samoa to any other port or place in Samoa must be registered under this Act.

(3) A vessel required by this Act to be registered may be detained at a port or place in Samoa until the master or owner of the vessel, if so required, produces the Certificate of Registry of the vessel.

(4) A Samoan cargo or fishing vessel or pleasure craft of less than 15 metres in length must be licensed under this Act, in a manner to be prescribed in the Regulations.

(5) The owner of a vessel required to be licensed shall obtain a licence before the vessel is allowed to put to sea, and any such vessel may be detained until the owner produces a licence.

**11. Exempt vessels** – (1) Subject to section 10, for the purposes of this Part, an exempt vessel is a vessel that is exempt from registration, and includes a vessel that is:

- (a) less than 15 metres in length; or
- (b) a pleasure craft; or
- (c) an outrigger vessel; or
- (d) a warship.

(2) The owner or owners of an exempt vessel that is owned wholly by a qualified person or by persons each of whom is a qualified person and is not registered in any other country may apply for the registration of the vessel under this Act.

**12. Continuation of registration of certain vessels** – A vessel that:

- (a) was, immediately before the commencement of this Act, registered under the Shipping Act 1972; and
- (b) is wholly owned by a qualified person or by persons each of whom is a qualified person, –

is taken to be registered, and the existing Certificate of Registry continues to be valid under this Act.

**13. The Registrar** – (1) There shall be a Registrar of Vessels, whose duty is to maintain the registry, and who shall for that purpose, inter alia:

- (a) receive and record all information and documents required or permitted to be recorded by this Act;
- (b) enter in the register those particulars of vessels, the owners, names and addresses and any mortgages, liens and other instruments required to be recorded or registered in accordance with this Act or Regulations;
- (c) grant, issue, vary or revoke such certificates and other documents issued under this Act as required by this Act or by the Court;
- (d) issue copies of, or extracts from, a certificate or document and entries in the register.

(2) There is a seal of the Samoan Registrar of Vessels in a form determined by the Minister, which is under the control of the Registrar.

(3) All Courts, judges and persons acting judicially shall take judicial notice of the seal of the Registrar affixed to a document and shall presume that it was duly affixed.

(4) Where a signature on a document purports to be the signature of the Registrar it is presumed, until the contrary is proved, that the signature is that of a person who, at the relevant time, was holding the office or performing the duties of the Registrar.

(5) The Registrar, or any other person to whom any or all of the functions of the Registrar are delegated, is not liable for an act or omission done or made by him or her bona fide and without negligence for the purpose of this Act.

**14. Delegation by Registrar** – (1) Subject to this Act, the Registrar may, by instrument in writing, delegate to a person all or any of his or her powers and functions, other than this power of delegation, which may be exercised and performed by that person in relation to the matters specified in the instrument of delegation.

(2) A delegation is revocable, in writing, at will, and no such delegation affects the exercise of a power or the performance of a function by the Registrar.

(3) A copy of an instrument of delegation must be given to the Chief Executive Officer.

**15. Ports of registry** – The Chief Executive Officer may, by notice published in the Savali, appoint ports in Samoa to be ports of registry for the purposes of this Act.

**16. Register of Vessels** – (1) The Registrar shall cause to be kept at the Ministry responsible for Transport, a register book to be known as the Register of Vessels.

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

(3) A person may inspect the Register at any time during the normal business hours of government offices.

(4) The Registrar shall make available for public inspection an instrument required or permitted to be deposited with the Registrar and shall make available copies of such instrument upon payment of the prescribed fee.

**17. Special provisions relating to registration** – The following provisions apply to the registration of vessels under this Act:

- (a) the property in a vessel must be divided into 64 shares;
- (b) subject to this Act with respect to joint owners or owners by transmission, not more than 64 persons are entitled to be registered at the same time as owners of any 1 vessel, provided that the beneficial title of a number of persons or of a company represented by or claiming under or through a registered owner or joint owner shall not be affected;
- (c) a person is not entitled to be registered as owner of a fractional part of a share in a vessel but a number of person not exceeding 5 may be registered as joint owners of a vessel or of a share or shares in a vessel;
- (d) joint owners:
  - (i) are considered as constituting 1 person only as regards the persons entitled to be registered; and
  - (ii) are not entitled to dispose severally of an interest in a vessel in respect of which they are jointly registered;
- (e) a company is registered as owner by its corporate name.

**18. Application for registration** – (1) An application for Registration of a vessel under this Act must be made to the Registrar in the prescribed form.

- (2) Such application must be made where the owner is:
- (a) a corporation, by the agent of the company; or
  - (b) not a corporation, by the person or persons seeking registration of the vessel.

(3) The authority of the agent referred to in subsection (2) must be in writing, and must be under the common seal of the company.

(4) The Registrar shall require proof of ownership and seaworthiness of a vessel before entering the particulars of the vessel and the Bill of Sale or other instruments of transfer or transmission in the register.

(5) An application for registration of a vessel must be accompanied by such evidence as may be prescribed in regulations.

**19. Tonnage Certificate** – (1) Before a vessel may be registered, it must be inspected by a principal Surveyor appointed by the Chief Executive Officer who shall ascertain the tonnage of the vessel and issue a Tonnage Survey Report.

(2) On the receipt of a Tonnage Survey Report the Principal Surveyor shall, on payment of the prescribed fee, issue a Tonnage Certificate.

**20. Marking of a vessel** – (1) The Registrar shall not register a vessel unless the vessel has first been marked permanently and conspicuously in the manner prescribed in regulations.

(2) The marks must be permanently maintained and no alteration shall be made except as provided by this Act.

(3) An owner or master who fails to cause a vessel to be marked as required by this section, or to keep that vessel so marked, commits an offence, and is liable upon conviction to a fine not exceeding 100 penalty units.

(4) A person who conceals, removes, alters, defaces or obliterates a mark required by this Act commits an offence, and is liable upon conviction to a fine not exceeding 100 penalty units.

**21. Declaration by qualified person** – A person is not entitled to be registered as the owner of a registered vessel until he or she, or in the case of a corporation a person authorised by the corporation to make declarations on its behalf, has made and signed a declaration that the person or corporation is a qualified person under this Act, in the form prescribed in regulations.



**22. Entries in the register – (1)** If the requirements for registration have been complied with, the Registrar shall, upon payment of the prescribed fee, register the vessel, by entering the prescribed particulars in the register.

**(2)** The Registrar shall not register a vessel by a name which is already registered under this Act or by a name that is in the opinion of the Registrar undesirable.

**(3)** If the vessel is owned by a qualified person and is required to be registered in Samoa the vessel is registered in the registry of another State, the Registrar shall not register the vessel unless:

- (a) a Certificate of Deletion has been issued by the Registrar of the other State, or
- (b) a certificate has been issued by the Registrar of the other State to the effect that the vessel will be de-registered with the immediate effect, at such time as the new registration in Samoa is effected and the date of de-registration is the date of the new registration of the vessel.

**(4)** A Bill of Sale in the form prescribed in regulations is the document which evidences transfer of title in the sale and purchase of a vessel and is to be signed by the vendor and purchaser and show the name and address of the purchaser and the interest of ownership in the vessel.

**(5)** Despite any regulation prescribing the information to be contained in the documents and instruments to be filed with the Registrar in respect of a mortgage or other charge against the vessel, the Registrar shall require that the documents or instruments to be deposited with him or her contain the following information:

- (a) the name of the vessel, its tonnage and port of registry;
- (b) the name and address of the owner of the vessel;
- (c) the name and address of the person in whose favour the mortgage or charge has been effected;
- (d) the date of execution of the mortgage
- (e) the maximum amount secured;
- (f) the date and the time of registration of the mortgage or other charge in the register.

(6) For a mortgage or other charge against the vessel, the Registrar shall enter in the Register the information contained in the documents or instruments deposited with him or her under subsection (5).

**23. Improper description of vessel** – An owner or master of a vessel required to be registered under this Act, who suffers or permits the vessel to be described by a name other than that by which the vessel is currently registered, commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units.

**24. Certificate of Registry** – (1) As soon as practicable after the vessel has been registered, the Registrar shall issue to the owner a Certificate of Registry.

(2) The Certificate of Registry shall be kept by the master in a safe place on board the vessel and the particulars therein entered in the vessel's Official Log Book.

(3) The Certificate of Registry of a vessel is to be used only for the lawful operation of the vessel, and is not to be subject to detention, and may only be removed from the vessel in accordance with subsection (5).

(4) A master or owner of a vessel who uses a Certificate of Registry not legally issued in respect of the vessel, commits an offence, and is liable upon conviction to a fine not exceeding 100 penalty units.

(5) A person who has in his or her possession or under his or her control the Certificate of Registry of a vessel and who refuses or fails, without reasonable cause, to deliver the certificate on demand:

- (a) to the person entitled to its custody for the purposes of the lawful operation of the vessel; or
- (b) to the Registrar; or
- (c) to any other person entitled by law to require its delivery, –

commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units.

(6) The Registrar may, upon the delivery to him or her of a Certificate of Registry issued under this section, issue a new certificate in its place.

**25. Provisional registration** – (1) When a vessel becomes wholly owned by a qualified person at a place outside Samoa and that person declares an intention to apply to have the vessel registered under this Act, the Registrar may issue a Provisional Certificate of Registry for the vessel.

(2) A Provisional Certificate of Registry issued under this section is taken to be a Certificate of Registry until the expiry of:

- (a) three months after the date on which it was issued; or
- (b) ten days after the arrival of the vessel in Samoa, whichever is the earlier.

(3) The master of a vessel who fails within 10 days after the arrival of the vessel in Samoa to deliver the Provisional Certificate to the Registrar commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units.

(4) Upon application of the owner, the Registrar may extend the period of validity of the Provisional Certificate of Registry, if the circumstances of the particular case are extenuating and warrant such an extension.

**26. Loss of Certificate of Registry** – If a Certificate of Registry has been lost, mislaid or destroyed, the Registrar shall, on application by the owner of the vessel, supported by a declaration made by a person having knowledge of the facts of the case, and on payment of a prescribed fee, issue a certified copy of the Certificate of Registry.

**27. Endorsement of Certificate of Registry on change of ownership** – When a change in the ownership of a vessel, registered under this Act occurs by reason of a transfer to a qualified person:

- (a) notification of the change shall be given to the Registrar; and
- (b) the Registrar shall endorse the Certificate of Registry to that effect.

**28. Registration of alterations to a vessel** – (1) If a vessel registered under this Act is altered so as not to correspond with

the particulars relating to the Tonnage Measurement Certificate or the description of the vessel contained in the register, the owner of the vessel shall within 21 days of that alteration being made, make a written application to the Registrar to register the alteration.

(2) An owner of a vessel who refuses or fails to comply with this provision commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units.

(3) An application made under this section must be accompanied by a Tonnage Measurement Certificate and the Registrar upon receipt of the application and a prescribed fee, shall cause the alteration to be registered.

**29. Check of entries in the register** – (1) The Registrar may, when he or she has reason to believe that the register does not contain accurate particulars in respect of a vessel registered under this Act, direct the owner of the vessel, or any other person in possession of information relating to the vessel, to furnish him or her with information in respect of the vessel.

(2) A person who, after having been given a direction under this section, fails within 30 days to comply with that direction, commits an offence, and is liable upon conviction to a fine not exceeding 50 penalty units.

**30. Transfer of ownership by Bill of Sale** – If a vessel registered under this Act is disposed of to a qualified person the vessel is to be transferred by Bill of Sale in the prescribed form and executed by the transferor and transferee, and in the case of a corporation, by the affixing of the corporate seal.

**31. Declaration of qualified person on transfer of vessel** – When a vessel registered under this Act is transferred, the transferee is not entitled to be registered as owner of the vessel until he or she, or in the case of a corporation, a person authorised by the corporation to make the declaration on its behalf, has made and signed a Declaration in the prescribed form that the person or corporation to whom the vessel is to be transferred is a qualified person as defined by this Act.

**32. Registration of transfer** – (1) A Bill of Sale for the transfer of a vessel registered under this Act, when duly executed, shall be delivered to the Registrar together with the Declaration of Qualified Person, and the Registrar shall enter into the register the name of the transferee as owner of the vessel, and shall endorse on the Bill of Sale the fact of that entry having been made, with the day and hour of the entry.

(2) Bills of Sale are to be entered in the register in the order of their delivery to the Registrar.

**33. Transmission of property in vessel by operation of law** – (1) If property in a vessel registered under this Act is transmitted to a qualified person by any lawful means other than by transfer made under this Act, that person shall authenticate the transmission by making and signing a Declaration on Transmission in the prescribed form identifying the vessel, and the Declaration on Transmission shall contain such statements and must be accompanied by such documents as are prescribed.

(2) The Registrar, on receipt of the Declaration on Transmission referred to in subsection (1), accompanied by the statements and document referred to in that subsection, shall enter in the Register the name of the person entitled under the transmission as owner of the vessel, the property or interest which has been transmitted.

(3) If there is more than 1 such person, the Registrar shall enter the names of all such persons, but those persons, however numerous, shall, for the purposes of this Act with respect to the number of persons entitled to be registered as owners, be considered as 1 person.

**34. Registration of Maritime Liens and Mortgages** – (1) A registered vessel is capable of being made security for a loan or other financial obligation, by way of a mortgage in the prescribed form.

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

(3) The Registrar shall:

- (a) register mortgages in the order in which they are produced to him or her for that purpose; and

- (b) endorse and sign a memorial on each mortgage, stating the date and time that it was produced to him or her and entered in the register.

(4) Despite anything contained in this Act or the International Convention on Maritime Liens and Mortgages 1993, a maritime lien is not enforceable against a vessel owned by a bona fide purchaser for value without notice unless such lien has been registered in the Register of Vessels at the port in which the ship is registered, but it is enforceable against the owner and vendor who has incurred the debt from which the maritime lien arises, irrespective of registration.

(5) The Registrar shall, at the request of the holder of a maritime lien register the maritime lien by making the entry in the Register:

- (a) describing the claim against the owner, demise charterer, manager or operator of the vessel secured by the maritime lien on the vessel; and
- (b) the date of the event which gave rise to the maritime lien against the vessel; and
- (c) the name and address of the lien holder for the service of notice or documents.

(6) Subject to Article 9 of the Convention on Maritime Liens and Mortgages 1993, a maritime lien must be extinguished after a period of 1 year.

**35. Priority of Maritime Liens and Mortgages – (1)** Where there is more than 1 mortgage registered in respect of the same vessel under this Act, the mortgagees are, despite an express, implied, or constructive notice, entitled in priority 1 over the other according to the date and time at which each mortgage is delivered to the Registrar and recorded in the register and not according to the date of each mortgage itself.

(2) A registered mortgage shall not be affected by an act of bankruptcy or insolvency committed by the mortgagor after the date of registration of the mortgage, despite that the bankrupt or insolvent mortgagor had, at the commencement of his or her bankruptcy or insolvency the vessel in his or her possession, order or disposition.

(3) Any such mortgage is preferred to a right, claim, or interest in the vessel of the other creditors of the bankrupt or a trustee or assignee on their behalf.

(4) A maritime lien recorded in the register shall rank in priority as against other maritime liens and registered mortgages in accordance with the provisions of the Convention on Maritime Liens and Mortgages 1993.

**36. Discharge of mortgage** – (1) The Registrar, after production to him or her of a discharge of mortgage in the prescribed form, shall make an entry in the register that the mortgage has been discharged.

(2) On that entry being made, the property (if any) which passed to the mortgagee vests in the person in whom, having regard to an intervening act and circumstances, it would have vested if the mortgage had not been made.

**37. Powers of mortgagee** – (1) A mortgagee shall not by reason of the mortgage be deemed to be the owner of the vessel, nor shall a mortgagor be deemed to have ceased to be the owner of the vessel.

(2) In the event of default of mortgage, the registered mortgagee is entitled to recover the amount due under the mortgage. Upon application, notice of which is to be served on the mortgagor, and a subsequent mortgagee, the Court may grant an Order, directing that the mortgaged vessel, or a share therein, be sold by tender or at a public auction, and that the proceeds of the sale be used to satisfy:

- (a) the expenses of conducting the sale;
- (b) any existing maritime liens against the vessel;
- (c) the amount outstanding to the mortgagee under the mortgage;
- (d) the amount outstanding to subsequent mortgagees;
- (e) the balance being distributed to the mortgagor.

(3) Upon receiving the application, the Court may set the date of the hearing, notice of which is published for 3 insertions in a daily newspaper having wide circulation in Samoa, and the Court shall appoint a person as an Officer of the Court, to conduct the sale and distribute the proceeds in accordance with the Order. The Officer so appointed shall not be liable for an act of

commission or omission done bona fides in conducting the sale or distributing the proceeds.

(4) The Order of the Court shall vest ownership in the vessel to the purchaser, which Order may be registered in the Register of Vessels.

(5) Where more than 1 person is registered as mortgagee of the same vessel, a subsequent mortgagee shall not, except under an Order of the Court, make an application to sell the vessel without the concurrence of a prior mortgagee.

**38. Transfer of mortgage – (1)** A registered mortgage of a vessel may be transferred to a person by registration of an instrument of transfer of that mortgage 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:

- (a) register the transfer by making an entry of the transfer in the Register; and
- (b) endorse and sign on the mortgage and instrument of transfer the fact of the entry having been made and stating the date and time of the making of the entry.

**39. Transmission of mortgage by operation of law – (1)** If the interest of a mortgagee in a vessel is transmitted to a person by a lawful means other than by a transfer under this Act, the transmission is authenticated by a declaration of the person to whom the interest is transmitted.

(2) A declaration referred to in subsection (1) shall contain a statement of the manner in which, and the person to whom, the interest has been transmitted and must be accompanied by such documents as the Registrar may require.

(3) The Registrar after receipt of the declaration and accompanying documents referred to in subsection (2), shall enter the name of the person entitled under the transmission in the register as the mortgagee of the vessel.



**40. Notification where vessel is lost or an owner ceases to be a qualified person** – (1) In the event of a vessel registered under this Act:

- (a) being either actually or constructively lost, taken by an enemy, burnt or broken up; or
- (b) ceasing to be entitled to be registered, –

An owner of the vessel who fails, immediately after obtaining knowledge of the event, unless notice has already been given to the Registrar, to give notice in writing of the event to the Registrar, commits an offence and is liable upon conviction to a fine not exceeding 10 penalty units.

(2) The Registrar shall upon receipt of a notice under subsection (1), make or cause to be made an entry in the register of the event to which the notice relates.

(3) If an entry made in the register under subsection (2) is for a vessel which has:

- (a) been either actually or constructively lost, taken by an enemy, burnt or broken up, the registration of the vessel is deemed to be closed in so far as it relates to an unsatisfied mortgage of the vessel; or
- (b) ceased to be entitled to be registered, –

the registration is, subject to this section, taken to be closed and the vessel shall be struck off the register.

(4) If a vessel, for which the Registrar has received a notice under subsection (1) stating that the vessel has ceased to be entitled to be registered, is subject to an unsatisfied mortgage or mortgages:

- (a) the registration of the vessel, so far as it relates to the mortgage or mortgages, is, subject to subsections (5) and (6), taken not to be closed; and
- (b) the Registrar shall give notice in writing to the mortgagee or each mortgagee as the case may be, that he or she has received a notice under subsection (1) stating that the vessel has ceased to be entitled to be registered.

(5) Subject to this section, where the Registrar gives a notice under subsection (4) to the mortgagee or mortgagees of a vessel, the registration of the vessel, so far as it relates to the mortgage or mortgages is taken to be closed at the expiration of a period of 3 months after the date of the notice.

(6) If a mortgagee who has received a notice under subsection (4) makes application to the Court within the period of 3 months after the date of the notice or such extended time as the Court orders, on application made either before or after the expiration of that period, the Court may do all or any of the following:

- (a) order that the vessel or the vessel's equipment be sold; and
- (b) make such Orders for and in relation to the distribution of the proceeds of the sale as it thinks fit; and
- (c) make such Orders and give such directions with respect to the closure of the registration of the vessel as it thinks fit.

(7) Notice of an application under subsection (6), including an application for an extension of time, is served on the Registrar.

(8) An Order under subsection (6) may be made on such terms and conditions as to costs or otherwise as the Court thinks fit.

(9) The Registrar shall give effect to an Order or direction given by the Court under this section so far as it relates to the Register.

(10) When the registration of a vessel is closed or taken to be closed under this section, the Registrar shall direct the person who has the Certificate of Registry or the Provisional Certificate of Registry of the vessel in his or her possession to deliver the Certificate or the Provisional Certificate, as the case may be, to the Registrar.

(11) A person who refuses or fails to comply with a direction given under subsection (10) commits an offence, and is liable upon conviction to a fine not exceeding 50 penalty units.

(12) Nothing in this section prejudices any rights of a mortgagee existing apart from this section.

