

THE MERCHANT SHIPPING BILL
(No. XXII of 2007)

Explanatory Memorandum

The object of this Bill is to repeal the Merchant Shipping Act and several articles under the *Code de Commerce* and replace them by a new enactment.

The Merchant Shipping Act, which came into operation in 1986, had to be amended in 1992 to make better provision for the mortgage of ships and shares in a ship and to provide for bareboat chartering and maritime liens. Besides, the relevant provisions of the law relating to the carriage of passengers and luggage were contained in the *Code de Commerce* which itself had numerous cross-references to the Merchant Shipping Act. All the provisions relating to merchant shipping will henceforth be contained in a single enactment.

The Bill also makes better provision for the Incorporation of the international conventions to which Mauritius is a party and of the protocols which apply to this country. A number of areas, in which there has been substantive development in recent years, such as the engagement, welfare and discharge of seamen, the safe manning of ships, salvage operations and remuneration for salvage services, limitation and division of liability for maritime claims, piracy and hijacking of ships, are also addressed in the Bill.

Finally the Bill seeks to cover the main issues relating to merchant shipping with more precision and greater detail than was done in the existing Act.

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THE MERCHANT SHIPPING BILL
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A BILL

To repeal and replace the Merchant Shipping Act and certain provisions of the *Code de Commerce*

ENACTED by the Parliament of Mauritius, as follows –

PART I – INTRODUCTORY

1. Short title

This Act may be cited as the Merchant Shipping Act 2007.

2. Interpretation

In this Act -

“aid to navigation” means a lighthouse, buoy, beacon, radio aid, or any other light, signal or mark established to aid marine navigation, and includes any building, mooring and other works associated therewith;

“bareboat charter” means a written agreement by virtue of which a charterer shall -

- (a) acquire control and possession of a ship, including its management and operational control;
- (b) appoint and dismiss the master and the crew of the ship;
- (c) be responsible towards any third party as if he was the owner of the ship; and
- (d) generally be substituted in all respects to the owner of the ship; but
- (e) have no right to sell or mortgage the ship;

for an agreed period;

“Board of Inquiry” means any such Board appointed to inquire into any matter pursuant to this Act;

“certificate of registration” means a certificate issued in respect of a ship under section 26;

“Classification Society” means a member of the International Association of Classification Societies which is recognised by the Government of the Republic of Mauritius;

“coastal area” means the coast of Mauritius and all Mauritius waters other than those within the limits of ports and harbours and the approaches thereto;

“Court” –

(a) except in section 50, means a Court of competent jurisdiction; and

(b) in section 50, means the Master’s Court;

“Court of Investigation” means a body appointed as such under section 10;

“crew” –

(a) includes –

(i) any person employed to work on a ship on a voyage;

(ii) an apprentice; but

(b) does not include a pilot or any other person employed solely in a port;

“dangerous goods” –

(a) means explosives, gases, inflammable liquids, inflammable solids, substances liable to spontaneous combustion, inflammable acids, substances that emit inflammable gases in contact with water, oxidising substances, organic peroxides, poisonous, infectious or radioactive substances and corrosives;

(b) includes any other goods that may be prescribed or classified as such in the International Maritime Dangerous Goods Code;

“Director” means the Director of Shipping referred to in section 4;

“foreign port” means an area of water, or land and water (including any building, installation or building situated in or on that land or water) in a foreign country, intended for use in connection with the movement, loading, unloading or maintenance of ships or the supply of provisions to ship;

“foreign ship” means a ship which is not a Mauritius ship;

“Government ship” means a ship owned by the Government of the Republic of Mauritius or held by a person on behalf of, or for the benefit of, the Government of the Republic of Mauritius;

“grain” means wheat, oats, rye, barley, rice, pulses or seeds;

“international Convention” means any convention adopted by the International Maritime Organisation or the International Labour Organisation, which is ratified by the Republic of Mauritius;

“international voyage”, except in Sub-Part II of Part V, means a voyage from Mauritius to a port or other place outside Mauritius or a voyage to Mauritius from such a place;

“ISPS Code” means the International Ship and Port Facility Security Code;

“limitation fund” means a fund constituted in accordance with section 204;

“maritime entity” includes a partnership, ‘*société*’, association or other body of persons which is a business entity;

“master” includes every person, other than a pilot, who has the command or charge of a ship;

“Mauritius ship” means a ship registered under Part III, the registration of which has not been suspended or terminated;

“Mauritius waters” has the same meaning as in the Maritime Zones Act;

“Minister” means the Minister to whom responsibility for the subject of shipping is assigned;

“national colours” means the flag of the Republic of Mauritius;

“naval vessel” means a warship or troop ship;

“night” means a period of not less than 9 hours starting not later than midnight and ending not earlier than 5 a.m.;

“officer”, in relation to a ship, means a crew member appointed to assist the master in the operational control of the ship;

“official log book” means the book required to be kept pursuant to section 92;

“Organisation” means the International Maritime Organisation;

“outer islands” means the islands comprised in the State of Mauritius, other than the Islands of Mauritius and Rodrigues;

“owner” means the owner of a registered ship;

“passenger”, except in Part VIII, means a person carried on a ship other than a person –

- (a) employed or engaged on the business of the ship; or
- (b) carried pursuant to an obligation on the master as a shipwrecked or distressed person or owing to circumstances that the master or the owner could not have foreseen; or
- (c) a child under one year of age;

“passenger ship” means a ship carrying more than 12 passengers;

“Port” means a Port specified in the Schedule to the Ports Act;

“proper officer” means a person whose duty is to perform, in a foreign country, any duty carried out in Mauritius by the Director, the Registrar, the Superintendent of Shipping or a surveyor;

“Registrar” means the person referred to in section 5;

“remuneration” means remuneration for salvage services;

“representative person” means a person who is required to be designated in accordance with section 17;

“Safety Convention” means the International Convention for the Safety of Life at Sea 1974 and its Protocol of 1988;

“salvage” includes all expenses properly incurred by a salvor as determined in accordance with Sub-Part III of Part VI;

“Salvage Convention” means the International Convention on Salvage 1989;

“salvage operation” means an act or activity undertaken to assist a ship or other property in danger in navigable waters;

“salvage services” means services rendered in direct connection with a salvage operation;

“salvor” means a person who renders salvage services;

“seafarer” means a person engaged on a ship’s crew agreement other than –

- (a) the master or a pilot; and
- (b) a person temporarily engaged in a port or employed on duties which are not part of a seafarer’s normal duties;

“ship” –

- (a) means any kind of vessel, however propelled, used in navigation; and
- (b) includes a barge, lighter, dredger, mobile dredging unit, high speed craft and an air-cushion vehicle;

“ship’s agent” means any person who manages the affairs of a ship on behalf of the master or owner while she is in Mauritius waters;

“Superintendent of Shipping” means the person referred to in section 6;

“surveyor” or “inspector” means a person designated as such by the Director under section 7;

“territorial sea” has the same meaning as in the Maritime Zones Act;

“Tonnage Convention” means the International Convention on Tonnage Measurement of Ships 1969;

“Tonnage Regulations” means regulations made under section 228 (1) (d);

“unsafe ship” has the meaning given to it by section 128;

“voyage” means the time spent and the distance covered by a ship between its port of departure and its port of arrival;

“wages” includes emoluments and any other amount due to a seafarer from his employer during the currency of his employment.

3. Application of Act and non application of Labour Act

- (1) Subject to subsection (2), this Act shall apply to –
 - (a) a Mauritius ship wherever it may be; and

- (b) every other ship while in a Port or in any other place within Mauritius waters, including a ship on bareboat charter to the Government of the Republic of Mauritius.
- (2) This Act shall not apply to –
 - (a) a naval vessel; or
 - (b) a Government ship which is not operated for profit.
- (3) The Minister may, by regulations, provide that an object designed or adapted for use at sea is or is not to be treated as a ship for the purposes of this Act.
- (4) The Labour Act shall not apply to a seafarer.

PART II – ADMINISTRATION

4. Director of Shipping

There shall be a Director of Shipping who shall have the general superintendence of this Act and the general supervision of all matters relating to shipping and seamen and may –

- (a) carry out such inspections or investigations as he thinks fit to determine whether this Act, or any International Convention or Code relating to shipping to which Mauritius is a party, is being complied with;
- (b) require a ship to be taken into dry docks for the purpose of surveying or inspecting its hull; and
- (c) detain a ship in respect of a contravention of this Act.

5. Registrar of Ships

(1) There shall be a Registrar of Ships who shall exercise the functions and powers conferred on him by this Act and perform such other duties as the Director may direct.

- (2) The Registrar of Ships shall be a public officer.

6. Superintendent of Shipping

(1) There shall be a Superintendent of Shipping who shall exercise the functions and powers conferred on him by this Act and perform such other duties as the Director may direct.

- (2) The Superintendent of Shipping shall be a public officer.

7. Other staff

(1) There shall be such surveyors, inspectors and other officers who shall exercise the functions conferred on them by this Act in connection with –

- (a) surveys of ships;
- (b) maritime security inspection; and
- (c) other matters incidental to their duties under this Act,

as the Director may direct.

(2) The Director may designate such persons to be surveyors or inspectors for the purposes of this Act at such Port as he thinks fit.

(3) Subject to such conditions as the Director may impose, surveys and inspections of ships under this Act may be carried out by a Classification Society, and in such instances the terms “surveyor” and “inspector” shall be construed to include such Classification Society.

(4) A surveyor shall be appointed as –

- (a) a nautical surveyor; or
- (b) a marine engineering surveyor.

8. Powers of officers

(1) Where the Director, the Registrar, the Superintendent of Shipping, a surveyor or an inspector has reason to suspect that this Act or any other enactment relating to seamen or navigation is not being complied with, he may –

- (a) at all reasonable times go on board a Mauritius ship or a foreign ship which is in a Port or at an offshore terminal;
- (b) inspect the ship and its equipment;
- (c) require the owner or master to –
 - (i) produce any log book, certificate or other document relating to the ship, the crew or any seafarer in his possession or control;
 - (ii) muster the crew; or

(iii) require the master to give any explanation concerning the ship, its crew or log book, certificate or other documents produced or required to be produced; or

(d) take copies or extracts from any such document.

(2) Where a person referred to in subsection (1) has reasonable ground for believing that there are, on any premises, provisions or water intended for supply to a Mauritius ship which, if provided on the ship, would not be in accordance with this Act, he may enter the premises and inspect the provisions or water for the purpose of ascertaining whether they would be in accordance with this Act.

9. Officers' reports

Every surveyor or inspector shall -

(a) report to the Director –

(i) on the nature and cause of any accident or damage which any ship has or is alleged to have sustained or caused;

(ii) whether any requirement, restriction or prohibition imposed by or under this Act has been complied with or not;

(iii) whether the hull, machinery and equipment of a ship are sufficient and in good condition; and

(iv) on any article found in, or document carried on, a ship; and

(b) issue such certificates as the Director may require him to do.

10. Shipping casualties

(1) Where a shipping casualty occurs, such as –

(a) the loss or presumed loss, stranding, grounding, abandonment of, or damage to, a ship;

(b) a loss of life or serious injury to any person, caused by fire on board, or by any accident to a ship or ship's boat, or by any accident occurring on board a ship or ship's boat; or

(c) any damage caused by a ship,

and, at the time it occurs, the ship was registered under this Act or under the law of another country, the Director or a surveyor designated by him may hold a preliminary inquiry into the casualty and may, for that purpose, exercise any power conferred by section 8 (1) and such additional power as the Minister may confer on them for the particular inquiry.

(2) Whether or not a preliminary inquiry into a casualty has been held under subsection (1), the Minister may cause a formal investigation to be held by a Court of Investigation appointed by the Minister for that purpose which shall submit to the Minister a report of its findings and recommendations, if any, upon completion of the investigation.

(3) Where a death occurs on board a Mauritius ship or on board any foreign ship, and that ship calls at a Port, the Superintendent of Shipping shall, on arrival of the ship in Mauritius –

- (a) inquire into the cause of the death; and
- (b) make, in the official log book, a report of the result of the inquiry.

(4) Where, in the course of an inquiry under subsection (3), it appears to the Superintendent of Shipping that the death has been caused by violence or in suspicious circumstances, he shall report the matter –

- (a) to the Commissioner of Police; and
- (b) where the ship is a foreign ship, to the proper officer of the country in which the ship is registered.

11. Court of Investigation

(1) A Court of Investigation holding an investigation into a shipping casualty under section 10 shall consist of a Chairperson who holds or has held judicial office, and 2 other persons with skills and knowledge in maritime matters.

(2) The Court of Investigation shall hold meetings and conduct its proceedings in the same manner, and shall have the same powers, as a Commission of Inquiry under the Commissions of Inquiry Act.

(3) (a) Where, as a result of the investigation, the Court of Investigation recommends the cancellation, suspension or withdrawal of recognition of a ship's officer's certificate, the Director may act on the recommendation, and the ship's officer shall forthwith deliver the relevant certificate to the Director.

(b) Where the certificate was delivered by a foreign government, the Director shall inform the proper authority having delivered the certificate for any necessary action.

(4) Where a certificate has been cancelled, suspended or its recognition withdrawn under this section, the Director may, in an appropriate case and after considering representations made by the officer, reissue a cancelled certificate or reduce the period of its suspension and return the certificate, or may grant a new certificate of the same or a lower grade in place of the cancelled or suspended certificate, or reinstate the recognition of a certificate, as the case may be.

(5) Where an investigation has been held under subsection (2), the Minister may order the whole or part of the case to be reheard within 21 days of the findings of the Court of Investigation and shall do so where -

- (a) new and important evidence which could not have been produced at the inquiry or investigation has been discovered; or
- (b) it appears to the Minister that there are other grounds for suspecting that a miscarriage of justice may have occurred.

(6) An order under subsection (5) may provide for the rehearing to be made by the Court of Investigation which held the investigation or by such differently-constituted Court of Investigation as the Minister may appoint.

(7) After the rehearing, the body that conducted the rehearing shall determine whether to quash or confirm the findings of the first Court of Investigation and its decision shall be final.

PART III – REGISTRATION OF SHIPS
Sub-Part I – General

12. The Register

(1) There shall be a Register for the registration of ships and their related mortgages which shall be divided into Parts as follows –

- (a) First Part for registration of ships that are not bareboat chartered;
- (b) Second Part for bareboat chartered ships;
- (c) Third Part for ships under construction;
- (d) Fourth Part for fishing vessels;
- (e) Fifth Part for pleasure vessels; and
- (f) Sixth Part for submersible craft.

(2) No registration shall be effected under more than one Part at the same time but registration may be transferred from one Part to another as may be appropriate according to the particular circumstances.

(3) The Register may consist of manual or electronic records or such other records as the Registrar may consider expedient.

(4) The Registrar shall maintain the Register in accordance with this Part and may establish such other procedures in relation to registration as he may consider expedient.

(5) The Registrar may amend an entry in the Register where a clerical error is apparent or there is evidence that the entry is otherwise incorrect, and in such cases a new certificate of registration may be issued.

(6) Any person may, on application to the Registrar and on good cause shown, obtain a transcript of an entry in the Register.

13. Entries in the Register

Entries in the Register in relation to the ownership of a ship shall be made in the following manner –

- (a) the property in a ship shall be divided into 100 shares;

- (b) subject to the provisions of this Act with respect to joint owners or owners by transmission, not more than 100 individuals shall be entitled to be registered at the same time as owners of a ship, but this provision shall not affect the beneficial title of any number of persons or of a company represented by or claiming under or through a registered owner or joint owner;
- (c) subject to paragraph (e), a person shall not be entitled to be registered as owner of a fractional part of a share in a ship, but a number of persons, not exceeding 5, may be registered as joint owners of a ship or of a share in the ship;
- (d) joint owners shall be deemed to constitute one person as regards the persons entitled to be registered, and shall not be entitled to dispose severally of any interest in a ship, or of any share in the ship in respect of which they are registered;
- (e) in the case of a ship wholly or partly owned by a maritime entity, without a legal personality separate and distinct from that of its members, a person may be entitled to be registered as owner of a percentage of a share in the ship;
- (f) a body corporate shall be registered as owner by its corporate name;
- (g) in the case of a ship owned by a maritime entity –
 - (i) where the maritime entity has a legal personality separate and distinct from that of its members, the name of the maritime entity may be entered in the Register as the owner of the ship;
 - (ii) where the maritime entity does not have a legal personality separate and distinct from that of its members, the names of all its members carrying on business in the name of the maritime entity and the number of shares in the ship owned by each member shall be entered in the Register; and
 - (iii) whether or not the maritime entity is one that has a legal personality separate and distinct from that of its members, only the name of the maritime entity may be entered in the certificate of registration as the owner of the ship.

14. Mauritius ships

(1) Every Mauritius ship of not less than 24 metres in length shall be registered under this Act.

(2) A ship shall be a Mauritius ship for the purposes of this Act, where it is registered in Mauritius under this Part.

(3) Where a ship entitled to be registered in Mauritius is so registered, the ship shall not be registered under the law of another jurisdiction except pursuant to permission granted under section 56.

15. Port of registration

The Port of Port Louis shall be the port of registration of every ship registered under this Part and the Port to which it belongs.

16. Ownership of Mauritius ships

(1) For the purposes of this Act, a person is qualified to be the owner of a Mauritius ship where he is –

- (a) a citizen of Mauritius;
- (b) a body corporate incorporated in Mauritius and the place where meetings of its directors are regularly held is in Mauritius; or
- (c) a maritime entity.

(2) Subject to subsection (3), a ship shall be entitled to apply for registration as a Mauritius ship if it is owned by one or more persons qualified to be owners of Mauritius ships by virtue of subsection (1).

(3) Where the holders of the majority interest in a ship are not resident in Mauritius, the ship shall only be entitled to be registered if a representative person resident in Mauritius is appointed in relation to the ship, who may be the managing owner of that ship so nominated for the purpose.

(4) For the purposes of subsection (3), one or more persons shall be treated as owning a majority interest in a ship if there is vested in that person, or in those persons taken together, the legal title to 51 or more of the 100 shares into which the property in the ship is divided for the purposes of section 13.

17. Representative person

(1) Where, under section 16(3), there is a requirement for a representative person, the owner of the ship shall ensure that, so long as the ship remains registered, an individual or body corporate remains so appointed.

(2) The owner of a ship in relation to which a representative person is appointed shall –

- (a) on application for the ship to be registered, notify the Registrar of the name and address of the representative person; and
- (b) in the event of a change in the identity, or in the address, of the representative person so appointed, notify the Registrar of the name and address of the new representative person, or of the new address, as the case may be, as soon as practicable after the change occurs,

and the Registrar shall record any particulars notified to him in the Register.

(3) Every representative person shall, on a request by the Registrar –

- (a) provide information with respect to the ship in relation to which he is a representative person, or the owner of the ship; and
- (b) carry out such instructions with respect to his duties and responsibilities in relation to the ship or those of its owner as the Registrar may give.

(4) (a) Subject to paragraph (b), a representative person shall, for the purposes of this Act –

- (i) remain as the representative person in relation to the ship for which he was so appointed; and
- (ii) be subject to all the requirements of this Act applicable to representative persons and to owners,

until such time as the Registrar is notified in accordance with subsection (2) (b) of a change in the identity of the representative person.

(b) Paragraph (a) shall not apply where the Registrar is satisfied that it is not desirable or appropriate that the representative person remain as such.

18. Equitable interests

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

(2) Where, on the bankruptcy of a registered owner or mortgagee, his title is transmitted to his trustee in bankruptcy, that person may be registered as the owner or mortgagee of a Mauritius ship or of a share in the ship, where the ship remains entitled to be registered as a Mauritius ship under section 16.

(3) The expression “beneficial interest”, where used in this Part, includes interests arising under contract or by operation of law, and without prejudice to subsection (1) or to the powers of disposition and of giving receipts conferred by this Act on registered owners and mortgagees, interests arising under contract or by operation of law may be enforced by or against owners and mortgagees of ships in respect of their interest therein in the same manner as in respect of any other personal property.

(4) Where a person is beneficially interested, otherwise than by way of mortgage, in a ship or a share in a ship registered in the name of some other person as owner, the person so interested shall, as well as the registered owner, be subject to all pecuniary penalties imposed by this Act or any other enactment on the owner of a ship or a share in the ship.

Sub-Part II – Registration (other than bareboat charter ships)

19. Application for registration

(1) Every application for the registration of a ship shall be made to the Registrar in a prescribed form which shall contain the name and address of the applicant and sufficient information to enable the ship to be identified.

(2) Every application under subsection (1) in respect of a ship which has, immediately before the application, been registered in the registry of a foreign state shall be accompanied by a certified extract of the register of that registry pertaining to that ship.

(3) Every application under subsection (1) shall be supported –

(a) in the case of a new ship, by the builder’s certificate; and

(b) in the case of a ship which is not new, by a bill of sale or other equivalent document acceptable to the Registrar, evidencing the most recent transfer of ownership.

(4) Every application under subsection (1) shall be made -

(a) in the case of an individual -

(i) by the person requiring to be registered as owner;

(ii) by one or more of the persons so requiring if more than one;
or

(ii) or by his or their agent; and

(b) in the case of a body corporate or a maritime entity, by its agent, (and the authority of the agent shall be testified by writing), if appointed by individuals or maritime entities, under the hands of the appointers, and, if appointed by a body corporate, under the common seal of that body corporate or by deed or instrument under seal.

(5) Every application under subsection (1) shall be accompanied by a declaration of ownership –

(a) made by the person who is to be registered as owner of the ship or of a share in the ship, or, in the case of a body corporate or a maritime entity, the person authorised to make the declaration on behalf of that body or entity; and

(b) referring to the ship as described in the certificate of a builder or a surveyor, and containing a statement of the number of shares in the ship the legal title to which is vested in him or, as the case may be, the body corporate or maritime entity, and whether held alone or jointly with any other person.

20. Survey and measurement

(1) Every ship shall, before registration, be surveyed by a surveyor and its tonnage ascertained in accordance with the Tonnage Regulations, and the surveyor shall grant a certificate specifying the ship's tonnage and build, and such other particulars descriptive of the identity of the ship as may be required by the Director which shall be delivered to the Registrar.

(2) Where a ship intended to be registered in Mauritius has already been measured according to the Tonnage Convention in a foreign country, the Director may, without the ship being re-measured, treat it as being of the tonnage denoted by its previous certificate of registration, and in such a case the ship shall be considered to be in compliance with this section for the purposes of registration, except where a surveyor determines otherwise, in which case he shall issue a certificate to that effect, and the Director shall direct that ship to be re-measured in accordance with this section.

(3) Where the tonnage of a ship has been determined, that tonnage shall be treated as the tonnage of the ship until the ship is re-measured following a change to its physical dimensions, and in such a case the Register shall be amended accordingly.

(4) Where the tonnage of a ship has been determined, the Director shall issue a tonnage certificate to the ship.

(5) Where, under subsection (2), a ship is treated as being of the tonnage denoted by its previous certificate of registration, it may be issued with a tonnage certificate, unless it is in possession of a valid International Tonnage Certificate.

21. Carving and marking

(1) Subject to subsections (2) and (3), every ship shall, before registration, be marked permanently and conspicuously to the satisfaction of the Director in the following manner -

- (a) (i) its name shall be marked on each of its bows, and its name and the name of its port of registration shall be marked on its stern, in letters of a contrasting colour so as to be clearly visible of a length of not less than 10 centimetres, and of proportionate breadth; or
- (ii) its name and the name of its port of registration shall, with the Director's approval, be marked on its stern in the manner provided in subparagraph (i);
- (b) its official number and net tonnage shall be permanently marked on a main part of the ship's permanent structure that is readily visible and accessible in such manner as may be specified by a surveyor;
- (c) in the case of a ship built after 1 May 1988, a scale of metres, denoting its draught of water shall be marked on each side of its stem and of its stern post in figures at 20 centimetres' intervals, the capital letter "M" being placed after each metre figure, the top figure of the scale showing the metre figure and the lower line of the figures coinciding with the draught line so denoted, the figures and letters being not less than 10 centimetres in length and being marked by being cut in and painted in a contrasting colour so as to be clearly visible; and
- (d) in the case of a ship built before 1 May 1988, the marking shall be as specified in paragraph (c) or, a scale of feet denoting its draught of water shall be marked on each side of its stem and of its stern

post in Roman capital numerals or in figures, not less than 15 centimetres in height, the lower line of such numerals or figures to coincide with the draught line so denoted, and the numerals or figures shall be marked by being cut in and painted in a contrasting colour so as to be clearly visible.

(2) The Director may exempt a ship or a class of ships from any requirement of this section subject to such conditions as he may impose.