#### **41. Power to inquire into ownership of a registered vessel**

– (1) If the Chief Executive Officer has reason to suspect that a vessel registered under this Act is not entitled to be registered he or she may, by written notice served on the registered owner of the vessel, require that person to furnish to the Chief Executive Officer within the period specified in the notice, being not less

than 30 days after the date of service of the notice, information relating to and evidence as to whether or not the owner is a qualified person.

(2) The owner of a vessel to whom a notice is directed under subsection (1) who fails to furnish to the Chief Executive Officer within the period specified in the notice, the information sought by that notice, commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units.

(3) Where an owner is unable to produce evidence to the satisfaction of the Chief Executive Officer that a vessel is entitled to remain registered, the Chief Executive Officer may decide that the registration in relation to the vessel be closed and the Chief Executive Officer may, by written notice given to the Registrar, direct that the registration of the vessel be closed.

(4) On receipt of such notice, the Registrar shall advise a registered mortgagees and then, after 30 days strike the vessel from the Register.

**42. Transfer of vessel or sale of vessel by Order of the Court** – (1) If the Court orders the sale of a vessel 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 vessel, and that person is entitled to transfer the vessel in the manner and to the same extent as if he or she were the registered owner of the vessel.

(2) The Registrar shall obey the requisition of the person named in a declaration and treat the Order as if it were a Bill of Sale in respect of any such transfer to the same extent as if that person were the registered owner and be required to register the same and insert the purchaser as registered owner.

**43. Trusts not recognised** – Notice of a trust for a registered vessel, whether the trust is express, implied or constructive, shall not be:

- (a) received by the Registrar; or
- (b) entered in the Register.

**44. Powers of disposal by owner** – (1) Subject to this Act, and subject to any rights and powers appearing in the Register to be vested in any other person, the registered owner of a vessel

has absolute power to dispose of the vessel and to give effectual receipts in respect of the disposal.

(2) If the vessel is subject to an existing registered mortgage or mortgages, the prior consent of the registered mortgagees must be obtained before the vessel may be disposed of to another person qualified to register the vessel in Samoa.

(3) Subject to section 41, if a vessel subject to an existing mortgage is to be sold to a person who is not qualified to register the vessel in Samoa, all existing registered mortgages outstanding against the vessel is discharged and deleted from the Register prior to de-registration of the vessel.

**45. Equities not excluded by this Act – (1)** In this Act, “beneficial interest” includes interests arising under contract and other equitable interests.

(2) The intention of this Act is that, subject to this Act, beneficial interests may be enforced by or against the owner or mortgagee of a vessel in respect of his or her interest in the vessel in the same manner as in respect of any other personal property.

**46. Liability of owners – (1)** If a person has a beneficial interest in a vessel registered under this Act and that vessel is registered in the name of some other person as owner, the person having that beneficial interest shall, as well as the registered owner, be subject to all pecuniary penalties imposed by this Act on the owners of vessels, and proceedings may be taken for the enforcement of any such penalties against both or either of those persons, with or without joining the other of them.

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

(3) The registered agent of a vessel registered under this Act or a foreign vessel in Samoa waters is subject to all pecuniary penalties imposed by this Act as if he or she were the owner of the vessel, and proceedings can be taken for the enforcement of any such penalties against that person.

**47. Mode of making declarations under this Part – (1)** A declaration required under this Part may be made before the

Registrar, or any other person before whom declarations may be made under the Oaths, Affidavits and Declarations Act 1963.

(2) A declaration required by this Act may be made on behalf of a company by a person so authorised by resolution of the board of directors, under the common seal of the company.

**48. Crew to be citizens of Samoa – (1)** The owner of a vessel registered under this Act is required, subject to subsection (2), to employ citizens of Samoa aboard that vessel.

(2) The Chief Executive Officer may, on application and presentation of satisfactory proof by the owner, waive the requirement of subsection (1) for a period of up to 6 months, if no citizens of Samoa with the requisite certificates and experience are available for employment at the time the vessel is due to sail.

(3) If the vessel is outside Samoa waters when the period expires, the owner of the vessel may continue to employ non-citizens until the vessel returns to Samoan waters.

(4) If, when the vessel is outside Samoan waters, a citizen of Samoa employed on board the vessel is discharged for a reason, that person shall be replaced by another citizen of Samoa at the owners expense, unless the owner can prove to the satisfaction of the Chief Executive Officer that no suitably qualified or experienced Samoan seamen are available at that time.

**49. Registration fees – (1)** The owner of a vessel registered under this Act is liable, on the initial registration of the vessel, to pay the prescribed registration fee.

(2) Fees may be prescribed by regulation for the registration of mortgages, discharge of mortgages, change of name of vessel and any other service provided by the Registrar, including searching for and copying of documents in the Register.

**50. Regulations – (1)** The Head of State may, on the advice of Cabinet make regulations as are necessary or expedient for giving full effect to this Part, and for the due administration of this Act.

(2) Without limiting subsection (1), regulations may provide for:

- (a) the registration of vessels; and

- (b) the ascertainment of the tonnage of vessels and the issue and use of Tonnage Certificates; and
- (c) the marking of a vessel for the purposes of registering a vessel under this Act; and
- (d) the manner of making an Application for Registration of a vessel at a port of registry; and
- (e) the manner in which the Registrar shall register a vessel or a vessel mortgage; and
- (f) the endorsements which is made on a Certificate of Registry; and
- (g) the manner in which an alteration to a vessel is recorded; and
- (h) the documents which shall accompany a Declaration of Transmission; and
- (i) transmission of mortgage; and
- (j) the approval by the Registrar of the name by which the vessel is to be registered and the change of the name of a registered vessel; and
- (k) the fees payable on the initial registration of a vessel or an application therefor, the registration of mortgages and other documents required to be registered under this Act and fees payable for a copy of a document filed in the Registry; and
- (l) the manner in which the Registrar shall register a lien in respect of a vessel; and
- (m) the manner in which the Registrar shall licence passenger, cargo, fishing vessels or pleasure craft of less than 15 metres.

### **PART 3A**

#### **BAREBOAT CHARTER REGISTRY**

**50A. Compatible Registries** – Whenever it appears to the Minister that the law of a State with regards to bareboat charter registration are compatible with this Act, the Minister may declare the ship registry of that State to be a compatible registry for the purposes of this Part.

**50B. Conditions for Registration–** (1) Despite anything contained in Part 3, a ship is eligible to be registered as a Samoan ship under this Part, **PROVIDED THAT:**

- (a) the ship is bareboat chartered to a qualified person;
- (b) the ship is not a Samoan ship, and is registered in a compatible registry;
- (c) the ship is not registered in another bareboat charter registry; and
- (d) the following certified documents are submitted to the Registrar to the Registrar’s satisfaction—
  - (i) an application for registration under this Part made by the Charterer or his or her authorised agent containing such information as may be required by the Registrar;
  - (ii) a declaration of bareboat charter made by the Charterer accompanied by a copy of the charter agreement, which charter agreement shall not be available for public inspection;
  - (iii) a transcript or an extract of the underlying registration of the ship which shall include a description of the ship, the owners and, where applicable, all registered mortgages and encumbrances of the ship; and
  - (iv) the consent in writing for the ship to be bareboat charter registered in Samoa of—
    - (A) the appropriate authorities of the underlying registry who may be further required by the Registrar to declare that during the period of bareboat charter registration the ship will not be entitled to fly their flag;
    - (B) the owners of the ship; and
    - (C) all registered mortgagees.

(2) Any amendments or modifications to the bareboat charter shall within 30 days be produced to the Registrar by the Charterer.

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

- (a) within 7 days from such amendments or modifications being effected communicate to the

Registrar any such amendments or modifications;  
and

- (b) within 30 days of such amendments or modifications having been entered in the underlying register produce to the Registrar a transcript or an extract of the underlying registration showing such amendments or modifications.

(4) For the purposes of this Part, all documents issued other than by Government authorities are, either signed in the presence of the Registrar or of a Commissioner for Oaths or a Samoan Consular Officer, or else certified by a Notary Public.

(5) Despite any other provision of this Act, a qualified person for the purposes of this Part shall include:

- (a) a corporation established by an Act of Samoa; and
- (b) a corporation—
  - (i) established or registered in Samoa; and
  - (ii) having a place of business or an appointed agent in Samoa.

**50C. Ascertainment of Tonnage** – The Tonnage of a ship to be registered under this Part is ascertained in accordance with the Tonnage Regulations made under this Act, provided that at the request of the Charterer the Registrar may accept the tonnage of such ship to be that registered in the underlying registry if the Registrar is satisfied that the Tonnage Measurement Convention, if applicable to such ship and unless such ship has been excepted from them, have been adhered to.

**50D. Name of Ship Bareboat Charter Registered in Samoa** – (1) Subject to subsection (2), a ship is registered under this Part by the name under which it is registered in the underlying registry, provided that such name is not already the name of a registered Samoan Ship or a name so similar as to be likely to deceive.

(2) The name of a ship to be registered or of a ship already registered under this Part, may be changed, prior or subsequent to registration under this Part as the case may be provided the appropriate authorities of the underlying registry, the owners, and the registered mortgagees, if any, have consented thereto and



provided also that such change is made in accordance with the directions of the Registrar.

**50E. Bareboat Charter Registration** – (1) The Registrar, if satisfied that all conditions for registration specified in this Part and in other Parts where applicable, have been complied with, and on payment of the prescribed fee shall:

- (a) enter in the Register provided for in section 16, all particulars of the ship and its underlying registration, owners and charterers, stating that it is a bareboat charter registration, the expiry date of such registration, and that the register does not contain an official record of any mortgages affecting the ship; and
- (b) inform the appropriate authorities of the underlying registry of the registration under this Part; and
- (c) issue a certificate of bareboat charter registration, which shall include the name and particulars of the ship, the name of the home port Apia and the expiry date of the registration.

(2) Upon the issue of a certificate of bareboat charter registration, all documents issued to the ship by the underlying registry, must be surrendered to the appropriate authorities of that registry and, within 30 days of the issue of the certificate as aforesaid, the charterer shall make and deliver to the Registrar a declaration to that effect.

**50F. Duration of Bareboat Charter Registration** – Subject to section 50G, the duration of such registration is to be for a period not exceeding the duration of the bareboat charter or the expiry date of the underlying registration, whichever is the shorter period, but in no case for a period exceeding 2 years.

**50G. Extension of Bareboat Charter Registration** – (1) At the request of the Charterer or his or her authorised Agent the Registrar may extend registration and further extend the registration for the remaining period of the charter or until the expiry date of the underlying registry, whichever is the shorter period, but in no case for periods exceeding 2 years at a time, provided that he has not received any objections to this extension

from the appropriate authorities of the underlying registry, the owners and the Registrar having informed them of such request for extension.

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

- (a) enter the new date of expiry in the register of the ship;
- (b) issue a certificate of extension of bareboat charter registration which shall include the date of expiry thereof; and
- (c) inform the appropriate authorities of the underlying registry.

**50H. International Convention Certificates of Ship Bareboat Charter Registered in Samoa** – A ship bareboat charter registered under this Part required to be issued with international convention certificates in terms of an international convention to which Samoa is a party shall be issued with such certificates under the authority of the Government of Samoa, provided that where Samoa is not a party to such convention a certificate required under that convention may be issued, with the permission of the Registrar, under the authority of the Government of the underlying registry.

**50I. Jurisdiction over a Ship Registered Under this Part** –

(1) A ship registered under this Part is taken to be a Samoan ship and except where otherwise provided is under the jurisdiction and control of Samoa and shall comply with all the laws applicable to Samoan ships.

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

(3) The home port of a ship registered under this Part is Apia and shown on the certificate of bareboat charter registration and marked on the stern in accordance with this Act.

**50J. Ownership of ship registered under this Part** – (1)

This Act does not assert any ownership rights over a ship registered under this Part and it has no effect with regards to title and transfer and transmission of such ship or shares therein.

(2) A transfer of ownership of a ship registered under this Part must be notified by the charterers to the Registrar, and the registration of the ship under this Part is closed unless the new owners, within 7 days, have informed the Registrar that they have no objection to the registration of the ship under this Part and, within 30 days of having made such declaration, delivered to the Registrar their consent in writing to such registration.

**50K. Payment of fees** – A ship registered under this Part is to be subject to the payment of the initial and annual registration fees and of any other fees set out in this Act, or in a regulation.

**50L. Mortgages and encumbrances** – Mortgages and encumbrances may not be registered under this Act in respect of a ship registered under this Part, and the Registrar shall refuse to register any such mortgages and encumbrances; such power of registration shall remain vested in the underlying registry.

**50M. Closure of Bareboat Charter Registration** – (1) The Minister may order that the registration of a ship under this Part is closed:

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

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

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

- (a) the Minister has ordered such closure in terms of subsection (1); or
- (b) a voluntary closure of registry has been requested and such request has been acceded to by the Registrar in terms of subsection (2); or

- (c) the appropriate authorities of the underlying registry, or the owners, or any of the mortgagees, if any, have withdrawn their consent to the bareboat charter registration in Samoa; or
- (d) the registration in the underlying registry has for a reason been terminated; or
- (e) the charter lapses or is terminated by any of the parties to it; or
- (f) the period for which the ship has been bareboat charter registered lapses and no extension has been granted under section 50G.

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

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

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

**50N. Bareboat Charter Registration in a Foreign Registry** – Despite any other provision of this Act, a Samoan ship registered under Part 3 may be bareboat charter registered in a foreign registry if the Registrar gives consent in writing thereto in terms of section 50O.

**50O. Consent of the Registrar**– (1) The Registrar may give consent referred to in section 50N if:

- (a) the ship is registered as a Samoan ship under Part 3, provided that a ship provisionally registered under Part 3 shall not be considered as registered for the purpose of this paragraph; and
- (b) the bareboat charter registry where the ship is to be registered is a compatible registry; and

- (c) the following documents are submitted to the Registrar—
- (i) an application for bareboat charter registration in a foreign registry made by the owners containing such information as may be required by the Registrar;
  - (ii) the consent in writing to such registration of all registered mortgagees, if any;
  - (iii) a written undertaking by the owners to surrender the certificate of registration issued under the Act within 15 days from entry into the bareboat charter registry;
  - (iv) a copy of the bareboat charter.

(2) The owners shall produce to the Registrar any amendments or modifications to the bareboat charter within 30 days of such amendments or modifications being effected.

**50P. Name of Ship Bareboat Charter Registered in a Foreign Registry** – (1) Subject to subsection (2), a ship registered under Part 3 is bareboat charter registered in a foreign registry by the name under which it is registered under the Act.

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

**50Q. Registration in a Foreign Bareboat Charter Registry** – The registration in a foreign bareboat charter registry of a ship registered under this Act that is not made under this Part is void.

**50R. Bareboat Charter Registration of a Samoan Ship in a Foreign Registry** – (1) Upon the bareboat charter registration of a Samoan ship in a foreign registry:

- (a) the owners shall immediately notify the Registrar of such registration, and within 30 days surrender to the Registrar the certificate of registration issued to the ship under this Act and deliver to the Registrar a transcript or an extract of the foreign bareboat charter registration; and

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

(2) The owners shall immediately notify the Registrar of the closure or lapse of the bareboat charter registration in a foreign registry, and shall within 30 days of the closure of such registration deliver to the Registrar a transcript or an extract of the foreign bareboat charter registration showing such closure.

**50S. Obligations While Ship is in a Foreign Bareboat Charter Registry** – (1) Unless otherwise provided for in this Part the owners of a Samoan Ship bareboat charter registered in a foreign registry shall comply with all the provisions of this Act as if the ship were not so registered in the foreign registry.

(2) During the time a Samoan ship is a bareboat charter registered in a foreign registry in terms of this Part, despite this Act:

- (a) such ship shall not hoist the Samoan Flag; and
- (b) the home port of such ship is that of the foreign bareboat charter registry.

(3) The owners shall, within 15 days from entry into the foreign bareboat charter registry, make and deliver to the Registrar a declaration to the effect that the name of the foreign home port has been marked on the stern of the ship in lieu of the name Apia.

**50T. Payment of Fees while Ship is in a Foreign Bareboat Charter Registry** – A Samoan ship bareboat charter registered in a foreign registry shall, despite such registration, continue to be subject to the payment of all the fees set out in this Act, or in a regulation in respect of Samoan ships.

**50U. International Convention Certificates of Ship Bareboat Charter Registered in Foreign Registry** – A Samoan ship bareboat charter registered in a foreign registry required to be issued with international convention certificates in terms of an international convention to which Samoa is a party must be issued with such certificates under the authority of the Government of the bareboat charter registry provided that where

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

**50V. Title, Mortgages and Encumbrances of Ship Bareboat Charter Registered in a Foreign Registry – (1)**

Despite that a Samoan ship may be bareboat charter registered in a foreign registry, all matters with respect to title over the ship, mortgages and encumbrances shall continue to be governed by Samoan law.

(2) A transaction affecting the title over a ship referred to in subsection (1) or relating to the registration, amendment, transfer and transmission and discharge of mortgages must be made and registered under this Act and only by the persons specified therein.

(3) The registration of any mortgages or encumbrances in the bareboat charter registry is void.

**50W. Termination of Bareboat Charter Registration in Foreign Registry – (1)**

The Registrar may withdraw the consent referred to in section 50N, if any of the applicable provisions of this Act, are not complied with:

**PROVIDED THAT** the Registrar shall withdraw such consent if:

- (a) the Minister, in the national interest or in the interest of Samoan shipping and after giving the owners and the charterers of the ship a reasonable opportunity to make representations, has ordered the Registrar to withdraw consent; or
  - (b) any of the conditions required to be fulfilled in terms of section 50O(1) is not so fulfilled; or
  - (c) the charter terminates or is terminated by any of the parties to it.
- (2) Upon the withdrawal of the consent of the Registrar in terms of subsection (1):
- (a) the Registrar shall inform the appropriate authorities of the bareboat charter registry, the owners, the charterers, and the mortgagees, if any, of such withdrawal; and
  - (b) the bareboat charter registration is terminated.

- (3) Upon the termination of the bareboat charter registration:
- (a) the Registrar shall make an entry thereof in the register, and the ship shall thereupon be again subject to Samoan law;
  - (b) within 30 days from the termination of such registration the owners shall make and deliver a declaration to the Registrar that the certificate of a bareboat charter registration has been surrendered to the foreign bareboat charter registry, and thereupon the Registrar, unless the registration of the ship under Part 3 is also closed, shall again deliver to the owners the certificate of registration which had been surrendered to him in terms of section 50R(1)(a); and
  - (c) within 30 days from the termination of such registration the owners shall deliver to the Registrar a transcript or an extract of register showing that the bareboat charter registration has been cancelled.

**50X. Application of International Maritime Conventions**

– Subject to the Act and any other law of Samoa for the purposes of this Part, the Safety of Life at Sea (SOLAS) Convention 1974, the Load Line Convention 1966, the Tonnage Measurement Convention 1969, the Collisions Convention 1972, the Limitation of Liability for Maritime Claims Convention, the Maritime Liens and Mortgages (MLM) Convention, the International Telecommunication Convention, the International Convention on Standards of Training, Certification and Watchkeeping (STCW) for Seafarers 1978, MARPOL 73/78 Convention, the Law of the Sea Convention, the Civil Liability Convention and the Fund Convention shall have the force of law in Samoa.

**50Y. Regulations to give effect to International Conventions** – (1) Regulations made under this Act may make provision for the implementation of any on all of the Conventions referred to in section 50X.

(2) Regulations made under the Act may provide for:



- (a) the payment of fees; and
- (b) penalties for failure to observe or comply with requirements of any of the Conventions referred to in of section 50X.

**PART 4  
SAFETY**

**51. Application–** (1) The following Conventions govern this Part and a regulation relating thereto:

- (a) Collisions Convention; and
- (b) Load Lines Convention; and
- (c) Safety Convention; and
- (d) Tonnage Measurement Convention; and
- (e) MARPOL 73/78 Convention.

(2) Subject to a specific provision and, unless the contrary intention appears, this Part applies only insofar as it is applicable and relevant to a vessel coming under any of the Conventions.

(3) Regulations may be made under this Act to give effect to the Collisions Convention, the Load Lines Convention, MARPOL 73/78 Convention, the Safety Convention, the STCW Convention and the Tonnage Measurement Convention.

(4) Regulations may be made under this Act to ensure that appropriate measures are adopted to preserve the safety of vessels, crew, passengers and cargo not subject to the Conventions listed in subsection (3).

(5) If a vessel that is registered under this Act, or a Load Lines Convention vessel, fails to comply with a requirement of the Load Lines Convention, the master or owner of the vessel commits an offence, and is liable upon conviction to a fine not exceeding 150 penalty units.

(6) If a vessel that is registered under this Act, or a Safety Convention vessel, fails to comply with a requirement of the Safety Convention, the master or owner of the vessel commits an offence, and is liable upon conviction to a fine not exceeding 150 penalty units.

- (7) If, in respect of a vessel, irrespective of type or size, that:
- (a) is registered or licensed under this Act; or
  - (b) is a foreign vessel within Samoan waters,–

the master or the owner or any other person fails to comply with a requirement of the Collisions Convention, the master or the owner of the vessel or that other person commits an offence and is liable upon conviction to a fine not exceeding 250 penalty units.

(8) If, in respect of a vessel irrespective of type or size, that:

- (a) is registered under this Act; or
- (b) is a foreign vessel within Samoan waters,

the master or the owner or any other person fails to comply with a requirement of MARPOL 73/78 Convention, the master or the owner of the vessel or that other person commits an offence and is liable upon conviction to a fine not exceeding 500 penalty units.

(9) Despite a requirement under this Act, for the purpose of giving effect to or implementing a requirement of the Load Lines Convention or the Safety Convention or MARPOL 73/78 Convention which requires a particular fitting, material, appliance or apparatus to be fitted or carried in a vessel or a particular provision to be made in a vessel, the Principal Surveyor may allow any other fitting, material, appliance or apparatus or type of fitting, material, appliance or apparatus to be fitted or carried, or any other provision to be made, if he or she is satisfied that other fitting, material, appliance or apparatus or provision is at least as effective as that required by the Load Lines Convention and the Safety Convention, as the case may be.

(10) If a vessel goes to sea without carrying the equipment required by the Collisions Convention, the Load Lines Convention, the Safety Convention or MARPOL 73/78 Convention to be carried on or fitted in the vessel, or where the equipment required to be carried or fitted is absent from the vessel, or is not in standard working order and ready for use, the owner and master of the vessel each commits an offence and each is liable upon conviction to a fine not exceeding 200 penalty units.

(11) Except in the case of a vessel that is in distress or requires assistance, a person who exhibits a signal that is prescribed in the Collisions Convention as a signal indicating that a vessel is in distress and needs assistance commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units.

**52. Appointment of Principal Surveyor – (1)** The Public Service Commission shall appoint a suitable person, to be the Principal Surveyor under the Public Service Act 2004.

(2) The Principal Surveyor is responsible for carrying out obligations in respect of Flag State and Port State Control contained in the Conventions to which Samoa is a Party, including, but not limited to, the following:

- (a) Law of the Sea Convention;
- (b) Safety Convention;
- (c) Collisions Convention;
- (d) STCW Convention;
- (e) MARPOL 73/78 Convention;
- (f) Tonnage Measurement Convention;
- (g) Load Lines Convention.

(3) The Principal Surveyor may delegate a responsibility for carrying out the duties and obligations referred to in subsection (2).

**53. Surveyors – (1)** The Chief Executive Officer may appoint an association or corporation to be a classification society for the purposes of this Part.

(2) The Chief Executive Officer may appoint a person, or classification society to be a Surveyor for the purposes of this Act.

(3) When a classification society is appointed, it shall nominate 1 or more persons to carry out surveys, issue reports, make declarations of compliance or do all other things prescribed in Regulations, subject to the approval of the Chief Executive Officer.

**54. Vessel not to go to sea without certificates – (1)** No vessel shall go to sea unless there are in force all such valid certificates in respect of that vessel that are required under this Part.

(2) If a vessel goes to sea in contravention of subsection (1), the owner and master each commits an offence, and each is liable upon conviction to a fine not exceeding 100 penalty units.

**55. Certificates to be produced – (1)** The Principal Surveyor may direct the master of the vessel to produce to him

or her such certificates as are required under this Part before the vessel goes to sea.

(2) The master of a vessel who refuses or fails without reasonable cause to produce the certificates under subsection (1), commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units.

**56. All vessels subject to survey** – A vessel is subject to such surveys and inspections as are required by this Act or prescribed by regulations.

**57. Powers of a Surveyor** – (1) A Surveyor may at any time in the course of a survey, or in a situation which in his or her opinion is or may become dangerous:

- (a) go on board a vessel, including a vessel under construction, and survey a part of the vessel and its equipment, any cargo or articles on board, and examine a document carried on the vessel under this Act;
- (b) upon giving reasonable notice to the owner or agent of the vessel concerned, enter any premises and make such examination and investigation and require the production of such books, papers and documents relating to that vessel, as he or she considers necessary for the performance of his or her duty;
- (c) instruct the owner or master to provide sufficient information with respect to the stability of the vessel, and prove to the satisfaction of the Surveyor that the vessel has sufficient residual stability—
  - (i) on arrival; and
  - (ii) at a stage of discharge and loading; and
  - (iii) on departure from the port; and
- (d) instruct the master or owner of the vessel to give him or her a satisfactory explanation of a matter concerning the vessel or the documents produced or required to be produced;

- (e) request plans, specifications, and any other information relating to any work, repair or alteration.

(2) A Surveyor, who finds a situation on a vessel which is or may become dangerous, has the power to detain the vessel until the situation is rectified, but shall not exercise a power under subsection (1) in such a manner that a vessel is unreasonably detained or delayed.

(3) A person who hinders or obstructs a Surveyor in the exercise of his or her powers under this section commits an offence, and is liable upon conviction to a fine not exceeding 50 penalty units.

(4) A person who refuses or fails to comply with a requirement or request given or made to him or her by a Surveyor in accordance with this section, commits an offence, and is liable upon conviction to a fine not exceeding 50 penalty units.

(5) Contravention of subsection (3) or (4) shall result in the vessel being liable to detention.

(6) If a vessel is found to be unseaworthy or if a person fails to provide adequate information to the Surveyor in respect of the stability of the vessel, the Principal Surveyor may detain the vessel until it is made seaworthy or until sufficient information is provided which, in the opinion of the Surveyor, indicates that the vessel has adequate residual stability.

**58. Special examinations of vessels – (1)** For the purposes of a survey of a vessel, the Principal Surveyor may, if he or she thinks fit, direct the owner or the master of a vessel to have the vessel slipped or taken into dock so he or she may inspect the hull and appendages below the waterline.

(2) A person, who refuses or fails without reasonable cause to comply with a direction under subsection (1), commits an offence, and is liable upon conviction to a fine not exceeding 50 penalty units.

**59. Requirement to notify the Principal Surveyor – (1)** The owner or master of a vessel shall notify the Principal Surveyor of a condition that may impair the safety of a vessel or its operation, or affect the validity of a certificate issued under this Act.

(2) Upon notification, the Principal Surveyor shall forthwith take an action that is appropriate in the circumstances.

(3) Any measures taken to restore the safety of the vessel or its operation must be communicated to the Principal Surveyor.

(4) Where an alteration or modification is proposed that will change the vessel's characteristics from those described in a certificate, the owner or master shall notify the Principal Surveyor not less than 14 days prior to the intended commencement of such work.

(5) The Principal Surveyor shall signify his or her approval or convey his or her recommended changes to the owner or master within 14 days after receipt of the proposal.

(6) When the Principal Surveyor has approved the proposal, work on the alterations or modifications may commence.

**60. Application for survey – (1)** If the owner or master of a vessel seeks the issue of a Safety Certificate he or she shall apply to the Principal Surveyor for the vessel to be surveyed.

(2) On receipt of an application made under subsection (1), the Principal Surveyor shall nominate a Surveyor and cause the vessel to be surveyed.

(3) If the owner or master of a Load Lines Convention ship or a Safety Convention ship seeks the issue of a Load Lines Certificate or a Safety Certificate, he or she may apply to the Principal Surveyor to have a classification society appointed.

**61. Issue of Safety Certificate – (1)** A Surveyor shall on completion of a survey, deliver a written report of the survey to the Principal Surveyor.

(2) If the Surveyor is satisfied that the vessel complies with the requirements of this Part, he or she shall complete a declaration to that effect, and deliver it to the Principal Surveyor.

(3) If the Principal Surveyor has received the declaration and is satisfied that the vessel complies with the requirements of this Part he or she shall, subject to any conditions as he or she thinks fit, issue a Safety Certificate for the prescribed duration.

**62. Cancellation or suspension of Safety Certificate – (1)** If, in the opinion of the Principal Surveyor:

- (a) a declaration made under section 61(2) has been made fraudulently or erroneously; or
- (b) a Safety Certificate has been issued upon false or erroneous information; or
- (c) since the issue of a Safety Certificate the vessel has been altered, repaired or damaged to such an extent or in such a manner as to affect adversely the seaworthiness of the vessel; or
- (d) the vessel or its equipment has been insufficiently maintained so as to render the vessel unseaworthy, –

the Principal Surveyor shall cancel or suspend the Safety Certificate of the vessel.

(2) If the Principal Surveyor suspends or cancels a Safety Certificate under subsection (1), he or she shall as soon as practicable after the suspension or cancellation, serve a notice on the owner or master of the vessel which shall:

- (a) if the certificate has been suspended, set out the period for which it has been suspended; or
- (b) if the certificate has been cancelled, require the surrender of the Safety Certificate to the Principal Surveyor.

(3) A person served with such a notice who fails to surrender the Safety Certificate to the Principal Surveyor commits an offence, and is liable upon conviction to a fine not exceeding 100 penalty units.

(4) If a Safety Certificate is cancelled or suspended, the Principal Surveyor may require the owner to have the vessel re-surveyed before the issue of a new certificate or the removal of the suspension.

(5) If a Safety Certificate is cancelled or suspended, the Chief Executive Officer may order the detention of the vessel in port until the situation is rectified

**63. Alteration of a vessel** – If a vessel, for which a certificate has been issued, is altered so that the certificate becomes or may become inapplicable to the altered state of the vessel, the owner or master of the vessel who fails to notify the Principal Surveyor of such alteration each commits an offence and each is liable upon conviction to a fine not exceeding 100 penalty units.

**64. Certificates to be displayed – (1)** A master of a vessel, other than an unmanned barge, in respect of which a certificate has been issued, shall cause the certificate or a certified copy of the certificate to be continuously displayed in some prominent and accessible place on the vessel.

(2) A master who fails to do so commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units.

**65. Requirement to carry certain safety equipment – (1)** The owner and the master of a vessel which is required by this Act and regulations, or by the Safety Convention to carry or be fitted with particular kind of equipment shall ensure that all such equipment:

- (a) is carried or fitted in the vessel; and
- (b) is in standard working order and ready for use; and
- (c) where applicable, has a valid inspection or manufacturer's or testing certificate, –

before the vessel goes to sea.

(2) The owner and the master of the vessel who fails to comply with requirements of the subsection (1) commits an offence and each is liable upon conviction to a fine not exceeding 100 penalty units.

**66. Vessel to carry qualified radio communications personnel** – The owner and the master of a vessel, which is required by this Part or the Regulations or the Safety Convention to carry a radio installation and which goes to sea without a person qualified to operate the radio installation, commits an offence and each is liable upon conviction to a fine not exceeding 100 penalty units.

**67. Radio reports of dangers to navigation** – The master of a vessel who refuses or fails without reasonable cause to forthwith make a report by radio to the nearest coastal station and a written report to the Chief Executive Officer of a serious danger to navigation, including non-functioning or absence of navigation aids, which comes to his or her notice while the vessel



is at sea, commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units.

**68. Assistance to persons in danger or distress at sea – (1)**

The master of a vessel shall, as far as he or she can do so without danger to the vessel, its crew and passengers, render assistance to a person or vessel found at sea in danger or distress.

(2) The master of a vessel who fails to comply with this section commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units, or to a term of imprisonment not exceeding 2 years, or both.

(3) Compliance with this section by the master of a vessel shall not affect his or her right or the right of any other persons to salvage under this Act.

**69. Duty of vessel to assist in case of collision – (1)** For collision between 2 vessels, the person-in-charge of each vessel, if and so far as the can do so without danger to his or her own vessel, crew and passengers, shall:

- (a) render to the other vessel, his or her master, crew and any passengers such assistance as is practicable and necessary in order to save them from any danger caused by the collision; and
- (b) stand by the other vessel until it has been ascertained that the other vessel has no need of further assistance; and
- (c) give to the person in charge of the other vessel—
  - (i) the name of his or her own vessel and of the port of registry; and
  - (ii) the names of the previous and the next port of call.

(2) The person-in-charge of a vessel who fails without reasonable cause to comply with this section commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units or to a term of imprisonment not exceeding 2 years, or both.

**70. Hazardous cargo – (1)** This section applies to cargo, goods or substances (other than dangerous goods) which, if shipped or carried in a vessel in an improper or unsuitable manner

could, in the opinion of the Principal Surveyor, endanger that vessel or constitute a danger to human life.

(2) A master shall inform the Principal Surveyor of his or her intention to load, carry, discharge or handle cargo comprising dangerous goods or harmful substances and a master who fails to do so commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units.

(3) The Principal Surveyor may by direction to the master of a vessel:

- (a) prohibit the loading into the vessel; or
- (b) prohibit the carriage in the vessel; or
- (c) order the removal from the vessel; or
- (d) direct the manner of the stowage or carriage in the vessel of cargo, goods or substances to which this section applies.

(4) The master of a vessel who refuses or fails to comply with a direction given under this section by the Principal Surveyor commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units.

(5) If a master of a vessel is charged with an offence under subsection (4), the vessel may be detained until such time as the master has complied with the direction given by the Principal Surveyor.

#### **71. Powers of the master in relation to dangerous goods –**

(1) The International Maritime Dangerous Goods (IMDG) Code has the force of law in Samoa and apply to this Part.

(2) The master or owner of a vessel may:

- (a) refuse to take on board a package which he or she suspects may contain dangerous goods; and
- (b) open and inspect a package which he or she suspects may contain dangerous goods; and
- (c) discharge, destroy, render innocuous or otherwise deal with goods which—
  - (i) in his or her opinion are dangerous goods; and
  - (ii) have been shipped on board the vessel without his or her consent, –

and is not subject to any civil or criminal liability of any kind for so doing in good faith.

**72. Powers of the Principal Surveyor in relation to dangerous goods – (1)** The Principal Surveyor may, where he or she is satisfied that dangerous goods are being loaded into, unloaded from, or stowed, carried or used in a vessel otherwise than in accordance with the International Maritime Dangerous Goods (IMDG) Code or with the Safety Convention, direct the owner or master of the vessel to take such action in relation to the vessel or to the whole or to a part of the cargo of the vessel as he or she thinks fit.

(2) A person who fails to comply with a direction given under subsection (1) commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units.

(3) If a person is charged under this section, the vessel may be detained until such time as the person has complied with the direction given by the Principal Surveyor.

**73. Requirements in relation to dangerous goods – (1)** The master of a vessel shall inform the Principal Surveyor of his or her intention to load, carry, discharge or handle dangerous goods.

(2) A person who ships, carries or uses in a vessel dangerous goods otherwise than as required or permitted by the International Maritime Dangerous Goods (IMDG) Code or by the Safety Convention, commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units.

(3) A person who conceals the character of any dangerous goods or uses a false description of dangerous goods in order to ship, carry, or use, any dangerous goods aboard the vessel, commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units.

**74. Forfeiture of dangerous goods – (1)** Any dangerous goods shipped or carried or used in a vessel in contravention of this Part may be ordered by the Court to be forfeited to the Government.

(2) Where an Order is made under this section, the dangerous goods may be forfeited, sold or destroyed, even if:

- (a) no offence has been committed by the owner of the goods; or
- (b) the owner of the goods has had no notice of the proceedings; or
- (c) there is no evidence as to the ownership of the goods.

**75. Number of persons that may be carried in a vessel – (1)**

The owner and the master of a vessel shall not permit more persons to be carried than the number stated in the Safety Certificate issued in respect of the vessel as being the maximum number of persons that may be carried in the vessel.

(2) If a vessel is found to be in contravention of this section, the owner and the master commit an offence for which each is liable upon conviction to a fine not exceeding 50 penalty units and to a further fine of not more than 1 penalty unit for each person carried on board the vessel in excess of the number stated in the Safety Certificate.

**76. Compliance with load line requirements – (1)** This section applies to a Samoan vessel.

(2) Subject to an exemption conferred or granted under this Part, a vessel shall not proceed or attempt to proceed to sea, unless the vessel:

- (a) has been surveyed and marked with a deck line and load line in accordance with the Load Lines Convention or regulations made under this Act;
- (b) complies with the conditions of assignment; and
- (c) has on board the prescribed information for the guidance of the master.

(3) If a vessel is taken to sea in contravention of this section, the owner who permits and the master who takes a vessel to sea, each commits an offence for which each is liable upon conviction to a fine not exceeding 50 penalty units.

**77. Submerged load line – (1)** This section applies to a Samoan vessel and to a vessel in Samoan waters.

(2) A vessel other than a passenger vessel shall not be so loaded that:

- (a) if the vessel is in still salt water of specific gravity of 1.025 and has no list, the appropriate load line on each side of the vessel is submerged; or
  - (b) the appropriate load line on each side of the vessel would be submerged if the vessel were in still salt water of specific gravity of 1.025 and had no list.
- (3) A passenger vessel shall not be so loaded that:

- (a) if the vessel is in still salt water of specific gravity of 1.025 and it has no list, the appropriate subdivision load line on each side of the vessel is submerged; or
- (b) the appropriate subdivision load line on each side of the vessel would be submerged if the vessel were in still salt water of specific gravity of 1.025 and had no list.

(4) If a vessel is loaded in contravention of subsection (2) or (3) the owner and the master commit an offence, and each is liable upon conviction to a fine not exceeding 20 penalty units, and to a further fine not more than 2 penalty units for every centimetre or part thereof by which the appropriate load line or subdivision load line was, or would have been, submerged.

(5) If a vessel is loaded in contravention of this section, the vessel may be detained until it ceases to be so loaded.

(6) If a non-Samoan vessel is or appears to be overloaded:

- (a) the master or owner shall not be prosecuted, but the Government of the country in which the vessel is registered must be advised through the appropriate channels, and;
- (b) the vessel shall not be detained unless the vessel has been inspected by a Surveyor, and if detained, the Government of the country in which the vessel is registered must be advised through the appropriate channels.

(7) It is a defence to a prosecution for an offence under this section to prove that the vessel was overloaded as a result of an alteration in the route of the vessel, or of a delay to the vessel caused by stress of weather, force majeure or other circumstances which the master or owner of the vessel could not have foreseen or prevented.

(8) The master of a registered vessel shall record the draught forward and after draft in the Official Log Book before the vessel departs from a port.

**78. Unsafe vessels – (1)** A vessel is an unsafe vessel if:

- (a) the hull, machinery or equipment of the vessel is inadequate or is in a defective condition; or
- (b) the vessel is undermanned; or
- (c) the vessel is improperly loaded; or,
- (d) the vessel has inadequate stability; or
- (e) for any other reason which, in the opinion of the Principal Surveyor having regard to the proposed voyage, makes the vessel unfit to go to sea without danger to life or property or the environment.

(2) A person who sends, and the master who takes a vessel to sea which is known to be unsafe commits an offence and each is liable upon conviction to a fine not exceeding 250 penalty units.

**79. Detention of unsafe vessels – (1)** An unsafe vessel may be detained until, in the opinion of the Principal Surveyor, it ceases to be an unsafe vessel.

(2) If an unsafe vessel is detained, the Principal Surveyor shall give notice in writing to the owner or to the master setting out the reasons for the detention.

(3) If a vessel that is registered in a country other than Samoa is detained, the Chief Executive Officer shall as soon as practicable cause the nearest Consul or other diplomatic representative of the country in which the vessel is registered to be informed of the detention, and of the reasons for the detention.

**80. Reporting of casualties and incidents – (1)** In this section, “vessel” means a vessel that is:

- (a) registered under this Act; or
- (b) not registered under this Act, but is within the jurisdiction of Samoa—
  - (i) in Samoan waters, or;
  - (ii) on a voyage where the next port of call is in Samoa; or

- (c) an offshore vessel.
- (2) If a vessel:
  - (a) causes or is involved in a casualty; or
  - (b) receives damage which renders or is likely to render the vessel unsafe; or
  - (c) has been in a position of great peril from—
    - (i) the act of some other vessel; or
    - (ii) danger of wreck or collision; or
  - (d) fouls or does damage to—
    - (i) a pipeline; or
    - (ii) a submarine cable; or
    - (iii) a marine navigation aid; or
  - (e) having left a port in Samoa is forced to return to that port in difficulties; or
  - (f) has sustained an incident, –

the master of the vessel shall, as soon as practicable, report the event to the Principal Surveyor by radio through an appropriate coastal station, or if no radio is available, by the fastest practicable means and shall, if so requested by the Principal Surveyor, provide a report in writing.

(3) The master of a vessel who, without reasonable cause, fails to comply with a provision of subsection (2) commits an offence and is liable upon conviction to a fine not exceeding 200 penalty units.