(3) Every pleasure vessel shall be marked in such manner as may be prescribed,

22. Identification number

(1) Subject to subsection (4), every ship to which the ISPS Code applies shall have its identification number permanently marked in a contrasting colour –

- (a) in a visible place on the stern of the ship or on either side of the hull, amidships port and starboard, above the deepest assigned load line on either side of the superstructure or, in the case of passenger ships, on a horizontal surface visible from the air; and
- (b) in an easily accessible place on one of the end transverse bulkheads of the machinery spaces, as defined in regulation 11-2/ 3.30 of the Safety Convention, or on one of the hatchways or, in the case of tankers, in the pump-room or, in the case of ships with ro-ro spaces, as defined in regulation 11-2/ 3.41 of the Safety Convention, on one of the end transverse bulkheads of the ro-ro spaces.

(2) The markings referred to in subsection (1) (a) shall be not less than 200 millimetres in height, and that referred to in subsection (1) (b) shall not be less than 100 millimetres in height, the width of the marks being proportionate to the height.

(3) The markings may be made by raised lettering, by cutting them in, by centre-punching them or by any other equivalent method of marking which ensures that the markings are not easily expunged.

(4) The Director shall approve the method of marking a ship's identification number where it is constructed of material other than steel or metal.

23. Name of ship

(1) A ship shall not be described by a name other than that under which it is registered.

(2) A change shall not be made in the name of a ship without the written permission of the Registrar.

(3) A request for permission under subsection (2) shall be made by application in writing and, if the request is reasonable, the Registrar may grant permission, and require notice of the change to be published in such manner as he may specify.

(4) Where permission is granted under subsection (3), the name of the ship shall be altered in the Register, in the ship's certificate of registration and on its bows and stern.

24. National colours

(1) The flag of the Republic of Mauritius shall constitute the national colours of a Mauritius ship.

(2) A Mauritius ship shall hoist the proper national colours –

- (a) on a signal being made to it by any ship in the service of the Government;
- (b) on entering or leaving any foreign port; and
- (c) on entering or leaving a Port.

25. Insurance cover

(1) Every Mauritius ship shall carry insurance cover against risks of loss or damage to third parties, and in particular –

- (a) in respect of a shipowner's liabilities to a crew member under Part IV; and
- (b) against claims in respect of loss or damage caused by any cargo carried on board the ship.

(2) Every ship anchoring in, or trading in or from, Mauritius waters or entering a Port shall, in addition, carry insurance cover against wreck removal expenses in such amount as the Director may approve.

26. Registration and refusal to register

(1) Where the Registrar determines in respect of an application under section 19 that –

- (a) the ship has been duly carved and marked and that the appropriate survey or measuring certificate has been provided;
- (b) the particulars of the ship submitted to him as required by section 19 (1) are correct;
- (c) title to the ship has been adequately proved; and
- (d) the other relevant requirements of this Part have been met,

he shall register the ship by entering in the Register the particulars of the ship and its owner in such manner as may be prescribed and grant to the owner of the ship a certificate of registration containing such particulars as may be prescribed.

(2) Where the Registrar determines otherwise than as provided in subsection (1), he shall, subject to subsection (3), refuse the application and inform the applicant of his decision.

(3) Where the Registrar determines that the information or evidence referred to in this section is not correct or sufficient, he may require the owner to submit supplementary information or evidence.

(4) The Registrar may refuse to register a ship where he is satisfied that having regard to –

- (a) the condition of the ship so far as is relevant to safety or to a risk of pollution;
- (b) the safety, health and welfare of persons employed or engaged in any capacity on board the ship;
- (c) the possibility that the ship is being used for an unlawful purpose; or
- (d) the record of the owner's management and operational quality including matters mentioned in paragraphs (a) to (c),

it would be detrimental to the interests of Mauritius or to international shipping for the ship to be registered.

27. Retention of documents

(1) Where a ship is registered, the Registrar shall retain a copy of any builder's certificate or bill of sale or other evidence of title produced on registration, as well as any certificate of measurement or survey, and all declarations made in connection with registration as required by this Part.

(2) Every document which has been produced to the Registrar to establish title shall be returned to the applicant after it has been stamped by the Registrar to indicate that it has been used for the registration of a ship.

28. Right of owner and mortgagee

(1) Subject to any right or power appearing from the Register to be vested in any other person, the registered owner of a ship or a share in a ship may dispose of it where the disposal is made in accordance with this Act.

(2) Any interest arising under contract or by operation of law shall subsist in relation to a ship or a share in a ship and may be enforced by or against the owner or mortgagee of a ship in respect of his interest in the ship or share in it.

(3) The registered owner of a ship or of a share in a ship may give a valid receipt for any money paid or advanced by way of consideration on any disposal of the ship or share.

29. Alterations to ships

(1) Where a registered ship is so altered as not to correspond with the particulars relating to its tonnage or description contained in the Register, the Registrar shall, on application made to him and on receipt of a certificate from a surveyor stating the particulars of the alteration, cause the alteration to be registered or direct that the ship be registered anew.

(2) For the purpose of the registration of an alteration to a ship, the ship's certificate of registration shall be produced to the Registrar, and he shall, in his discretion, retain the certificate and grant a new certificate containing a description of the ship as altered, or endorse and sign on the existing certificate a notation of the alteration.

(3) The Registrar shall enter in the Register the particulars of the alteration, and the fact that a new certificate has been granted, or that the existing certificate has been endorsed.

30. Transfer or transmission of ship or share

Subject to section 35, where there is a transfer or transmission of a Mauritius ship or a share in it –

- (a) the person ceasing to own the ship or share, or in the event of his death, his heirs, shall notify the Registrar and surrender the certificate of registration; and
- (b) the certificate of registration shall be cancelled and the registration frozen pending an application for the registration of the transfer or transmission by the new owner of the ship or share.

31. Transfer of ship

(1) A transfer of a registered ship or of a share in it shall be effected by a bill of sale containing a description of the ship as in the surveyor's certificate, or some other description sufficient to identify the ship to the satisfaction of the Registrar, and the bill of sale shall be executed by the transferor in the presence of, and attested by, a witness.

(2) The transferee shall be entitled to be registered as owner if he makes and signs a declaration with reference to the ship to the effect that he is qualified to own a Mauritius ship and that, to the best of his knowledge and belief, the ship is otherwise entitled to be registered.

- (3) Where there is a transfer of a registered ship –

- (a) the new owner shall, within 30 days of the transfer, apply to the Registrar, in such form as may be approved by him, for the transfer to be registered; and
- (b) where the transfer is of all the shares in the ship, and no application is made under paragraph (a), the Registrar may cancel the registration of the ship and the certificate of registration; or
- (c) where the transfer is of one or more shares in the ship, and no application is made under paragraph (a), the Registrar shall serve a notice on the remaining registered owners notifying them that, unless an application to transfer the share or shares is made within 30 days of the date of the notice, the registration of the ship and the certificate of registration may be cancelled.

(4) Every application for a transfer under subsection (3) shall be accompanied by a duly executed bill of sale together with a declaration referred to in subsection (2), and where the ship is entitled to be registered, the Registrar shall enter in the Register the name of the transferee as owner of the ship or share, endorse the bill of sale indicating the date and time of the endorsement and issue a new certificate of registration.

32. Transmission of property

(1) Where the property in a registered ship or share in it is transmitted to a person by any lawful means other than a transfer under section 31 and the person is qualified to be the owner of a Mauritius ship –

- (a) that person shall authenticate the transmission by making and signing a declaration identifying the ship and containing the statements referred to in section 31 (2) and a statement of the manner in which the property has been transmitted;
- (b) where the transmission is as a result of bankruptcy, the declaration shall be accompanied by such evidence as is acceptable to the Registrar as proof of the title of person claiming under bankruptcy;
- (c) where the transmission is as a result of death, the declaration shall be accompanied by an affidavit of succession or such other proof as the Registrar may accept; and
- (d) where the transmission is consequent upon an order of a Court, the declaration shall be accompanied by a copy of the order or judgment of that Court.

- (1) –
- (2) Where there is a transmission of a Mauritius ship pursuant to subsection
- (a) the new owner shall apply to the Registrar in a form approved by him, enclosing the declaration referred to in subsection (1) (a) and the proof required by subsection (1) (b), (c) or (d), for the transmission to be registered;
 - (b) where the transmission is of all the shares in the ship, and application is not made within a reasonable time, the Registrar may cancel the registration of the ship and the certificate of registration; and
 - (c) where the transmission is of one or more shares in the ship, and application is not made within a reasonable time, the Registrar shall serve a notice on the remaining registered owners notifying them that, unless an application to register the transmission of the share or shares is made within 30 days of the date of the notice, the registration of the ship and the certificate of registration may be cancelled.

(3) The Registrar, on receipt of an application under subsection (2), and on being satisfied that the ship remains entitled to be registered, shall enter in the Register the name of the person entitled under the transmission as owner of the ship or share in the property which has been transmitted, and where there is more than one such person, they shall be considered as one person.

33. Registration anew

(1) Where the ownership of a ship is changed, the Registrar may, on the application of the owner of the ship, register the ship anew.

(2) Where a ship is to be registered anew, the Registrar shall carry out the same procedure as in the case of a first registration, and upon surrender of the existing certificate of registration, and compliance with all other requirements for registration, the Registrar shall register the ship anew and grant a new certificate.

(3) The Registrar shall also cause the names of all persons appearing on the Register to be interested in the ship as owners or mortgagees to be entered in the new registration, and the registration anew shall not in any way affect the rights of any of those persons.

34. Refusal to register on transfer or transmission

Where, on an application for transfer or transmission of a ship or a share, it is determined by the Registrar that the ship is not eligible to be registered, he shall serve a

notice of termination on the owner of the ship, and the registration of the ship shall terminate by virtue of this section at the end of the period of 14 days beginning with the date of the service of the notice.

35. Transfer by order of Court

Where a Court, under this Act or otherwise, orders the sale of a ship or of a share in it, the order of the Court shall contain a declaration vesting in some person named by the Court the right to transfer that ship or share, and that person shall thereupon be entitled to transfer the ship or share in the same manner and to the same extent as if he were the registered owner, and the Registrar shall deal with any application relating to the transfer of the ship or share made by the person so named as if that person were the registered owner.

36. Power of Judge

A Judge may, if he thinks fit and on the application of any interested person, make an order prohibiting for a specified time any dealing with a ship or any share in it, and the Registrar shall, on being served with the order or an official copy of the order, comply with it.

37. Duplicate certificate of registration

(1) The Registrar may, where he is satisfied upon submission of proof that a certificate of registration has been lost, stolen or destroyed or has become defaced or illegible, issue to the owner a duplicate of that certificate.

(2) Where a duplicate certificate is issued, the original, if then available or if subsequently found or recovered, shall be surrendered to the Registrar.

(3) The Registrar may, in special circumstances, issue a facsimile or other electronically transmitted version of the duplicate certificate which shall be surrendered as soon as an original duplicate certificate is received by the owner.

38. Provisional certificate of registration

(1) Where a ship becomes entitled to be registered while at a foreign port, the proper officer may, on the application of the owner or master of the ship, grant to him a provisional certificate stating –

- (a) the name of the ship;
- (b) the time and place of the purchase of the ship and the name of the purchaser; and

- (c) the best particulars respecting the tonnage, build and description of the ship which the person granting the certificate is able to obtain,

and shall forward a copy of the certificate at the first convenient opportunity to the Registrar.

(2) A provisional certificate shall have the effect of a certificate of registration until –

- (a) the expiration of 3 months from its date; or
- (b) the ship's arrival at the Port of Port Louis,

whichever occurs first, and shall then cease to be of any effect.

(3) Where a provisional certificate has been granted for a ship under this section, no further provisional certificate shall be granted to the ship within one year of the date of that certificate, except with the consent of the Director.

39. Interim registration

(1) The Registrar may, subject to subsection (2), where –

- (a) there is in existence a written contract for the transfer of a ship or a share in a ship;
- (b) under the terms of that contract, the owner has agreed –
 - (i) to transfer the ship or a share in the ship to a person qualified to own Mauritius ships and who intends to register the ship; and
 - (ii) to provide the transferee with a bill of sale of the ship and a certificate stating that the ship is free from registered mortgages; and
- (c) the ship will, on the execution of the bill of sale, be entitled to be registered,

register the ship by entering the particulars referred to in section 26 (1) and grant to the transferee a certificate of registration which is valid for 21 days from its date of issue.

(2) The entry in the Register shall only be made where –

- (a) the transferee makes a declaration confirming his qualifications to own a Mauritius ship and containing –

- (i) a statement that there is in existence a written contract for the transfer of the ship or a share in the ship and that the ship is not registered in Mauritius;
 - (ii) a statement that the owner has agreed –
 - (A) to transfer the ship or a share in the ship to the transferee;
 - (B) to provide the transferee with a bill of sale of the ship and a certificate stating that the ship is free from registered mortgages; and
 - (C) to procure the termination of the registration of the ship in the country in which it is then registered; and
 - (iii) a statement that, to the best of his knowledge and belief, on the execution of the bill of sale the ship will be owned by persons qualified to be owners of Mauritius ships, and the ship is otherwise entitled to be registered; and
- (b) there is produced to the Registrar a certified copy of the contract referred to in the declaration made under paragraph (a).

(3) Where a ship is registered under subsection (1), the transferee shall, within 21 days of the date of issue of the certificate of registration, deliver to the Registrar a declaration made in accordance with section 19 (5) and a bill of sale executed under the contract, and the Registrar shall then make the entries in the Register required by section 26 (1) and grant a certificate of registration under that section.

(4) Where the transferee does not comply with the requirements of subsection (3), the registration of the ship shall automatically terminate at the expiry of the interim certificate which shall be delivered to the Registrar.

(5) Where a ship is registered under subsection (1), it shall be deemed to be a Mauritius ship for the purposes of this Act and it shall not display any colours other than the national colours of Mauritius.

(6) Where a ship is registered under subsection (1), any act or thing required to be done or not done under this Act by the owner of a ship shall be deemed to be required to be done or not done by the transferee.

40. Termination of registration

(1) The Registrar may, subject to subsection (6), terminate the registration of a ship where -

- (a) he is satisfied that -
 - (i) having regard to the matters mentioned in section 26 (1), it would be detrimental to the interests of the Republic of Mauritius or to international shipping for the ship to continue to be registered;
 - (ii) a fine imposed on the owner of the ship for a contravention of this Act has remained unpaid for more than 3 months; or
 - (iii) a summons for any such contravention has been served on the owner of the ship and the owner has failed to appear at the time and place appointed for the hearing;
- (b) the ship is no longer entitled to remain registered;
- (c) any fee due in respect of the ship has remained unpaid for a period of more than one year;
- (d) the owner states that he wishes to terminate the registration of the ship;
- (e) the ship becomes a total loss or is otherwise destroyed; or
- (f) section 17 (1) is contravened.

(2) Where a registered ship is in a condition referred to in subsection (1) (e), every owner of the ship or a share in it shall, immediately upon being made aware of the event, inform the Registrar who shall make an entry to that effect in the Register.

(3) Where the registration of a ship is terminated under subsection (1), the Registrar -

- (a) shall notify every registered mortgagee of the termination of the ship's registration and a mortgagee's interest in the ship shall remain registered except where the Registrar is satisfied that the mortgagee was privy to the possibility of the ship being used for an unlawful purpose, in which case the registration of his interest shall be deleted; and
- (b) may, at the request of the owner, issue a certificate of deletion confirming that the ship has been deleted from the Register, and stating the status of any mortgage registered in respect of that ship.

(4) Where registration is terminated under subsection (1) (d) or (e), the Registrar shall issue a certificate of deletion to the owner of the ship.

(5) On receipt of a certificate of deletion, the owner shall surrender the ship's certificate of registration to the Registrar for cancellation and remove from the ship the marking required under this Part and send a written confirmation of the removal to the Registrar.

(6) Where –

- (a) subsection (1) (a), (b), (c) or (f) applies, the Registrar may serve notice on the owner to produce, within 21 days, sufficient evidence that the ship is eligible to remain on the Register and if, at the expiry of that period, no such evidence is produced –
 - (i) extend the notice and ask for further information or evidence; or
 - (ii) serve a final notice informing the owner of the termination of the ship's registration, and such termination shall take effect 7 days after the service of that notice;
- (b) the Registrar serves a notice under this subsection on the owner of a ship in respect of which a mortgage is registered, he shall send a copy of that notice to the mortgagee at the address recorded for him in the Register;
- (c) a ship's registration is terminated under this subsection, the Registrar shall issue a certificate of deletion and the owner of the ship shall surrender its certificate of registration.

Sub-Part III – Mortgages and maritime liens

41. Mortgage of ship or share

(1) A registered or provisionally registered ship, a ship under construction or a share in any such ship may be made a security for the repayment of a loan or the discharge of any other obligation by means of a deed of mortgage in such form as may be prescribed.

(2) The Registrar shall register deeds of mortgage in the order in which they are produced to him and sign on each deed a statement to the effect that it has been registered.

(3) Where it is stated in the deed of mortgage that no further mortgage on a ship may be created without the written consent of the mortgagee, the Registrar shall make a note in the Register to that effect and any mortgage registered in contravention of this provision shall be of no effect.

(4) Where it is stated in the deed of mortgage that no transfer of ownership or termination of registration of a ship pursuant to section 40 (1) (d) may be made without the written consent of the mortgagee, the Registrar shall make a note in the Register to that effect and any recording in the Register of a transfer of ownership or a termination of the registration of the ship under that paragraph shall be of no effect.

(5) Where the registration of a ship under construction is transferred to another appropriate part of the Register, any entry relating to a mortgage shall also be transferred to the same appropriate part of the Register.

42. Priority of mortgages

(1) Where 2 or more mortgages are registered in respect of the same ship or share, the priority of the mortgagees between themselves shall, subject to subsection (2), be determined by the order in which the mortgages were registered.

(2) Where it is so prescribed, the Registrar may give an intending mortgagee a priority notice which, when recorded in the Register, shall determine the priority of the interest to which the notice relates.

43. Discharge of mortgage

(1) Subject to subsection (2), where a registered mortgage is discharged, the Registrar shall, on production of the deed, with a receipt for any sum due endorsed on it, make an entry in the Register to the effect that the mortgage has been discharged.

(2) Where, for good reason, the deed cannot be produced to the Registrar, he may, on being satisfied that the mortgage has been properly discharged, record in the Register that the mortgage has been discharged.

(3) The termination of the registration of a ship shall not affect any entry in the Register relating to an undischarged mortgage of that ship or any share in it except where the Registrar is satisfied that a person appearing on the Register to be interested as a mortgagee has consented to the entry ceasing to have effect.

44. Powers of mortgagee

(1) Where under a deed the mortgagee is entitled to take possession of a ship or where the mortgagor allows the ship to remain burdened with a maritime lien which

impairs the security of the mortgage, the mortgagee may take possession of the ship and shall, on taking possession, have all the rights and powers of an owner in possession of the ship.

(2) Subject to subsection (3), every registered mortgagee shall have power, if the mortgage money is due, to sell the ship or share in respect of which he is registered, and to give effectual receipt for the purchase money.

(3) Where 2 or more mortgagees are registered in respect of the same ship or share, a subsequent mortgagee shall not, except under an order of a Court, sell the ship or share without the concurrence of every prior mortgagee.

45. Bankruptcy of mortgagor

A registered mortgage of a ship or share shall not be affected by any act of bankruptcy committed by the mortgagor after the date of the registration of the mortgage, and the mortgage shall be preferred to any right, claim or interest of any other creditor of the bankrupt or of any trustee or assignee on his behalf.

46. Transfer and transmission of mortgage

(1) A registered mortgage of a ship or share may be transferred to any person, and on production of the instrument effecting the transfer, the Registrar shall record it by entering in the Register the name of the transferee as mortgagee, and sign on the instrument of transfer a statement to the effect that it has been registered by him.

(2) (a) Where the mortgage interest in a ship or share is transmitted to a person by any lawful means, other than by a transfer under subsection (1), that person shall produce to the Registrar a statement of the manner in which, and the person to whom, the property has been transmitted together with such evidence as is required for a transmission of the ownership of a ship or share.

(b) The Registrar shall, on receipt of a statement referred to in paragraph (a), enter the name of the person entitled under the transmission in the Register as mortgagee of the ship or share.

47. Maritime liens

(1) Subject to subsection (2), a maritime lien may be created to secure a claim -

- (a) for wages or other sum due to a master, officer or crew member of a ship in respect of his employment on the ship, including costs of repatriation and social insurance contributions payable on his behalf;
- (b) in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;
- (c) for remuneration of salvage of a ship;
- (d) for port, canal and other waterways dues and pilotage dues; or
- (e) based on tort arising out of physical loss or damage caused by the operation of the ship other than loss of or damage to cargo, containers and passengers' effects carried on the ship.

(2) No maritime lien shall attach to a ship to secure a claim referred to in subsection (1) (b) or (e) which arises out of or results from -

- (a) damage in connection with the carriage of oil or other hazardous or noxious substances by sea for which compensation is payable to the claimant under the appropriate International Convention; or

- (b) the radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or of radioactive products or waste.

(3) A maritime lien shall remain attached to the ship, notwithstanding any change of ownership, registration or flag.

(4) (a) A maritime lien shall be extinguished after a period of one year unless, before the expiry of such period, the vessel has been arrested or seized and the arrest or seizure has led to a judicial sale.

(b) The one-year period shall commence -

- (i) in the case of a maritime lien referred to in subsection (1) (a), on the claimant's discharge from the ship; and
- (ii) in the case of a maritime lien referred to in subsection (1) (b) to (e), when the claim arises.

(c) The one-year period shall not be subject to interruption or suspension except that time shall not run during the period that the arrest or seizure of the ship is not permitted by law.

(5) (a) Where a claim secured by a maritime lien is assigned or a person is subrogated to such a claim, there shall be a simultaneous assignment of, or subrogation to, the maritime lien.

(b) The holder of a maritime lien shall not be subrogated to the indemnification payable by an insurer to a ship owner under a contract of marine insurance.

48. Priority of maritime liens

(1) A maritime lien shall take priority over mortgages and preferential rights registered under the Bankruptcy Act and privileges arising under articles 2143 to 2162 of the Code Civil Mauricien, and except as provided in subsection (2), no other claim shall take priority over it.

(2) Maritime liens shall -

- (a) rank in the order in which they are listed in section 47 (1), except that a maritime lien securing a claim for remuneration of salvage shall take priority over every other maritime lien which has attached to the ship before the operation giving rise to the lien was performed;

- (b) in the case of claims arising under paragraphs (a), (b), (d) and (e) of section 47 (1), rank *pari passu* among themselves;
- (c) in the case of claims for remuneration of salvage arising under paragraph (c) of section 47 (1), rank in the inverse order of the time when the claim accrued, and for this purpose a claim shall be deemed to have accrued on the day on which the salvage operation was terminated.

(3) A claim in respect of general average contributions, and other maritime claims based on contract, shall rank lower in priority to the maritime liens set out in section 47 (1) and to mortgages.

49. Right of retention

(1) There shall be a right of retention in respect of a ship in the possession of a shipbuilder for securing a claim for the building of the ship, or of a ship repairer for securing a claim for the repair or reconstruction of the ship, effected during that possession.

(2) A right of retention shall be postponed to the maritime liens set out in section 47 (1) but shall take priority over any registered mortgage or other preferential right so long as the ship is in the possession of the shipbuilder or ship repairer.

(3) Subject to subsection (4), the right of retention shall be extinguished when the ship ceases to be in the possession of the shipbuilder or ship repairer, otherwise than in consequence of an arrest or seizure of the ship.

(4) Where at the time of the judicial sale of a ship it is in the possession of a shipbuilder or ship repairer, he shall be entitled to obtain satisfaction of his claim from the proceeds of sale of the ship, and his priority ranking under this section shall be preserved where he surrenders possession of the ship to the purchaser.

50. Judicial sale of ships

(1) Notwithstanding any other enactment, this section shall apply to the judicial sale of a ship following its arrest or seizure for the purpose of enforcement of a mortgage or a maritime lien.

(2) The Court shall, by written notice issued at least 30 days before the judicial sale of a ship, inform the owner and every mortgagee, holder of a charge or of a maritime lien who has notified the Court of his claim, of the pending sale.

(3) The notice referred to in subsection (2) shall contain -

- (a) the time and place of the sale, if they are certain, or if they are not certain, the approximate time and anticipated place followed by confirmation, at least 7 days in advance of the sale, of the actual time and place; and
- (b) such particulars concerning the sale as the Court determines are sufficient to protect the interests of persons entitled to notice.

(4) Where a ship is sold by judicial sale, every mortgage or other charge, except those assumed by the purchaser with the consent of the holder, and every lien or other encumbrance shall cease to attach to the ship when the ship is within the physical jurisdiction of the Court conducting the sale and the sale is conducted in accordance with this Act.