**81. Inquiry into certain casualties and incidents** – If a vessel has suffered or caused a casualty or incident, the Chief Executive Officer may cause:

- (a) a preliminary investigation into the casualty or incident to be carried out by a person appointed by him or her; or
- (b) a Marine Inquiry to be held under this Part; or
- (c) a preliminary investigation to be carried out and a Marine Inquiry to be held.

**82. Preliminary investigations** – (1) If the Chief Executive Officer causes a preliminary investigation to be held under this Act, the person holding the investigation:

- (a) may:

- (i) go on board a vessel involved in the casualty or incident; and
  - (ii) require any persons to answer questions relating to the casualty or incident; and
  - (iii) require production of a document or certificate relating to a vessel involved in the casualty or incident; and
- (b) shall report the result of the preliminary investigation to the Chief Executive Officer.
- (2) A person shall not in relation to an officer carrying out an investigation:
- (a) hinder or obstruct any such Officer carrying out a preliminary investigation under this section; or
  - (b) fail to answer a question put to him or her by any such Officer; or
  - (c) fail to produce a document or certificate he or she has in his or her possession or under his or her control when requested to so by any such Officer,

—  
and a person so doing commits an offence and is liable upon conviction to a fine not exceeding 150 penalty units.

(3) A person committing an offence under subsection (2) may, in addition to a fine payable, have his or her name added to the List of Suspended Seamen.

(4) Where it appears to the Chief Executive Officer to be necessary or desirable to do so, he or she may order the suspension of a certificate issued to a qualified seaman under this Act, pending the outcome of the preliminary investigation.

**83. Marine inquiries** – (1) The Minister may appoint a Board of Marine Inquiry which shall consist of a chairperson and 2 other members.

(2) The chairperson may, if he or she thinks it is advisable, co-opt expert advisers to assist the Board in an inquiry.

(3) Subject to subsections (4) and (5), and any regulations made under this Act, the Board may regulate its procedure in such a manner as it thinks fit.

(4) Where it is likely during the course of a Marine Inquiry that the conduct of a person will be called into question or it is



likely that a person will be adversely affected by a decision of the inquiry, the chairperson shall:

- (a) give that person at least 72 hours' notice of the place, day and hour of the inquiry; and
- (b) provide that person—
  - (i) a copy of the report of a preliminary investigation in relation thereto; or
  - (ii) in any other case, a statement of the case on which the inquiry was so ordered.

**(5)** A person whose conduct is likely to be questioned during the course of a Marine Inquiry or who is likely to be adversely affected by the decision of the inquiry is entitled to:

- (a) attend the inquiry personally and to be represented by counsel; and
- (b) be sworn and give evidence before the inquiry; and
- (c) subpoena and call witnesses; and
- (d) examine, cross-examine and re-examine all witnesses in accordance with rules of procedure and evidence applicable to the Commissions of Inquiry Act 1963; and
- (e) take all proper exceptions to the admissibility of evidence; and
- (f) address the Inquiry, either at the conclusion or at any other proper time.

**(6)** The Board of Marine Inquiry may:

- (a) go on board a vessel; and
- (b) require a person to answer questions relating to the subject of the Inquiry; and
- (c) require the production of a document or certificate which in their opinion is relevant to the Inquiry.

**(7)** Without limiting any of the powers conferred on it by this Act, a Board of Marine Inquiry shall have the same powers and immunities as if it were a Commission of Inquiry appointed under the Commission of Inquiry Act 1963.

**(8)** On conclusion of the Inquiry, the Board of Marine Inquiry shall make a report in writing to the Minister setting out the results of the Inquiry.

**(9)** A member of the Board may dissent in writing from a report of the Board and an Order must be made on the majority decision of the members.

(10) The Board of Marine Inquiry may make such Order as it thinks just in regard to the costs of the Inquiry and any such costs which a person may be ordered to pay may be recovered from that person by the Chief Executive Officer.

(11) If it appears to the Chief Executive Officer to be necessary or desirable to do so, he or she may order the suspension of a certificate issued to a qualified seaman under this Act, pending the outcome of a Marine Inquiry.

**84. Powers of the Board of Marine Inquiry in relation to certificates – (1)** If, as a result of an inquiry, the Board is satisfied that a certificated or qualified seaman:

- (a) is unfit to discharge his or her duties because of incompetence, or misconduct, or for any other reason; or
- (b) has been seriously negligent in the discharge of his or her duty, –

and is further satisfied that the unfitness or negligence caused or contributed to the casualty, the Board of Marine Inquiry shall make recommendations to the Minister.

(2) The Board may recommend to the Minister that he or she:

- (a) cancel or suspend a certificate held by the qualified seaman; or
- (b) reprimand the seaman in writing to be filed on his or her record; or
- (c) add the seaman's name to the List of Suspended Seamen; or
- (d) issue a lower grade of certificate for the period of cancellation or suspension.

(3) If the Minister cancels or suspends a certificate, the seaman concerned shall forthwith deliver such certificate to the Principal Shipping Officer for cancellation or suspension.

(4) Where, as a result of the Inquiry, the Board of Marine Inquiry is satisfied that the suspended seaman was fit or was not negligent in the discharge of his or her duties at the time the casualty or the incident occurred, it may recommend to the Chief Executive Officer that:

- (a) the cancellation or suspension of the certificate of the suspended seaman be revoked as soon as practicable;
- (b) the name of the suspended seaman be removed from the List of Suspended Seamen; and
- (c) the certificate be returned to the suspended seaman forthwith.

**85. Statement to be furnished to seaman** – The Board shall not recommend the cancellation or suspension of the certificate of a master or qualified seaman, unless a statement of the case on which the Inquiry had been ordered has been furnished to the master or seaman holding the certificate, and, where practicable, the master or qualified seaman has had an opportunity to be heard.

**86. Failure to deliver cancelled or suspended certificate** – If a certificate is recommended to be cancelled or suspended, the holder who fails to deliver up the certificate commits an offence, and is liable upon conviction to a fine not exceeding 10 penalty units.

**87. Appeals** – If under this Part, the certificate of a master or qualified seaman:

- (a) is cancelled or suspended; or
- (b) where a master or qualified seaman is reprimanded, – the master or the qualified seaman may within 21 days of the reprimand, or after cancellation or suspension of the certificate, appeal to the Court, and the Court may make such Order confirming, varying or revoking the reprimand, or the cancellation, or suspension as it deems fit.

**88. Safety and well-being of passengers** – (1) This section shall apply to a vessel which is carrying passengers.

(2) If, in the opinion of the Principal Surveyor there would be a danger to the safety, comfort, health or well-being of a passenger on a vessel by reason of the manner in which the vessel is equipped, or manned, or fuelled, or, if the vessel is carrying cargo, livestock or ballast such that the safety and well-being of passengers is affected or is provided with insanitary passenger accommodation, or, health and medical services or unwholesome

provisions, or water or stores, the Principal Surveyor may notify the master of the vessel accordingly.

(3) When a notification is given under subsection (2), the carriage of passengers in the vessel in respect of which the notification is given, is prohibited until such time as the Principal Surveyor is satisfied that passengers may be carried without danger to their safety, comfort, health or well-being and the prohibition is revoked.

(4) The master of a vessel carrying passengers who takes the vessel to sea while the carriage of passengers is prohibited under subsection (3) commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units and to a further fine not exceeding 5 penalty units for each passenger carried in the vessel.

**89. Safety Regulations** – (1) The Head of State may, on the advice of Cabinet make regulations as may be necessary or expedient for giving full effect to this Part and for the due administration thereof.

(2) Without limiting subsection (1), regulations may provide in respect of all vessels including fishing vessels, for or in relation to:

- (a) the Certificates that are required by this Part to be in force in respect of a vessel;
- (b) the manner of survey or inspection of vessels;
- (c) periods within which vessels are surveyed or inspected;
- (d) the circumstances in which, a survey or inspection may be carried out;
- (e) the manner in which a Surveyor shall make a record of survey and a declaration of compliance to the Principal Surveyor on completion of a survey or of an inspection;
- (f) the exemptions from survey that may be granted in respect of a particular vessel or a particular class of vessel;
- (g) the type and form of Certificates;
- (h) the duration of, or extension to the duration of, the validity of Certificates;

- (i) the circumstances in which Certificates may be cancelled or suspended;
- (j) the manner in which Certificates may be endorsed;
- (k) the requirements with which the hull, machinery and equipment of vessels shall comply;
- (l) the appliances to be carried and the measures to be observed on vessels for—
  - (i) the saving of life at sea; and
  - (ii) the prevention, detection and extinction of fires;
- (m) the requirements for the holding and recording of musters and drills for crew and passengers;
- (n)
  - (i) the requirements with respect to the equipping of vessels with radio-telephones and radio navigation aids including the number of units; and
  - (ii) the operation, maintenance and use of radio-telephones and radio navigation aids in vessels; and
  - (iii) qualifications of the radio-telephone operators to be carried on vessels;
- (o) the measures and procedures to be followed and the equipment to be carried on vessels to ensure safety of navigation;
- (p) the observance of safety standards and procedures on board vessels;
- (q) safety and safe working practices on board vessels including the loading and unloading of cargo, stores and provisions;
- (r) minimum standards for machinery and appliances carried and used on vessels in loading or unloading of cargo, stores and provisions;
- (s) the minimum freeboard for fishing vessels;
- (t) the stability and seaworthiness of vessels and the information required to be provided by an owner to the Principal Surveyor and to the master of the vessel;
- (u) the manner in which preliminary investigations and Marine Inquiries are to be conducted;

- (v) empowering the Principal Surveyor to make orders applicable to a specified vessel or class of vessel, in relation to—
  - (i) the number, type and location of lifesaving appliances and fire fighting equipment to be carried;
  - (ii) the type and location of radio, navigation and miscellaneous equipment to be carried;
- (w) the fees payable in respect of surveys and inspections;
- (x) the number of berthed and un-berthed passengers that may be carried in a vessel;
- (y) the requirements which must be complied with in respect of the stowage and carriage of livestock, deck cargo, grain, dangerous goods and other hazardous cargo in vessels;
- (z) the manner of determining freeboards to be assigned to vessels;
- (aa) the manner of determining, in relation to a vessel, 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 vessel by marks;
- (bb) the manner of determining, by reference to a mark, the freeboards assigned and the position in which each side of a vessel is to be marked with a line indicating the maximum depth to which the vessel may be loaded;
- (cc) the requirements in respect of hull, superstructure, fittings and appliances which are relevant to the assignment of freeboards to vessels;
- (dd) the manner of recording particulars of the requirements for the assignment of freeboard and the method of determining the extent of compliance with the conditions of assignment and the requirements for the recording of the vessel's draft forward and after and the freeboard in the Official Log Book prior to departure from a port;
- (ee) in relation to a vessel carrying passengers—
  - (i) the accommodation of passengers;

- (ii) provisions, water, medical stores and medical inspection;
  - (iii) the carriage of medical staff and the provision of hospital accommodation;
  - (iv) sanitary facilities;
  - (v) the sale and consumption of alcohol;
  - (vi) passenger lists;
  - (vii) the cargo which may be carried in the vessel and the method of stowing cargo;
  - (viii) the maintenance of good order in respect of the passengers;
  - (ix) the prevention of wilful damage to the machinery or equipment of a vessel by a passenger;
  - (x) the prevention of an obstruction to a seaman in the execution of his or her duty;
  - (xi) the prevention of the molesting of or interference with a person on board the vessel;
- (ff) empowering the Principal Surveyor to make orders applicable to a specified vessel or class of vessel, providing for or in relation to—
- (i) the number of passengers which may be carried having regard to the trade in which the vessel is engaged; and
  - (ii) the special requirement to be observed for the carriage of dangerous goods and other hazardous cargoes including deck cargoes and livestock.

## **PART 5**

### **SEAMEN'S AND PILOTAGE CERTIFICATES**

**90. Application—** (1) Subject to a specific provision and unless the contrary intention appears, this Part applies only in so far as they are applicable and relevant to a vessel coming under the STCW Convention or the Code.

(2) This Part, unless the contrary intention appears, does not apply to, or in relation to, a vessel that is:

- (a) less than 15 metres in length; or

- (b) a pleasure craft; or
- (c) an outrigger vessel.

(3) This Part applies to the issuance and control of pilotage certificates and pilotage exemption certificates.

**91. Vessel to be properly manned – (1)** In addition to the crew complement prescribed by Regulations, a vessel is provided with a master and an engineer who are the holders of valid Certificates of Competency issued by the Minister, and a person who fails to comply with this subsection commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units.

(2) An owner who sends or a master who takes a vessel to sea or permits it to remain at sea with fewer qualified seamen on board than the complement prescribed in respect of that vessel, commits an offence and each is liable upon conviction to a fine not exceeding 50 penalty units.

**92. The STCW Convention and the Code – (1)** Subject to this Act and to any other law, the STCW Convention and the Code shall have the force of law in Samoa and shall govern this Part and a regulation relating thereto.

(2) Where, in respect of the manning of a vessel that is registered under this Act, there is a failure to:

- (a) comply with a requirement of the STCW Convention; or, where applicable
- (b) to observe the Code, –

the owner and the master of the vessel commit an offence and each is liable upon conviction to a fine not exceeding 100 penalty units.

(3) Regulations made under this Act may make provision for the implementation of the STCW Convention and for giving effect to the Code.

(4) Despite a requirement under this Act for the purpose of giving effect to or implementing a requirement of the STCW Convention or the Code in respect of education and training arrangements, the Minister may allow equivalent arrangements for such education and training, subject to the condition set down in Article IX of that Convention, or the Code.

(5) If the Government is required to carry out an obligation or duty under the STCW Convention or the Code, that obligation or



duty is to be implemented, as may be practicable, by the Ministry of Transport, or by any other agency or person designated by the Minister to be the implementing agency.

**93. Appointment of Principal Shipping Officer** – (1) The Public Service Commission shall appoint a suitable person to be the Principal Shipping Officer, under the Public Service Act 2004.

(2) The Principal Shipping Officer is responsible for carrying out obligations in respect of Flag State and Port State Control contained in the STCW Conventions and the Code.

(3) The Principal Shipping Officer may delegate a responsibility for carrying out the duties and obligations referred to in subsection (2).

(4) All vessels to which the STCW Convention or the Code apply shall, while in Samoan ports, be subject to control of the Principal Shipping Officer or his or her designees to verify that all seafarers serving on board vessels, who are required to be certified under the STCW Convention or the Code, are so certified or hold an appropriate dispensation.

**94. Certificates** – (1) A person may apply to the Principal Shipping Officer for a Certificate of Competency.

(2) An application must be accompanied by the prescribed fee.

(3) The Minister shall, issue a Certificate of Competency if he or she is satisfied that the applicant is properly qualified in accordance with the regulations incorporating the STCW Convention and the Code.

(4) A Certificate must be in the prescribed form and be in accordance with the STCW Convention and shall set out the grade or designation in respect of which it is issued.

(5) The holder of a valid Certificate of Competency may serve on a vessel as a qualified seaman of the grade and designation specified in the certificate.

**95. Suspension or cancellation of certificate** – (1) If the Chief Executive Officer has a reason to believe that the holder of a Certificate of Competency is unfit to be the holder of such a Certificate of Competency whether by reason of medical unfitness, incompetence or misconduct or for any other valid reason, the

Chief Executive Officer may give the holder written notification that he or she is considering the suspension or cancellation of the Certificate of Competency.

(2) The notification referred to in subsection (1) shall state:

- (a) the ground upon which the Chief Executive Officer has a reason to believe that the holder is unfit; and
- (b) that within a period specified in the notice, being not less than 72 hours, the holder may make written and oral representations to the Chief Executive Officer.

(3) After considering any representations, the Chief Executive Officer shall decide whether or not to suspend or cancel the Certificate and shall, upon authorisation by the Minister, give the holder written notice of and the reasons for his or her decision.

(4) If the decision is to suspend or cancel the Certificate, the notice shall:

- (a) state the date from which and the period for which the suspension is to take effect or the date from which the cancellation is to take effect; and
- (b) require the holder to deliver the Certificate of Competency to the Principal Shipping Officer not later than the date so specified in the notice.

(5) A person who is served with the notice and who fails to deliver the Certificate specified in the notice to the Principal Shipping Officer commits an offence and is liable upon conviction to a fine not exceeding 10 penalty units.

#### **96. Pilotage certificate and pilotage exemption certificate**

– (1) The Chief Executive Officer may, after consultation with the Samoa Ports Authority determine the qualifications and experience required for pilotage certificates and pilotage exemptions certificates in respect of that pilotage area which are prescribed in Regulations.

(2) The Minister, on the advice of the Chief Executive Officer, may issue or renew a pilotage certificate or a pilotage exemption certificate, authorising the holder to take the lawful conduct of a vessel within a compulsory pilotage area.

(3) The issue and renewal of a pilotage certificate or pilotage exemption certificate is subject to such conditions as the Chief

Executive Officer thinks fit, which conditions must be endorsed on the pilotage certificate or exemption certificate.

(4) A pilotage certificate or pilotage exemption certificate issued or renewed under this section is valid only within a pilotage area in respect of which it is issued.

(5) The Minister, on the advice of the Chief Executive Officer, may at a time cancel a pilotage exemption certificate.

(6) The Chief Executive Officer may, after consultation with the Samoa Ports Authority, at a time exempt a person from this Part.

**97. Suspension of a pilotage certificate – (1)** Where in the opinion of the Principal Shipping Officer a certificated pilot:

- (a) is unfit to discharge his or her duties because of incompetence or misconduct or for any other reason; or
- (b) has been seriously negligent in the discharge of his or her duties, –

the Principal Shipping Officer, after consultation with the Samoa Ports Authority shall inform the Chief Executive Officer who may cause an inquiry to be held.

(2) If the Chief Executive Officer causes an inquiry to be held he or she may, if he or she thinks fit suspend the pilotage certificate of the certificated pilot in relation to whom the inquiry is to be held, pending the outcome of the inquiry.

**98. Inquiry into incompetence of a pilot – (1)** The Chief Executive Officer may conduct an inquiry or nominate a person appearing for the Chief Executive Officer to be suitably qualified to hold the inquiry.

(2) If the Chief Executive Officer has caused an inquiry to be held under this Part, he or she or the person holding the inquiry shall follow the same procedure as that laid down for the conduct of a Marine Inquiry in Part 4 and may, for the purpose of the inquiry:

- (a) go on board the ship;
- (b) enter upon a wharf on installation adjacent to a pilotage area;

- (c) require a person to answer questions relating to the subject of the inquiry;
- (d) require the production to him or her of a document or certificate which in his or her opinion is relevant to the inquiry.

(3) The person holding an inquiry shall make a report on the inquiry to the Chief Executive Officer.

(4) After receiving a report and consulting with the Pilotage Authority, the Chief Executive Officer may recommend to the Minister that the pilotage certificate of the pilot in respect of whom the inquiry was held be cancelled, or suspended for such period as the Chief Executive Officer thinks fit.

(5) If, under this section a pilotage certificate is cancelled or suspended the holder of the certificate may within 21 days after the date of suspension or cancellation appeal to the Court and the Court shall make, confirm, vary or revoke such Order as it thinks fit in the circumstances.

(6) This section applies, with necessary modifications, to a person holding a pilotage exemption certificate.

**99. Production of pilotage certificate** – (1) When a certificated pilot goes on board a vessel, the master may require the pilot to produce his or her pilotage certificate for inspection.

(2) A certificated pilot who refuses or fails without reasonable cause to comply with this requirement commits an offence and is liable upon conviction to a fine not exceeding 10 penalty units.

**100. Unqualified persons not to act as certificated pilot or exempt pilot** – A person who is not a certificated pilot or does not hold a pilotage exemption certificate who:

- (a) holds himself or herself out to be a certificated pilot or an exempt pilot; or
- (b) pilots a ship in respect of which a certificated pilot is required to be on board, –

commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units.

**101. Misconduct by a certificated pilot** – Despite anything in this Act, where a certificated pilot:

- (a) does an act which causes, or is likely to cause the loss or destruction of or damage to a ship or the death of or injury to a person on board a ship; or
  - (b) fails to do anything required to be done by him or her to preserve a ship from loss, destruction or damage or a person on board a ship from death or injury, –
- then where such act or failure to act is deliberate or amounts to a wilful breach or neglect of duty or occurs when the certificated pilot is under the influence of alcohol or drugs, the certificated pilot commits an offence, and is liable upon conviction to a fine not exceeding 100 penalty units.

**102. Transitional** – If a person possesses a valid certificate as a certificated pilot for a particular pilotage area on the date of the coming into force of this Part, that person is taken, until the expiry of a period of 12 months after the date of coming into force of this Part, or until expiry of his or her existing certificate whichever is the earlier, to be a certificated pilot for that pilotage area.

**103. Appeals** – If a Certificate of Competency, pilotage certificate or pilotage exemption certificate is suspended or cancelled, the holder may, within 30 days of the date on which the notice was served on him or her, appeal to the Court, which may confirm, vary or revoke the suspension or cancellation, as it deems fit.

**104. Production of certificate** – A person who holds a Certificate of Competency, pilotage certificate or pilotage exemption certificate and who fails upon request to produce that certificate to a person authorised by this Act, commits an offence and is liable upon conviction to a fine not exceeding 10 penalty units.

**105. Offences** – (1) No person shall go to sea purporting to hold a Certificate, issued under STCW Convention or the Code, of a particular grade or designation who is not a qualified seaman of that grade or designation, and a person who does so commits

an offence and is liable upon conviction to a fine not exceeding 50 penalty units.

(2) Neither the owner nor the master of a vessel shall knowingly permit a person who does not hold a Certificate, issued under STCW Convention or the Code, of a particular grade or designation to go to sea on the vessel as a seaman of that grade or designation and an owner or master who does so commits an offence and each is liable upon conviction to a fine not exceeding 100 penalty units.

(3) A person who fails to comply with a provision of this Part in respect of Pilotage, for which no other penalty is provided, commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units or a term of imprisonment not exceeding 1 year.

**106. Regulation of seamen – (1)** The Head of State may on the advice of Cabinet make regulation as may be necessary or expedient for giving full effect to this Part and for the due administration thereof.

(2) Without limiting subsection (1), regulation may provide in respect of all vessels including fishing vessels, for:

- (a) the grades and designations of Certificate of Competency; and
- (b) the appointment of examiners of applicants for Certificates of Competency; and
- (c) the issue, endorsement and validation of Certificates of Competency; and
- (d) the manning of vessels, providing for the complement of qualified seamen to be carried in that vessel; and
- (e) the dispensations that may be permitted from the complement of qualified seamen to be carried in a vessel; and
- (f) the fees payable in respect of examinations for Certificates of Competency; and
- (g) the training, qualifications and experience of teaching staff at nautical training institutions.

**107. Pilotage regulations** – The Head of State may on the advice of Cabinet make regulations to provide for or in relation to:

- (a) the manner of application for the issuance of a pilotage certificate or a pilotage exemption certificate;
- (b) the determination after consultation with the Pilotage Authority, of the qualifications and experience required for applicants for the issue or renewal of a pilotage certificate or a pilotage exemption certificate in respect of a pilotage area;
- (c) the issue or renewal of pilotage certificates and pilotage exemption certificates;
- (d) the maintenance of the efficiency of certificated pilots and exempts pilots, and the continuous evaluation of their competency, health, proficiency and skills;
- (e) the suspension and cancellation of pilotage exemption certificates; and
- (f) the fees payable on the issuance or renewal of pilotage certificates and pilotage exemption certificates.

## **PART 6**

### **SEAMEN'S EMPLOYMENT**

**108. Application**– (1) This Part unless the contrary intention appears applies to or in relation to:

- (a) a vessel that is registered or is required to be registered under this Act; or
- (b) a seaman who is a citizen or permanent resident of Samoa and employed in a vessel, whether that seaman joins a vessel in Samoa or elsewhere.

(2) This Part, unless the contrary intention appears, does not apply to or in relation to a vessel that is:

- (a) less than 15 metres in length; or
- (b) a pleasure craft; or
- (c) an outrigger vessel.

**109. Supply and engagement of seamen– (1)** No person shall engage or supply a seaman for employment on board a vessel, unless that person is:

- (a) the owner of the vessel or that owner's licensed agent;  
or
- (b) an official of a trade union or trade association to which the seaman belongs; or
- (c) the Principal Shipping Officer or a person authorised by him or her.

**(2)** No person shall receive or accept a seaman employment on board a vessel unless that person is satisfied that such seaman is not being supplied or engaged in contravention of this Act.

**110. Restriction on making arrangements for employment of seamen – (1)** Except as provided in this Act, a person who for reward makes arrangements for:

- (a) finding seamen for persons seeking to employ seamen; or
- (b) finding employment for persons as seamen, –  
commits an offence, and is liable upon conviction to a fine not exceeding 100 penalty units, or 1 penalty unit a seaman engaged contrary to that section, whichever is greater.

**(2)** A person who in contravention of subsection (1) demands or directly or indirectly receives from any other person any remuneration for providing that other person with employment as a seaman, commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units.

**111. Agreements – (1)** No person is employed on a vessel as a seaman unless there is in force an employment agreement approved by the Principal Shipping Officer, in writing in both English and Samoan, between the owner, or licensed agent, or master and the seaman which agreement may be:

- (a) with respect to employment in 1 or more vessels; or
- (b) for a particular period not exceeding 1 year; or
- (c) for 1 or more particular voyages.

**(2)** No master shall take a vessel to sea unless, for each seaman employed, there is an employment agreement approved by the Principal Shipping Officer.



(3) A person who contravenes subsection (1) or (2) commits an offence, and is liable upon conviction to a fine not exceeding 50 penalty units.

**112. Seaworthiness of vessel shall be a condition of employment – (1)** It is a condition of an employment agreement that the owner of a vessel in which a person is, (or is to be), employed as a seaman shall use all reasonable means to ensure that the vessel is seaworthy before and during the voyage on which the seaman is employed.

(2) A purported waiver in an employment agreement of the condition referred to in subsection (1) is void.

**113. Seaman to understand Agreement – (1)** No owner or master of a vessel shall enter into an Agreement relating to employment in a vessel, unless he or she is satisfied that the seaman:

- (a) has read the Agreement, or if the seaman is illiterate, in respect of the language in which the agreement is written, has had the Agreement read to him or her; and
- (b) as far as practicable understands the nature and content of the Agreement.

(2) An owner or master who contravenes subsection (1) is liable upon conviction, to a fine not exceeding 20 penalty units, for each seaman engaged in contravention of that subsection.

**114. Agreements to be approved – (1)** The owner of a vessel shall, before a vessel in which a seaman is (or is to be) employed goes to sea, lodge a copy of the employment Agreement or the proposed employment Agreement with the Principal Shipping Officer.

(2) The Principal Shipping Officer shall, if satisfied that the Agreement adequately protects the interests of the seaman and complies with the requirements of this Part, approve the Agreement, by indicating his or her approval and appending his or her signature.

**115. Suspended person not to be employed as a seaman –**

(1) No person who is a suspended seaman shall be employed as a seaman in a vessel.

(2) An agreement for employment of a suspended person is void.

(3) A person, who employs a suspended person or enters into an agreement with a suspended person, commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units.

(4) A suspended person who offers himself or herself for employment as a seaman in a vessel or enters into an agreement for employment as a seaman in a vessel, commits an offence and is liable upon conviction to a fine not exceeding 10 penalty units.

**116. Termination of agreement –** (1) Subject to this section, an employment agreement may be terminated:

- (a) by mutual consent of the parties;
- (b) by the incapacitation or death of the seaman;
- (c) by the expiry of a particular period referred to in the Agreement, and, if that period expires during a voyage, on the arrival of the vessel at the next port of call after the expiry of that period;
- (d) where the Agreement relates to employment in a particular vessel—
  - (i) by the wreck, loss or total inability of the vessel to go to sea or to proceed on a voyage;
  - or
  - (ii) by the vessel ceasing to be registered under this Act; or
- (e) by the lawful dismissal of the seaman; or
- (f) by the seaman becoming a suspended person.

(2) The Agreement is not capable of being terminated subsection (1)(a) or (c) at a place away from the proper return port of the seaman without the consent of the seaman and the Principal Shipping Officer.

**117. Seaman cannot waive protection of this Act –** A provision in an employment agreement, whether express or implied, which purports to modify, vary or negate the right of a seaman under this Part is void.

**118. Seaman not to be left behind – (1)** A person who wrongfully:

- (a) forces a seaman on shore from a vessel; or
- (b) without reasonable justification, leaves behind or causes a seaman to be left behind, –

commits an offence, and is liable upon conviction to a fine not exceeding 100 penalty units.

(2) This section does not apply when a seaman leaves the vessel with the intention of not returning to the vessel.

**119. Wages – (1)** Subject to this Act, a seaman is paid wages under the terms of an employment agreement.

(2) Subject to this Act, the wages due to a seaman under the agreement is paid in full on the termination of the agreement.

(3) If an owner fails without reasonable cause to make payment in full to a seaman, as provided in subsection (2) he or she shall, in respect of each day for which payment is delayed, pay to the seaman a sum equal to double the daily rate fixed under the Agreement.

(4) If the amount required to be paid in full, as provided in subsection (2), is less than \$500, the number of days in respect of which payment is to be made under subsection (3) shall not exceed 7.

(5) A sum payable under subsections (3) and (4) is taken to be wages due to the seaman and constitutes a maritime lien against the vessel.

(6) If a seaman has entered into an agreement and is afterwards discharged before the commencement of the voyage or before 1 month's wages are earned, without fault on his or her part justifying such discharge and without his or her consent, he or she is entitled to receive in addition to his or her earned wages, a sum equal to 1 month's wages as compensation.

**120. Allotments – (1)** A seaman may allot a part of his or her wages not exceeding 75% of the whole.

(2) Allotment is made by means of an allotment note in the prescribed form.

(3) A person to whom a part of the wages of a seaman is allotted has the right to receive such part in his or her own name

and, for that purpose, has the same remedies as the seaman for recovery of wages.

(4) In any proceedings brought by a person named in an allotment note, it is presumed, unless the contrary is shown, that the seaman is entitled to the wages specified in the allotment note and that the allotment note has not been varied or cancelled.

**121. Account of wages – (1)** The owner or the master shall deliver to a seaman an exact account of the wages due under the Agreement, and deductions (if any) made from those wages.

(2) An owner or master who fails to comply with subsection (1) commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units.

**122. Entitlement to wages after wreck or loss of vessel – (1)** If a vessel is wrecked, lost or unable to proceed on a voyage, a seaman whose employment in the vessel is thereby terminated before the date contemplated in the Agreement, is entitled, in addition to wages earned during the voyage, to:

- (a) conveyance by or, at the cost to the owner of the vessel, to his or her proper return port; and
- (b) subject to subsection (2), wages at the rate payable on the day of the termination of the service for the period commencing on the date of termination of the service and ending 30 days after he or she reaches his or her proper return port.

(2) A seaman is not entitled to wages for a day on which his or her conveyance under subsection (1) is delayed by his or her own act, default or neglect.

**123. Wages for sick or injured seaman – (1)** This section applies to a seaman belonging to a vessel who is ill, hurt or injured where the illness, hurt or injury is:

- (a) not due to the wilful act, default, or misbehaviour of the seaman; and
- (b) such as to incapacitate him or her wholly from the performance of his or her duty,–

and who, by reason of the illness, hurt or injury is left behind at a port other than his or her proper return port.

(2) In addition to wages earned during the voyage, a seaman is entitled to wages at the rate payable under the agreement on the day on which he or she was left behind in respect of the period commencing on that day and ending:

- (a) on the day of his or her return to his or her proper return port; or
- (b) at the expiration of 2 months; or
- (c) on the date of his or her death, –  
whichever first occurs.

**124. Seaman’s rights in regard to wages – (1)** A seaman’s lien for his or her wages and a right he or she may have or obtain in the nature of salvage is not capable of being renounced by an agreement.

(2) Subsection (1) does not affect those terms of the agreement made with the seaman of a vessel employed on salvage services, which provide for the remuneration to be paid to the seaman for salvage services rendered by that vessel.

(3) The master of a vessel shall have the same lien for all disbursements or liabilities properly made or incurred by him or her on account of the vessel as a seaman has for his or her wages, *pro-rated* from any funds available.

(4) The right of a seaman to wages shall not depend on the earning of freight.

(5) Nothing in this section prevents a profit sharing plan or sharing of the catch of a fishing vessel by which a seaman is to be compensated with a proportion of profits or catch in addition to his or her wages.

(6) The wages and clothing of a seaman is not subject to attachment or arrest by a court; and assignment of wages (except allotments) or of salvage made prior to the accruing thereof shall not bind the seaman.

(7) A person who contravenes subsection (1), (2), (3), (4), (5) or (6) commits an offence and is liable upon conviction to a fine not exceeding 20 penalty units for each offence.

**125. Return of a distressed seaman – (1)** In this section, a “distressed seaman” means a person who:

- (a) is or has been a seaman on a vessel; and

- (b) is at a place away from his or her proper return port by reason of having been left behind from a vessel, or shipwrecked in a vessel, –

but does not include a seaman left behind who would not have been left behind, but for his or her own wilful act or neglect.

(2) If a person is a distressed seaman, the person who last employed him or her as a seaman shall make such provision for his or her return to his or her proper return port and his or her relief and maintenance prior to his or her return to that port.

(3) A person who fails to make the provision referred to in subsection (2) commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units, in addition to making restitution to the seaman for any expenses incurred.

(4) If, in the opinion of the Principal Shipping Officer a person has failed to make proper provision for the relief, maintenance and return to his or her proper return port of a distressed seaman, the Principal Shipping Officer may make such provision and recover the cost of so doing from the person who has failed to make the provision.

(5) If an expense is incurred on a matter for which a person is required to make provision under this section then, unless it can be proved that the distressed seaman would not have been left behind but for his or her own wilful act or neglect; and:

- (a) if the expense is incurred by or on behalf of the Government, then the Government; or

(b) if the expense is incurred by the distressed seaman, – then the distressed seaman, may recover the expense from the person who is required to make that provision in a civil action.

(6) When a seaman or a distressed seaman dies, and his or her body:

- (a) is conveyed to his or her proper return port; or  
(b) is buried or cremated at a place away from his or her proper return port, –

the expense of conveying, burying or cremating his or her body may be recovered from the person who last employed him or her as a seaman.

**126. Property of deceased seaman – (1)** When a seaman dies, while or after being employed in the vessel, the master shall

cause his or her property left on board to be delivered up to the Principal Shipping Officer.

(2) A master or other person who refuses or fails unreasonably to comply with subsection (1) commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units.

(3) Unless otherwise prescribed, where a property of a deceased seaman has come into the possession of the Principal Shipping Officer, he or she shall take all steps reasonably necessary and practicable in the circumstances to ensure that the property of the deceased seaman is immediately returned to the person lawfully entitled to it.

**127. Disciplinary offences – (1) If a seaman:**

- (a) does an act which causes or is likely to cause—
  - (i) the loss or destruction of, or damage to, a vessel; or
  - (ii) the death of, or serious injury to, a person on board; or
- (b) fails to do anything required by him or her to preserve—
  - (i) a vessel from loss, destruction, or damage; or
  - (ii) a person on board the vessel from death or serious injury; or
- (c) engages in fighting or commits any form of assault against the master or officers, any passenger or any other crew member; or
- (d) whilst on duty, is found to be under the influence of alcohol, or a prohibited or narcotic drug; or
- (e) fails to obey a lawful command; or
- (f) is in possession of a prohibited substance or illegal weapons or other objects; or
- (g) smuggles or attempts to smuggle into a country any goods on which duty is payable, or any goods the import of which is prohibited, –

that seaman commits an offence, and is liable upon conviction to a fine not exceeding 100 penalty units or a term of imprisonment not exceeding 2 years, or both.

(2) The commission of an offence under subsection (1) is included as a disciplinary offence for the purposes of this Act.

**128. Continual or concerted disobedience** – If a seaman other than the master:

- (a) wilfully and persistently—
  - (i) neglects his or her duty; or
  - (ii) disobeys a lawful command; or
- (b) combines with other seamen to—
  - (i) neglect his or her duty; or
  - (ii) disobey a lawful command; or
  - (iii) impede the navigation of the vessel; or
- (c) wilfully and persistently commits any of the disciplinary offences in contravention of section 128, –

that seaman commits an offence, and is liable upon conviction to a fine not exceeding 100 penalty units or a term of imprisonment not exceeding 2 years, or both.

**129. Absence without leave** – If a seaman is absent without leave and his or her absence is due to his or her recklessness, or is deliberate and without reasonable cause, and a vessel is thereby delayed or goes to sea without him or her, the seaman commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units.

**130. Persons deemed to be seamen** – Despite any other provision of this Act, where:

- (a) a person is carried to sea without the consent of the master or of any other person authorised to give consent to his or her being so carried; or
- (b) a person, having been a seaman, is carried on a vessel for the purpose of being returned to his or her proper return port, –

that person is, for the purposes of those sections of this Act dealing with discipline and good order, taken to be a seaman on the vessel and shall obey all the lawful commands of the master.

**131. Suspension of seamen** – (1) The Principal Shipping Officer shall maintain a List of Suspended Seamen.



(2) The master of a vessel, on which a seaman has committed a disciplinary offence, shall make an entry in the Official Log Book to that effect and make a report of his or her findings to the Principal Shipping Officer.

(3) If:

- (a) two or more reports under subsection (2) have been made during a voyage of period under an employment contract in respect of a seaman; or
- (b) a seaman has committed a disciplinary offence under this Act, –

the Principal Shipping Officer may declare the seaman to be a suspended person, and place his or her name on the List of Suspended Seamen.

**132. Appeal against suspension** – (1) If the Principal Shipping Officer has declared the seaman to be a suspended seaman; and the period of suspension exceeds 6 months, the seaman may, within 21 days of receiving the notification of his or her suspension, appeal to the Court.

(2) When an appeal is made, the Court shall make such order confirming, waiving or revoking the suspension as it deems fit.

(3) If no appeal to the Court is made within the period of 21 days or an appeal is made and the Court orders that the appeal be dismissed, the Principal Shipping Officer shall include the name of the seaman in the List of Suspended Seamen.

**133. Stowaways** – (1) A person who, without the consent of the master of the vessel, or a person authorised by the master to give that consent, goes to sea or stows away in a vessel from a port or place in Samoa commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units or imprisonment for a term not exceeding 1 year, or both.

(2) In addition to a fine, the Court may order that the stowaway shall pay to the owner of the vessel any expenses incurred by the owner as a result of the actions of the stowaway, and alternatively, the Court may include in the fine an amount for reimbursement of any costs incurred by a person or agency and provide for a term of imprisonment in default of payment by the person convicted of stowing away.

(3) A person who contravenes subsection (1) is repatriated to Samoa at the expense of the owner or master of the ship on which that person stowed away.

(4) The owner of the vessel may bring an action against the stowaway to recover the expenses of repatriation.

**134. Incitement of seamen to revolt or mutiny** – If a seaman, other than the master of a vessel:

- (a) attempts to mutiny or usurp the authority of the master; or
  - (b) combines or conspires, with any other person on board, to mutiny; or
  - (c) solicits or incites any other member of the crew to—
    - (i) disobey or resist the lawful orders of the master or other officers of the vessel; or
    - (ii) refuse or neglect his or her proper duty on board the vessel; or
  - (d) assembles with others in a tumultuous and mutinous manner; or
  - (e) makes a riot on board the vessel, –
- that seaman commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units or to a term of imprisonment not exceeding 5 years, or both.

**135. Revolt or mutiny of seamen** – If a seaman, other than the master of a vessel:

- (a) unlawfully and with force, or by fraud or intimidation, usurps the command of the vessel from the master; or
  - (b) deprives the master of command and authority; or
  - (c) resists or prevents the master in the free and lawful exercise of his or her command and authority; or
  - (d) transfers the command and authority of the master to a person not lawfully entitled thereto;
  - (e) unlawfully confines the master, –
- that seaman commits a revolt and mutiny, and is liable upon conviction to a fine not exceeding 100 penalty units or to a term of imprisonment not exceeding 5 years, or both.

**136. Prohibition of corporal punishment – Flogging** and all other forms of corporal punishment are prohibited on board a vessel, and a master or officer who contravenes this section commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units or to a term of imprisonment not exceeding 2 years, or both.

**137. Wrongful death or disability** – Subject to this Act in respect of time limits and limitations of actions, if:

- (a) the death of a seaman is caused by wrongful act, omission, neglect or default occurring on board a vessel, the personal representative of the deceased seaman may maintain an action for damages, for the exclusive benefit of the deceased's wife, husband, parent, child, or dependent relative, against the vessel, person, owner or charterer which would have been liable to the deceased if death had not ensued; or
- (b) an injury or permanent disability is sustained by a seaman by wrongful act, omission, neglect or default occurring on board a vessel, the seaman may maintain an action for damages against the vessel, person, owner or charterer.