(5) The proceeds of sale shall be disposed of by the Court in the following order –

- (a) costs and expenses arising out of the arrest or seizure and the subsequent sale of the ship, including costs and expenses relating to the maintenance of the ship, crew wages and other sums referred to in section 47 (1) (a) incurred from the time of arrest or seizure;
- (b) costs of removal of a wrecked, stranded or sunken ship within the jurisdiction of Mauritius where the wreck has been removed by or under the direction of the Director in the interests of safe navigation or protection of the marine environment;
- (c) maritime, liens, mortgages, charges and other rights and claims provided for in this Sub-Part ranked in priority according to the relevant provisions in this Sub-Part; and
- (d) the balance, which shall be freely transferable, payable to the owner.

(6) Following a judicial sale, the Court may, at the request of the purchaser, issue a certificate stating that the ship has been sold free of all encumbrances except those assumed by the purchaser, provided there has been compliance with subsection (4).

(7) Where there has been a judicial sale of a Mauritius ship, the Registrar shall, on production to him of the certificate referred to in subsection (6), delete all mortgages from the Register except those assumed by the purchaser, and register the ship in the name of the new owner or issue a certificate of deletion for the purpose of registration anew of the ship, as the case may be.

Sub-Part IV – Bareboat charter ships

51. Registration of bareboat charter ship

- (1) Where a ship -
 - (a) is registered under the laws of a foreign country;
 - (b) is chartered by the owner or by a charterer with the owner's consent to a person who is qualified to own a Mauritius ship;
 - (c) is operated under a bareboat charter for a period of not less than 2 years, or such lesser period as may be authorised by the Director; and
 - (d) is authorised by the proper officer of the foreign country to be registered in a bareboat charter registry of another jurisdiction, and an application for the registration of the ship under this section is made in such form and manner as may be prescribed,

the Registrar may register the ship, enter in the Register the particulars of the ship and issue a certificate of registration.

(2) The registration of a ship under this section shall, unless earlier terminated under section 55, terminate at the end of the bareboat charter period.

(3) Where a ship is registered under this section or where the registration of the ship is terminated under section 55, the particulars in respect of the ship shall be notified by the Registrar to the proper officer of the foreign country.

(4) Where a ship is registered under this section, it shall be a Mauritius ship for the purposes of this Act and, during the period that it is so registered, shall not display any colour other than the national colours of Mauritius.

52. Application of Act to bareboat charter ships

(1) This Act shall apply to a bareboat charter ship subject to the modifications set out in subsection (2).

(2) (a) Sections 13 (a) to (e), 18, 19 (3), 26 (1) (c) and 30 to 46 shall not apply to a bareboat charter ship.

(b) Any act or thing required to be done or not done under this Act by an owner of a ship shall be required to be done or not done by the charterer, and -

- (i) the charterer shall be liable for doing or omitting to do such act or thing as if he were the owner of the ship; and
- (ii) a reference to “owner” in this Act shall, in the case of a bareboat charter ship, be deemed to be a reference to “charterer”.

(c) Instead of the particulars referred to in section 19 (1), the following particulars shall be entered in the Register in respect of a bareboat charter ship -

- (i) the name of the charterer;
- (ii) the name and address of the owner;
- (iii) the name and address of any person who has been granted a mortgage of the ship or a share in it and such particulars of the mortgage as the Registrar may request; and
- (iv) the previous name, if any, of the ship.

(d) The declaration required under section 19 (5) shall be replaced by a statement that the ship is subject to a bareboat charter.

(e) A bareboat charter ship shall not be required to be surveyed for the purpose of ascertaining the tonnage of the ship under section 20 if there is in force in respect of the ship an International Tonnage Certificate.

(f) The Registrar shall retain in his possession, in addition to the surveyor’s certificate issued under section 20, the certified copy of the bareboat charter.

53. Interest in ships registered under section 51

In respect of a ship registered under section 51, neither the rights nor proprietary interests of the owner, nor the rights and obligations of parties to a contract, bill of sale, mortgage, charge or other instrument creating or disposing of an interest in the ship whether existing at the date of registration of the ship under section 51 or created thereafter, shall be affected by such registration or governed by this Act.

54. Refusal to register bareboat charter ship

The Registrar may, in addition to the reasons specified in section 26 (4), refuse to register a ship under section 51 where –

- (a) it is evident that the owner or a mortgagee has not consented to the registration of the ship;

- (b) the tonnage of the ship cannot be determined in accordance with this Act;
- (c) the ship cannot be marked in accordance with this Act;
- (d) the ship would be precluded by the law of a foreign country from flying the national colours of Mauritius; or
- (e) the bareboat charter has an unexpired period of registration of less than one year on the date when the application to register the ship is made.

55. Termination of registration of bareboat charter ship

(1) The Registrar may, in addition to the reasons specified in section 40 (1), terminate the registration of a bareboat charter ship where -

- (a) it ceases to be operated under a bareboat charter;
- (b) the transfer by the charterer of his rights and obligations causes the registration of the ship to cease;
- (c) the registration of the ship in the foreign country is closed or annulled; or
- (d) the authorisation referred to in paragraph 51 (1) (d) is revoked or withdrawn.

(2) Where the Registrar intends to terminate the registration of a bareboat charter ship, he shall serve a notice to that effect on the charterer stating the grounds for the termination.

(3) The Registrar shall give an opportunity to the charterer to show cause within such period as may be specified in the notice referred to in subsection (2) as to why the registration should not be terminated.

56. Registration of Mauritius ships in foreign bareboat charter registry

(1) The Registrar may, with the Minister's approval, on an application to that effect made in the prescribed manner, grant permission to the owner of a Mauritius ship to register the ship in the bareboat charter registry of another jurisdiction where -

- (a) the ship is subject to a bareboat charter pursuant to which the owner is not responsible for the management, operation or control of the ship for the period of the charter;
- (b) every mortgagee of the ship has consented to the permission being granted;

- (c) the owner has delivered to the Registrar –
 - (i) a certified copy of the bareboat charter;
 - (ii) the certificate of registration granted under section 26 (1); and
 - (iii) any other certificate issued in respect of the ship under this Act; and
- (d) the Registrar has received confirmation of acceptance of bareboat charter registration from the proper officer of the country where the ship is intended to be registered.

(2) The registration of the ship under section 26 shall be suspended while the ship is registered in a bareboat charter registry of another country.

(3) The Port of Port Louis shall no longer be the port of registration for a ship in respect of which permission has been granted under this section, and the marking of the name “Port Louis” on its stern as provided in section 21 (1) (a) shall be removed.

57. Consequences of registration under section 56

(1) (a) Where a Mauritius ship is registered pursuant to section 56, any matter in relation to proprietary interests in the ship shall be governed by this Act and the registration of any proprietary interest pertaining to the ship in that other country shall, for the purposes of Mauritius law, be null and void.

(b) The Registrar shall notify the proper officer of the other country of any entry made in the Register in relation to proprietary interests in a ship referred to paragraph (a).

(2) During the period during which the status of bareboat charter registration in the foreign registry is in force, the ship shall cease to pay any fee that may be prescribed and to be subject to the same financial obligations as other Mauritius ships, except for payment of crew fees and radio fees.

(3) A ship that has been registered under section 56 shall not, for the duration of the registration, fly the national colours of Mauritius.

58. Revocation of permission granted under section 56

The Registrar may revoke a permission granted under section 56 –

- (a) where the ship ceases to be registered in the bareboat charter registry at which it is registered;
- (b) where the bareboat charter terminates;
- (c) on an application from the owner or mortgagee of the ship; or
- (d) on the request of the proper officer of the other country.

PART IV – ENGAGEMENT, DISCHARGE AND WELFARE OF SEAMEN

Sub-Part I – General

59. Interpretation of Part IV

- (1) In this Part -

“crew agreement” has the meaning given to it by section 60;

“relief and maintenance” includes the provision of surgical or medical treatment and such dental and optical treatment (including the repair or replacement of any appliance) as cannot be postponed without impairing efficiency; and

“ship’s boat” includes a life-raft.

- (2) A reference in this Part to “going to sea” includes a reference to going to sea from any country outside Mauritius.

- (3) For the purposes of this Part –

- (a) a seafarer is discharged from a ship when his employment in that ship is terminated; and
- (b) a seafarer discharged from a ship in any country and left there shall be deemed to be left behind in that country, notwithstanding that the ship also remains there.

Sub-Part II – Engagement, wages and discharge

60. Crew agreements

(1) An agreement in writing shall be made between each person employed as a seafarer in a Mauritius ship and the person employing him and shall be signed by both parties.

(2) Agreements made under this section with persons employed in the same ship shall be contained in one document (referred to in this Part as a “crew agreement”).

(3) The terms and form of a crew agreement shall be approved by the Director.

(4) A crew agreement or a certified copy shall be carried in the ship to which it relates whenever the ship goes to sea and a copy or extract shall be provided to a seafarer on request.

(5) Before a crew agreement is signed or any condition with any person is added to those contained in a crew agreement, the Superintendent of Shipping or the proper officer, as the case may be, shall be notified.

61. Medical Certificate

(1) Prior to signing the Articles of Agreement, a seafarer shall produce a valid medical certificate attesting that he is medically fit to perform the duties he is to carry out at sea.

(2) Each medical certificate shall state in particular that –

- (a) the hearing and sight of the seafarer concerned, and the colour vision in the case of a seafarer to be employed in capacities where fitness for the work to be performed is liable to be affected by defective colour vision, are all satisfactory; and
- (b) the seafarer concerned is not suffering from any medical condition likely to be aggravated by service at sea or to render the seafarer unfit for such service or to endanger the health of other persons on board.

(3) Unless otherwise provided -

- (a) a medical certificate shall be valid for a maximum period of 2 years unless the seafarer is under the age of 18, in which case the maximum period of validity shall be one year; and
- (b) a certification of colour vision shall be valid for a maximum period of 6 years.

(4) If the period of validity of a certificate expires in the course of a voyage, the certificate shall continue in force until the next port of call where the seafarer can obtain a medical certificate from a qualified medical practitioner, provided that the period shall not exceed 3 months.

62. Premature termination of employment

(1) Where the employment of seafarer terminates before the date contemplated in the agreement and is left on shore by reason of his unfitness or inability to proceed on the voyage, he shall be entitled to wages for time served up to the time of that termination.

(2) Where the employment of a seafarer terminates before the date contemplated in his agreement by reason of the loss or foundering of the ship on which he was employed, he shall be entitled to receive wages in respect of each day on which he is unemployed during a period of 2 months from the date of termination of his service at the rate stipulated in his agreement.

63. Improper discharge

Where a seafarer who has signed a crew agreement is discharged otherwise than in accordance with its terms before the commencement of the voyage, or before one month's wages has been earned, without fault on his part justifying that discharge, and without his consent, the seafarer shall be entitled to receive from the person employing him, in addition to any wages which he has earned, compensation for the damage caused to him by the discharge not exceeding 1 month's wages.

64. Payment of wages and account of wages

(1) Where a seafarer employed under a crew agreement relating to a Mauritius ship leaves the ship on being discharged from it, the wages due to the seafarer under the agreement calculated from the day that the seafarer reports for duty on board shall, subject to this section, be paid to him in full at the time when he leaves the ship (referred to in this section as the "time of discharge").

(2) Where any amount payable to a seafarer is not paid at the time at which it is payable, it shall carry interest at the legal rate except when the failure to pay was due to –

- (a) a reasonable dispute as to liability;
- (b) the act or default of the seafarer; or
- (c) any other cause, not being the wrongful act or default of the person liable to pay his wages.

(3) Where a seafarer, pursuant to section 75, is discharged from a ship outside Mauritius but returns to Mauritius under arrangements made by the person who employed him, this section shall have effect as if for the reference to the time of discharge there were substituted a reference to the time of his return to Mauritius, and as if subsection (6) were omitted.

(4) Where any amount of wages is not paid in cash at the time of discharge, the amount shall be deemed to have been paid –

- (a) on the date when a cheque, money order or postal order for that amount was dispatched by the recorded delivery service of the post office to the seafarer's last known address; or
- (b) on the date when any account kept by the seafarer with a bank or other institution was credited with that amount.

(5) The master of every Mauritius ship shall deliver to every seafarer employed in the ship under a crew agreement an account of the wages due to him

under that crew agreement and of the deductions subject to which the wages are payable.

(6) The account shall be delivered not later than 24 hours before the time of discharge or, if the seafarer is discharged without notice or at less than 24 hours' notice, at the time of discharge.

65. Disputes on wages

(1) Any dispute relating to the amount payable to a seafarer employed under a crew agreement may be submitted by the parties to the Superintendent of Shipping for decision but the Superintendent shall not be bound to accept the submission or, if he has accepted it, to decide the dispute, where he is of the opinion that the dispute, whether by reason of the amount involved or for any other reason, ought not to be decided by him.

(2) The decision of the Superintendent on a dispute submitted to him under this section shall be final.

66. Termination of employment due to illness

Where the engagement of a seafarer terminates before the date contemplated in his agreement by reason of his being left ashore at any place outside his port of return, under a medical certificate of unfitness or inability to proceed on a voyage, the seafarer shall be entitled to wages up to the time of the termination.

67. Attachment and assignment of wages

Notwithstanding any other enactment but subject to section 69 –

- (a) the wages due or accruing to a seafarer employed in a Mauritius ship shall not be subject to attachment or assignment;
- (b) an assignment made before they have accrued shall not bind the seafarer, and the payment of the wages to the seafarer shall be valid; and
- (c) a power of attorney or authority for the receipt of the wages shall not be irrevocable.

68. Interest on wages due

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

- (a) a mistake;
- (b) a reasonable dispute as to liability;
- (c) the act or default of the person claiming the amount; or
- (d) any other cause, not being the wrongful act or default of the person liable to make the payment,

may order the payment of interest at the legal rate for the period beginning 7 days after the sum became due and ending when the sum is paid.

69. Allotment of wages

(1) A crew agreement may contain a stipulation that a part of the wages due to a seafarer not exceeding 50 percent of his monthly wages may, during his absence from Mauritius, be allotted to such person and at such time as may be specified in the agreement.

(2) Any person who becomes entitled to an allotment under this section may sue and recover the amount of the allotment as if it were a debt due to him.

70. Right or loss of right to wages

(1) Where a Mauritius ship is wrecked or lost, a master or seafarer whose employment in the ship is thereby terminated before the date contemplated in the agreement shall, subject to subsections (2) and (3), be entitled to wages at the rate payable under the agreement at the date of the wreck or loss for every day on which he is unemployed in the 2 months following that date.

(2) Where a Mauritius ship is sold while outside Mauritius or ceases to be a Mauritius ship and a master's or a seafarer's employment in the ship is thereby terminated before the date contemplated in the agreement under which he is employed, he shall, subject to subsection (3), be entitled to wages at the rate payable under the agreement at the date on which his employment is terminated for every day on which he is unemployed in the 2 months following that date.

(3) A master or seafarer shall not be entitled to wages under subsection (1) or (2) for a day on which he was unemployed, where it is shown that -

- (a) the unemployment was not due to the wreck or loss of the ship or, as the case may be, the termination of his employment on the sale of the ship or its ceasing to be a Mauritius ship; or
- (b) the master or seafarer was able to obtain suitable employment for that day but unreasonably refused or failed to take it.

71. Protection of wages and liens

(1) A seafarer may not renounce his lien, his remedies for the recovery of his wages, his right to wages in case of the wreck or loss of his ship and any right he may have or obtain in the nature of salvage.

(2) Subsection (1) shall not affect any agreement made with a seafarer belonging to a ship which, in accordance with the agreement, is to be employed on salvage service, provides for the remuneration to be paid to him for salvage services rendered by that ship.

(3) Subject to subsection (2), a seafarer employed on a Mauritius ship, other than crew specifically employed for salvage services who have saved or assisted in saving another ship or its property or the life of a person belonging to that ship, shall be entitled to share in the salvage remuneration awarded to his own ship.

72. Master's lien

The master of a ship shall have the same lien for his salary, and all disbursements or liabilities property made or incurred by him on account of the ship, as a seafarer has for his wages.

73. Discharge of seafarer outside Mauritius.

Where it is so prescribed no seafarer shall be discharged outside Mauritius from a Mauritius ship without the consent of the proper officer and on such conditions as may be prescribed.

74. Seafarer left behind abroad

Where it is so prescribed, no seafarer employed in a Mauritius ship shall be left behind outside Mauritius otherwise than on being discharged from the ship or on such conditions as may be prescribed.

75. Discharge where ship ceases to be registered

Where a Mauritius ship ceases to be registered, any seafarer employed in the ship shall be discharged from the ship unless he consents in writing to continue his employment in the ship, and sections 64 to 66 shall apply in relation to his wages as if the ship had remained a Mauritius ship.

76. Death or personal injury

(1) Where a seafarer dies during his employment, his wages shall be payable up to the date of his death to his heirs or to any other person in accordance with the law.

(2) A compensation shall be payable by the person employing a seafarer for the death of, or injury caused to, the seafarer employed on a Mauritius ship, who is not covered under the Workmen's Compensation Act and the compensation shall not be less than that provided under the Workmen's Compensation Act.

(3) Where a seafarer is killed while carrying out any act or duty for the safety of the ship or in its defence, his wages shall be payable in full for the remaining duration of his employment contract in addition to such compensation as may be determined by the Court.

(4) Where a vessel is lost without trace, every seafarer's dependants shall be entitled to receive compensation as may be determined by the Court.

77. Personal effects

Where the personal effects of a seafarer are lost or destroyed by shipwreck, fire on board or any other act of God or case of '*force majeure*', the shipowner shall be liable to compensate the seafarer in an amount determined by the Court.

Sub-Part III – Safety, health and welfare

78. Obligation as to seaworthiness

(1) Subject to subsection (2), in every contract of employment between the owner of a Mauritius ship and the master of, or a seafarer employed in, the ship, there shall be implied an obligation on the owner that the owner, master and agent of the ship charged with –

- (a) loading the ship;
- (b) preparing the ship for sea; or
- (c) sending the ship to sea,

to use all reasonable means to ensure the seaworthiness of the ship at the time of commencement of the voyage and to keep the ship in a seaworthy condition throughout the voyage.

(2) No liability on the owner of a ship shall arise under subsection (1) in respect of the ship being sent to sea in an unseaworthy condition where, owing to special circumstances, the sending of the ship to sea in that condition was reasonable and justifiable.

79. Complaint about provisions or water

(1) Where 2 or more seamen employed in a Mauritius ship consider that the provisions or water for the seamen are not in accordance with such standards as may be prescribed, they may complain to the master who shall investigate the complaint.

(2) Where the seamen are dissatisfied with the action taken by the master as a result of his investigation or by his failure to take any action, they may state their dissatisfaction to him and complain to the Superintendent of Shipping or the proper officer, and the master shall make adequate arrangements to enable the seamen to make their complaint as soon as the service of the ship permits.

(3) The Superintendent of Shipping or proper officer to whom a complaint is made under subsection (2) shall investigate the complaint and may require the master to take such remedial action as he thinks fit.

80. Medical and other treatment during voyage

(1) Where a seafarer, while employed in a Mauritius ship, receives outside Mauritius any surgical, medical, dental or optical treatment, including the repair or replacement of any appliance, which cannot be postponed without impairing efficiency, the reasonable expenses of the treatment shall be borne by the person employing him.

(2) Where a seafarer dies while employed in a Mauritius ship and is buried or cremated outside Mauritius, the expenses of his burial or cremation shall be borne by the person employing him.

(3) Where a Mauritius ship does not carry a doctor among the seamen employed in it, the master shall make arrangements for ensuring that any medical attention on board the ship is given either by him or under his supervision by a person appointed by him for the purpose.

81. Minimum age

(1) No person under the age of 16 shall be employed or engaged, or shall work, on board any Mauritius ship.

(2) No person under the age of 18 shall perform night work on a Mauritius ship except -

- (a) when the effective training of the seafarers concerned, in accordance with established programmes and schedules, would otherwise be impaired; or
- (b) the specific nature of the duty or a recognised training programme requires that the seafarers perform duties at night.

82. Fitness or conduct of officer

(1) Where it appears to the Director that an officer -

- (a) is unfit to discharge his duties by reason of incompetence or misconduct or for any other reason;
- (b) has been seriously negligent in the discharge of his duties; or
- (c) has failed to comply with section 100,

the Director may cause an inquiry to be held by a Board of Inquiry consisting of one or more persons appointed by him and, if he does so, may, if he thinks fit, suspend,

pending the outcome of the inquiry, the use of any certificate issued to the officer or recognised by the Director.

(2) In the case of a certificate delivered by a foreign Government, the Director shall inform the proper officer for such action as he deems fit.

(3) An inquiry under this section shall be conducted in such manner as the Board of Inquiry thinks fit, and it shall, if it deems it necessary, be assisted by one or more assessors.

(4) The Board of Inquiry -

(a) may, if satisfied of any of the matters referred to in subsection (1) (a) to (c), cancel or suspend any certificate issued to the officer or withdraw the recognition of the certificate or censure him; and

(b) shall make a report on the case to the Director.

83. Holders of certificate who are not officers

(1) Where it appears to the Director that a seafarer other than an officer who is the holder of a certificate of competency, is unfit to be the holder of such a certificate, by reason of incompetence, misconduct or for any other reason, the Director may give him notice in writing that he is considering the suspension or cancellation of the certificate.

(2) The notice shall state the reason why it appears to the Director that the seafarer is unfit to be the holder of such a certificate and shall state that within a period specified in the notice the seafarer may make representations to the Director.

(3) After considering any representation made under subsection (2), the Director shall decide whether or not to suspend or cancel the certificate, and shall give the holder written notice of his decision.

(4) The seafarer may, where the Director has decided to suspend or cancel his certificate, require his case to be dealt with by an inquiry, and the Minister shall cause an inquiry to be held by a Board of Inquiry consisting of one or more persons appointed by him.

(5) An inquiry under this section shall be conducted in such manner as the Board of Inquiry thinks fit and the Board shall, if it deems it necessary, be assisted by one or more assessors.

(6) The Board of Inquiry holding an inquiry under this section -

- (a) may quash, confirm or vary the decision of the Director, on the certificate; and
- (b) shall make a report on the case to the Minister.

84. Rehearing of inquiry

(1) Where an inquiry has been held under section 82 or 83, the Minister may order the whole or part of the case to be reheard within 21 days of the decision of the Board of Inquiry, and shall do so –

- (a) if new and important evidence which could not be produced at the inquiry has been discovered; or
- (b) if there appear to the Minister to be other grounds for suspecting that a miscarriage of justice may have occurred.

(2) A further hearing under this section shall be conducted by the Board of Inquiry which conducted the first hearing or, if the Minister so determines, by a differently-constituted Board appointed by him.

(3) On a fresh hearing under this section, the Board of Inquiry may quash, confirm or vary the findings of the first Board and its decision shall be final.

85. Power to restore certificate

Where a certificate has been cancelled or suspended under section 82, 83 or 84, the Director may, if he thinks that the justice of the case so requires, re-issue the certificate, reduce the period of suspension and return the certificate or grant a new certificate of the same or a lower grade in place of the cancelled or suspended certificate or reinstate the previously withdrawn recognition of a certificate.

86. Seafarer left behind or shipwrecked

- (1) Where -
 - (a) a person employed as a seafarer in a Mauritius ship is left behind in a foreign country or is taken to such a country on being shipwrecked; or
 - (b) a person who became so employed under an agreement entered into outside Mauritius is left behind in Mauritius or is taken to Mauritius on being shipwrecked,

the person who last employed him as a seafarer shall, whether or not he is discharged from the ship, make provision for this return and his relief and maintenance until his

return, including the repayment of expenses incurred in bringing the shipwrecked seafarer ashore and maintaining him until he is brought ashore and the payment of the expenses of the burial or cremation of a seafarer who dies before he can be returned.

(2) The Superintendent of Shipping or the proper officer, as the case may be, shall -

- (a) determine the place to which the seafarer is to be returned;
- (b) require the master of any Mauritius ship to convey a person to a place determined in accordance with paragraph (a) and give the master directions for that purpose; and
- (c) require the person who last employed the seafarer to make the necessary payment in respect of the conveyance of the seafarer.

87. Employer's liability under section 86

Where a seafarer left behind in, or taken to, a country pursuant to section 86, remains there after the end of a period of 3 months, the person who last employed him as a seafarer shall not be liable under that section to make provision for his return or for any matter arising after the end of that period where the person who last employed him proves that the reason for the seafarer remaining in that country beyond the 3 months is not attributable to any default on his part.

88. Recovery of expenses from employer

Where expenses are incurred in respect of a matter for which the employer of a seafarer is required to make provision under section 86 and –

- (a) the expenses are incurred by the Government, or by a foreign government and repaid to it on behalf of the Government, the Government may recover them from the employer; or
- (b) the expenses are incurred by the seafarer, he may recover them from the employer unless the latter proves that under the terms of his employment they were to be borne by him or that he would not have been left behind but for his own wrongful act or neglect.