**138. Death or injury on board** – (1) If a death occurs on board a vessel, the master shall:

- (a) where practicable, retain the body on board;
  - (b) make an entry in the Official Log Book of the vessel which shall contain particulars of the cause, or suspected cause of death;
  - (c) at the first port of arrival after death has occurred, report the death and deliver the body to the appropriate authority;
  - (d) at the earliest opportunity after the death has occurred, forward a copy of the log book entry, signed by him or her, to the Principal Shipping Officer.
- (2) If an injury occurs on board a vessel, the master shall:
- (a) make an entry in the Official Log Book of the vessel, which shall contain particulars of how the injury

occurred, the treatment given, and any other pertinent particulars;

- (b) at the first port of arrival after the injury has occurred, report the injury to the appropriate authority;
- (c) at the earliest opportunity after the injury has occurred, forward a copy of the log book entry, signed by him or her, to the Principal Shipping Officer.

**139. Issuance of death certificate** – When the Principal Shipping Officer has received a copy of the Official Log Book entry, he or she shall forward the information contained in the entry to the Chief Executive Officer of the Ministry of Health, Apia, Samoa, for the issuance of a death certificate.

**140. Freedom of association** – A seaman has the right to establish and to become a member of a lawful organisation of his or her choosing.

**141. Seaman's identity card** – (1) The Principal Shipping Officer may issue to a person being a permanent resident of Samoa, who is serving or intending to serve aboard a vessel, a card to be known as a Seaman's Identity Card.

(2) A person to whom a Seaman's Identity Card has been issued who refuses or fails without reasonable cause to keep the card securely and to produce it when so required to such persons and in such circumstances as are prescribed, commits an offence and is liable upon conviction to a fine not exceeding 10 penalty units.

**142. Seaman's record book** – (1) The Principal Shipping Officer shall issue to a seaman a book to be known as a Seaman's Record Book.

(2) A Seaman's Record Book must be in such form as the Principal Shipping Officer shall determine and be applied for, issued and dealt with in the manner determined by the Principal Shipping Officer.

(3) A seaman who fails to produce his or her Seaman's Record Book, when requested by the Principal Shipping Officer,

commits an offence and is liable upon conviction to a fine not exceeding 10 penalty units.

(4) A seaman, whose Seaman's Record Book has become lost or destroyed as a result of his or her negligence, will be required to pay the cost of replacement.

**143. Register of seamen** – (1) The Principal Shipping Officer shall cause to be kept at the Ministry of Transport, a book to be known as the Register of Seamen and enter such particulars as the Chief Executive Officer may require.

(2) A person may inspect the Register of Seamen at any time during the hours of official attendance by the Principal Shipping Officer.

**144. Official log book** – (1) The master of a vessel shall keep a book on board the vessel to be known as the Official Log Book in the form prescribed which shall contain such particulars as are prescribed, or if not prescribed, such particulars as are required by the Chief Executive Officer.

(2) Subject to this Act, the master of a vessel who fails without reasonable cause:

- (a) to keep the Official Log Book in the prescribed or required manner; and
  - (b) to carry the Official Log Book in the vessel, –
- commits an offence, and is liable upon conviction to a fine not exceeding 50 penalty units.

**145. Crew list** – (1) An owner or the master of a vessel shall make a list of the crew of the vessel, which list must be known as the Crew List, and deposited the list with the Principal Shipping Officer or a person or class of persons designated by the Chief Executive Officer, before the vessel departs from the port.

(2) The Crew List shall list all the crew and their positions on board the vessel and only those crew on board the vessel at the time of sailing, and if the names and address of their next of kin are not recorded in the Employment Agreement, then the crew list shall name each seaman's next to kin and their current address.

(3) A person who without reasonable cause fails to maintain the Crew List of a vessel or fails to deposit a copy with the Principal Shipping Officer, commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units.

**146. Exemption of particular vessels** – (1) The Minister may by notice published in the *Savali* or *Gazette*, subject to such conditions (if any) as he or she thinks fit, exempt a particular vessel or a particular class or description of vessel from a requirement of this Part.

(2) An exemption under subsection (1) may be for a particular period, or 1 or more particular voyages.

**147. Time limits** – (1) Subject to provisions of this Act in respect of limitation of actions, court proceedings, arising out of agreements between employers and seamen, must be commenced within 1 year.

(2) Court proceedings for the following classes of claim must be commenced within 2 years:

- (a) claims arising out of the death of a seaman caused by wrongful act, neglect or default on the high seas or Samoan waters;
- (b) claims of the ship owner against the master for acts committed during the performance of his or her duties;
- (c) all other tort claims.

(3) Proceedings for all other claims must be commenced within 3 years.

(4) The periods of time referred to in subsections (1), (2) and (3), run from the time of the termination of the voyage during which the cause of action arose.

(5) A cause of action of a kind referred to in this section is taken to have been abandoned if proceedings for it have not been commenced within the time or times specified in this section.

**148. Regulations for employment of seamen** – The Head of State, acting on the advice of Cabinet, may make regulations in relation to:

- (a) the terms and conditions of employment of seamen; and
- (b) the conditions and particulars to be included in an agreement; and
- (c) the form of an agreement and the manner in which an agreement is made; and
- (d) the manner in which an agreement is added to or amended or lodged with the Principal Shipping Officer; and
- (e) the circumstances in which an agreement or copy of an agreement is carried in a vessel; and
- (f) the requirements for an agreement, or a copy of an agreement to be delivered to or made available to the Principal Shipping Officer; and
- (g) the notice required to be given to the Principal Shipping Officer before an agreement is entered into or terminated; and
- (h) procedures and practices to be followed on the termination of an agreement; and
- (i) the circumstances under which, other than by reason of termination of an agreement, a seaman may be left behind from a vessel outside Samoa; and
- (j) the deductions which may be made from the wages due to a seaman; and
- (k) the manner in which wages are to be paid; and
- (l) the manner in which wages are to be accounted for where a seaman leaves a vessel otherwise than on termination of an agreement; and
- (m) the form and manner in which accounts of wages are to be prepared by the owner and delivered to a seaman; and
- (n) the form of allotment notes; and
- (o) the circumstances and the manner in which allotment notes are to be made; and
- (p) the conduct of medical examinations of seamen and persons seeking employment as seamen;
- (q) the manner in which the property of a deceased seaman is to be dealt with; and
- (r) the misconduct of seamen on board a vessel which is to be a disciplinary offence; and

- (s) procedures under which a master may find that a seaman has committed a disciplinary offence; and
- (t) the manner in which a declaration of suspension is made and the manner in which that declaration is notified to—
  - (i) a suspended seaman; and
  - (ii) the person who last employed him or her as a seaman; and
- (u) the manner in which the name of a suspended seaman is included in the List of Suspended Seaman; and
- (v) the manner in which the List of Suspended Seaman is to be kept and made available for inspection by any person; and
- (w) the circumstances, manner and form in which Seamen's Identity Cards and Seamen's Employment Records Books are to be issued, recorded and dealt with; and
- (x) the particulars to be entered, and the manner in which and the persons by whom, entries in an Official Log Book are to be made, signed and witnessed; and
- (y) the production, or delivery of an Official Log Book to such person in such circumstances and within such times as may be specified; and
- (z) the particulars to be entered into and the place and manner in which a Crew List or a copy thereof is to be maintained; and
- (aa) the manner in which a Crew List or a copy thereof is to be made available on demand to specified persons; and
- (bb) the imposition of fees, and the fees payable for a matter under this Part.

**PART 7**  
**SEAMEN'S WELFARE**

- 149. Application—** (1) This Part applies to a vessel that is:
- (a) registered or is required to be registered under this Act; or



- (b) employing Samoan seamen; or
  - (c) an offshore vessel.
- (2) This Part does not apply to the following vessel:
- (a) a vessel less than 15 metres in length; or
  - (b) a pleasure craft; or
  - (c) an outrigger vessel.

**150. Protection of young persons – (1)** No person under the age of 16 years shall be employed as a seaman in a vessel except that, with the approval of the Principal Shipping Officer, a person under the age of 16 years may be employed in:

- (a) a vessel in which only members of the same family are employed; or
  - (b) a school vessel or a training vessel.
- (2) A person under the age of 18 years but who is 16 years and over shall not be employed as a seaman in a vessel unless:
- (a) the seaman is subjected to such periodical medical examinations as are prescribed; and
  - (b) a register is kept of persons of such age aboard the vessel in the Official Log Book.

(3) An agreement for employment of a seaman which is not in compliance with subsections (1) and (2) is of no effect as against that seaman.

(4) A person who knowingly employs a person in contravention of subsection (1) or (2) or who fails to comply with the requirements of subsection (2) commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units.

**151. Approval of service – (1)** A person who at a place in Samoa without the written approval of the Principal Shipping Officer, employs a permanent resident of Samoa who is under 18 years of age as a seaman in a vessel that is proceeding on a voyage to a place in another country commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units.

(2) If there is a contravention of this section and a permanent resident of Samoa is carried to sea, the owner, master or agent of the vessel, to which subsection (1) applies, commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units.

**152. Crew accommodation** – (1) A vessel shall have accommodation exclusively reserved for the use of the crew.

(2) An owner or master of a vessel who permits the vessel to go to sea without crew accommodation of the prescribed standard, or if no standard is prescribed, then as the Chief Executive Officer may require, commits an offence, and is liable upon conviction to a fine not exceeding 100 penalty units.

**153. Provisions and water** – (1) An owner or master of a vessel shall ensure that the provisions and water supplies for the use of seamen are as prescribed.

(2) If the Principal Shipping Officer is of the opinion that the provisions of water on a vessel are in his or her opinion unwholesome or insufficient for the voyage, he or she may direct the owner or the master to replace or replenish them before the vessel goes to sea.

(3) The owner or master of a vessel, who fails to comply with this section, commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units.

**154. Vessel to carry medical stores** – An owner or master of a vessel who permits the vessel to go to sea without carrying the prescribed number of seamen with first-aid, medicines, medical and surgical stores, each commits an offence and each is liable upon conviction to a fine not exceeding 50 penalty units.

**155. Exemption of particular vessels** – (1) The Chief Executive Officer may, in writing, exempt a particular vessel or a particular class or description of vessel from a requirement of this Part.

(2) An exemption under subsection (1) may be in respect of a particular period or 1 or more particular voyages.

(3) The Chief Executive Officer, in granting an exemption on a vessel under subsection (1), may impose any such conditions as he or she thinks fit.

**156. Regulations for welfare of seamen** – The Head of State acting on the advice of Cabinet, may make such regulations providing for or in relation to:

- (a) the protection of young persons and the manner in which a register of persons between the ages of 16 and 18 years employed on a vessel are recorded;
- (b) the crew accommodation requirements for new and existing vessels;
- (c) the standards to be observed in the construction, equipment, ventilation, lighting, heating, furnishing and maintenance of crew accommodation;
- (d) the quality and quantity of the provisions and water to be supplied for the use of seamen;
- (e) the carriage of a medical practitioner in a vessel;
- (f) first-aid certificates and the number of first-aid qualified seamen to be carried in a vessel;
- (g) the medicines, medical and surgical stores to be carried in a vessel and the manner in which such medicines and stores are to be carried, stored and used in a vessel.

## **PART 8 MARINE NAVIGATION AIDS**

**157. Application**– This Part applies to all marine navigation aids situated in Samoan waters used for guiding seafarers in the navigation of vessels near reefs, shoals and other dangers to navigation.

**158. Responsibility for aids to navigation** – (1) The Chief Executive Officer shall appoint a suitable person to inspect a marine navigation aid which, in his or her opinion, may affect the safety or convenience of marine navigation.

(2) If, for the purpose of inspection or maintenance of a marine navigation aid, it is necessary for the person to do so, the person may enter upon a property and transport goods through or over that property.

(3) A person who obstructs or hinders that other person in the exercise of his or her powers or in the performances of his or her duties under this section, commits an offence, and is liable upon conviction to a fine not exceeding 50 penalty units.

**159. Establishment and alteration of marine navigation aids** – The Chief Executive Officer may establish, maintain, operate, alter or remove any marine navigation aid.

**160. Changes to marine navigation aids** – If a marine navigation aid is established, altered or removed, the Chief Executive Officer shall cause a “Notice to Mariners” to be issued accordingly.

**161. Private Marine Aids to Navigation** – (1) It is unlawful for a person to establish, operate, alter or remove a private aid to navigation without the written approval of the Chief Executive Officer.

(2) If safety or convenience requires the Chief Executive Officer may by written notice require the owner of a private aid to navigation to move, remove, modify or alter it.

(3) If the owner of a private aid to navigation fails to comply with a notice served under subsection the Chief Executive Officer may take possession or control of the aid and do anything which must be done for the safety of navigation, and the owner shall pay any and all costs incurred by the Government under this subsection.

**162. Offences in relation to marine navigation aids** – (1) A person who:

- (a) makes fast to, damages, destroys or allows a vessel to foul a marine navigation aid; or
- (b) does anything which causes the view of a marine navigation aid to be obstructed in such a manner as to lessen its efficiency; or
- (c) without lawful authority removes or does anything which interferes with a marine navigation aid so as to hinder the effective use or operation of the aid; or
- (d) trespasses on or without lawful excuse is found in or on a marine navigation aid or any land upon which such an aid is situated,–commits an offence, and is liable upon conviction to a fine not exceeding 100 penalty units and in addition shall

reimburse the Chief Executive Officer for the cost of repairing or replacing the marine navigation aid or of rendering the aid effective.

(2) A person who, or the master of a vessel which damages, destroys, fouls or interferes with a marine navigation aid and fails to notify the Principal Surveyor as soon as practicable after the aid is damaged, destroyed, fouled or interfered with commits an offence, and is liable upon conviction to a fine not exceeding 100 penalty units.

**163. Detention of a vessel which damages a marine navigation aid** – If a vessel damages, destroys, fouls or interferes with a marine navigation aid, the vessel may be detained until the cost of repairing or replacing the marine navigation aid, or rendering the marine navigation aid effective again, is paid to the Government.

**164. Immunity from certain proceedings** – (1) In this section, “the Government” includes the Chief Executive Officer, an officer or employee of the Government, or a statutory authority.

(2) Despite the Government Proceedings Act 1974 or any other enactment, no legal proceedings must be instituted against the Government in respect of an act or omission that is done or made under this Part unless that act or omission arises from wilful misconduct.

**165. Advisory committee on marine navigation aids** – (1) The Chief Executive Officer may appoint persons to advise him or her on a matter related to this Part.

(2) The persons appointed under subsection (1) includes 2 or more persons who shall represent the owners of vessels in respect of which marine navigation aid dues are payable.

(3) The persons appointed under subsection (1) shall form a committee the chairman of which is a person appointed by the Chief Executive Officer.

**166. Marine Navigation aids dues** – (1) The owner or master of a vessel that enters or leaves a port in Samoa shall pay

such marine navigation aid dues in respect of the vessel as are prescribed.

(2) If, without reasonable cause, the owner or master of a vessel fails to pay such dues as are prescribed, the owner and master of the vessel each commits an offence and each is liable upon conviction to a fine not exceeding 50 penalty units.

(3) If the marine navigation aid dues payable under this Part are unpaid for a period in excess of 30 days after the invoice is delivered, the vessel may be detained until they are paid.

**167. Marine navigation aids Regulations** – The Head of State may on the advice of Cabinet make regulations providing for or in relation to:

- (a) the rates of marine navigation aid dues payable in respect of vessels and the manner in which dues are paid; and
- (b) the exemption of particular vessels from the requirements relating to the payment of marine navigation aid dues; and
- (c) the specific responsibility of the Marine Division to provide and maintain marine navigation aids; and
- (d) penalties for failure to comply with this Part or regulations made hereunder.

## **PART 9 SMALL CRAFT**

**168. Regulations for small crafts** – (1) The Head of State, acting on the advice of Cabinet, may make regulations in respect of small craft.

(2) Despite anything in this Act, “small craft” means a vessel that is less than 15 metres in length.

(3) Regulations for small vessels to which this section applies may provide for and in relation to:

- (a) the recording of information with respect to the vessel, its description and ownership;
- (b) the identification and marking of vessels;
- (c) periodical and unscheduled inspections;
- (d) construction and equipment;

- (e) licensing of small vessels and restricting their scope of operation;
  - (f) issuing of operators' permits;
  - (g) safety equipment to be carried on vessels;
  - (h) fees payable in respect of the recording of information, inspection of a vessel, the licensing of vessels, the issuing of operators' permits and other safety services;
  - (i) the exemptions from the specific requirements of the regulations which may be granted in respect of a specified vessel or class of vessel.
- (4) Regulations made under this section may make different provisions for different classes of vessels.

## **PART 10 WRECK AND SALVAGE**

**169. Receiver of wreck** – (1) The Receiver is the Chief Executive Officer, or such other person appointed by him or her.

(2) The Receiver is the Receiver of Wreck in Samoa and shall have general superintendence in all matters relating to wreck, and may appoint a person to act for the Receiver of Wreck in any part of Samoa, and to perform such duties as are referred to in this Part.

**170. Preservation of wreck** – (1) When a vessel is wrecked, stranded or in distress at a place on or near the shore of the sea or of any tidal water within the limits of Samoa, the Receiver may proceed to such place, and upon his or her arrival there shall take command of all persons present, and assign such duties to each person and issue such directions as he or she thinks fit with a view to the preservation of the vessel, the cargo and the lives of persons belonging to the vessel.

(2) A person who wilfully disobeys a direction given by the Receiver under subsection (1), commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units.

(3) The Receiver shall not interfere between the master of the vessel and his or her crew in matters relating to the management of the vessel unless he or she is requested to do so by the master.

(4) The Receiver may with a view to preserve a vessel, persons, cargo and apparel:

- (a) require such assistance as he or she thinks necessary;
- (b) require the master of a vessel to give such aid as he or she is able to safely do; and
- (c) demand the use of a vehicle or equipment as required,

—  
and a person, refusing without reasonable cause, to comply with a requisition or demand, commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units.

(5) All cargo and other articles belonging to a vessel that may be washed on shore or otherwise be lost, or taken from the vessel, must be delivered to the Receiver, and a person, whether he or she is the owner or not, who secretes or keeps possession of any such cargo or articles or refuses to deliver the same to the Receiver or to a person authorised by him or her to demand the same, commits an offence, and is liable upon conviction to a fine not exceeding 100 penalty units.

(6) It is lawful for the Receiver or any other person appointed by him or her, to take a cargo or article by the use of reasonable force from a person refusing to deliver it under subsection (5).

(7) For the purpose of rendering assistance to a vessel or saving the lives of shipwrecked persons or the cargo or apparel thereof, a person may, unless there is some public road equally convenient, pass and re-pass doing as little damage as possible either with or without vehicles over any adjoining lands without being subject to interruption by the owner or occupier.

(8) A person may deposit on adjoining lands a cargo or other articles recovered from a vessel to which this section applies.

(9) All damage that may be sustained by an owner or occupier in consequence of any such passing or re-passing or deposit is a charge on the vessel, cargo or articles in respect of or by which such damage was occasioned, and is, in default of

payment recovered in the same manner as salvage is made recoverable under this Part, and the amount payable in respect thereof, if disputed, is determined in the same manner as the amount of salvage is in case of dispute to be determined.



(10) If the owner or occupier of any land over which a person is authorised to pass or re-pass for any of the purposes referred to in subsections (7) and (8):

- (a) impedes or hinders any such person from so passing or re-passing; or
- (b) impedes or hinders the deposit on the land of a cargo or other articles recovered from any such vessel; or
- (c) prevents such cargo or other articles from remaining so deposited for a reasonable time until the same can be removed to a safe place of public deposit, –

that person commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units.

**171. Finding and taking possession of wreck – (1)** A person finding or taking possession of wreck within Samoa:

- (a) if the person so finding or taking possession of wreck is the owner, shall as soon as possible give notice to the Receiver that he or she has so found or taken possession of wreck, and he or she shall describe in such notice the marks by which such wreck is recognised;
- (b) if a person not being the owner finds or takes possession of a wreck shall as soon as possible deliver the wreck to the Receiver.

(2) A person who fails without reasonable cause to comply with the requirements of subsection (1) commits an offence, and is liable upon conviction to a fine not exceeding 50 penalty units.

**172. Search allowed for secreted wreck –** If the Receiver suspects or receives information that a wreck:

- (a) has been secreted; or
- (b) is in the possession of some person who is not the owner and who has failed to comply with this Part,

–

The Receiver may apply for a search warrant so that he or she may enter and search for the wreck in a vessel or place, and if any such wreck is found it may be seized and detained and dealt with as wreck by the Receiver under this Part.

**173. Notice by Receiver of having taken possession of wreck** – The Receiver shall, as soon as possible after taking possession of any wreck, inform the owner or publicly advertise a description of the wreck and of any marks by which it is distinguished and the fact that he or she has taken possession of it under this Part.

**174. Removing wreck from custody of Receiver** – If a vessel, cargo, apparel or wreck is detained under this Part by the Receiver for any sums due, and a person, without the authority of the Receiver removes or attempts to remove the vessel, cargo, apparel or wreck from the place where the Receiver has ordered it to be detained, that person commits an offence and is, in addition to a liability incurred under any other law, liable upon conviction to a fine not exceeding 50 penalty units.

**175. Claimed and unclaimed wreck** – (1) Subject to the payment of any expenses, fees and salvage due, the owner of a wreck who establishes his or her claim thereto to the satisfaction of the Receiver within 1 year from the date at which such wreck has come into possession of the Receiver is entitled to have the wreck delivered up to him or her.

(2) If no owner establishes his or her claim to wreck before the expiration of 1 year from the date at which the wreck has come into possession of the Receiver, the Receiver shall sell the wreck, and, after payment of all expenses, deduction of his or her fees, and payment to the salvors of such amount of salvage as has been determined, shall pay the residue into the Public Account of Samoa.

(3) Despite subsection (1), the Receiver may at any time sell a wreck in his or her possession, if in his or her opinion:

- (a) it is so damaged that it cannot with advantage be kept;  
or
- (b) it is of so perishable a nature that it cannot be preserved; or
- (c) it is not of sufficient value to pay for storage or warehousing; and, –

the proceeds of the sale shall, after defraying the expenses thereof, be held by the Receiver in an interest-bearing trust account pending a claim thereto.

**176. Removal of wrecked vessels – (1)** If, in the opinion of the Chief Executive Officer, a vessel is, or is likely to become an obstruction or hazard to navigation, the Chief Executive Officer may, by notice in writing to the owner or person in command of the vessel, require the vessel to be removed in such manner and within such time as he or she specifies.

**(2)** If a vessel is wrecked on or near the coasts of an island of Samoa, or in any tidal water within the limits of Samoan waters, the Chief Executive Officer may:

- (a) require the owner of the wrecked vessel to raise, remove or destroy the vessel, or to place a lighted buoy or other structure to indicate the position of any such vessel until it is raised, removed or destroyed;
- (b) where the owner fails to comply with such requirement, the Chief Executive Officer may—
  - (i) take possession of, raise, remove or destroy the whole or any part of the vessel, or deal with it as he or she deems fit; and
  - (ii) sell the vessel or any part thereof and any other property recovered, and out of the proceeds reimburse the Government for the expenses of buoying, or lighting the wreck or its removal, and any expenses associated with the sale; and
  - (iii) if the proceeds of the sale are insufficient to cover all the cost of the removal, recover the balance from the owner of the vessel.

**(3)** For the forced sale of a stranded or sunken vessel removed by the Chief Executive Officer or other public authority in the interest of safe navigation or the protection of the marine environment, the costs of such removal shall constitute a maritime lien under Article 12(3) of the International Convention on Maritime Liens Mortgages 1993 and are to be paid out of the proceeds of the sale before all other claims secured by a maritime lien on the vessel.

(4) The powers given to the Chief Executive Officer under this section for the removal of wrecked vessels are in addition to and not in derogation of any other powers given under this or any other Act.

**177. Prohibited Areas – (1)** If the Chief Executive Officer is satisfied that, because of anything contained within a wrecked vessel, it is in a condition which makes it a potential danger to life, property or the environment, and the wrecked vessel ought to be protected from unauthorised interference, he or she shall advise the Minister who may, by notice in the Savali, declare an area around the wrecked vessel to be a prohibited area.

(2) The notice in the Savali shall contain a description of the wrecked vessel, the place where it is and the extent of the area declared to be a prohibited area.

(3) Subject to subsection (4), a person who, without the written authority of the Chief Executive Officer, enters a prohibited area, commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units.

(4) A person does not commit an offence under subsection (3) if he or she enters a prohibited area under some duty or function imposed on him or her by law or out of necessity due to stress of weather or navigational hazard.

**178. Salvage Convention – (1)** The Salvage Convention has the force of law in Samoa.

(2) For the purposes of this Act, “Salvage operation” means an act or activity undertaken to assist a vessel or any other property in danger in Samoan waters or on the High Seas.

**179. Payments to salvors for services rendered – (1)**  
When:

- (a) a vessel is stranded or wrecked or otherwise in distress within Samoan waters, and services are rendered by a person assisting the vessel or saving the lives of the persons belonging to the vessel or saving cargo or apparel of the vessel; or
- (b) a wreck is salvaged by a person other than a Receiver within Samoan waters, –

there shall be payable by the owners of the vessel, the cargo, apparel or wreck to the person by whom such services are rendered or by whom such wreck is salvaged, a reasonable amount of salvage, as determined by the Salvage Convention.

(2) The amount of salvage and expenses payable under subsection (1) are to be determined in the manner set out in this Part.

**180. Duties of salvor and owner or master – (1)** The salvor owes a duty to the owner of the vessel or other property in danger:

- (a) to carry out the salvage operations with due care; and
- (b) in performing the duty specified in subsection (a), to exercise due care to prevent or minimise damage to the environment; and
- (c) whenever circumstances reasonably require, to seek assistance from other salvors; and
- (d) to accept the intervention of other salvors when reasonably requested to do so by the owner or master of the vessel or other property in danger; provided however that the amount of his or her reward is not prejudiced should it be found that such request was unreasonable.

(2) The owner and master of the vessel or the owner of other property in danger shall owe a duty to the salvor:

- (a) to co-operate fully with him or her during the course of the salvage operations; and
- (b) in so doing, to exercise due care to prevent or minimise damage to the environment; and
- (c) when the vessel or other property has been brought into a place of safety, to accept redelivery when reasonably requested to do so.

**181. Duty to render assistance – (1)** A master is bound, so far as he or she can do so without serious danger to his or her vessel and persons thereon, to render assistance to a person in distress or in danger of being lost at sea.

(2) The duty of the master of a vessel to render assistance to those in distress at sea does not derogate from his or her right to salvage for property saved at sea.

(3) The owner of the vessel incurs no liability for a breach of the duty of the master under subsection (1).

(4) Life salvage is not payable to a salvor when there is no property saved.

**182. Criteria for fixing of reward – (1)** The reward is fixed by arbitration with a view to encouraging salvage operations, taking into account the criteria listed in Article 13 of the Salvage Convention.

(2) If the parties cannot agree on the amount of the reward, it is referred to a Panel of Arbitrators, 1 appointed by the salvors, 1 appointed by the owners of the ship and the cargo, and a third to be selected by the first 2 appointed who shall act as chairman.

(3) The rules of procedure to be followed by the Arbitration Panel is free from rigid, formal procedures and which will best allow for a rapid resolution of the amount of the reward. The Panel shall, as far as is practical, conduct the arbitration in accordance with the procedures laid down in Lloyd's Open Form 1990, and an award, subject to Appeal, is final and binding on all parties concerned whether they were represented at the Arbitration or not.

(4) A party to the Arbitration may, if not satisfied with the decision of the Arbitration panel, appeal to the Supreme Court of Samoa which shall review all documentary evidence as it thinks fit, but evidence which was not adduced at the Arbitration shall not be considered on Appeal, and the decision of the Court is final in respect of all parties whether or not they were represented at the Arbitration or the Appeal.

(5) Special compensation may be paid to a salvor in respect of a vessel or its cargo which has threatened the environment when the salvor by his or her salvage operations has prevented or minimised such damage to the environment, in accordance with the criteria laid down in the Salvage Convention.

**183. Maritime lien for salvage – (1)** Subject to this Act, a salvor shall have a maritime lien against the ship and its cargo for salvage services rendered.

(2) The salvor may not enforce his or her maritime lien when satisfactory security for his or her claim, including interest and costs, has been duly tendered or provided.

**184. Life salvage to have priority** – (1) Salvage for the preservation of the life of a person belonging to a vessel is payable prior to all other claims for salvage. In cases where the vessel, cargo or apparel are destroyed or where the value thereof is insufficient, after payment of the actual expenses incurred, to pay the amount of salvage due in respect of any life or lives, the Chief Executive Officer may, with the approval of the Minister, and without further appropriation than this section, award to the salvors of such life or lives out of the Public Account of Samoa, such sum as he or she deems fit in whole or in part satisfaction of any salvage left unpaid in respect of such life or lives.

(2) Nothing in this section derogates the duty of all masters and other seafarers to render assistance to those in distress at the sea.

**185. Settlement of disputes as to salvage**– (1) If there is a dispute as to the amount of salvage and the parties to the dispute cannot agree to a settlement or to refer the matter to arbitration, the dispute is to be determined by the Court.

(2) If a dispute arises between 2 or more parties as to the title of a wreck, the dispute is to be determined in the same manner as if it were salvage, determined under subsection (1).

(3) If there is a dispute between parties as to the wreck or salvage, or the Receiver wishes to seek directions in a related matter, the Receiver may apply to the Court for directions.

**186. Manner of enforcing payment of salvage** – (1) When payment of salvage is due to a person under this Part, the Chief Executive Officer shall detain the vessel, cargo, property or wreck as he or she thinks is appropriate in the circumstances.

(2) If a vessel, cargo, property or wreck is detained under this section, the Chief Executive Officer shall notify the owner, and if the owner cannot be found, retain possession until salvage has been paid or otherwise ordered by the Court.

(3) The Chief Executive Officer may release a detained vessel, cargo, property or wreck on receipt of adequate security.

**187. Sale of detained property – (1)** If a dispute as to salvage has been referred to the Court, the Chief Executive Officer shall deal with any property detained as the Court orders.

(2) Where the amount of salvage due to a salvor is not disputed, and the amount due is not paid within 21 days of the date agreed for payment, the Chief Executive Officer may sell the detained property.

(3) After payment of any fees and any expenses incurred by the Chief Executive Officer in respect of the property, its sale and payment of salvage, the proceeds of the sale are to be paid to the person legally entitled, or, if in dispute, into Court.

**188. Offences relating to wreck – (1)** A person who:

- (a) wrongfully removes apart of a vessel stranded or in distress or apart of the cargo or wreck; or
- (b) endeavours in any way to impede the saving of a vessel, cargo, apparel or wreck; or
- (c) secretes a wreck or obliterates or defaces any marks thereon, –

commits an offence and is liable upon conviction to a fine not exceeding 150 penalty units.

(2) A person not being the Receiver or not acting under the orders of the Receiver who, without the permission of the master, boards or endeavours to board a vessel, commits an offence and is liable upon conviction to a fine not exceeding 150 penalty units, and the master of the vessel may repel by reasonable force necessary under the circumstances in order to deter any such person so boarding or attempting to board the vessel.

(3) A person who without the permission of the master or authority of the Receiver takes from Samoa into a foreign port a vessel found stranded, derelict or in distress within Samoa or a part of the cargo or a wreck, or its apparel or equipment, that person commits an offence, and is liable upon conviction to a fine not exceeding 250 penalty units.

**189. Powers of Customs – (1)** All wreck being foreign goods brought into Samoa is subject to the same duties as if imported into Samoa. If a question arises as to the origin of such goods, they are



deemed to be the produce of such country as the Comptroller of Customs determines.

(2) The Comptroller of Customs may permit all cargo saved from a vessel stranded or wrecked to be forwarded to the port of its origin or destination.

**190. Limitation of time in proceedings** – No person is to be convicted of an offence under this Part unless proceedings for that offence are commenced within 1 year from the commission of the offence.

## **PART 11 MARITIME RIGHTS AND LIABILITIES**

**191. Liability and division of loss** – (1) If, by the fault of 2 or more vessels, damage or loss is caused:

- (a) to 1 or more of them; or
- (b) to their cargoes or freight; or
- (c) to a property on board; or
- (d) to a third party not liable for the loss or damage, –

the liability to make good the damage or loss is in proportion to the degree in which each vessel was in fault.

(2) If, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability is apportioned equally.

(3) Nothing in this section renders a vessel liable for a loss or damage for which that vessel was not at fault.

(4) Nothing in this section affects the liability of a person under a contract of carriage, or any other contract.

(5) Nothing in this section is construed as:

- (a) imposing a liability upon a person from which he or she is exempted by a contract or law; or
- (b) affecting the legal rights of a person to limit his or her liability.

(6) In this Part, references to damage or loss caused by the fault of a vessel is to be construed as including references to a salvage or other expenses consequent upon that fault, recoverable at law by way of damages.

**192. Ship owner's liability in collisions for death and personal injuries – (1)** If a person on board a vessel:

- (a) is killed; or
  - (b) suffers personal injury,–
- due to the fault of that vessel and of any other vessel or vessels, the liability of the owners of the vessels is joint and several.

**(2)** Nothing in this section:

- (a) deprives a person of a right of defence on which, independent of this section, he or she might have relied in an action brought against him or her by the person injured or a person entitled to sue in respect of that loss of life; or
- (b) affects the right of a person to limit his or her liability in cases to which International Maritime Conventions apply which Samoa has ratified or acceded to.

**193. Right of contribution – (1)** If death or personal injury is suffered by a person on board a vessel as a result of the fault of that vessel and any other vessel or vessels, and a proportion of the damages is recovered against the owners of 1 of the vessels which exceeds the proportion to which that 1 was at fault, the owners of that 1 vessel may recover by way of contribution the amount of the excess from the owners of the other vessel or vessels to the extent to which those vessels were respectively at fault.

**(2)** No amount is recoverable which could not by reason of a statutory or contractual limitation of, or exemption from liability, or which could not for any other reason have been recovered in the first instance as damages by persons otherwise entitled to sue.

**(3)** In addition to any other remedy provided by law, the persons entitled to a contribution provided by subsection (1) shall for the purpose of recovering the same have, the same rights and powers as the persons entitled to sue for damages in the first instance.

**194. No presumption of fault –** For a collision, a vessel is taken not to be at fault solely by reason of the fact that the master or person-in-charge of the vessel has infringed the Collisions Convention.

**195. The Right of Limitation of Shipowner's liability – (1)**

The Limitation of Liability for Maritime Claims Convention has the force of law in Samoa.

(2) If a claim is made against a person for a liability for maritime claims set forth in the Convention and in this Part, that person may limit his or her liability in accordance the Limitation of Liability for Maritime Claims Convention by applying to the Court to determine the limit of that liability under the procedures set forth in Regulations.

(3) The Court may determine the limit of that liability and may make such Order as it thinks fit including the creation, administration and distribution of a Limitation of Liability Fund for the payment of claims.

(4) The act of invoking limitation of liability under this Part shall not constitute an admission of liability.

(5) The insurer of liability or claims subject to limitation under this Part is entitled to the benefits of this Part with respect to limitation of liability to the same extent as the insured.

(6) Liability of a person includes liability in an action *in rem* brought against the vessel.

**196. Limitation of actions – (1)**

No action is maintainable to enforce a claim or lien against the vessel or its owners in respect of a damage or loss to another vessel, its cargo or freight, or a property on board the vessel, or damages for loss of life or personal injuries suffered by a person on board the vessel, caused wholly or partly by the fault of the first mentioned vessel, or in respect of any salvage services, unless proceedings are commenced within 2 years from the date when the damage or loss or injury was caused, or the salvage services were rendered.

(2) No action is to be maintainable to enforce a contribution in respect of an overpaid proportion of any damages for loss of life or personal injuries unless proceedings therein are commenced within 1 year from the date of payment.

(3) The Court may extend any such period, to such extent and on such conditions as it thinks fit, if satisfied that there has not been a reasonable opportunity of arresting the defendant vessel within the jurisdiction of the Court, or within the territorial sea of the country to which the plaintiff's vessel belongs.

**PART 12**  
**ARREST, FORFEITURE AND FORCED SALE OF**  
**VESSELS**

**197. Application of International Convention on Maritime Liens and Mortgages** – (1) Subject to this Act and to any other law, and subject to any such reservations as Samoa may make, the International Convention on Maritime Liens and Mortgages 1993, is incorporated into and has the force of law in Samoa, from and after the day that Samoa deposits instruments of accession with the Chief Executive Officer General of the United Nations.

(2) The Convention applies to all sea-going vessels registered in Samoa and registered in States which are parties to the Convention.

(3) Each of the claims listed in Article 4 of the International Convention on Maritime Liens and Mortgages 1993 is secured by a maritime lien on the vessel.

(4) The priority of maritime liens is to be in accordance with Article 5 of the International Convention on Maritime Liens and Mortgages 1993.

(5) Where it is alleged in an action brought in a Court with Admiralty jurisdiction that the owner of a vessel has incurred a liability to pay a sum in respect of the following items, a maritime lien will be created which will take priority in accordance with Article 6 of the International Convention on Maritime Liens and Mortgages 1993:

- (a) work carried out at a port, harbour, roadstead or anchorage in Samoa in connection with the loading or discharging of cargo or fuel or the embarkation or disembarkation of passengers on or from that vessel; or
- (b) victualling storing, fuelling, repairing and maintenance of that vessel or a part thereof or of the equipment thereof or any other services rendered in connection therewith.

(6) If at any time a vessel is found within the territorial limits of Samoa, the Court, upon being shown that there are grounds on

which the owners may be found liable, and that the owners are not residents of Samoa and the vessel intends to depart therefrom, may, at its discretion, order the detention of the vessel.

(7) Despite subsection (6), if, under this Act, a vessel is subject to detention, the Minister may without warrant and with such assistance as he or she considers necessary, take, or cause to be taken, such action as he or she thinks necessary to detain the vessel.

(8) For the purpose of detaining a vessel the Minister or his or her delegate may require a person to do or refrain from doing a specified act.

(9) A person who fails to comply with a requirement under subsection (8) commits an offence, and is liable upon conviction to a fine not exceeding 100 penalty units.

(10) A seaman who does, or refrains from doing, an act in pursuance of this section is not thereby in breach of his or her employment agreement.

**198. Arrest of vessels – (1)** This section covers the arrest of vessels for the enforcement of rights between private parties and does not cover the arrest of ships for breach of a statutory provision or requirement.

(2) A vessel may be arrested or released from arrest only by Order of the Court.

(3) A vessel may only be arrested in respect of maritime claim.

(4) A vessel may be arrested for the purpose of obtaining security, despite a clause in a relevant contract in respect of where the claim is to be adjudicated.

(5) The procedures relating to the arrest of a vessel in Samoa or its release is governed by this Act and any other applicable law of Samoa.

(6) A vessel may be arrested in respect of a maritime claim secured by a maritime lien referred to in Article 4 of the International Convention on Maritime Liens and Mortgages 1993, or a claim based upon a vessel mortgage registered in Samoa, or a claim in respect of ownership or possession of the vessel.

(7) A ship which has been arrested shall only be released when sufficient security has been furnished in the amount and form satisfactory to the claimant, or if the sufficiency and form is disputed, by the Court but in any event, not exceeding the value of the vessel.

(8) A request for the vessel to be released upon security being provided shall not be construed as an acknowledgment of liability nor as a waiver of a defence or a right to limit liability.

(9) Upon application of the owner, the Court may, in its discretion, as a condition of the arrest of the ship, impose upon the claimant the obligation to provide security of a kind and for an amount and on such term as the Court deems appropriate for a loss which may be incurred by an owner or defendant as a result of the arrest.

(10) The Court has jurisdiction to determine the case on its merits, unless all parties agree to submit the dispute to a Court of another State which accepts jurisdiction, or to arbitration.

(11) Despite subsection (10), the Court may refuse to exercise jurisdiction on the merits of the case where the Court of another State accepts jurisdiction.

(12) The Court may require that proceeding on the merits of the case be commenced within a reasonable period of time and if proceeding have not commenced within that time, the Court may order the ship released.

(13) Except with leave of the Court, a warrant for the arrest of a foreign ship shall not be issued in an action in rem until notice of the action has been sent to the consul or the Government of the State in which the vessel is registered.

(14) The notice is to be sent through the normal diplomatic channels and may be transmitted by facsimile or telex and is deemed to have been received when sent and proof of notice is not required prior to the arrest of the vessel.

**199. Forced sale of vessels – (1)** Articles 11 and 12 of the International Convention on Maritime Liens and Mortgages, 1993, in respect of notice and effects of forced sale have full effect in the event of a forced sale of a vessel under this Part.

(2) The costs and expenses arising out of the arrest or seizure and subsequent sale of a vessel are to be paid first out of the proceeds of sale. Such costs and expenses include the cost of upkeep of the vessel and the crew as well as wages, repatriation, and other expenses legally payable on behalf of the master and crew incurred from the time of arrest or seizure, and the balance of the proceeds are to be distributed in accordance with the

International Convention on Maritime Liens and Mortgages 1993, with the residue of the proceeds, if any, to be paid to the owners.

(3) If at the time of the forced sale the vessel is held under a possessory lien by a shipbuilder or ship repairer, such ship-builder or ship repairer must surrender possession of the vessel to the purchaser and is entitled to be paid his or her claim out of the proceeds of the sale after the claims of holders of maritime liens have been satisfied.

(4) When a vessel, which has been the subject of a forced sale, is sold free and clear of all mortgages or other charges and maritime liens, the Court shall issue a certificate to that effect, and, upon production, the Registrar shall register the vessel in the name of the purchaser or issue a certificate of deletion and delete any existing mortgages or maritime liens.