89. Recovery of expenses from seafarer

Where, in the case of any seafarer, expenses are incurred by the Government or by a foreign government and repaid to it on behalf of the Government –

- (a) in respect of any matter for which, but for section 87, the seafarer's last employer would have been required to make provision under section 86; or
- (b) in respect of any matter falling under section 86 (2) (b),

the Government may recover them from the seafarer or, if he has died, from his heirs.

90. Relief and repatriation of foreign seafarer

(1) Where a foreign ship proceeds or intends to proceed to sea and leaves or intends to leave behind a foreign seafarer in Mauritius, the cost of his repatriation shall be borne by the owner of the ship or, where the owner is not in Mauritius, by the agent of the ship.

(2) Where expenses referred to in subsection (1) are incurred by the Government, they shall be recoverable from the owner or agent of the ship.

91. Application of sections 86 to 90 to ship's master

Sections 86 to 90 shall, with such adaptations or modifications as may be necessary, apply to the master of a ship as they apply to a seafarer.

92. Official log book

(1) The Master shall cause an official log book in a form approved by the Director to be carried on board every Mauritius ship.

(2) Every entry to be made in an official log book shall be in English and shall be made as soon as possible after the occurrence to which it relates.

(3) Every entry in an official log book shall be signed by the master and by another member of the crew, and where it is an entry regarding illness, injury or death, it shall be signed by the ship's doctor if one is available on board.

(4) The master of every Mauritius ship shall, whichever occurs earlier, at intervals of 90 days or on the ship's arrival at a Port and foreign port, deliver the official log book covering the period since it was last delivered, to the Superintendent of Shipping or to the proper officer, as the case may be.

(5) Where a Mauritius ship is lost or abandoned, the owner or master of the ship shall, if practicable and as soon as possible, deliver to the Superintendent of Shipping or the proper officer, as the case may be, the official log book duly completed.

(6) Where a Mauritius ship is deregistered or its registration is otherwise terminated, or where its ownership is transferred or transmitted, the owner or master of

the ship shall within 30 days deliver to the Superintendent of Shipping or the proper officer, as the case may be, the official log book duly completed.

(7) Where a person ceases to be the master of a Mauritius ship, he shall deliver to his successor the documents relating to the ship and its crew which are in his custody and the successor shall forthwith enter in the official log book a list of the documents received by him.

(8) The Director may exempt a Mauritius ship trading solely within the waters of Mauritius from compliance with subsection (1) to (4) subject to such conditions as he may impose.

93. Entries in official log book

The master of every Mauritius ship which is required to carry an official log book shall enter or cause to be entered in the official log book particulars of the following -

- (a) any conviction by a Court of a member of the crew of an offence and the sanction inflicted;
- (b) any offence committed by a member of the crew for which it is intended to institute proceedings in Court, or if it is a disciplinary offence, for which a sanction has been imposed on board by the master;
- (c) every case of illness or injury describing its nature, the medical treatment, if any, administered to the person and any other relevant details;
- (d) every birth and death occurring on board together with any other relevant details;
- (e) the name of every seafarer who ceases to be a member of the crew stating the place, time, and reason and any other relevant details concerning the matter;
- (f) where a seafarer dies during a voyage, details of the wages due to him including details concerning deductions and allotments in relation to those wages, and details of the sale of his personal effects if such sale takes place;
- (g) the details of any collision or other maritime casualty occurring during the voyage and the action taken in relation thereto;
- (h) the date and time of any boat and fire drill carried out on board pursuant to the requirements of this Act and, where such drills are not carried out, the reason therefor;

- (i) the ship's draught and freeboard each time the ship enters and leaves a port, offshore terminal or anchorage and the date and time of posting of a notice containing those particulars;
- (j) record of inspections of crew accommodation;
- (k) record of inspection of food and water provided for the crew; and
- (l) any other entry required to be made under this Act.

94. Deck and engine room log books

Every Mauritius ship shall, in addition to the official log book, carry on board a deck log book and an engine room log book in which shall be recorded in English on a daily basis, particulars relating to the deck watch and the engine room watch respectively.

95. Lists of crew

(1) The master of every Mauritius ship shall make and maintain a list of the crew containing such particulars as may be prescribed.

(2) The crew list may be contained in the same document as the crew agreement such that any particulars in the crew agreement may be treated as forming part of the particulars entered in the list.

(3) The crew list shall be produced by the master on demand to any competent authority of a foreign port or offshore terminal where a Mauritius ship may be for the time being.

(4) The crew list or a copy shall be delivered by the owner or master to the Superintendent of Shipping at intervals and in the manner specified by the Superintendent, which may include transmission by electronic means, and every occasion when a change is effected in the list.

(5) The Director may exempt a Mauritius ship from the requirements of subsections (1) and (3) subject to such conditions as he may impose.

96. Continuous discharge book

(1) The Superintendent of Shipping may, on application, issue to a seafarer engaged for service on a Mauritius ship, a book referred to in this section as "the continuous discharge book", which shall contain a continuous record of service of the seafarer.

(2) The master of a Mauritius ship shall, on the discharge of a seafarer from the ship, make an entry in the continuous discharge book of the seafarer stating the period of the seafarer's service on that ship and the time and place of his discharge, and sign the entry.

(3) An entry made under subsection (2) shall not contain any statement as to the wages, quality of work or character of the seafarer.

(4) The holder of a continuous discharge book shall produce or surrender it on demand to the Superintendent of Shipping or the proper officer, as the case may be, in such circumstances as may be stipulated by the Director.

(5) The Director may order a seafarer to surrender a continuous discharge book in consequence of a recommendation to that effect made by a disciplinary body or a Board of Inquiry acting pursuant to the relevant provisions of this Act.

(6) The Director may, if a particular case so warrants, reissue a continuous discharge book that has been surrendered in the circumstances referred to in subsection (5).

PART V – SAFETY OF NAVIGATION

Sub-Part I – Collisions and preventive measures

97. Lights and fog signals

(1) No ship shall carry or exhibit any light or use any fog signal, other than a light or signal which is prescribed.

(2) No person shall show a light, including light from a fire, in such a place or manner as to mislead ships navigating in Mauritius waters.

98. Liability for collision

(1) Liability for collision damage, including damage to ships, their cargoes, the effects or other property of the crew, passengers or other persons on board, or to third parties, shall be apportioned according to the degree of fault of each ship involved in a collision.

(2) Where it is not possible to determine the degree of fault of each ship, or it appears that the faults are equal, liability shall be apportioned equally.

(3) There shall be no presumption of fault against a ship for a contravention of any regulations relating to collisions without proof of fault or negligence.

(4) Where a collision is accidental or caused by '*force majeure*', or the cause is left in doubt, the damages shall be borne by those who have suffered them, notwithstanding that the ships, or any one of them, may have been at anchor, or was otherwise made fast, at the time of the collision.

(5) Where a collision is caused by the fault of one of the ships, liability to make good the damage shall attach to the one which has committed the fault.

(6) In respect of damage caused by death or personal injury, the ships at fault shall be jointly and severally liable to third parties, without prejudice, however, to the right of the ship which has paid a larger part than that which, in accordance with subsections (1) and (2), it ought ultimately to bear, to obtain a contribution from the other ship at fault.

(7) Collision liability shall attach in accordance with this section in a case where the collision is caused by the fault of a pilot, whether or not the pilot is required to be carried by law.

(8) The right of action for the recovery of damages resulting from a collision is not conditional upon the entering of a protest or the fulfilment of any other special formality.

(9) Where no collision has actually taken place, liability for damage to the ships involved in the incident, or to goods or persons on board the ships resulting from the execution or non-execution of a manoeuvre or a contravention of any regulations relating to collisions, shall be determined in accordance with this section.

(10) This section shall have effect notwithstanding any other enactment.

99. Inspection of lights, shapes and signals

A surveyor or inspector may inspect a ship of any nationality in a Port to determine whether the ship is properly provided with lights and shapes and the means of making sound signals as required by law, and, where he finds that the ship is not so provided, he shall specify in writing the action required to rectify the deficiency and the Director may detain the ship until such deficiency is rectified to his satisfaction.

100. Duty to give assistance following collision

(1) In every case of collision between ships, the master of each ship shall, so far as he can do so without damage to his own ship, crew and passengers, if any –

- (a) render to every other ship, the master, crew and passengers, if any, such assistance as may be practicable and necessary to save them from any danger by the collision, and stand by the other ship until

he has ascertained that such ship has no need for further assistance; and

- (b) give the master of every ship the name and port of registration of his ship, and the names of the ports from which his ship sailed and to which his ship is bound.

(2) Subsection (1) shall apply to the master of a Mauritius ship anywhere and to the master of a foreign ship when in Mauritius waters.

101. Master to notify hazards to navigation

(1) Where the master of a Mauritius ship encounters a danger to navigation specified in subsection (2), he shall send information of the danger by any means of communication at his disposal to the appropriate shore-based authorities via a coast radio station, and repeat the information to such ships in the vicinity as may be practicable.

(2) The dangers to navigation referred to in subsection (1) are –

- (a) dangerous ice;
- (b) a dangerous derelict;
- (c) a hurricane, typhoon, cyclone or other similar storm;
- (d) air temperatures below freezing point associated with gale force winds causing severe ice accretion on the superstructure of ships;
- (e) winds of force 10 or above on the Beaufort scale for which no storm warning has been received; and
- (f) any other direct danger to navigation.

(3) The information referred to in subsection (1) shall -

- (a) be sent on the authority of the master of the ship in English, or by means of the International Code of Signals, and where it is transmitted by radio, it may be sent in one of the working languages of the International Telecommunications Union and, where language difficulties are encountered, the Organisation Standard Communication Phrases may be used; and
- (b) when sent on the authority of the master of the ship by means of radio, be preceded by such safety signal or code sequence as may be prescribed and be in such format as may be prescribed.

(4) Every person in charge of a radio station or in charge of radio communication on board a Mauritius ship shall, on receiving a signal indicating that a message is about to be sent under this section, refrain from sending messages for a time sufficient to allow other stations to receive the message, and transmit the message in such manner as may be prescribed.

102. Master's duty where ice is reported

The master of a Mauritius ship shall, where ice is reported on or near his course at night, proceed at a safe speed adapted to the prevailing circumstances or change his course so as to keep amply clear of the ice reported and of the area of danger.

103. Duty to assist ships or persons in distress

(1) The master of a ship shall, so far as he can do so without serious danger to his own ship and the persons on board, render assistance to any person in danger of being lost at sea.

(2) The master of a ship shall, on receiving at sea a signal from any source that a ship or aircraft or a survival craft is in distress, proceed with all speed to the assistance of the persons in distress, informing them, if possible, that he is doing so, and where -

(a) he is unable to do so; or

(b) in the special circumstances of the case, he considers it unreasonable or unnecessary to proceed to their assistance,

he shall enter in the official log book of the ship the reason for failing to proceed to their assistance.

(3) The master of a ship shall be released from the duty imposed by subsection (2) as soon as he is informed of the requisition of one or more ships, other than his own, under section 104 and that the requisition is being complied with by the ship or ships requisitioned.

104. Right to requisition ships when in distress

(1) The master of a ship in distress may, after consultation, so far as may be possible, with the masters of ships which answer his call for assistance, requisition one or more of those ships as he considers best able to render assistance, and it shall be the duty of the master of a ship which is requisitioned to comply with the requisition by proceeding with all speed to the assistance of persons in distress.

(2) The master of a ship shall be released from the duty imposed by section 103 (1) and, if his ship has been requisitioned, from the duty imposed by subsection (1), if he is informed by the persons in distress or by the master of another ship which has reached such persons that assistance is no longer required.

105. Report of accident to a ship

(1) Where a ship -

- (a) has sustained or caused any accident occasioning loss of life or serious injury to any person; or
- (b) has sustained any material damage affecting its seaworthiness or its efficiency, either in its hull or in any part of its machinery,

the owner or master shall, within 24 hours after the happening of the accident or causing of the damage or as soon as possible thereafter, transmit to the Director or to a proper officer, a report of the accident or damage.

(2) Every report made under subsection (1) shall be signed by the owner or master and state -

- (a) the name of the ship, the port to which the ship belongs, the official number, if any, of the ship and the place where the ship is located;
- (b) the circumstances in which the accident or damage occurred; and
- (c) the probable cause of the accident or damage.

(3) (a) Where the owner, the representative person of the owner, or the agent of a ship to which this section applies, has reason to believe that the ship has sustained or caused any such accident or received any such damage as is mentioned in subsection (1), he shall satisfy himself that the accident or damage has been reported to the Director by the master;

(b) Where any such owner, representative person or agent has reason to believe that the accident or damage has not been so reported, he shall, as soon as possible, send to the Director notice in writing stating the name of the ship, its official number and its port of registration or the port to which it belongs, stating to the best of his knowledge and belief, the nature and extent of the accident or damage, its probable cause and the location of the ship.

106. Apprehended loss of ship

Where the owner or agent of a Mauritius ship has reason, owing to the non-appearance of the ship or to any other circumstance, to believe that the ship has been lost, he shall cause a reasonable search to be made for the ship and shall, as soon as may be convenient, send to the Director a notice in writing signed by him and stating –

- (a) the name of the ship, the port to which the ship belongs and official number, if any, of the ship;
- (b) the circumstances and probable cause of the loss; and
- (c) the last known position of the ship, if possible.

107. Aids to navigation

(1) (a) The State shall ensure that there are, within the coastal areas of Mauritius, such aids to navigation as may be necessary to facilitate safe navigation.

(b) Where it is proposed to set up or discontinue an aid to navigation, or alter the lighting characteristics or any other distinguishing features of an aid, the Director shall be consulted before any such proposal is carried into effect.

(2) The Director may cause the publication and updating of information on aids to navigation and declare such publications, and any other publications, to be approved nautical publications.

(3) Every Mauritius ship shall carry and use such nautical charts, sailing directions, list of lights, list of radio signals, tide tables, current atlases and such other publications and information as may be necessary or expedient for the safe navigation of ships and approved by the Director.

(4) The Director may determine the system of lighting and other characteristics, and marks and features of aids to navigation and in doing so, shall have due regard to the International Association of Marine Aids to Navigation and Lighthouse Authorities Harmonised Buoyage “System A”, or any other international system of buoyage which may replace it.

108. Application of Safety Convention

(1) Subject to subsection (2), the Safety Convention shall, unless she is exempted by section 109, apply to a Mauritius ship engaged on an international voyage and to a foreign ship engaged on such a voyage while she is in Mauritius waters.

(2) The Safety Convention shall not apply to -

- (a) warship and troop ships;
- (b) cargo ships of less than 500 tons;
- (c) ships not propelled by mechanical means;
- (d) wooden ships of primitive build;
- (e) pleasure vessels not engaged in trade; and
- (f) fishing vessels.

(3) Notwithstanding subsection (1), this section and sections 110 and 111 shall not apply to a foreign ship that would not be within a Port but for such stress of weather or any other circumstances that neither the master, owner nor charterer, if any, of the ship could have prevented or forestalled.

109. Exemptions

(1) The Director may exempt any ship or class of ships from any safety requirements imposed by this Act subject to such conditions as he thinks fit.

(2) Where a ship not normally engaged on international voyages is required to undertake a single international voyage, the Director may, where he is of the opinion that the ship complies with safety requirements imposed by this Act, exempt the ship while engaged on that voyage.

(3) Where a ship embodies features of a novel kind, the Director may exempt it from any requirement imposed by this Act relating to safety construction, life-saving appliances and radio communications, the application of which might seriously impede research into the development of such features and their incorporation in ships engaged in international voyages, but the ship shall comply with any safety requirement which, in the opinion of the Director, is adequate for the service for which it is intended and is such as to ensure the overall safety of the ship.

(4) Where the Director considers that the sheltered nature and conditions of a voyage are such as to render the application of a specific requirement relating to safety construction, life-saving appliances and radio communications unreasonable or unnecessary, he may exempt from that requirement a Mauritius ship, or a class of ships which, in the course of their voyage, do not proceed more than 20 miles from the nearest land.

110. Inspection of ships holding Safety Convention Certificates

(1) Where a valid Safety Convention Certificate is produced to in respect of a foreign ship, it shall be accepted, and the ship shall be exempted from a survey or

inspection under this Part, unless there are clear grounds for believing that the condition of the ship or of its equipment does not correspond substantially with the particulars of the certificate or that the ship and its equipment are not in compliance with any regulations respecting the maintenance of conditions of such ships and their equipment after survey.

(2) Where a Safety Convention Certificate is not acceptable due to the circumstances referred to in subsection (1), or the Certificate has expired or ceased to be valid, the ship shall not be granted clearance and shall be detained until it can proceed to sea or to the appropriate repair yard without causing danger to the ship or persons on board, and the following persons shall be notified in writing of the circumstances -

- (a) the local Consular Officer of the ship's flag State or, in his absence, the nearest diplomatic representative of the ship's flag State; and
- (b) the surveyor or recognised organisation responsible for the issue of the certificate referred to in subsection (1).

(3) Where a ship referred to in subsection (2) is unduly detained or delayed, it shall be entitled to compensation for any loss or damage suffered as a direct result of such undue detention or delay.

111. Ships to carry stability information

(1) Every Mauritius ship shall carry on board such information about the ship's stability as may be prescribed.

(2) The information, a copy of which shall be sent to the Director, shall be based on the determination of the ship's stability by means of an inclining test of the ship but the Director may allow the information to be based on a similar determination of the stability of a sister ship.

Sub-Part II – Load Lines

A - General

112. Interpretation of Sub-Part II

(1) In this Sub-Part -

“alteration” includes deterioration;

“1966 Convention” means the International Convention on Load Lines 1966;

“Convention State” means a State that is party to the 1966 Convention or a territory of such State to which the Convention has been extended;

“load line” means a mark on a ship indicating the maximum depth to which a ship may be loaded;

“post-1966 Convention ship” means a ship whose keel is laid, or which is at a similar stage of construction, on or after the material date and “pre-1966 Convention ship” means a ship which is not a post-1966 Convention ship;

“valid Convention Certificate” means a certificate which –

- (a) has been issued under subsection (2) and is for the time being in force; or
- (b) having been issued as mentioned in subsection (2), is produced in circumstances in which it is required by the Load Line Regulations to be recognised for the purposes of this Sub-Part.

(2) For the purposes of the definitions of “pre-1966” and “post-1966 Convention ship”, the material date -

- (a) in relation to a ship which is registered in or flies the flag of a Convention State other than Mauritius, is the date from which the 1966 Convention is declared to be effective in respect of that State or its territory to which the Convention extends; and
- (b) in relation to any other ship, is 21 July 1968.

(3) In this Sub-Part, subject to subsection (4), “international voyage” means a voyage between –

- (a) a Port and a foreign port; or
- (b) a port in a Convention State other than Mauritius and a port in any other country or territory (whether or not a Convention State) outside Mauritius.

(4) In determining , for the purposes of subsection (3), what are the ports between which a voyage is, no account shall be taken of any deviation by a ship from its intended voyage made solely because of stress of weather or any other circumstances which neither the master, owner nor charterer, if any, of the ship could have prevented or forestalled.

113. Application of Sub-Part II

- (1) Subject to subsection (2), this Sub-Part applies to all ships except -
 - (a) warships;

- (b) fishing vessels; and
- (c) pleasure vessels not engaged in trade.

(2) This Sub-Part applies to any foreign ship, other than a ship referred to in subsection (1), which -

- (a) is registered in a Convention State or flies the flag of a Convention State; and
- (b) is a pre-1966 Convention ship of not less than 150 gross tonnage or a post-1966 Convention ship of not less than 24 metres in length.

114. Load Line regulations

The Minister may make regulations, referred to in this Act as “the Load Line Regulations”, to give effect to the 1966 Convention and to provide for –

- (a) surveys, and periodical inspections of ships to which this Sub-Part applies;
- (b) determining the freeboards to be assigned to such ships including timber freeboards and the conditions for such assignment;
- (c) determining, in relation to any such ship, the deck which is to be taken to be the freeboard deck of the ship, and requiring the position of that deck to be indicated on each side of the ship by a mark of a prescribed description;
- (d) determining, by reference to that mark and the freeboards assigned to any such ship, the positions in which each side of the ship is to be marked with lines of a prescribed description, indicating the various maximum depths to which the ship may be loaded in prescribed circumstances;
- (e) the determination and assignment of load lines to Mauritius ships to which the 1966 Convention does not apply;
- (f) the requirements with respect to the carriage of cargo in any uncovered space on the deck of a ship;
- (g) determining the period during which a certificate issued under this Sub-Part is to remain in force;
- (h) determining the period during which an exemption order under section 115 shall remain in force; and

- (i) the issue and recognition of certificates, including exemption certificates.

115. Exemption orders

(1) Where, in the opinion of the Director, the sheltered nature and conditions of international voyages –

- (a) between a Port and a near neighbouring port in another Convention State; or
- (b) between near neighbouring ports in any 2 or more States or territories outside Mauritius,

make it unreasonable or impracticable to apply this Sub-Part to ships plying on such voyages, and the Director is satisfied that the Government of the other State concurs in that opinion, the Director may, by order specifying those ports, direct that ships plying on international voyages between those ports shall be exempt from this Sub-Part.

(2) The Director may, by order, direct that ships under 24 metres in length engaged solely in the coasting trade, shall be exempt from this Sub-Part while not carrying cargo, or, if the order so provides, shall be exempt from the Sub-Part whether carrying cargo or not.

(3) On the application of the owner of a Mauritius ship to which this Sub-Part applies which is either a pre-1966 Convention ship of not less than 150 gross tonnage or a post-1966 Convention ship of not less than 24 metres in length, the Director may exempt the ship where, in his opinion, the ship embodies features of a novel kind such that, if the ship had to comply with all the requirements of this Sub-Part and of the Load Line Regulations, the development of those features and their incorporation in ships engaged on international voyages might be seriously impeded.

(4) On the application of the owner of a Mauritius ship to which this Sub-Part applies which is –

- (a) a pre-1966 Convention ship of less than 150 gross tonnage or a post-1966 Convention ship of less than 24 metres in length; or
- (b) a ship not falling within paragraph (a) which does not ply on international voyages,

the Director may exempt the ship.

(5) Without prejudice to subsection (4), where a Mauritius ship to which this Sub-Part applies which is a pre-1966 Convention ship of not less than 150 gross tonnage or a post-1966 Convention ship of not less than 24 metres in length, does not

normally ply on international voyages but is, in exceptional circumstances, required to undertake a single international voyage, the Director may, on the application of the owner of the ships, exempt the ship while engaged on that voyage.

(6) Where the Director exempts a ship under subsection (3), (4) or (5), he shall issue the appropriate certificate to the owner of the ship.

(7) For the purposes of subsection (6), the appropriate certificate –

- (a) where the exemption is conferred under subsection (3) or (5), is an International Load Line Exemption Certificate; or
- (b) where the certificate is conferred under subsection (4), is a Mauritius Load Line Exemption Certificate.

B – Mauritius ships

116. Compliance with regulations

Subject to any exemption conferred under this Sub-Part, no Mauritius ship shall proceed or attempt to proceed to sea unless –

- (a) the ship has been surveyed in accordance with the Load Line Regulations;
- (b) the ship is marked with a deck-line and with load lines in accordance with those regulations;
- (c) the appropriate certificate has been issued under section 118;
- (d) the ship complies with the conditions of assignment; and
- (e) any information required by those regulations to be provided for the guidance of the master of the ship in the prescribed manner has been so provided.

117. Submersion of load lines

(1) (a) Where a Mauritius ship is marked with load lines, the ship shall not be so loaded that –

- (i) if the ship is in salt water and has no list, the appropriate load line on each side of the ship is submerged; or
- (ii) in any other case, the appropriate load line on each side of the ship would be submerged if the ship were in salt water and had no list.

(b) For the purposes of this section, “appropriate load line” means the load line which, in accordance with the Load Line Regulations, indicates the maximum depth to which the ship may be loaded in salt water in certain circumstances.

(2) Where, pursuant to the Load Line Regulations, a Mauritius passenger ship is marked with subdivision load lines, and the lowest of those lines is lower than the line which, apart from this subsection, would be the appropriate load line, subsection (1) shall have effect as if that subdivision load line was the appropriate load line for the purposes of this section.

118. Issue of certificate

(1) (a) Where a Mauritius ship has been surveyed and marked in accordance with the Load Line Regulations, the appropriate certificate shall be issued to the owner of the ship on his application.

(b) For the purposes of paragraph (a), the appropriate certificate -

(i) in the case of a pre-1966 Convention ship of not less than 150 gross tonnage, and in the case of a post-1966 Convention ship of not less than 24 metres in length, is a certificate called an International Load Line Certificate (1966); and

(ii) in the case of any other ship, is a certificate called a Mauritius Load Line Certificate.

(2) Subject to subsection (3), a certificate required by subsection (1) to be issued shall be issued by the Director and be in such form as may be prescribed.

(3) The Director may request the Government of a Convention State to issue an International Load Line Certificate (1966) in respect of a Mauritius ship falling within subsection (1) (b) (i).

(4) Where a certificate, issued under this section and for the time being in force, is produced in respect of the ship to which the certificate relates -

(a) the ship shall be deemed to have been surveyed in accordance with the Load Line Regulations; and

(b) where lines are marked on the ship corresponding in number and description to the deck-line and load lines required by the Load Line Regulations, and the positions of those lines so marked correspond to the positions of the deck-line and load lines so specified in the

certificate, the ship shall be deemed to be marked as required by those regulations.

119. Publication and entry of certificate

(1) (a) Where a certificate is issued in respect of a ship under section 118, the owner of the ship shall, on receipt of that certificate, cause it to be posted in some conspicuous place on board the ship and cause it to be kept so posted and legible so long as the certificate remains in force and the ship is in use.

(b) The master of the ship, before making any other entry in the official log book of the ship, shall enter in it particulars as to the positions of the deck and the load lines which are specified in the certificate.

(2) Before a Mauritius ship leaves any dock, wharf, harbour or other place for the purpose of proceeding to sea, the master of the ship shall cause a notice to be posted in some conspicuous place on board the ship, which shall be in such form and contain such particulars relating to the depth to which the ship is for the time being loaded as may be prescribed and cause those particulars to be entered in the official log book.

(3) Where a notice required by subsection (2) has been posted, the master of the ship shall cause it to be kept so posted and legible until the ship arrives at some other dock, wharf, harbour or place.

C – Foreign ships

120. Compliance with regulations

(1) Subject to subsection (2), and to any exemption conferred under this Sub-Part, no foreign ship shall proceed or attempt to proceed to sea from any Port unless -

- (a) the ship has been surveyed in accordance with the Load Line Regulations;
- (b) the ship is marked with a deck-line and with load lines in accordance with those regulations;
- (c) the appropriate certificate under this Sub-Part has been issued;
- (d) the ship complies with the conditions of assignment; and

- (e) any information required by those regulations to be provided for the guidance of the master of the ship in the prescribed manner has been so provided.

(2) Subsection (1) does not apply to a ship in respect of which a valid Convention Certificate is produced.

121. Submersion of load lines

(1) Where a foreign ship is within any Port, and is marked with load lines, the ship shall not be so loaded that –

- (a) if the ship is in salt water and has no list, the appropriate load line on each side of the ship is submerged; or
- (b) in any other case, the appropriate load line on each side of the ship would be submerged if the ship were in salt water and had no list.

(2) In relation to a ship in respect of which a valid Convention Certificate is produced, “load line”, in subsection (1), means a line marked on the ship in the position of a load line specified in that certificate, and for the purposes of any circumstances for which a particular load line is specified in the certificate, “appropriate load line” means the load line which, in accordance with the certificate, indicates the maximum depth to which the ship may be loaded in salt water in those circumstances.

(3) Where a valid Convention certificate is not produced in respect of a ship, for the purposes of any circumstances prescribed by the Load Line Regulations in accordance with section 114(d), “appropriate load line” means the load line which, in accordance with those regulations, indicates the maximum depth to which the ship may be loaded in salt water in those circumstances.

(4) Where, pursuant to the Load Line Regulations, a foreign passenger ship is marked with subdivision load lines, and the lowest of those load lines is lower than the line which, apart from this subsection, would be the appropriate load line, subsection (1) shall have effect as if that subdivision load line was the appropriate load line for the purposes of this section.

122. Issue of certificate

(1) Where a foreign ship has been surveyed and marked in accordance with the Load Line Regulations, on the application of the owner of the ship, a Mauritius Load Line Certificate shall be issued to him by the Director.

(2) Subject to subsection (3), section 118 (4) shall have effect in relation to a certificate issued under subsection (1) as it has effect in relation to a certificate issued under that section.

(3) Any certificate issued under subsection (1) in respect of a ship to which section 113 (2) applies shall be valid only so long as the ship is not plying on international voyages, and shall be cancelled by the Director if he has reason to believe that the ship is plying on international voyages

(4) The Director may, at the request of the Government of a country referred to in section 113 (2), issue in respect of a ship referred to in that subsection a certificate in such form as may be prescribed by the Load Line Regulations, where he is satisfied that he could properly issue a certificate in respect of the ship under subsection 118 (1) as if the ship were a Mauritius ship.

123. Production of certificate

(1) Subject to any exemption conferred under this Sub-Part, before a foreign ship proceeds to sea from any Port, the master of the ship shall produce the appropriate certificate to the Director and request a clearance for the ship which shall not be granted unless the appropriate certificate is produced.

(2) For the purposes of subsection (1), the appropriate certificate -

- (a) where a clearance for the ship is requested in respect of an international voyage, is a valid Convention certificate;
- (b) where a clearance for the ship is requested in respect of a voyage, other than an international voyage, is either a valid Convention certificate or a Mauritius Load Line Certificate for the time being in force in respect of the ship; and
- (c) in any other case, is a Mauritius Load Line Certificate for the time being in force in respect of the ship.

124. Inspection of foreign ships

(1) Subject to subsections (2) to (5) and to section 8, a surveyor may inspect a foreign ship while the ship is within a Port.

(2) The surveyor may go on board the ship for the purpose of demanding production of an International Load Line Certificate (1966) or a Mauritius Load Line Certificate for the time being in force in respect of the ship.

(3) Where a valid Convention certificate is produced to the surveyor in respect of the ship, the powers of the surveyor under subsection (1) shall be limited to seeing that -

- (a) the ship is not loaded beyond the limits allowed by the certificate;
- (b) lines are marked on the ship in the positions of the load lines specified in the certificate;
- (c) no material alterations or other changes have taken place in the hull or superstructure of the ship which affect the position in which any of those lines ought to be marked; and
- (d) the fittings and appliances for the protection of openings, the guard rails, the free ports and the means of access to the crew's quarters have been maintained on the ship in as effective a condition as they were in when the certificate was issued.

(4) Where the ship is found to have so deteriorated or to have been so materially altered in respect of the matters referred to in subsection (3)(c) or (d) that the ship is manifestly unfit to proceed to sea without danger to human life, it shall be deemed to be unsafe for the purposes of Sub-Part IV.

(5) Where a ship is detained pursuant to a finding under subsection (4), the Director shall order the ship to be released as soon as he is satisfied that the ship is fit to proceed to sea without danger to human life.

Sub-Part III – Grain and dangerous goods

125. Application of Sub-Part III

(1) Subject to this section, this Sub-Part applies to all ships to which the Safety Convention applies and to cargo ships of less than 500 gross tonnage.

(2) The provisions of this Sub-Part respecting the carriage of dangerous goods in packaged form or in solid form in bulk do not apply to ships' stores and equipment, including ships' distress signals.

(3) This Sub-Part and any regulations made under this Act relating to dangerous goods shall apply to all Mauritius ships and to all foreign ships while loading or discharging cargo or fuel, or embarking or disembarking passengers, at any place in Mauritius.

126. Carriage of grain

(1) A cargo ship carrying grain shall comply with the requirements of the International Grain Code.

(2) Without prejudice to subsection (1) or any other requirement of this Act, the master or owner of every ship shall ensure that –

- (a) a ship loading grain complies with the International Grain Code; and
- (b)
 - (i) in the case of a foreign ship, the ship has on board a document of authorisation as required under the International Grain Code;
 - (ii) in the case of a Mauritius ship, the ship has on board a document of authorisation issued by or on behalf of the Ministry.

(3) Except for stress of weather or any other circumstance that neither the master, owner nor charterer, if any, could have prevented or forestalled, neither the owner nor the master shall permit a ship loaded with grain in bulk outside Mauritius to enter a Port so laden unless the ship has been laden in accordance with the International Grain Code.

(4) No person shall order the commencement of the loading of grain on a ship in Mauritius unless he is satisfied that -

- (a) the ship has on board a document as referred to in subsection (2)(b); or
- (b) where there is no document of authorisation on board, the master has demonstrated to the satisfaction of the Director that the ship, will, in its proposed loading condition, comply with the requirements of the International Grain Code and has obtained from the administration where the ship is registered, a certified document to this effect.

127. Carriage of dangerous goods

(1) No person shall send or carry any dangerous goods in any ship, except in accordance with this Sub-Part and any regulations made under this Act.

(2) No person shall send by or carry in a Mauritius ship any dangerous goods without first distinctly marking their nature on the outside of their outermost package in such manner as may be prescribed and giving written notice of the nature of the goods and of the name and address of the sender to the master or owner of the ship at or before the time of sending such goods to be shipped or carried on board the ship.

(3) The master or owner of a ship may refuse to take on board any package or parcel that he suspects might contain any dangerous goods and may require the package to be opened to ascertain its nature.

(4) Where any dangerous goods, or any goods that, in the opinion of the master or owner of the ship, are dangerous goods, have been sent on board any ship without the marking or the written notice described in subsection (2), the master or owner of the ship may cause the goods, together with any package or container, to be thrown overboard; and neither the master nor the owner of the ship shall be subject to any civil or criminal liability in any Court in respect of such action.

Sub-Part IV – Unsafe ships

128. Power to detain unsafe ships

(1) Subject to subsection (3), where the Director has reason to believe that any ship, being in Port or at sea in Mauritius waters, is an unsafe ship by reason of any of the matters specified in subsection (2) and unfit to remain at sea or proceed to sea without serious danger to human life or the environment having regard to the nature of the service for which it is intended, he may cause the ship to be detained.

(2) The matters referred to in subsection (1) are -

- (a) the condition, or the unsuitability for its purpose, of the ship or its machinery or equipment; or
- (b) undermanning;
- (c) failure to comply with the conditions of assignment under section 116 or 120;
- (d) alternations or other changes referred to in section 126;
- (e) improper carriage of dangerous goods;
- (f) overloading or unsafe or improper loading; or
- (g) any other matter relevant to the safety of the ship,

and the reference in subsection (1) to proceeding to sea shall, in a case where the service for which the ship is intended consists of going on voyages or that do not involve going to sea, be construed as a reference to going on such a voyage.

(3) Notwithstanding any other enactment, a foreign ship that is exercising the right of innocent passage under the United Nations Convention on the Law of the Sea 1982 shall not be detained pursuant to this section.

129. Compensation and security

(1) Subject to subsection (2), where a ship is detained under this Act, and the owner proves to the satisfaction of the Government that there was no reasonable cause for the detention of the ship, the Government may pay compensation to the owner for any loss or damage sustained by him by reason of the detention.

(2) Subject to subsection (3), where a complaint is made to the Director that a Mauritius ship is unsafe, or otherwise does not comply with this Act, the Director may require the complainant to give security to his satisfaction for any compensation which may become payable by the Government under subsection (1).

(3) The security referred to in subsection (2) shall not be required where the complaint is made by one fourth, being not less than 3, of the seamen belonging to the ship and is not, in the opinion of the Director, frivolous or vexatious.

(4) Where a ship is detained in consequence of any complaint, and the circumstances are such that the Government determines to pay compensation to the owner of the ship under subsection (1), the complainant shall be liable to repay to the Government the compensation which the Government may pay under subsection (1) in respect of the detention of the ship.

130. Safe operation of ships

(1) Where -

- (a) a Mauritius ship is within or outside Mauritius waters; or
- (b) a ship which is registered under the law of, or flies the flag of, any foreign country is within Mauritius waters while proceeding to or from a Port otherwise than because of weather conditions or any other unavoidable circumstances,

the owner of the ship shall take all reasonable steps to ensure that the ship is operated in a safe manner.

(2) Where a ship referred to in subsection (1) is bareboat chartered, or is managed by a person other than the owner under the terms of a management agreement, any reference to the owner of the ship in subsection (1) shall be construed as including a reference –

- (a) to the charterer under the bareboat charter;
- (b) to any manager under the management agreement; or
- (c) if the ship is both chartered and managed, under a management agreement to both the charterer and the manager.

PART VI – WRECK AND SALVAGE

Sub-Part I – Interpretation

131. Interpretation of Part VI

(1) In this Part -

“damage to the environment” means substantial physical damage to human health or to marine life or resources in coastal or inland waters or adjacent areas, caused by pollution, contamination, fire, explosion or a similar major incident;

“maritime casualty” means a collision of vessels, stranding or other incident of navigation or other occurrence on board a vessel or external to it, resulting in material damage, or imminent threat of material damage, to a vessel or cargo;

“payment” means any remuneration or compensation due under this Part;

“property” –

(a) means any property not permanently and intentionally attached to the shoreline; and

(b) includes freight at risk and wherever the context so requires, a vessel, cargo, equipment and effects;

“Receiver” means the Receiver of Wrecks designated in section 132;

“remuneration” means any amount paid in return for salvage services;

“vessel” includes any ship, dredger, boat or vessel of any other description used in navigation; and

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

(2) Fishing vessels or fishing gear lost or abandoned at sea and -

(a) found or taken possession of within Mauritius waters; or

- (b) found or taken possession of beyond those waters and brought within those waters,

shall be treated as wreck for the purposes of this Part.

Sub-Part II – Wreck

132. Receiver of Wrecks

(1) The Director shall be the Receiver of Wrecks, and in that capacity shall exercise general direction and supervision over all matters relating to wreck and salvage.

(2) Subsections (6) to (10) apply in circumstances where any vessel is wrecked, stranded or in distress at any place on or near the coast of Mauritius or any tidal water within Mauritius waters.

(3) The Receiver may designate a suitably qualified person to assist him in the performance of his duties as Receiver.

(4) There shall be paid to the Receiver the expenses properly incurred by him in the performance of his duties and such fees in respect of such other matters as may be prescribed, and the Receiver shall not be entitled to any other remuneration.

(5) The Receiver shall, in addition to all other rights and remedies for the recovery of the expenses and fees referred to in subsection (4), have the same rights and remedies as a salvor has in respect of salvage due to him and may, if the property in respect of which any such expenses and fees are due is not under arrest in any Court, seize or detain the property until his expenses and fees are paid, or until security is given to his satisfaction.

(6) All fees received by the Receiver, in respect of any services performed by him as Receiver, shall be retained by him, and a separate account shall be kept by him and the moneys shall be applied in defraying any expenses duly incurred in carrying this Sub-Part into effect.

(7) Subject to subsection (8), where the Receiver is informed that any of the circumstances specified in subsection (2) exists, he shall –

- (a) forthwith proceed to the place where the vessel is;
- (b) take command of all persons present; and
- (c) assign such duties and give such directions to each person as he thinks fit for the preservation of the vessel and of the lives of the shipwrecked persons and of the cargo and apparel of the ship.

(8) The Receiver shall not interfere between the master and crew of the vessel in relation to the management of the vessel unless he is requested to do so by the master.

(9) The Receiver may, for the purpose of the preservation of shipwrecked persons or of the vessel, cargo and apparel, require -

- (a) such persons as he thinks necessary to assist him;
- (b) the master, or other person having the charge of any vessel near at hand, to give such assistance with his men or vessel, as may be in his power; and
- (c) the use of any vehicle that is near at hand.

(10) (a) In circumstances where this subsection applies, any person may, subject to paragraphs (c) and (d), for the purpose of -

- (i) rendering assistance to a vessel;
- (ii) saving the lives of shipwrecked persons; or
- (iii) saving the cargo or equipment of a vessel,

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

(b) The right of passage is a right of passage with or without vehicles.

(c) No right of passage is conferred where there is some public road equally convenient.

(d) The right of passage shall be so exercised as to do as little damage as possible.

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

(11) Where the Receiver has reason to believe that -

- (a) any wreck is being concealed by, or is in the possession of, some person who is not its owner; or
- (b) any wreck is being otherwise improperly dealt with,

he may apply to a Magistrate for a search warrant.

(12) Where a search warrant is granted under subsection (1) to the Receiver, he may, by virtue of the warrant -

- (a) enter any house, or other place wherever situated, or any vessel; and
- (b) search for, seize and detain any wreck found there.

(13) Where any seizure of wreck is made under this section in consequence of information given by any person to the Receiver, the person giving the information shall be entitled, by way of salvage, to such reasonable sum as the Receiver may allow.

133. Duty of finder of wreck

(1) Any person who finds or takes possession of any wreck in Mauritius waters or finds or takes possession of any wreck outside Mauritius waters and brings it within those waters shall -

- (a) where he is the owner of it, give notice to the Receiver stating that he has found or taken possession of it and describing the marks by which it may be recognised; or
- (b) where he is not the owner of it, give notice to the Receiver that he has found or taken possession of it and, as directed by the Receiver, either hold it to the Receiver's order or deliver it to the Receiver.

(2) Any person who fails, without reasonable excuse, to comply with subsection (1) shall -

- (a) forfeit any claim to salvage; and
- (b) be liable to pay twice the value of the wreck –
 - (i) if it is claimed, to the owner of the wreck; or
 - (ii) if it is unclaimed, to the person entitled to the wreck.

(3) Where a vessel is wrecked, stranded or in distress at any place on or near the coast of Mauritius, any cargo or other article belonging to or separated from the vessel which is washed on shore or otherwise lost or taken from the vessel shall be delivered to the Receiver.

(4) The Receiver or a person authorised by him may take any such cargo or article, if necessary by force, from any person who refuses to deliver it.

134. Notice of wreck

(1) Where the Receiver takes possession of any wreck, he shall within 48 hours make a record describing the wreck and any marks by which it is distinguished.

(2) The record made by the Receiver under subsection (1) shall be kept by him available for inspection by any person during reasonable hours without charge.

(3) Where the Receiver takes possession of any wreck, he shall, within 48 hours –

- (a) cause to be posted at the office of the Director of Shipping; and
- (b) where he thinks it desirable, send to the Secretary of Lloyd's in London,

a description of the wreck and any marks by which it is distinguished.

135. Claim of owner of wreck

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

(2) Where –

- (a) a foreign ship has been wrecked on or near the coast of Mauritius; or
- (c) any article belonging to or forming part of, or of the cargo of a foreign ship which has been wrecked on or near the coast of Mauritius is found on or near the coast or is brought into any Port,

any diplomatic representative of the country in which the ship is registered may, in the absence of the owner and of the master or agent of the owner, be treated as the agent of the owner for the purposes of the custody and disposal of the wreck or the article.

136. Immediate sale of wreck

(1) The Receiver may, at any time, sell any wreck in his possession where in his opinion –

- (a) it is under the value of 20,000 rupees;

(b) it is so damaged or of so perishable a nature that it cannot with advantage be kept; or

(c) it is not of sufficient value to pay for storage.

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

137. Unclaimed wreck

(1) The Government shall be entitled to any unclaimed wreck found in Mauritius or in Mauritius waters, except in cases where the Government has granted to any person the right to the wreck.

(2) Any person who is entitled to unclaimed wreck found at any place in Mauritius or in Mauritius waters shall give the Receiver a statement containing the particulars of his entitlement and specifying an address to which notices may be sent.

(3) Where a statement has been given to the Receiver under subsection (2) and the entitlement is proved to his satisfaction, he shall, on taking possession of any wreck found at a place to which the statement refers, within 48 hours send to the specified address a description of the wreck and of any marks distinguishing it.

(4) (a) Where, in respect of any wreck found in Mauritius or in Mauritius waters and in the possession of the Receiver, no owner establishes a claim to it within one year after it came into the Receiver's possession, the wreck shall be dealt with as provided in this subsection.

(b) Where the wreck is claimed by a person who has delivered the statement required by subsection (2) and has proved to the satisfaction of the Receiver his entitlement to receive unclaimed wreck found at the place where the wreck was found, the wreck shall, on payment of all expenses, costs, fees and salvage due in respect of it, be delivered to that person.

(c) Where the wreck is not claimed by a person in accordance with subsection (2), the Receiver shall sell the wreck and pay the proceeds into the Consolidated Fund, after deducting all expenses, costs and fees and all salvage due in respect of it.

138. Delivery of wreck and payment of proceeds

(1) Any delivery of wreck or payment of the proceeds of sale of wreck by the Receiver under this Sub-Part shall discharge the Receiver from all liability in respect of their delivery or payment.

(2) Any delivery of wreck by the Receiver under this Sub-Part shall not, however, prejudice or affect any question which may be raised by third parties concerning the right or title to the wreck.

139. Release of goods by Customs

(1) The Director-General of Customs shall, subject to taking security for the protection of the revenue in respect of the goods, permit all goods saved from any ship stranded or wrecked on its homeward voyage to be forwarded to the port of its original destination.

(2) The Director-General of Customs shall, subject to taking such security, permit all goods saved from any ship stranded or wrecked on its outward voyage to be returned to the port at which they were shipped.

140. Wreck in territorial sea

(1) (a) Where any vessel is sunk, wrecked or stranded within the territorial sea of Mauritius but outside the limits of any Port in such a manner as to be or be likely to become an obstruction or danger to navigation, the master, owner or agent shall raise, remove or destroy the vessel within 15 days of the occurrence of the event.

(b) After the 15 day period, on failure of the master, owner or agent to act, the Receiver may exercise any of the powers conferred by subsection (2).

(2) The powers referred to in subsection (1) (b) are -

- (a) to take possession of, and raise, remove or destroy the vessel and any other property to which the power extends;
- (b) to light or buoy the vessel and any other such property until it is raised, removed or destroyed;
- (c) subject to subsections (5) and (6), to sell, in such manner as the Receiver thinks fit, the vessel so raised or removed and any other property referred to in subsection (3) and recovered in the exercise of the powers conferred by paragraph (a) or (b); and
- (d) to reimburse himself, out of the proceeds of the sale, for the expenses incurred by him in relation to the sale.

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

(4) Any surplus of the proceeds of a sale under subsection (2) (c) shall be held by the Receiver in trust for the person entitled thereto.

(5) Except in the case of property which is of a perishable nature or which would deteriorate in value by delay, no sale shall be made under subsection (2) (c) until at least 7 days' notice of the intended sale has been given by advertisement in a local newspaper.

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

(7) The market value of property for the purposes of subsection (6) shall be that agreed to between the Receiver and the owner or, failing agreement, that determined by a valuer appointed for that purpose by the Minister.

(8) The sum paid to the Receiver in respect of any property under subsection (6) shall, for the purposes of this section, be treated as the proceeds of sale of the property.

Sub-Part III – Salvage

141. Application of Sub-Part III

This Sub-Part shall not apply to –

- (a) fixed or floating platforms or mobile off-shore drilling units where such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed mineral resources; or
- (b) warships or other non-commercial vessels owned or operated by a foreign State and entitled, at the time of the salvage operation, to immunity under generally recognised principles of international law, unless that State has decided to apply the Salvage Convention to those ships or vessels.

142. Life salvage

(1) Where salvage services are rendered in saving life from any vessel in or outside Mauritius waters, the owner of the vessel, cargo or equipment saved shall pay to the salvor a reasonable amount of salvage.

(2) Salvage in respect of the preservation of life, when payable by the owner of a vessel, shall have priority over all other claims for salvage.

(3) Salvage shall, under no circumstances, be due from a person whose life has been saved.

(4) Where –

- (a) services are rendered in Mauritius waters in saving life from a vessel of any nationality or elsewhere in saving life from a Mauritius ship; and
- (b) the vessel and other property are destroyed or the sum to which the salvor is entitled under section 145(2) is less than a reasonable amount for the services rendered in saving life,

the Receiver may, if he thinks fit, pay to the salvor such sum or, as the case may be, such additional sum as he thinks fit in respect of the services rendered in saving life.

143. Salvage of cargo

(1) Where a vessel is wrecked, stranded or in distress in Mauritius waters and services are rendered –

- (a) by any person assisting the vessel or saving the cargo or equipment of the vessel; or
- (b) by a person other than the Receiver in saving any wreck,

the owner of the vessel, cargo, equipment or wreck shall pay to the salvor a reasonable amount of salvage.

(2) A salvor of human life, who has participated in services rendered in the event of a maritime casualty giving rise to salvage, shall be entitled to a fair share of the remuneration awarded to the salvor for salvaging the vessel or other property or preventing or minimising damage to the environment.

144. Excluded services

Nothing in this Sub-Part shall entitle a person to remuneration –

- (a) in respect of salvage services rendered contrary to any express and reasonable prohibition of such services on the part of the vessel or aircraft or by the owner of property to which such services are rendered;
- (b) in respect of services rendered by a tug to or in respect of the vessel or aircraft which it is towing or its cargo, except where the services are of an exceptional character and outside the scope of the contract of towage;
- (c) where he has caused the distress giving rise to the salvage intentionally or through negligence; or
- (d) where and to such extent as it appears that he has concealed or unlawfully disposed of any property salvaged.

145. Salvage remuneration

(1) Subject to section 153, no remuneration shall be due under this Sub-Part where salvage operations have no useful result.

(2) A salvor shall be entitled to remuneration notwithstanding that the vessel performing the salvage operation and the vessel, cargo or other property salvaged belong to the same owner.

146. Salvage contracts

(1) Subject to subsection (3), this Sub-Part shall not apply to any salvage operation where a contract expressly or by implication provides otherwise.