**200. Unpaid rates, tolls and fees** – (1) No vessel, about to leave a port at which any rates, tolls, fees or other charges are payable under this or any other Act or regulation, shall receive a certificate of clearance unless the master produces a receipt to the effect that the rates, tolls, fees or other charges on the vessel have been paid or a certificate to the effect that none are payable thereon.

(2) If a vessel leaves a port without paying any rates, tolls, fees or other charges on the vessel such unpaid amounts shall constitute a maritime lien enforceable against the vessel.

(3) A vessel in respect of which any rates, tolls, fees or other charges remain unpaid may be detained until the amount owing is paid in full.

**201. Liability of agents for Vessel's Debts** – Licensed vessel agents are liable for any costs incurred by a vessel for which they are an agent while it is in a port in Samoa, and are liable for all outstanding financial obligations of the owner or master of the vessel after the vessel has left Samoan waters.

**202. Detention of a Vessel** – (1) When the Chief Executive Officer finds that reasonable grounds exist under this Act or regulations for the detention of a vessel, the Chief Executive

Officer may issue a Detention Order and may detain the vessel without warrant, provided however, that:

- (a) written notice is served on the master or person in charge of the vessel, together with a copy of the Detention Order, and
  - (b) such written notice shall state the grounds for detention and the section of the Act or regulations under which the Detention Order has been issued.
- (2) The owner or master of a vessel which has been detained may petition the Chief Executive Officer for a hearing to show cause as to why the vessel has been detained.
- (3) The procedures for the hearing are to the extent possible, the same as to be followed for a Marine Inquiry.
- (4) If a foreign vessel is detained, the Chief Executive Officer, through diplomatic channels, shall notify the diplomatic representative of the vessel's Flag State, including the reason for its detention.

**203. Proceedings on forfeiture of a vessel –** (1) If a vessel is subject to forfeiture under this Act or regulations, upon the issuance of a warrant by the Court, an authorised officer may seize and detain the vessel.

(2) The warrant, or a copy thereof, must be affixed or posted in a prominent place aboard the vessel.

(3) If a vessel which is liable to forfeiture under this Act or regulations has been seized and detained, the Chief Executive Officer may apply to the Attorney General to commence proceedings for the forfeiture of the vessel.

(4) Proceedings are to be initiated forthwith by the Attorney General and written notice of the proceedings is to be served upon the owner, provided however, in the case of a foreign vessel, notice is to be given to the diplomatic representative of the Flag State through diplomatic channels, of the forfeiture proceedings and the grounds therefore.

(5) If, after the hearing before the Court and on the preponderance of evidence, it has been proved beyond reasonable doubt that an offence has been committed by the vessel, its owner or master, for which the penalty is forfeiture, the Court may issue an Order stating that the owner has forfeited all rights of ownership



in the vessel, equipment, stores and cargo and that property rights in all the aforementioned have vested in the Government.

(6) The order issued by the Court is deemed evidence of good title to the vessel, free of all maritime liens, mortgages and other encumbrances, and the Government shall have the right to sell the vessel with clear title.

(7) In this section, “authorised officer” includes:

- (a) an officer authorised in writing by the Chief Executive Officer for the purposes of this section; or
- (b) a police officer.

### **PART 13 LEGAL PROCEEDINGS**

**204. Application** – The jurisdiction of the Supreme Court in Admiralty applies in relation to:

- (a) all vessels, irrespective of the place of residence of their owners; and
- (b) all maritime claims, wherever arising.

**205. Access to and inspection of regulations** – (1) If a Convention or Rule or Regulation, or a provision thereof, has been adopted and incorporated by reference in Regulations made under the authority of a power under this Act, the adopted Convention, Rule or Regulation, or provision, as the case may be, must be available for inspection and copying at the Ministry responsible for transport by a person likely to be affected by it.

(2) Subject to subsection (1), no person shall be prosecuted or convicted for contravening an adopted Regulation if that Regulation is not available for inspection or copying as required by subsection (1), and it is a defence to such a prosecution to show that the contravened Regulation was not so available as required.

(3) The defence available under subsection (2) is not available to a person who has sufficient knowledge of the requirements of the contravened provision for which he or she is being prosecuted, or who possessed or who had reasonable access, in any event, to the requirements of the contravened

provision independently of the procedure required under subsection (1).

(4) When a person requests copies of an adopted Regulation under subsection (1) the Ministry of Transport may charge a reasonable fee for any copying services that is provided, commensurate to that charged generally in the public service.

(5) In this section, “adopted Regulation” means a code, treaty, convention, statute, rule, by-law, resolution, form, ordinance, order or regulation adopted and incorporated by reference under this Act

**206. Jurisdiction of Supreme Court in admiralty – (1)**

The Supreme Court of Samoa has inherent jurisdiction in all maritime and admiralty matters and in all matters pertaining to this Act and Regulations made hereunder and the procedures set out in the Criminal Procedures Act 2016 apply.

(2) Admiralty jurisdiction *in rem* must be conferred with respect to:

- (a) disputes relating to the ownership, possession or title to a vessel or a share in a vessel; and
- (b) mortgages, including foreign mortgages and other charges in the nature of a mortgage; and
- (c) claims for towage; and
- (d) claims relating to salvage; and
- (e) claims for pilotage; and
- (f) claims for general average; and
- (g) claims for wages of masters and crew; and
- (h) claims for disbursements made by masters, shippers, charterers or agents on behalf of a vessel; and
- (i) claims for damage done by a vessel; and
- (j) personal injury claims arising from or in connection with the operation of a vessel for which the vessel’s owner, operator or charterer is liable; and
- (k) claims for loss or damage to goods carried by a vessel; and
- (l) claims arising from contracts for the carriage of goods by a vessel; and
- (m) claims arising from agreements for the use or hire of a vessel; and

- (n) claims for the construction, repair, alteration or equipping a vessel; and
  - (o) claims for goods, materials or services supplied to a vessel; and
  - (p) claims for unpaid insurance premiums or calls from protection and indemnity associations; and
  - (q) port, harbour, marine navigation aids dues and similar charges; and
  - (r) claims for marine pollution damage; and
  - (s) claims for damages arising from or in connection with the operation of a vessel for which the owner, operator or charter is liable; and
  - (t) claims for the enforcement of arbitral awards in respect of maritime claims; and
  - (u) claims for the enforcement of local and foreign admiralty judgments *in rem*.
- (3) Admiralty jurisdiction in *personam* is conferred with respect to:
- (a) claims for damage done to a vessel;
  - (b) claims to limit liability under an international maritime convention to which Samoa is a Party allowing for limitation of liability in relation to vessels;
  - (c) ancillary matters of admiralty and maritime jurisdiction associated with matters in respect of which the Court's jurisdiction is invoked.
- (4) If a person has a right of appeal under this Act against a decision in respect of an action commenced in the Supreme Court, that person may, with leave of the Supreme Court, or if that leave is declined, then special leave of the Court of Appeal, appeal to the Court of Appeal on a question of law.
- (5) The Court of Appeal may make such order or determination as it thinks fit, and the order or determination's final.
- (6) Subject to this section, the procedure in respect of an appeal must be in accordance with the rules of the Court, or otherwise as determined by the Court.
- (7) The Court may appoint Nautical Assessors to advise it on all matters of navigation and seamanship.

(8) Nautical Assessors shall not be called by the parties to give evidence, shall not be sworn and shall not be cross-examined.

(9) The advice of Nautical Assessors is confidential and shall not be disclosed to the parties.

(10) Nautical Assessors must be appointed on the basis of their expert knowledge and experience and may be engaged prior to trial for as long as their expertise is required.

(11) Nautical Assessors may be paid compensation for their services.

(12) The advice of Nautical Assessors is treated as highly persuasive, but it is for the Court to assess its worth and decide on all matters of fact and law.

(13) Trials in respect of civil admiralty actions is by judge alone or by a judge sitting with Nautical Assessors, and for the trial of actions *in rem*, limitation actions and an associated *in personam*, assessors shall not be used.

**207. Procedure for prosecution of offences – (1A)** All proceedings brought against a person for an offence under this Act shall be commenced by the laying of an information in writing.

(1B) An information for an offence under this Act or regulations shall be laid by the Chief Executive Officer.

(2A) Subject to subsection (2B), every information for an offence shall be laid within 12 months from the date on which the offence is alleged to have been committed.

(2B) If a vessel or a person has committed an offence under this Act and departed from the jurisdiction before an information could be laid, the time period referred to in subsection (2A) shall commence running on the date on which the vessel or person returns to the jurisdiction.

(3A) An information shall be sworn on oath before a Registrar of the Supreme Court and shall be in the form set out in Form 1 in manner stipulated in the Criminal Procedures Act 2016.

(3B) An information shall contain such particulars as will fairly inform the Defendant of the substance of the offence with which he or she is charged.

**(4)** As soon as practicable after an information is sworn it is filed in the Court.

**(5)** When an information has been laid, the Registrar of the Supreme Court may issue a summons to the Defendant in the manner stipulated in the Criminal Procedures Act 1972.

**(6A)** A summons to a Defendant and other document which is required to be served on a defendant must be served on him or her by being delivered to him or her personally or by being brought to his or her notice if he or she refuses to accept it.

**(6B)** If a summons is to be served on the master of a vessel it may be served on the Officer apparently in charge if the Master is not on board the vessel;

**(6C)** If the summon is to be served on the owner of a vessel it may be served on the licensed vessel agent;

**(6D)** The service on the persons referred to in subsections (6B) and (6C) is taken to be service on the defendant master and owner of the vessel.

**(7A)** A summons to a defendant and every other document which is required to be served on a defendant may be served by a Principal Officer.

**(7B)** A Principal Officer is the Principal Surveyor, Principal Shipping Officer, Port Master or any other person so designated by the Chief Executive Officer.

**(8A)** The service of a document may be proved by affidavit made by the person who served the document showing the fact and the time, place and mode of service.

**(8B)** The affidavit of service made by the person who served the document is deemed to be correct unless or until the contrary is proved.

**(9)** When an information has been laid and a summons has been issued and served, a Principal Officer who has reasonable grounds to believe that the defendant will not appear before the Court on the date set out in the summons, may apply to a Judge of the Supreme Court for a warrant to arrest the defendant if:

- (a) a warrant is necessary to compel the attendance of the defendant; or
- (b) a warrant is desirable having regard to the gravity of the alleged offence and the circumstances of the case.

(10) A Principal Officer or his or her delegate may for the purposes of enforcing this Act, without warrant:

- (a) stop, board and search a vessel he or she reasonably suspects to have committed an offence or that the owner or master or a crew member thereof has committed an offence under this Act;
- (b) require the master or a crew member to inform him or her about an incident occurring aboard or involving the ship;
- (c) make an inspection, examination of anything aboard the vessel;
- (d) require to be produced, examine and take copies of a certificate, document logbook or other record required to be kept by this Act or regulations, or concern the operation of the vessel or employment of the crew;
- (e) seize any logs, charges, documents, equipment material and take or require to be taken any samples which he or she has reasonable grounds to believe show or tend to show, with or without other evidence, the commission of an offence against this Act;
- (f) seize anything which he or she has reasonable grounds to believe might be used as evidence in any proceedings under this Act;
- (g) arrest a person whom he or she has reasonable grounds to believe has committed an offence.

(11A) Pending the date of the hearing set forth in the summons a Judge may, upon application, by Order, detain the vessel until the final adjudicating of the matter contained in the information.

(11B) Despite subsection (11A), the Court may by Order release the vessel from such detention upon the payment with Court of a bond in an amount not exceeding the value of the vessel or the maximum fine prescribed in relation to the offence or the total of all the offences if more than 1 are contained in the information.

(12A) If the defendant does not speak or understand the Samoan or English language a crew member may be used as an interpreter.

(12B) If an interpreter was used when the information was laid and the summons served, and the evidence collected from the vessel or persons on board the vessel, that same interpreter is summoned to appear in Court at the trial of the named defendant.

(12C) If certificates required to be carried on board the vessel are not in the English language, the defendant shall obtain copies of those certificates translated into the English language by the authority or organisation which issued the Certificate.

(13A) A number of information for any offences against a defendant may be tried together;

(13B) If the Court believes that it is desirable or expedient in the interests of justice to do so, it may order that the defendant be tried on 1 or more of such information separately;

(13C) The information which are not then tried are proceeded upon in all respect as if they had been presented separately.

(14) A number of defendants may be tried together, provided that the Court may, at any time, order separate trials if satisfied that the interests of justice so require.

(15A) If there is a conflict between the procedures contained in this Part and the procedures contained in any other Act, the procedures of this Part are paramount.

(15B) If there is an omission in the procedures contained in this Part, the procedures contained in the Criminal Procedures Act 1972 as amended apply.

(15C) The rules of evidence are those contained in the Evidence Ordinance 1961 as amended.

**208. False declaration as to ownership** – (1) A person who, in a declaration made for the purpose of this Act, or in a document or other evidence produced to the Registrar:

- (a) wilfully makes or assists in making, or produces to be made, a false statement concerning the title to, ownership of, or the interest existing in, a vessel registered under this Act; or

(b) alters, produces or makes use of a declaration or document containing a false statement knowing the same to be false, –  
commits an offence, and is liable upon conviction to a fine not exceeding 100 penalty units or a term of imprisonment not exceeding 2 years.

(2) A person who in a declaration made under or for the purposes of this Act, wilfully makes a false statement in relation either to his or her being a qualified person or to another person being a qualified person, commits an offence, and is liable upon conviction to a fine not exceeding 100 penalty units or to a term of imprisonment not exceeding 2 years, or both.

**209. False declaration and statements** – A person who knowingly:

(a) makes a false declaration, statement or representation; or  
(b) gives false evidence on oath; or  
(c) alters, produces or makes use of a false declaration, statement or representation, in connection with an application, report, record or proceeding under this Act, –  
commits an offence, and is liable upon conviction to a term of imprisonment not exceeding 2 years, or, despite the Oaths Affidavits and Declarations Act 1963, a fine not exceeding 100 penalty units, or to a term of imprisonment not exceeding 2 years, or both.

**210. Mode of making declaration** – (1) Except as otherwise provided in this Act a declaration required by this Act shall be made before a person authorised in that regard by the Oaths, Affidavits and Declarations Act 1963 as amended.

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

**211. Obstruction of persons** – A person who, without lawful excuse, (proof of which is on him or her), hinders or obstructs a person in the performance, execution or carrying out



of a duty conferred or imposed on that person by this Act commits an offence, and if no other penalty is provided for in this Act, is liable upon conviction to a fine not exceeding 50 penalty units or to a term of imprisonment not exceeding 3 months.

**212. Service of notices and documents** – A notice or other document authorised or required by this Act to be served upon, given or delivered to a person may be served, given or delivered:

- (a) in a case by delivering a copy personally to the person to be served, given or delivered or by sending the same by registered post, addressed to his or her place of abode or business;
- (b) if a document is to be served on the master of a vessel, by serving it on the person in command or charge of the vessel;
- (c) if a person, upon whom service is required, cannot be found, the Court may, upon application, order alternative methods of substituted service.

**213. 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 this Part.

(2) Documents admissible in evidence include:

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

**214. Admissibility of documents in evidence – (1)** If 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 a Court and is deemed to be conclusive evidence of the matters stated in it and the maker of the said document shall not be required to prove that he or she made the document, unless the Defendant has given written notice prior to the trial requiring the attendance of the person to prove the certificate.

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

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

**(4)** In proceedings for an offence against this Act an averment by the prosecutor contained in the information or complaint that at a specified time:

- (a) a specified person was a delegate of the Minister, or the Registrar, or the Director;
- (b) a specified person was a Principal Shipping Officer, Shipping Officer, a Surveyor, or a pilot;
- (c) a specified person was or was not the holder of a specified licence or certificate;
- (d) a specified safety, load line, or survey certificate was or was not in force in respect of a specified vessel,

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is *prima facie* evidence of the matter averred.

**215. Recovery of fines by distress –** If a Court orders a person convicted of an to pay a fine or other moneys and that person is the owner or master of a vessel registered under this Act and the fine or other moneys are not paid within the time and in

the manner set forth in 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, and despite any other Act, direct the amount remaining unpaid to be levied by distress or by sale of the vessel or the equipment of the vessel, as the case requires.

**216. Offences – (1)** A person who does an act, or makes an omission, in contravention of a provision of this Act or regulations commits an offence.

**(2)** When a provision of this Act is contravened and no specific offence is prescribed and no penalty provided for, a person contravening a provision commits an offence and is liable upon conviction to a fine not exceeding 10 penalty units.

**217. Regulations – (1)** In addition to the powers to make regulations conferred elsewhere in this Act, the Head of State acting on the advice of Cabinet may make regulations a purpose for which regulations are contemplated or required by this Act and may make all such other regulation as he or she thinks necessary or expedient for the purpose of giving effect to this Act and for the due administration thereof.

**(2)** Without limiting subsection (1), the Head of State acting on the advice of Cabinet may make regulations providing for Admiralty Rules of Procedure for actions *in rem*.

**(3)** Wherever in this Act authority is given to make regulations for a purpose, that authority is deemed to include an authority to prescribe offences in respect of the contravention of, or non-compliance with, any such regulations or a requirement or direction made or given under any such regulations, and authority to prescribe penalties not exceeding 500 penalty units or imprisonment for 2 years, or both.

**218. Delegations –** Subject to this Act, the Chief Executive Officer, Registrar, Principal Surveyor and Principal Shipping Officer may, by instrument, delegate to a person all or any of their powers under this Act, except this power and those powers and functions may be limited as to the area or locations specified in the instrument.

**219. Repeal and transitional – (1)** The Shipping Act 1972 and Regulations listed in Schedule 1 are repealed.

**(2)** A certificate, licence, instrument or document having a like or a similar effect to a:

- (a) Certificate of Registry;
- (b) Certificate of Competency;
- (c) Pilotage certificate;
- (d) Pilotage Exemption Certificate;
- (e) Safety Certificate;
- (f) Load Line Certificate;
- (g) Licence as Operator of a small vessel, –

in force immediately prior to the commencement of this Act shall remain in force for a period of 12 months from the date of commencement of the related Part of this Act or until the date of the expiration of the certificate, licence, instrument or document whichever is the earlier.

**220. Saving –** The Regulations referred to in Schedule 2 shall continue in force as if made under this Act.

## **SCHEDULES**

### **SCHEDULE 1 (Section 219)**

Importation of Fruit from Fiji Permit Notice 1923  
 Fumigation (Import) Proclamation 1933  
 Fumigation (Export to Tokelau) Prohibition 1937  
 Survey of Ships Order 1956 (1956/5)  
 Radio on Ships Regulation 1960 (1960/2)

### **SCHEDULE 2 (Section 220)**

Port Control Regulations 1939  
 Port Control Amendment Regulations 1960 (1960/14)  
 Port Control Regulations 1939 Amendment No. 1 (1970/8)  
 Port Control Regulations 1939 Amendment No. 2 (1976/1)

District Wharf Fees Regulations (Mulifanua and Salelologa) 1959 (1959/8) as amended by the Fa'asalele'aga Water Supply Act 1969

District Wharf Regulations (Salelologa) 1959 (1959/9) as amended by the Enactments Amendment and Repeal Ordinance 1960 (sec. 2), Reprint of Statutes Act 1972 (sec. 3 (f)) and the Ministerial Portfolios Act (1976)(sec. 2(1))

District Wharf Regulations (Salelologa) 1959 Amendment No 2. (W.S.R. 1966/5)

Port Charges Regulations 1984 (1984/4A)

Port Charges Amendment Regulations 1987 (1987/2)

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**REVISION NOTES 2008 – 2019**

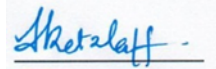
This is the official version of this Act as at 31 December 2019.

This Act has been revised by the Legislative Drafting Division in 2008 to 2019 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Amendments have been made to up-date references to offices, officers and statutes.
- (c) Insertion of the commencement date
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General:
  - (i) “Every” and “any” changed to “a”
  - (ii) “shall be” changed to “is” and “shall be deemed” changed to “is taken”
  - (iii) “shall have” changed to “has”
  - (iv) “shall be guilty” changed to “commits”
  - (v) “notwithstanding” changed to “despite”
  - (vi) “pursuant to” changed to “under”
  - (vii) “it shall be lawful” changed to “may”
  - (viii) “it shall be the duty” changed to “shall”
  - (ix) Numbers in words changed to figures
  - (x) “hereby” and “from time to time” (or “at any time” or “at all times”) removed
  - (xi) “under the hand of” changed to “signed by”
  - (xii) Numbering for Parts changed from Roman to decimal numbers

There were no amendments made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*.



Lemalu Hermann P. Retzlaff  
Attorney General of Samoa

*This Act is administered by  
the Ministry of Works, Transport and Infrastructure.*

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