(2) The master of a Mauritius vessel shall have the authority to conclude contracts for salvage operations on behalf of the owner of the vessel, and the master

and the owner of a Mauritius vessel shall have the authority to conclude contracts on behalf of the owner of property on board the vessel.

(3) Any contract relating to salvage may be annulled or modified by the Supreme Court, where it appears to the Court that –

- (a) the contract has been entered into under undue influence or the influence of danger and its terms are inequitable; or
- (b) the payment under the contract is too large or too small for the services actually rendered.

147. Duties of salvor

Every salvor shall owe a duty to the owner of the vessel or other property in danger to –

- (a) carry out the salvage operation with due care;
- (b) exercise due care to prevent or minimise damage to the environment in performing the duty specified in paragraph (a);
- (c) seek assistance from other salvors whenever the circumstances reasonably so require; and
- (d) accept the intervention of other salvors when reasonably requested to do so by the owner or master of the vessel or the owner of other property in danger, but the amount of his remuneration shall not be prejudiced where he proves that such a request was unreasonable.

148. Duties of owner and master

The owner and master of a vessel or the owner of other property in danger shall owe a duty to the salvor –

- (a) to co-operate fully with him during the course of the salvage operation;
- (b) in performing the duty specified in paragraph (a), to exercise due care to prevent or minimise damage to the environment; and
- (c) where the vessel or other property has been brought to a place of safety, to accept redelivery when reasonably requested to do so by the salvor.

149. Duties of other persons

Any person who is reasonably within the vicinity of a vessel or person in distress or danger of being lost at sea shall render assistance to save the vessel and life by cooperating in –

- (a) procuring and providing facilities to a salvor;
- (b) the admittance to a Port of a vessel in distress;
- (c) ensuring the efficient and successful performance of the salvage operation for the purpose of salvaging life or property; and
- (d) preventing or minimising damage to the environment.

150. Powers of Director

- (1) The Director may -
 - (a) give directions in relation to any salvage operation; and
 - (b) take measures in accordance with generally recognised principles of international law to protect the environment from pollution following a maritime casualty, or acts relating to such casualty which may reasonably be expected to result in harmful consequences.

(2) The Director shall, in exercising his powers under subsection (1), take into account the need for cooperation between salvors, other interested parties and the public authorities in order to ensure the efficient and successful performance of salvage operations and to prevent damage to the environment.

(3) Any public officer or other person acting under directions pursuant to subsection (1) shall be under a duty to exercise due care in preventing or minimising damage to the environment.

151. Criteria for determining remuneration

(1) Remuneration shall be determined with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are listed -

- (a) the salvaged value of the vessel and other property;

- (b) the skill and efforts of the salvor in preventing or minimising damage to the environment;
- (c) the measure of success achieved by the salvor;
- (c) the nature and degree of the danger;
- (d) the skill and efforts of the salvor in salvaging the vessel, other property and life;
- (e) the time spent and the expenses and losses incurred by the salvor;
- (f) the risk of liability and other risks run by the salvor or his equipment;
- (g) the promptness of the services rendered;
- (h) the availability and use of vessels or other equipment intended for salvage operations; and
- (i) the state of readiness and efficiency of the salvor's equipment and its value.

(2) Remuneration, excluding any interest and recoverable legal costs that may be payable, shall not exceed the salvaged value of the vessel and other property salvaged.

152. Responsibility for payment

(1) Payment of remuneration shall be made by the owners of the vessel and other property interests in proportion to their respective salvaged values.

(2) For expediency, the ship owner shall pay the remuneration on behalf of all interests referred to in subsection (1) subject to his retaining the right to be reimbursed by these other interests.

(3) The ship owner who makes a payment under subsection (2) may require the other interests to provide security not exceeding the values of their respective salvaged interests until he has been fully reimbursed.

153. Special compensation

(1) Where a salvor has carried out a salvage operation in respect of a vessel which by itself or its cargo threatened damage to the environment, and has failed to earn remuneration under this Sub-Part equivalent at least to the special compensation assessable under subsection (2), he shall be entitled to special compensation from the

owner of that vessel equivalent to the out-of-pocket expenses reasonably incurred by him in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in paragraphs (h), (i) and (j) of section 151 (1).

(2) Where, in the circumstances set out in subsection (1), the salvor by his salvage operation has prevented or minimised damage to the environment, the special compensation payable by the owner to the salvor under subsection (1) may be increased, but in no event shall the total increase be more than 100% of the expenses incurred by the salvor.

(3) The total special compensation assessable under this section shall be paid only if and to the extent that such compensation is greater than any remuneration recoverable under section 151.

(4) Where the salvor, in carrying out the salvage operation, has acted negligently and thus failed to prevent or minimise damage to the environment, he may be deprived of any special compensation payable under this section.

(5) In determining remuneration under sections 151 and 152, and assessing special compensation under this section, it shall not be necessary to award remuneration up to the maximum salvaged value of the vessel and other property before assessing the special compensation to be paid under this section.

154. Services rendered pursuant to a contract

No payment shall be due under this Sub-Part unless the services rendered exceed what can be reasonably considered as due performance of a contract entered into before the danger giving rise to the salvage operations arose.

155. Apportionment of remuneration

(1) The apportionment of remuneration between salvors shall be made on the basis of the criteria listed in section 151.

(2) The apportionment of remuneration between the owner, master and other persons in the service of each salving vessel shall be determined by the law of the State in which the vessel is registered.

(3) Where the salvage referred to in subsection (1) has not been carried out from a vessel, the apportionment shall be determined by the law governing the contract between the salvor and his servant and, in the absence of a contract, according to the merits of the case in order to reach a fair and just decision.

156. Salvor's misconduct

A salvor may be deprived of any payment due to him under this Sub-Part to the extent that the salvage operation has become necessary or more difficult because of fault or neglect on his part or if he has been guilty of fraud or other dishonest conduct.

157. Maritime lien

Nothing in this Sub-Part shall affect a salvor's maritime lien under this Act, but a salvor may not enforce his maritime lien where reasonable security for his claim, including interest and costs, has been tendered or provided.

158. Duty to provide security

(1) A person liable for a payment under this Sub-Part shall, at the request of a salvor, give security to the satisfaction of the salvor for the claim, including interest and costs.

(2) The owner of a salvaged vessel shall take all reasonable steps to ensure that the owner of the cargo provides security to his satisfaction or that of the salvor for the claims against them, including interest and costs, before the cargo is released.

(3) A salvaged vessel and property shall not, without the consent of the salvor, be removed from the port or place at which they first arrive after the completion of the salvage operation until security to the satisfaction of the salvor has been put up for the salvor's claim against the relevant vessel or property.

159. Interim payment

(1) The Court or any other person adjudicating the claim of a salvor may, upon the application of the salvor, make an interim order for payment to the salvor of such amount as the Court or person may deem fair and just, and on such terms, including terms as to security where appropriate, as may be fair and just in the circumstances of the case.

(2) In the event of any interim payment under subsection (1), any security provided under section 158 shall be reduced accordingly.

160. Humanitarian cargo

No humanitarian cargo donated by a State shall be subject to seizure, arrest or detention, where that State has agreed to pay for salvage services rendered in respect of that cargo.

161. Salvage dispute

(1) Any dispute as to the amount of salvage for services rendered within or outside Mauritius, arising between a salvor and the owner of a vessel, cargo, apparel or wreck may, if not settled by agreement, arbitration or otherwise, be determined by the Court.

(2) The Court may, for the purpose of determining any such dispute, call to its assistance, as an assessor, a person knowledgeable in salvage or maritime matters and there shall be paid as part of the costs of the proceedings to every such assessor in respect of his assistance such sum as may be prescribed.

162. Valuation of property salvaged

(1) Where any dispute relating to salvage arises, the Receiver may, on the application of either party, appoint a valuer to value the property, and when the valuation has been made, shall give a copy of the valuer's report to each party.

(2) Any copy of the valuation report, purporting to be signed by the valuer and certified as a true copy by the Receiver, shall be admissible as evidence in any subsequent proceedings.

(3) Such fee as the Receiver may direct shall be paid in respect of any valuation made under this section by the person applying for it.

163. Detention of property

(1) Where salvage is due to any person under this Sub-Part, the Receiver shall -

- (a) where the salvage is due in respect of services rendered in assisting any vessel or in saving life or cargo or equipment, detain the vessel, cargo or equipment; and
- (b) where the salvage is due in respect of the saving of any wreck, and the wreck is not sold as unclaimed under Sub-Part II, detain the wreck.

(2) Subject to subsection (3), the Receiver shall detain the vessel, cargo, equipment or wreck, as the case may be, until payment is made for salvage or process is issued for the arrest or detention of the property by the Court.

(3) The Receiver may release any property detained under subsection (2) where security is given to his satisfaction or, where the claim for salvage exceeds 50,000 rupees and any question is raised as to the sufficiency of the security, to the satisfaction of the Court.

164. Sale of detained property

(1) The Receiver may sell any property detained pursuant to section 163 where the person liable to pay the salvage in respect of which the property is detained is aware of the detention and -

- (a) the amount is not in dispute and payment of the amount due is not made within 30 days after it has become due; or
- (b) the amount is disputed and within 30 days after the decision of the Court neither payment of the sum due has not been made and no proceedings for an appeal have been started.

(2) The proceeds of sale of detained property shall, after payment of the expenses of the sale, be applied by the Receiver in payment of the expenses, fees and salvage, and any excess shall be paid to the owner of the property or any other person entitled to it or, in the absence of any such owner or person, into the Consolidated Fund.

165. Apportionment by Receiver

(1) Where the aggregate amount of salvage payable in respect of salvage services rendered in Mauritius has been finally determined and does not exceed 50,000 rupees, but a dispute arises as to its apportionment among several claimants, the person liable to pay the amount may apply to the Receiver for leave to pay it to him.

(2) The Receiver shall, if he thinks fit, receive the amount referred to in subsection (1) and give to the person paying it a certificate stating the amount paid and the services in respect of which it is paid.

(3) A certificate granted under subsection (2) shall be a full discharge to the person by whom the amount is paid and to his vessel, cargo, equipment and effects, against the claim of any person in respect of the services mentioned in the certificate.

(4) The Receiver shall, as soon as reasonably practicable, distribute any amount received by him under this section among the persons entitled to it on such evidence and in such shares and proportions as he thinks fit, and may retain any money which appears to him to be payable to any person who is absent.

166. Apportionment by Court

Where the aggregate amount of salvage payable in respect of salvage services rendered in Mauritius has been finally determined and exceeds 50,000 rupees, or where the aggregate amount of salvage payable in respect of salvage services rendered outside Mauritius has been finally determined whatever that amount may be, if any delay or dispute arises as to the apportionment, the Court may –

- (a) cause the amount to be apportioned among the persons entitled to it in such manner as it thinks just and, if it thinks fit, appoint any person to carry that apportionment into effect; and
- (b) compel any person, in whose hands or under whose control the amount may be, to distribute the amount or to bring it into Court to be dealt with as the Court directs.

167. Limitation of action

(1) No action shall be instituted in respect of any salvage services unless proceedings are commenced within 2 years of the date on which the salvage operation was terminated.

(2) An action for indemnity by a person liable under this Sub-Part may be instituted within 2 years of the date of termination of the salvage operation.

PART VII – CONTROL OF AND RETURNS ON PERSONS ON SHIPS

168. Objectionable persons

The master of a passenger ship may refuse to receive on board any person who, by reason of intoxication or otherwise, is in such a state, or misconducts himself in such a manner, as to cause annoyance or injury to passengers on board, and may put any such person who is already on board ashore at any convenient place.

169. Stowaways

(1) Where a person, referred to in this Act as a “stowaway”, without the consent of the master or of any other person authorised to give it, goes to sea or attempts to go to sea in a Mauritius ship, the master may -

- (a) where the stowaway is a Mauritius citizen -
 - (i) detain him and hand him over to the police authorities on the ship’s arrival in Mauritius; or
 - (ii) if the ship is not scheduled to call at a Port, after consultation with the proper officer at the next convenient foreign port of call, hand him over to the local immigration authorities for his repatriation to Mauritius; or
- (b) where the stowaway is not a Mauritius citizen -
 - (i) hand him over to the immigration authorities of the port at which he embarked; or
 - (ii) if he is discovered on the high seas or at a port other than that at which he embarked -
 - (A) hand him over to the local immigration authorities at the next port of call or at the port at which he is discovered; or

- (B) if the ship is scheduled to arrive in Mauritius within a reasonable time after the stowaway is discovered, detain him on board and arrange for his repatriation at the ship's expense.

(2) A stowaway shall, for as long as he remains on board a Mauritius ship, belong to the ship and be subject to the law governing the conduct of the crew as if he were a member of the crew.

170. Master's power of arrest

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

171. Status of person conveyed on Mauritius ship

Where a person is conveyed in a Mauritius ship pursuant to section 86 (2) (b), he shall, for as long as he remains on board, belong to the ship and be subject to the law governing the conduct of the crew as if he were a member of the crew.

172. Passenger returns

(1) The master of every Mauritius passenger ship, regardless of where the ship plies, and of every foreign ship carrying passengers from or to a place in Mauritius, shall provide to the Director in a manner directed by him, a return giving the total number of any passengers carried on every voyage.

(2) Any passenger so requested shall provide the master of the ship with any information required by him for the purpose of the return.

173. Births and deaths on ships

(1) The master of every Mauritius ship shall make a return to the Registrar of

—

- (a) the birth or death of a person occurring on the ship; and
- (b) the death of a person employed on the ship occurring outside Mauritius,

and shall notify any such death to such person, if any, as the deceased may have named to him as his next-of-kin.

(2) The master of a foreign ship which calls at a Port shall make a return to the Registrar of any birth or death of a Mauritius citizen which has occurred on the ship during the voyage.

(3) The Registrar shall send certified copies of returns made under this section to the Registrar of Civil Status who shall record the births and deaths to which the returns relate in the manner provided by law.

PART VIII – CARRIAGE OF PASSENGERS AND LUGGAGE

174. Interpretation of Part VIII

(1) In this Part -

“Athens Convention” means the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974;

“cabin luggage” -

(a) means luggage which a passenger has in his cabin or which is otherwise in his possession, custody or control; and

(b) includes, except for the purposes of subsection (2) and section 181, luggage which the passenger has in or on his vehicle;

“carriage” has the meaning assigned to it in subsection (2);

“carrier” means a person by or on behalf of whom a contract of carriage has been concluded, whether the carriage is actually performed by him or by a performing carrier;

“contract of carriage” means a contract for reward made by or on behalf of a carrier for the carriage by sea of a passenger or of a passenger and his luggage, as the case may be;

“international carriage” means carriage in which, according to the contract of carriage, the place of departure and the place of destination are situated in two different States, or in a single State if, according to the contract of carriage or the scheduled itinerary, there is an intermediate port of call in another State;

“loss of, or damage to, luggage” –

(a) includes pecuniary loss resulting from the luggage not having been redelivered to the passenger within a reasonable time after the

arrival of the ship on which the luggage has been or should have been carried; but

- (b) does not include delay in delivery luggage resulting from labour disputes;

“luggage” –

- (a) means any article or vehicle carried by the carrier under a contract of carriage; but

- (b) does not include -

- (i) articles and vehicles carried under a charter party, bill of lading or other contract primarily concerned with the carriage of goods; or

- (ii) live animals;

“passenger” means a person carried on a ship –

- (a) under a contract of carriage; or

- (b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods;

“performing carrier” means a person, other than the carrier, who is the owner, charterer or operator of a ship and who actually performs the carriage;

“ship” –

- (a) means a seagoing vessel; but

- (b) does not include an air-cushion vehicle.

- (2) For the purposes of this Part -

“carriage” covers the following periods –

- (a) with regard to the passenger and his cabin luggage, the period during which the passenger and his cabin luggage are on board the ship or in the course of embarkation or disembarkation, and the period during which the passenger and his cabin luggage are transported by water from land to the ship or vice versa, where the

cost of such transportation is included in the fare or where the vessel used for the purpose of auxiliary transportation has been put at the disposal of the passenger by the carrier;

- (b) with regard to the passenger, the period referred to in paragraph (a), but excluding the period during which the passenger is in a marine terminal or station or on a quay or in or on any other port installation;
- (c) with regard to cabin luggage, the period referred to in paragraph (a) as well as the period during which the passenger is in a marine terminal or station or on a quay or in or on any other port installation where the luggage has been taken over by the carrier or his agent and has not been re-delivered to the passenger; and
- (d) with regard to luggage other than cabin luggage, the period from the time it is taken over by the carrier or his agent ashore or on board until the time it is redelivered by the carrier or his servant or agent.

175. Application of Part VIII

(1) Subject to subsection (2), where a dispute concerning the carriage of a passenger or his luggage by sea is brought before a Court, this Part shall apply to an international carriage where -

- (a) the ship is flying the flag of, or is registered in, a State party to the Athens Convention;
- (b) the contract of carriage has been made in a State party to the Athens Convention; or
- (c) the place of departure or destination according to the contract of carriage is in a State party to the Athens Convention.

(2) Notwithstanding subsection (1), this Part shall not apply where the carriage is subject to any other international convention concerning civil liability with respect to the carriage of passengers or luggage by another mode of transportation, in so far as that convention has mandatory application to carriage by sea.

(3) For the purposes of subsection (2), any provision of an international Convention which does not have mandatory application to carriage by sea shall be treated as having mandatory application to carriage by sea if it is stated in the contract of carriage that the provision is to apply to the carriage.

(4) This Part shall apply to commercial carriage undertaken by ships owned by the Government of the Republic of Mauritius or a public authority under a contract of carriage.

(5) Nothing in this Part shall affect the operation of section 211 (3) which limits a shipowner's liability in certain cases of loss of life, injury or damage.

(6) Nothing in section 212, which limits a shipowner's liability for the loss of or damage to goods in certain cases, shall relieve a person of any liability imposed on him by this Part.

176. Liability of carrier

(1) A carrier shall be liable for the damage suffered as a result of the death of or personal injury to a passenger and the loss of or damage to luggage where the incident which caused the damage occurred in the course of the carriage and was due to the fault or neglect of the carrier or of his agent acting within the scope of his employment.

(2) Subject to subsections (3) and (4), a claimant shall have the burden of proving -

- (a) that the incident which caused the damage occurred in the course of the carriage, and the extent of the damage; and
- (b) fault or neglect on the part of the carrier or of his agent acting within the scope of his employment.

(3) Where the death of or personal injury to the passenger, or the loss of or damage to cabin luggage, arose from or in connection with the shipwreck, collision, stranding, explosion of, or fire or defect in, the ship, there shall be a rebuttable presumption of fault or neglect on the part of the carrier or his agent acting within the scope of his employment.

(4) In respect of loss of or damage to luggage other than cabin luggage, there shall be a rebuttable presumption of fault or neglect on the part of the carrier or his agent acting within the scope of his employment, irrespective of the nature of the incident which caused the damage.

177. Performing carrier

Where the performance of the carriage has been entrusted to a performing carrier –

- (a) subject to paragraphs (b), (c), (d) and (e), the carrier shall be liable for the entire carriage, and in relation to the carriage performed by the performing carrier, shall be liable for the acts and omissions of the performing carrier and of his agent acting within the scope of his employment;
- (b) subject to paragraphs (a), (c), (d) and (e), the performing carrier shall be subject to this Part and entitled for the part of the carriage performed by him;
- (c) any special agreement, under which the carrier assumes obligations not imposed by this Part or any waiver of rights conferred by this Part, shall not affect the performing carrier unless the performing carrier so agrees expressly and in writing;
- (d) where, and to the extent that, both the carrier and the performing carrier are liable, their liability shall be joint and several;
- (e) nothing in this section shall prejudice any right of recourse as between the carrier and the performing carrier.

178. Valuables

A carrier shall not be liable for the loss of or damage to moneys, negotiable securities, gold, silverware, jewellery, ornaments, works of art or other valuables, except where such valuables have been deposited with the carrier for the agreed purpose of safe-keeping, in which case the carrier shall be liable up to the limit provided for in section 181.

179. Contributory fault

Where the carrier proves that the death of or personal injury to a passenger, or the loss of or damage to his luggage was caused or contributed to by the fault or neglect of the passenger, the carrier may be exonerated wholly or partly from liability.

180. Limits of liability for death or personal injury

- (1) With respect to the limit of liability of a carrier for death or personal injury -
- (a) subject to paragraphs (b), (c), and (d), liability for the death of or personal injury to a passenger shall not exceed 46,666 special drawing rights per carriage;
 - (b) where damages are awarded in the form of periodical income payments, the equivalent capital value of those payments shall not exceed the limits prescribed in paragraph (a);
 - (c) interest on damages and legal costs shall not be included in the limits of liability prescribed in paragraphs (a) and (b); and
 - (d) the carrier and the passenger may agree, expressly and in writing, to limits of liability higher than those prescribed in paragraphs (a) and (b).

(2) Notwithstanding subsection (1)(a), the Minister may prescribe a limit of liability higher than that provided for in subsection (1)(a) for a carrier whose principal place of business is in Mauritius.

181. Limits of liability for loss of, or damage to, luggage

With respect to the limit of liability of a carrier for the loss of or damage to luggage –

- (a) subject to paragraphs (b) and (c), the liability of a carrier shall not exceed -
 - (i) for the loss of or damage to cabin luggage, 833 special drawing rights per passenger, per carriage;
 - (ii) for the loss of or damage to vehicles including all luggage carried in or on the vehicle, 3,333 special drawing rights per vehicle, per carriage; and
 - (iii) for the loss of or damage to luggage other than those mentioned in subparagraphs (i) and (ii), 1,200 special drawing rights per passenger, per carriage;
- (b) a carrier and a passenger may agree -
 - (i) that the liability of the carrier shall be subject to a reduction not exceeding 117 special drawing rights in the case of damage to a vehicle, and not exceeding 13 special drawing rights per passenger in the case of loss of or damage to other luggage to be deducted from the damage; or

- (ii) expressly and in writing, to a limit of liability higher than what is provided in paragraph (a); and
- (c) interest on damages and legal costs shall not be included in the limits of liability provided in paragraph (a).

182. Conversion of special drawing rights

(1) For the purpose of converting into rupees the amounts of special drawing rights mentioned in sections 180 and 181 in respect of which a judgment is given, one special drawing right shall be treated as equal to such a sum in rupees as determined by the Bank of Mauritius, being the rupee equivalent of the dollar amount fixed by the International Monetary Fund as being the equivalent of one special drawing right, for -

- (a) the day on which the judgment is given; or
 - (b) if no sum has been so determined for that day, the last day before that day for which a sum has been so determined.
- (2) A certificate given by a Deputy Governor of the Bank of Mauritius stating -
- (a) that a particular sum in rupees has been determined for a particular day as mentioned in subsection 45B of the Bank of Mauritius Act 2004; or
 - (b) that no sum has been so determined for that day and a particular sum in rupees has been so determined for a day which is the last day for which a sum has been so determined before the particular day,

shall be conclusive evidence of those matters for the purpose of sections 180 and 181, and a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

183. Defences and limits for agents

Where an action is brought against an agent of a carrier or of a performing carrier arising out of damage covered by this Part, the agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the defences and limits of liability which a carrier or a performing carrier is entitled to invoke.

184. Aggregation of claims

(1) Where the limits of liability provided in sections 180 and 181 take effect, they shall apply to the aggregate of the amounts recoverable in all claims arising out of the death of or personal injury to any one passenger or the loss of or damage to his luggage.

(2) In relation to carriage performed by a performing carrier, the aggregate of the amounts recoverable from the carrier and the performing carrier and from their agents acting within the scope of their employment shall not exceed the highest amount which could be awarded against either the carrier or the performing carrier under this Part, but none of the persons referred to shall be liable for a sum in excess of the limit applicable to him.

(3) In any case where an agent of a carrier or of a performing carrier is entitled under section 183 to avail himself of the limits of liability prescribed in sections 180 and 181, the aggregate of the amounts recoverable from the carrier or the performing carrier and from that agent shall not exceed those limits.

(4) The limitations on liability set out in this section in respect of a passenger or his luggage apply to the aggregate liabilities of the persons in question in all proceedings for enforcing the liabilities or any of them which may be brought whether in Mauritius or elsewhere.

185. Loss of right to limit liability

(1) A carrier shall not be entitled to the benefit of the limits of liability provided in sections 180 and 181 where it is proved that the damage resulted from an act or omission of the carrier, done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

(2) The agent of a carrier or of a performing carrier shall not be entitled to the benefit of those limits where it is proved that the damage resulted from an act or omission of that agent done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

186. Notice of loss of or damage to luggage

(1) Subject to subsection (3), a passenger shall give written notice to the carrier or his agent -

(a) in the case of loss of or apparent damage to luggage -

(i) for cabin luggage, before or at the time of disembarkation of the passenger; and

(ii) for all other luggage, before or at the time of its redelivery; and

(b) in the case of damage to luggage which is not apparent, or loss of luggage, within 15 days from the date of disembarkation or redelivery or from the time when such redelivery should have taken place.

(2) Where a passenger fails to comply with subsection (1), he shall be presumed, unless the contrary is proved, to have received the luggage undamaged.

(3) A notice under subsection (1) need not be given where the condition of the luggage has, at the time of its receipt, been the subject of a joint survey or inspection.

187. Time bar for actions

(1) Subject to subsections (2), (3) and (4), an action for damages arising out of the death of or personal injury to a passenger, or for the loss of or damage to luggage, shall be time-barred after a period of 2 years.

(2) The limitation period shall be calculated -

(a) in the case of personal injury, from the date of disembarkation of the passenger;

(b) in the case of death occurring during carriage, from the date when the passenger should have disembarked, and in the case of personal injury occurring during carriage and resulting in the death of the passenger after disembarkation, from the date of death, but this period shall not exceed 3 years from the date of disembarkation; or

(c) in the case of loss of or damage to luggage, from the date of disembarkation or from the date when disembarkation should have taken place, whichever is later.

(3) A Court may, at its discretion, order the suspension or interruption of limitation periods, but in no case shall an action under this Part be brought after the

expiration of 3 years from the date of disembarkation of the passenger or from the date when disembarkation should have taken place, whichever is later.

(4) Notwithstanding subsections (1), (2) and (3), the period of limitation may be extended by a declaration in writing of the carrier or by agreement in writing of the parties after the cause of action has arisen.

188. Competent jurisdiction

(1) Proceedings under this Part may be brought before a Court by a plaintiff where -

- (a) the permanent residence or principal place of business of the plaintiff or the defendant is situated in Mauritius;
- (b) the place of departure or destination according to the contract of carriage is in Mauritius; or
- (c) the contract of carriage was entered into in Mauritius and the defendant has a place of business in, and is subject to, the jurisdiction of Mauritius.

(2) After the occurrence of an incident causing damage, subject to agreement by the parties, a claim for damages may be submitted to arbitration, and section 187 shall, in such case apply to an arbitration as it applies to an action.

(3) The Court before which proceedings are brought under subsection (1) to enforce a liability which is limited by virtue of section 186 may, at any stage of the proceedings, make such orders as appear to the Court to be just and equitable and shall, where the liability is or may be partly enforceable in other proceedings in Mauritius or elsewhere have jurisdiction to award an amount less than the Court would have awarded if the limitation applied solely to the proceedings before the Court, or to make any part of its award conditional on the result of any other proceedings.

189. Invalidity of certain agreements

Any agreement, other than an agreement pursuant to section 181 (b) (i), concluded before the occurrence of an incident which has caused the death of or personal injury to a passenger or the loss of or damage to his luggage, purporting to relieve the carrier of his liability towards the passenger or to prescribe a lower limit of liability than that fixed in this Part or purporting to shift the burden of proof which rests on the carrier, or having the effect of restricting the application of section 188 (1), shall be null and void, but that nullity shall not render void the contract of carriage which shall remain subject to this Part.

190. Application of other limitation regimes

This Part shall not affect the rights or duties of a carrier, a performing carrier and their agents provided for in international conventions applicable to Mauritius or in any other enactment relating to the limitation of liability of owners of seagoing ships.

191. Nuclear damage

No liability shall arise under this Part for damage caused by a nuclear incident if liability arises under an international convention relating to nuclear damage applicable to Mauritius, or under any other enactment relating to nuclear damage.

192. States parties to Athens Convention

Where the Minister certifies that a State is a party to the Athens Convention, the certificate shall be conclusive evidence for the purposes of this Part that the State is a party to the Athens Convention.

PART IX – LIMITATION AND DIVISION OF LIABILITY FOR MARITIME CLAIMS

193. Persons entitled to limit liability

(1) A shipowner and a salvor may limit their liabilities in accordance with this Part.

(2) An insurer of liability for claims subject to limitation under this Part shall be entitled to the benefit of limitation to the same extent as the assured.

(3) A person for whose act, neglect or default a shipowner or salvor is responsible may limit his liability under this Part.

194. Claims subject to limitation

(1) Subject to section 195, a claim shall be subject to limitation of liability regardless of the basis of liability where it is -

- (a) in respect of loss of life or personal injury or loss of or damage to property, including damage to harbour works, basins and waterways and aids to navigation, occurring on board or in direct connection with the operation of the ship or with a salvage operation, and any consequential loss;
- (b) in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;
- (c) in respect of other loss resulting from a infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or a salvage operation;
- (d) in respect of the raising, removal, destruction or rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board the ship;
- (e) in respect of the removal, destruction or rendering harmless of the cargo of the ship; or
- (f) made by a person other than the person liable, in respect of measures taken in order to avert or minimise loss, for which the person liable may limit his liability in accordance with this Part, and further loss caused by those measures.

(2) A claim referred to in subsection (1) shall be subject to limitation of liability even if brought by way of counter claim or for indemnity under a contract or otherwise, but a claim referred to in subsection (1) (d), (e) or (f) shall not be subject to limitation to the extent that it relates to remuneration under a contract with the person liable.

(3) For the purposes of this Part, the liability of a shipowner shall include liability in an action against his ship, and the act of invoking limitation shall not constitute an admission of liability.

(4) A person liable shall not be entitled to limit his liability where it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

195. Claims excepted from limitation

Limitation of liability under this Part shall not apply to a claim –

- (a) for salvage and corresponding claims under a contract;

- (b) for contribution in general average;
- (c) by an employee of a shipowner or salvor whose duties are connected with the ship or a salvage operation, including a claim by his heirs, dependants or other persons entitled to make such a claim, where, under the contract of service between the shipowner or salvor and the employee, the shipowner or salvor is not entitled to limit his liability in respect of the claim, or he is under the contract only permitted to limit his liability to an amount greater than that provided for in section 197;
- (d) for oil pollution damage in respect of any liability incurred;
- (e) subject to any enactment governing or prohibiting limitation of liability for nuclear damage; or
- (f) against the shipowner of a nuclear ship for nuclear damage.

196. Counter claims

Where a person entitled to limitation of liability under this Part has a claim against the plaintiff arising out of the same occurrence, their respective claims shall be set off against each other and this Part shall only apply to the balance, if any.

197. Limitation calculations

The limits of liability for claims, other than those provided for in section 203, arising on any distinct occasion, shall be calculated as follows –

- (a) in respect of claims for loss of life or personal injury -
 - (i) 333000 special drawing rights for a ship with a tonnage not exceeding 500 tons;
 - (ii) for a ship with a tonnage in excess of 500 tons, the following amounts in addition to that mentioned in subparagraph (i) –
 - (A) for each ton from 501 to 3000 tons, 500 special drawing rights;
 - (B) for each ton from 3001 to 30000 tons, 333 special drawing rights;
 - (C) for each ton from 30001 to 70000 tons, 250 special drawing rights; and

- (D) for each ton in excess of 70000 tons, 167 special drawing rights;
- (b) in respect of any other claim -
 - (i) 167000 special drawing rights for a ship with a tonnage not exceeding 500 tons;
 - (ii) for a ship with a tonnage in excess of 500 tons, the following amounts in addition to that mentioned in subparagraph (i) -
 - (A) for each ton from 501 to 30000 tons, 167 special drawing rights;
 - (B) for each ton from 30001 to 70000 tons, 125 special drawing rights; and
 - (C) for each ton in excess of 70000, 83 special drawing rights.

198. Limits of liability for salvors

The limits of liability for a salvor not operating from a ship or for a salvor operating solely on the ship on which, or in respect of which, he is rendering salvage services, shall be calculated according to a tonnage of 1,500 tons.

199. Limitation calculations for fixed claims

Where the amount calculated in accordance with section 197 (a) is insufficient to pay the claims referred to in that paragraph in full, the amount calculated in accordance with section 197 (b) shall be available for payment of the unpaid balance of claims under section 197 (a) and that unpaid balance shall rank rateably with claims referred to in section 197 (b).

200. Liability of dock owner

- (1) In this section -

“dock” includes wet docks and basins, tidal docks and basins, locks, cuts, entrances, dry docks, graving docks, slips, quays, wharves, piers, stages, landing places and jetties;

“owner of a dock” includes any authority or person having the control and management of a dock.

- (2) The liability of the owner of a dock for any loss or damage caused to a ship, or to any goods or other things on board a ship, shall be limited, in accordance

with subsection (5), by reference to the tonnage of the largest Mauritius ship which, at the time of the loss or damage is, or within the preceding five years has been, within the dock of which the person is an owner.

(3) The limitation of liability under this section relates to the whole of any loss or damage which may arise on any one occasion, although the loss or damage may be sustained by more than one person, and shall apply whether or not the liability arises under an enactment.

(4) This section does not exclude the liability of the owner of a dock for any loss or damage resulting from any personal act or omission referred to in section 194 (4).

(5) The limit of liability shall be ascertained by applying to the ship, by reference to which the liability is to be determined, the method of calculation specified in section 197 (b).

(6) Sections 204 and 205 shall apply for the purposes of this section.

(7) For the purposes of subsection (2), a ship shall not be treated as having been within the dock owned by the owner of the dock by reason only that it has been built or fitted out within that dock, or that it has taken shelter within or passed through the dock on a voyage between two places situated outside that dock, or that it has loaded or unloaded mail or passengers within the dock.

201. Limits for passenger claims

(1) (a) In respect of a claim arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner shall be an amount of 46666 special drawing rights multiplied by the number of passengers which the ship is authorised to carry according to the ship's certificate, but not exceeding 25 million special drawing rights.

(b) In this subsection -

“claim for loss of life or personal injury to passengers of a ship” means any such claim brought by or on behalf of any person carried in that ship –

(i) under a contract of passenger carriage; or

(ii) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods.

(2) In the case of a ship for which there is in force a Passenger Ship Safety Certificate or Passenger Certificate, as the case may be, issued under or recognised by any relevant Safety Regulations, the ship's certificate mentioned in subsection (1) shall be that certificate.

202. Conversion of special drawing rights

(1) For the purpose of converting the amounts mentioned in sections 197, 198, 199 and 200 from special drawing rights into rupees, one special drawing right shall be treated as equal to such a sum in rupees as the International Monetary Fund has fixed as being the equivalent of one special drawing right for –

- (a) the date on which the limitation fund shall have been constituted and guarantee given under section 204; or
- (b) the date on which payment is effected if no limitation fund shall have been constituted; or
- (c) if no sum has been so fixed for those dates, the last preceding date for which a sum has been so fixed.

(2) Section 182 (2) shall apply to subsection (1).

203. Aggregation of claims

(1) The limits of liability determined in accordance with sections 197, 198 and 199 shall apply to the aggregate of all claims which arise on any distinct occasion against -

- (a) the shipowner and any person for whose act, neglect or default he is responsible;
- (b) the shipowner of a ship rendering salvage services from that ship, the salvor operating from such ship and any person for whose act, neglect or default he or they are responsible; or
- (c) the salvor who is not operating from a ship or who is operating solely on the ship to, or in respect of which, the salvage services are rendered and any person for whose act, neglect or default he is responsible.

(2) The limits of liability determined in accordance with section 201 shall apply to the aggregate of all claims subject thereto which may arise on any distinct occasion against the shipowner in respect of the ship referred to in section 201 and any person for whose act, neglect or default he may be responsible.

204. Constitution of limitation fund

(1) Any person alleged to be liable and seeking to limit his liability under this Part may constitute a fund by depositing in the Registry of the Supreme Court an amount at least equivalent to the limit provided for in section 197, 198, 199 or 201 as appropriate, or by producing a guarantee acceptable to the Court, together with interest from the date of the occurrence giving rise to the liability until the date of the constitution of the fund, and the fund so constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.

(2) A fund constituted by a person referred to in section 203 (1) or his insurer or by a person or his insurer in respect of section 203 (2), shall be deemed to have been constituted by all the persons mentioned in section 203 (1) or all the persons in respect of section 203 (2), as the case may be.

(3) The Court may determine the rate of interest to be applied for the purposes of subsection (1).

(4) Where a fund is constituted under this section for the payment of claims arising out of any occurrence, the Court may stay any proceedings relating to any claim arising out of that occurrence which are pending against the person by whom the fund has been constituted.

(5) Where a limitation fund is constituted in Mauritius, the rules relating to its constitution and distribution, and the rules of procedure relating to it, shall be governed by Mauritius law.

205. Distribution of fund

(1) Subject to sections 197, 198, 199 and 201, a limitation fund shall be distributed among the claimants in proportion to their established claims against the fund.

(2) The Court may proceed, as to the exclusion of any claimants who do not come in within a certain time and as to payment of costs, in such manner as the Court thinks just.

(3) No lien or other right in respect of a ship or property shall affect the proportions in which any amount is distributed among several claimants.

(4) All sums paid for or on account of any loss or damage in respect of which the liability of owners is limited under this Part and all costs incurred may be brought into account among part owners of the same ship in the same manner as money disbursed for its use.

(5) If, before the fund is distributed, the person liable or his insurer has settled the claim, such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Part.

(6) In making any distribution in accordance with this section, the Court may, if it thinks fit, postpone the distribution of such part of the amount to be distributed as it deems appropriate having regard to any claims, subrogated or otherwise, that may be established later.

206. Bar to other actions

(1) Where a limitation fund has been constituted in accordance with section 204, a person having made a claim against the fund shall be barred from exercising any right in respect of the claim against any other assets of a person by or on behalf of whom the fund has been constituted.

(2) Where a ship or other property is attached or arrested in connection with a claim which appears to the Court to be founded on liability to which limitation is applicable under this Part, and in respect of which a limitation fund has been constituted or a guarantee has been deposited, the Court shall order the release of the ship or property where the limitation fund has been constituted in Mauritius or at -

- (a) the port where the occurrence took place, or, if it took place out of port, at the first port of call thereafter;
- (b) the port of disembarkation in respect of claims for loss of life or personal injury; or
- (c) the port of discharge in respect of damage to cargo,

but where the release is ordered, the person on whose application it is ordered shall be deemed to have submitted to the jurisdiction of the Court to adjudicate on the claim for which the ship or property was attached or arrested.

(3) This section shall apply only where the plaintiff brings a claim before the Court and the limitation fund is actually available and freely transferable in respect of that claim.

207. Apportionment of liability

- (1) (a) In this section -
- “freight” includes passage money and hire.

(b) In this section, reference to damage or loss caused by the fault of a ship includes a reference to any salvage or other expenses, consequent upon that fault, recoverable by way of damage under this Act.

(2) Where, by the fault of 2 or more ships, damage or loss is caused to one or more of those ships, to their cargoes or freight or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each ship was at fault.

(3) Where, in any such case, having regard to all the circumstances, it is not possible to establish different degrees of fault, the liability shall be apportioned equally.

(4) This section applies to persons other than the owners of the ships who are responsible for the faults of the ships, as well as to the owners of the ships and where, by virtue of any charter or demise, or for any other reason, the owners are not responsible for the navigation and management of the ship in question, this section applies to the charterers or other persons for the time being so responsible instead of the owners.

(5) Nothing in this section shall operate so as to render any ship liable for any loss or damage to which the fault of the ship has not contributed.

(6) Nothing in this section shall affect the liability of any person under a contract of carriage or any other contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of this Act, or as affecting the right of any person to limit his liability in the manner provided by this Act.

208. Joint and several liability

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

(2) Section 207 (4) shall apply to subsection (1).

(3) Nothing in this section shall be construed as depriving any person of any right of defence on which, apart from this section, he might have relied on in an action brought against him by the person injured, or any person entitled to sue in respect of such loss of life, or shall affect the right of any person to limit his liability in the manner provided by this Act.

209. Right of contribution

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

(2) Section 207 (4) shall apply to subsection (1).

(3) Nothing in this section authorises the recovery of any amount which could not, by reason of any 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 the persons entitled to sue for the amount.

(4) In addition to any other remedy provided by law, the persons entitled to any contribution recoverable under this section shall, for the purposes of recovering it, have the same rights and powers as the persons entitled to sue for damages in the first instance.

210. Time limit for proceedings against owner of ship

(1) This section applies to any proceedings to enforce a claim or lien against a ship or its owner –

- (a) in respect of damage or loss caused by the fault of that ship to another ship, its cargo or freight or any property on board it; or
- (b) for damages for loss of life or personal injury caused by the fault of that ship to a person on board another ship.

(2) Subject to subsections (4) and (5), no proceedings to which this section applies shall be brought after the period of 2 years from the date when -

- (a) the damage or loss was caused; or
- (b) the loss of life or injury was suffered.

(3) Subject to subsections (4) and (5), no proceedings under section 207, 208 or 209 to enforce any contribution in respect of any overpaid proportion of any damages for loss of life or personal injury shall be brought after the period of one year from the date of payment.

(4) The Court may extend the period allowed for bringing proceedings to such extent and on such conditions as it thinks fit.

(5) The Court, if satisfied that there has not been, during any period allowed for bringing proceedings, any reasonable opportunity of arresting the defendant ship within -

- (a) the jurisdiction of the Court; or
- (b) the territorial sea of the country to which the plaintiff's ship belongs or in which the plaintiff resides or has his principal place of business,

shall extend the period allowed for bringing proceedings to an extent sufficient to give a reasonable opportunity of so arresting the ship.

211. Scope of application of Part IX

(1) Subject to subsection (3), this Part shall apply whenever a person referred to in section 194 seeks to limit his liability before a Court or seeks to procure the release of a ship or other property, or the discharge of any security given within the jurisdiction of Mauritius.

(2) This Part shall apply in relation to –

- (a) a ship of which the beneficial interest is vested in the Government;
- (b) a ship which is registered as a Government ship; and
- (c) a ship which is, for the time being, bareboat chartered or sub-chartered to, or in the exclusive possession of, the Government.

(3) This Part shall not apply to any liability in respect of loss of life or personal injury caused to, or loss of or damage to, any property of a person who is on board the ship in question or employed in connection with that ship, or with the relevant salvage operation, where he is so on board or employed under a contract of employment governed by Mauritius laws.

212. Exclusion of liability

(1) Subject to subsection (3), the owner of a Mauritius ship shall not be liable for any loss or damage where –

- (a) any property on board the ship is lost or damaged by reason of fire on board the ship; or
- (b) any gold, silver, watches, jewels or precious stones on board the ship are lost or damaged by reason of theft, robbery or other dishonest conduct and their nature and value were not at the time

of shipment declared by their owner or shipper to the owner or master of the ship in the bill of lading or otherwise in writing.

(2) Subject to subsection (3), where the loss or damage arises from anything done or omitted by a person in his capacity as master or member of the crew or, otherwise than in that capacity, in the course of his employment as an employee of the owner of the ship, subsection (1) shall also exclude the liability of –

- (a) the master, member of the crew or employee; and
- (b) in a case where the master or member of the crew is the employee of a person whose liability would not be excluded by that subsection apart from this paragraph, the person whose employee he is.

(3) This section does not exclude the liability of a person for any loss or damage resulting from any such personal act or omission of his as is referred to in section 194 (4).

PART X – PIRACY, HIJACKING AND OTHER OFFENCES

Sub-Part I – Piracy and hijacking

213. Piracy

(1) In this Sub-Part, subject to subsection (3) -

“high seas” has the same meaning as in the United Nations Convention on the Law of the Sea 1982;

“piracy” means –

- (a) any illegal act of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or private aircraft, and directed –
 - (i) on the high seas, against another ship, or against persons or property on board the ship; or
 - (ii) against a ship or persons or property on board the ship in any other place outside the jurisdiction of any State;
- (b) any voluntary act of participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft; or

- (c) any act of inciting or intentionally facilitating an act described in paragraph (a) or (b);

“pirate ship or aircraft” means a ship or aircraft under the dominant control of persons who –

- (a) intend to use the ship or aircraft for piracy; or
- (b) have used the ship or aircraft for piracy, so long as it remains under the control of those persons;

“private ship” and “private aircraft” means a ship or aircraft that is not owned by the Government or held by a person on behalf of, or for the benefit of, the Government.

(2) Where an act of piracy is committed by the crew or the passengers of a warship, a Government ship or a Government aircraft which has mutinied and taken control of the ship or aircraft, the act shall be deemed to be an act of piracy committed by the crew or the passengers of a private ship or aircraft.

(3) This section applies to aircraft only when it is on the high seas.

(4) Any person who commits an act of piracy shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 60 years.

214. Hijacking and destroying ships

(1) Subject to subsection (4), a person who unlawfully, by the use of force or by threats of any kind, seizes a ship or exercises control of it, commits the offence of hijacking a ship.

(2) Subject to subsection (4), a person commits an offence where he unlawfully and wilfully -

- (a) destroys a ship;
- (b) damages a ship or its cargo so as to endanger, or to be likely to endanger, the safe navigation of the ship;
- (c) commits on board a ship an act of violence which is likely to endanger the safe navigation of the ship; or
- (d) places or causes to be placed on a ship any device or substance which is likely to destroy the ship or is likely to so damage it or its cargo as to endanger its safe navigation.

(3) Subject to subsection (4), subsections (1) and (2) shall apply -

- (a) whether the ship referred to in those subsections is in Mauritius or elsewhere;
- (b) whether any such act as is mentioned in those subsections is committed in Mauritius or elsewhere; and
- (c) irrespective of the nationality of the person committing the act.

(4) Subsections (1) and (2) do not apply in relation to any warship or any other ship used as a naval auxiliary or in customs or police service, or any act committed in relation to such a warship or such other ship unless -

- (a) the person seizing or exercising control of the ship under subsection (1), or doing the act under subsection (2), as the case may be, is a Mauritius citizen;
- (b) the act is committed in Mauritius; or
- (c) the ship is used in the customs service, or in the service of the police force, in Mauritius.

(5) Any person who commits an offence under this section shall, on conviction, be liable to penal servitude for a term not exceeding 60 years.

(6) In this section -

“act of violence” means –

- (a) any act done in Mauritius which constitutes the offence of murder, attempted murder, manslaughter or assault; or
- (b) any act done outside Mauritius which, if done in Mauritius would constitute an offence referred to in paragraph (a); and

“unlawfully” –

- (a) in relation to the commission of an act in Mauritius, means so as to constitute an offence independent of this Sub-Part under Mauritius laws; and
- (b) in relation to the commission of an act outside Mauritius, means that the commission of the act would have been an offence independent of this Sub-Part under Mauritius laws, if it had been committed in Mauritius.

215. Endangering safe navigation

- (1) Subject to subsection (8), any person who unlawfully and intentionally -
- (a) destroys or damages any property to which this subsection applies; or
 - (b) seriously interferes with the operation of any such property,

where the destruction, damage or interference is likely to endanger the safe navigation of a ship, shall commit an offence.

(2) Subsection (1) applies to any property used for the provision of maritime navigation facilities, including any land, building or ship so used, and including any apparatus or equipment so used, whether it is on board a ship or elsewhere.

(3) Subject to subsection (8), any person who intentionally communicates that which he knows to be false in a material particular, where the communication of the information endangers the safe navigation of a ship. shall commit an offence.

(4) It shall be a defence for a person charged with an offence under subsection (3) to prove that, when he communicated the information, he was lawfully employed to perform duties which consisted of, or included, the communication of information and that he communicated the information in good faith in performance of those duties.

(5) A person who, in order to compel any other person to do or abstain from doing any act, threatens that he or some other person will do in relation to a ship an act which is an offence by virtue of section 214 (2) (a), (b) or (c) where the making of that threat is likely to endanger the safe navigation of the ship, shall commit an offence.

(6) Subject to subsection (8), a person who in order to compel any other person to do or abstain from doing any act, threatens that he or some other person will do an act which is an offence by virtue of subsection (1), where the making of that threat is likely to endanger the safe navigation of a ship, shall commit an offence.

(7) Except as provided by subsection (8), subsections (1), (3), (5) and (6) shall apply whether any act referred to in those subsections is committed in Mauritius or elsewhere and whatever the nationality of the person committing the act.

(8) For the purposes of subsections (1), (3) and (6)(b), any danger, or likelihood of danger, to the safe navigation of a warship or any other ship used as a naval auxiliary or in customs or police service shall be disregarded unless -

- (a) the person committing the act is a Mauritius citizen;

- (b) the act is committed in Mauritius; or
- (c) the ship is used in the customs service of Mauritius or in the service of the police force in Mauritius.

(9) It shall be an offence for any person in Mauritius to induce or assist the commission outside Mauritius of any act which would –

- (a) but for section 214(4), be an offence under that section; or
- (b) but for subsection (8), be an offence under this section.

(10) In this section –

“unlawfully” has the same meaning as in section 214(6).

(11) Any person who commits an offence under this section shall, on conviction, be liable to penal servitude for a term not exceeding 60 years.

216. Master’s power of delivery

(1) Where the master of a ship, wherever that ship may be, and whatever the State, if any, in which it may be registered, has reasonable ground to believe that any person on board the ship has –

- (a) committed any offence under section 214 or 215;
- (b) attempted to commit such an offence; or
- (c) aided, abetted, counselled, procured or incited the commission of such an offence,

in relation to any ship other than a warship or other ship used as a naval auxiliary or in customs or police service, he may deliver that person to the Commissioner of Police in Mauritius or to the proper officer in any other Convention State.

(2) Where the master of a Mauritius ship intends to deliver any person in Mauritius or any other Convention State in accordance with subsection (2) he shall notify the Director if the delivery is to be in Mauritius, or, if delivery is to be in another Convention State, to the proper officer in that State –

- (a) of his intention to deliver that person; and
- (b) of his reasons for intending to do so.

- (3) A notification under subsection (2) shall be given –
- (a) before the ship has entered the territorial seas of Mauritius or the other State concerned; or
 - (b) if, in the circumstances it is not reasonably practicable to comply with paragraph (a), as soon as reasonably practicable after the ship has entered that territorial sea.

(4) Where the master of a Mauritius ship delivers any person to the Commissioner of Police in Mauritius or to the proper officer in any other State under subsection (1), he shall -

- (a) make to the Commissioner of Police if the person is to be delivered in Mauritius, or, if the person is to be delivered in another State, to a proper officer in that State, such oral or written statements relating to the alleged offence as the Commissioner of Police or that officer, as the case may be, may reasonably require; and
- (b) deliver to the Commissioner of Police or the appropriate officer, as the case may be, such other evidence relating to the alleged offence as is in his possession.

(5) In this section -

“Convention State” means a State in which the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988 is in force.

Sub-Part II - Other offences

217. Other offences

(1) Where a ship is in contravention of, or fails to comply with, a requirement of this Act, the master, owner, charterer, representative person or ship’s agent, as the case may be, shall commit an offence unless he proves that –

- (a) he was not aware of the contravention or failure to comply; and
- (b) he had taken all reasonable steps to ensure that it would not occur.

(2) Where a ship fails to comply with section 25 (1), the person referred to in subsection (1) shall, on conviction, be liable to pay a fine not exceeding 1 million rupees.

(3) Where a ship is in contravention of section 130, the person referred to in subsection (1) shall, on conviction, be liable to pay a fine not exceeding 100,000 rupees.

(4) In every other case referred to in subsection (1), the person referred to in that subsection shall, on conviction, be liable to a fine not exceeding 50,000 rupees.

(5) Where a person fails to comply with section 140, he shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees.

(6) Where the master, owner, charterer or ship's agent fails to comply with section 231, he shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees.

(7) Where a ship which is detained pursuant to a detention order under section 220 which has been served on the master of the ship, proceeds to sea, the master shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees.

(8) Any person who –

- (a) where so required, fails to provide any information or provides information which is false or misleading in a material particular;
- (b) where so required, fails to surrender a certificate or other document issued under this Act;
- (c) makes use of a certificate or other document not lawfully issued under this Act;
- (d) fails to notify an alteration or other change to a ship or to its ownership or other particulars;
- (e) where so required, fails to apply for registration or reregistration of a ship;
- (f) while being an employer, contravenes this Act in relation to a crew agreement, the capacity of an officer or a seafarer, the age or status of a person employed on a ship or the payment of wages or the keeping of accounts of wages;
- (g) boards a ship without being authorised to do so;
- (h) destroys or damages an official log book or other similar document;
- (i) damages or renders unusable any aid to navigation;

- (j) on board a ship so conducts himself that he is likely to endanger the safe navigation of the ship or to cause interference or annoyance to the other persons on board the ship;
- (k) unlawfully sells any wreck or stranded ship or its cargo;
- (l) unlawfully interferes with a wreck or a stranded ship or its cargo;
- (m) obstructs or assaults any person exercising his lawful powers or duties under this Act;
- (n) being a seafarer, refuses to obey the master's order, neglects this duty or assaults any member of the crew;
- (o) having been summoned pursuant to section 223 –
 - (i) fails to attend or to produce a document or other article as required; or
 - (ii) gives evidence which is false or misleading in a material particular; or
- (p) in any other manner contravenes this Act,

shall commit an offence and shall, on conviction, be liable, where no specific penalty is provided, to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 2 years.

PART XI – LEGAL PROCEEDINGS

218. Jurisdiction in criminal matters

(1) Notwithstanding section 114 of the Courts Act and section 72 of the District and Intermediate Courts (Criminal Jurisdiction) Act, a Magistrate shall have jurisdiction to try an offence under this Act and may impose any penalty provided under this Act.

(2) A Court shall have jurisdiction respecting offences under this Act over any vessel being on, or lying or passing off, the coast of Mauritius, or being in or near any bay, channel or navigation water in Mauritius and over all persons on board that vessel or for the time being belonging to it.

(3) Where a person who is charged with having committed an offence under this Act is found within the jurisdiction of a Court in Mauritius, the Court shall have jurisdiction to try the offence where the person –

- (a) is a Mauritius citizen and is charged with having committed it –
 - (i) on board any Mauritius ship on the high seas;
 - (ii) in any foreign port or harbour; or
 - (iii) on board any foreign ship to which he does not belong; or
- (b) is not a Mauritius citizen and is charged with having committed it on board a Mauritius ship on the high seas or, in the case of a stowaway, in a foreign country.

(4) Any act or omission, in relation to property or person, done in or at any place, ashore or afloat, outside Mauritius by a master or a seafarer who, at the time, is employed on a Mauritius ship, which, if done in Mauritius would be an offence under a Mauritius law, shall be treated as an offence under that law and a Court shall have jurisdiction to try the offence.

219. Powers of arrest

- (1) (a) A police officer may arrest, without warrant, any person committing an offence under this Act.
- (b) Where a seafarer is arrested and detained under subsection (1), the master shall make an entry to that effect in the official log book as soon as convenient after the arrest.

(2) The master of a Mauritius ship which is at sea may arrest and detain any seafarer who commits an offence on board the ship where he has reasonable ground to believe that the arrest is necessary to prevent serious disorder on board the ship.

220. Detention of ships

- (1) The Director may detain a ship where it –
 - (a) has damaged or destroyed an aid to navigation;
 - (b) does not contain appropriate crew accommodation;
 - (c) does not carry the necessary medical stores;
 - (d) does not comply with the Safe Manning Regulations;

- (e) is not equipped with appropriate measures of communicating with members of the crew who do not understand English;
- (f) is not fitted with necessary lights, shapes or signals;
- (g) is carrying more passengers than it is entitled to;
- (h) is overloaded;
- (i) is not carrying the required certificates issued pursuant to this Act or any international Convention to which Mauritius is a party;
- (j) is deemed to be an unsafe ship;
- (k) has been salvaged and any remuneration is still unpaid; or
- (l) is so provided in this Act.

(2) Where a ship is to be detained pursuant to subsection (1), the Director shall issue a detention order and cause it to be served on the master of the ship.

(3) Where, a ship is the subject of a detention order, no outward port clearance shall be granted to that ship until a release order is issued, and, in the case of a foreign ship, the Director shall cause the consular officer, if any, or the proper officer of the country where the ship is registered to be informed.

(4) Subject to subsection (7), where proceedings are to be instituted in respect of an alleged contravention of this Act, the person exercising the power of detention shall immediately release the ship where –

- (a) no proceedings for the offence in question are instituted within 7 days beginning with the day on which the ship is detained;
- (b) such proceedings, having been instituted within that period, are concluded without the person charged being convicted;
- (c) the sum of 500,000 rupees is paid into Court by way of security;
- (d) the person charged is convicted and any costs or expenses and any fine imposed have been paid; or
- (e) the release is ordered by a court or tribunal referred to in Article 292 of the United Nations Convention on the Law of the Sea 1982, and any bond or other financial security ordered by such a court or tribunal is posted.

(5) The Court shall repay any sum paid under subsection (4) (c) as security within 30 days beginning with the day on which the sum is paid –

- (a) if no proceedings for the offence in question are instituted; or
- (b) if such proceedings, having been instituted within that period, are concluded without the person charged being convicted.

(6) Where a sum has been paid by any person under subsection (4)(c), and the person charged is convicted of the offence in question, the sum so paid shall be applied –

- (a) in payment of any costs or expenses ordered by the Court to be paid by the convicted person; and
- (b) in payment of any fine imposed by the Court,

and the balance shall be repaid to the person who paid the sum as security.

(7) Where a ship is detained under section 128, it shall not be released until the deficiency for which the ship was detained is rectified to the satisfaction of the Director.

(8) Where a ship detained under this Act is to be released, a release order shall be issued by the Director.

221. Forfeiture of ships

(1) A ship shall be liable to forfeiture where –

- (a) its nationality or port of registration is being concealed;
- (b) it is a foreign ship and is being used and being passed off as a Mauritius ship;
- (c) it is deemed to be an unsafe ship; or
- (d) it is carrying dangerous goods.

(2) Where a ship is liable to forfeiture under subsection (1), the Commissioner of Police or an inspector designated by the Minister for that purpose may seize and detain the ship for adjudication by the Supreme Court.

(3) Where a ship is subject to adjudication under subsection (2), the Supreme Court may –

- (a) adjudge the ship and its equipment to be forfeited to the State; and
- (b) make such order for costs as it thinks fit.

222. Recovery of fines and judgment debts from shipowners

Without prejudice to any enactment relating to the recovery of fines or of judgment debts –

- (a) where the owner of a ship, who is convicted of an offence under this Act, fails to pay any fine imposed on him, the amount due may be recovered in the manner a mortgage debt in favour of the State in respect of the ship would have been recovered; and
- (b) any judgment debt against the owner of a ship may be recovered in the manner a mortgage debt in favour of the judgment creditor in respect of the ship would have been recovered.

223. Summons to witness

A Board of Inquiry, a Court of Investigation or the Director may, for the purposes of an inquiry or an investigation under this Act –

- (a) summon any person to attend and give evidence or to produce any document or other article; and
- (b) administer an oath.

224. Depositions of persons made abroad

(1) Where the evidence of any person is required in the course of any proceedings in Mauritius in relation to the subject matter of the proceedings and it is proved that that person cannot be found in Mauritius, any deposition that he may have previously made at a place outside Mauritius in relation to the same subject matter shall, subject to subsection (2), be admissible in evidence in those proceedings.

(2) For a deposition to be admissible under subsection (1) in any proceedings, the deposition shall -

- (a) have been taken under oath;
- (b) have been taken before, and authenticated by the signature of, a judge, magistrate or similar officer in that place outside Mauritius; and

- (c) if the proceedings are criminal proceedings, have been taken in the presence of the accused or his counsel, and so certified by the person who had taken the deposition.

(3) No proof need be given of the signature or official character of the person appearing to have signed any such deposition and, in any criminal proceedings, a certificate stating that the deposition was taken in the presence of the accused or his counsel shall, unless the contrary is proved, be evidence of that fact.

(4) This section also applies to proceedings before a person authorised by law or consent of the parties to receive evidence.

(5) Nothing in this section affects the admissibility in evidence of depositions under any other enactment or the practice of the Court.

225. Admissibility of documents

(1) Any certificate issued under this Act, any official log book, crew agreement, crew list or other similar document kept on a ship pursuant to this Act, any maritime chart used on a ship and any entry in the Register shall be admissible in evidence in any proceedings.

(2) Where a document is admissible in evidence under subsection (1), it shall, on its production from proper custody –

- (a) be so admissible in the Court or before a person having by law or consent of parties authority to receive evidence; and
- (b) subject to all just exceptions, be evidence of the matters stated in the document.

(3) A copy of, or extract from, any document so made admissible in evidence shall, subject to subsection (4), also be admissible in evidence and be evidence of the matters stated in the document.

(4) A copy of, or extract from, a document shall not be admissible by virtue of subsection (3), unless it purports to be signed and certified as a true copy or extract by the officer to whose custody the original document was entrusted, and that officer shall furnish the certified copy or extract to any person who applies for it at a reasonable time and pays such reasonable fee as the Director determines.

(5) A person shall, on payment of such reasonable fee as the Director determines, be entitled to have a certified copy of any declaration or document a copy of which is made evidence by this Act.

226. Inspection and admissibility of copies of certain documents

(1) Where, under any enactment, a document is open to public inspection when in custody of the Director –

- (a) there may be supplied for public inspection a copy or other reproduction of the document instead of the original; but
- (b) the original shall, nevertheless, be made available for public inspection if the copy or other reproduction is illegible.

(2) Where the Director destroys any document which has been sent to him under or by virtue of any enactment and keeps a copy or other reproduction of that document, then –

- (a) any enactment providing for that document to be admissible in evidence or open to public inspection; and
- (b) in the case of a document falling within subsection (1), that subsection,

shall apply to the copy or other reproduction as if it were the original.

227. Service of documents

(1) A notice or document authorised or required to be served on the master of a ship may be served -

- (a) where there is a master, by leaving it for him on board the ship with the person appearing to be in command or charge of the ship; and
- (b) where there is no master –
 - (i) on the owner of the ship;
 - (ii) if there is no owner, on any agent of the owner; or
 - (iii) where no such agent is known or can be found, by leaving a copy of the document fixed to a conspicuous part of the ship.

(2) A document required or authorised by or under any enactment to be served on the owner of a Mauritius ship shall, where there are 2 or more registered owners, be treated as duly served if served on any one of the registered owners.

PART XII – MISCELLANEOUS

228. Regulations

(1) The Minister may, for the purposes of this Act, make such regulations as he thinks fit, including regulations -

- (a) for determining which sea-going objects shall be deemed to be ships;
- (b) for the safety and security of Mauritius ships and those of foreign ships while they are within a Port as well as those of the persons on any of those ships (referred to in this Act as “Safety Regulations”);
- (c) for giving effect to any international Convention to which Mauritius is a party;
- (d) to regulate the registration, survey, marking, tonnage (referred to in this Act as “Tonnage Regulations”), ownership and deregistration of ships;
- (e) to control the carriage of persons or goods on ships;
- (f) relating to the presence of medical practitioners and the availability of medical stores on ships;
- (g) for the engagement, welfare and discharge of seamen;
- (h) concerning salvage in relation to Government ships;
- (i) to provide for the procedure of any inquiry or investigation;
- (j) to ensure adequate means of communication on and to and from ships;
- (k) to control the use and operation of pleasure vessels;
- (l) for the setting up of a disciplinary board to enquire into misconduct, unfitness to discharge duties and negligence in the discharge of duties of seamen;
- (m) for the education, training and certification of deck and engine seafarers; and
- (n) for prescribing anything that is to be prescribed under this Act.

(2) Regulations made under this Act may -

- (a) provide for the levying of fees and forms to be used;

- (b) provide that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and imprisonment for a term not exceeding 5 years.

229. Minister's power to dispense

The Minister may exempt any ship from any specific requirement of, or prescribed under, this Act, or dispense with the observance of any such requirement in the case of any ship, where he is satisfied that –

- (a) the requirement has been substantially complied with in the case of that ship or that compliance with it is unnecessary in the circumstances; and
- (b) the action taken or provision made as respects the subject matter of the requirement in the case of the ship is as effective as, or more effective than, actual compliance with the requirement.

230. Immunity of Government and public officers

(1) Any person who acts in the performance of his duties under this Act shall be deemed to be a public officer for the purposes of the Public Officers' Protection Act and a public functionary within the meaning of the Criminal Code.

(2) No action shall lie against the Government or any public officer or other person appointed or authorised to perform any function under this Act in respect of anything done or omitted to be done by him in good faith in the exercise or performance of any power, authority or duty conferred or imposed on him under this Act.

231. Port clearances

(1) No ship shall leave a Port unless the master of the ship has obtained, not later than 2 hours before the expected time of departure, a port clearance from the Director.

(2) Where the master of a ship obtains a port clearance and does not sail within 12 hours of the expected time of departure, he shall report to the Director his reasons for not sailing and obtain a fresh port clearance.

(3) The Director shall not issue a port clearance for a ship until the master of the ship, if so required, produces the certificate of registration of the ship and declares to him –

- (a) the name of the country to which the ship belongs; and

- (b) whether or not a detention order for the ship is in force.
- (4) Where the Director is satisfied that -
 - (a) a person engaged on board a Mauritius ship;
 - (b) a Mauritius citizen engaged on board a foreign ship; or
 - (c) a seafarer engaged on a foreign ship,

has not been paid any wages due to him, or, in the case of any seafarer engaged on a foreign ship, that arrangements have not been made for his repatriation to his home port, the Director may refuse to issue a port clearance unless the wages are paid, or the necessary arrangements for the repatriation of the seafarer have been made, or the owner or master of the ship furnishes adequate security to the satisfaction of the Director, for the payment of the wages claimed to be unpaid or the repatriation costs.

232. Restriction on trading

No ship other than a Mauritius ship shall be engaged in trade that is exclusively between Mauritius, Rodrigues and the outer islands.

233. Consequential amendments

The Bank of Mauritius Act 2004 is amended by inserting, immediately after section 45 A, the following new section -

45B. Special Drawing Rights

In any proceedings before any Court, a certificate by a Deputy Governor of the Central Bank stating –

- (a) that a sum in rupees has been determined for a special drawing right for a particular date; or
- (b) that a sum in rupees has been so determined for a date which is the last preceding date for which a sum has been so determined,

shall be conclusive evidence of those matters for the purposes of the Merchant Shipping Act 2007 and a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

234. Repeal

The following enactments are repealed –

- (a) the Merchant Shipping Act;
- (b) Chapitre Troisième, articles 210 to 230;
Chapitre Quatrième, articles 231 to 244 ;
Chapitre Cinquième, articles 245 to 256 ;
Titre Sixième, articles 324 to 331 ; and
Titre Huitième Chapitre Premier et Chapitre Deuxième, articles 397 to 416
of the *Code de Commerce*;
- (c) the Merchant Shipping (Safety of Life at Sea) Regulations 1993;
- (d) the Merchant Shipping (Mortgage of Ships) Regulations 1994;
- (e) the Merchant Shipping (Payment of Fees) Regulations 1994;
- (f) the Merchant Shipping (Registration of Ships) Regulations 1994.

235. Transitional provisions

(1) Any certificate or other instrument issued under an enactment repealed by this Act shall remain in force until it is superseded, revoked or otherwise terminated.

(2) Any ship registered in Mauritius under an enactment repealed by this Act shall be deemed to have been registered under this Act.

(3) Any mortgage or lien inscribed on any ship before the commencement of this Act shall be held valid for all intents ad purposes and shall be deemed to have been inscribed after the commencement of this Act.

(a) Every person who is required to obtain a licence, permit or authorisation under this Act shall, within one month of the commencement of this Act, make an application for the licence, permit or authorisation

(b) Any licence or permit issued or authorisation given under an enactment repealed by this Act and which has not expired at the commencement of this Act shall remain valid until a licence, permit or authorisation is issued pursuant to paragraph (a).

(4) Pending the appointment of a Registrar of Ships, the functions required to be performed by the Registrar shall be performed by such officer as the Director of Shipping may designate.

236. Commencement

This Act shall come into operation on a day to be fixed by Proclamation.

THE MERCHANT SHIPPING BILL (No. of 2007)

Explanatory Memorandum

The object of this Bill is to repeal the Merchant Shipping Act and several articles under the *Code de Commerce* and replace them by a new enactment.

The Merchant Shipping Act, which came into operation in 1986, had to be amended in 1992 to make better provision for the mortgage of ships and shares in a ship and to provide for bareboat chartering and maritime liens. Besides, the relevant provisions of the law relating to the carriage of passengers and luggage were contained in the *Code de Commerce* which itself had numerous cross-references to the Merchant Shipping Act. All the provisions relating to merchant shipping will henceforth be contained in a single enactment.

The Bill also makes better provision for the Incorporation of the international conventions to which Mauritius is a party and of the protocols which apply to this country. A number of areas, in which there has been substantive development in recent years, such as the engagement, welfare and discharge of seamen, the safe manning of ships, salvage operations and remuneration for salvage services, limitation and division of liability for maritime claims, piracy and hijacking of ships, are also addressed in the Bill.

Finally the Bill seeks to cover the main issues relating to merchant shipping with more precision and greater detail than was done in the existing Act.

..... 2007

Dr. A.R. BEEBEEJAUN
*Deputy Prime Minister and Minister of
Public Infrastructure Land Transport
and Shipping*

THE MERCHANT SHIPPING BILL
(No. of 2007)

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A BILL

To repeal and replace the Merchant Shipping Act and certain provisions of the *Code de Commerce*

ENACTED by the Parliament of Mauritius, as follows –

PART I – INTRODUCTORY

1. Short title

This Act may be cited as the Merchant Shipping Act 2007.

2. Interpretation

In this Act -

“aid to navigation” means a lighthouse, buoy, beacon, radio aid, or any other light, signal or mark established to aid marine navigation, and includes any building, mooring and other works associated therewith;

“bareboat charter” means a written agreement by virtue of which a charterer shall -

- (a) acquire control and possession of a ship, including its management and operational control;
- (b) appoint and dismiss the master and the crew of the ship;
- (c) be responsible towards any third party as if he was the owner of the ship; and
- (d) generally be substituted in all respects to the owner of the ship; but
- (e) have no right to sell or mortgage the ship;

for an agreed period;

“Board of Inquiry” means any such Board appointed to inquire into any matter pursuant to this Act;

“certificate of registration” means a certificate issued in respect of a ship under section 26;

“Classification Society” means a member of the International Association of Classification Societies which is recognised by the Government of the Republic of Mauritius;

“coastal area” means the coast of Mauritius and all Mauritius waters other than those within the limits of ports and harbours and the approaches thereto;

“Court” –

- (a) except in section 50, means a Court of competent jurisdiction; and
- (b) in section 50, means the Master’s Court;

“Court of Investigation” means a body appointed as such under section 10;

“crew” –

- (a) includes –
 - (i) any person employed to work on a ship on a voyage;
 - (ii) an apprentice; but
- (b) does not include a pilot or any other person employed solely in a port;

“dangerous goods” –

- (a) means explosives, gases, inflammable liquids, inflammable solids, substances liable to spontaneous combustion, inflammable acids, substances that emit inflammable gases in contact with water, oxidising substances, organic peroxides, poisonous, infectious or radioactive substances and corrosives;
- (b) includes any other goods that may be prescribed or classified as such in the International Maritime Dangerous Goods Code;

“Director” means the Director of Shipping referred to in section 4;

“foreign port” means an area of water, or land and water (including any building, installation or building situated in or on that land or water) in a foreign country, intended for use in connection with the movement, loading, unloading or maintenance of ships or the supply of provisions to ship;

“foreign ship” means a ship which is not a Mauritius ship;

“Government ship” means a ship owned by the Government of the Republic of Mauritius or held by a person on behalf of, or for the benefit of, the Government of the Republic of Mauritius;

“grain” means wheat, oats, rye, barley, rice, pulses or seeds;

“international Convention” means any convention adopted by the International Maritime Organisation or the International Labour Organisation, which is ratified by the Republic of Mauritius;

“international voyage”, except in Sub-Part II of Part V, means a voyage from Mauritius to a port or other place outside Mauritius or a voyage to Mauritius from such a place;

“ISPS Code” means the International Ship and Port Facility Security Code;

“limitation fund” means a fund constituted in accordance with section 204;

“maritime entity” includes a partnership, ‘*société*’, association or other body of persons which is a business entity;

“master” includes every person, other than a pilot, who has the command or charge of a ship;

“Mauritius ship” means a ship registered under Part III, the registration of which has not been suspended or terminated;

“Mauritius waters” has the same meaning as in the Maritime Zones Act;

“Minister” means the Minister to whom responsibility for the subject of shipping is assigned;

“national colours” means the flag of the Republic of Mauritius;

“naval vessel” means a warship or troop ship;

“night” means a period of not less than 9 hours starting not later than midnight and ending not earlier than 5 a.m.;

“officer”, in relation to a ship, means a crew member appointed to assist the master in the operational control of the ship;

“official log book” means the book required to be kept pursuant to section 92;

“Organisation” means the International Maritime Organisation;

“outer islands” means the islands comprised in the State of Mauritius, other than the Islands of Mauritius and Rodrigues;

“owner” means the owner of a registered ship;

“passenger”, except in Part VIII, means a person carried on a ship other than a person –

- (a) employed or engaged on the business of the ship; or
- (b) carried pursuant to an obligation on the master as a shipwrecked or distressed person or owing to circumstances that the master or the owner could not have foreseen; or
- (c) a child under one year of age;

“passenger ship” means a ship carrying more than 12 passengers;

“Port” means a Port specified in the Schedule to the Ports Act;

“proper officer” means a person whose duty is to perform, in a foreign country, any duty carried out in Mauritius by the Director, the Registrar, the Superintendent of Shipping or a surveyor;

“Registrar” means the person referred to in section 5;

“remuneration” means remuneration for salvage services;

“representative person” means a person who is required to be designated in accordance with section 17;

“Safety Convention” means the International Convention for the Safety of Life at Sea 1974 and its Protocol of 1988;

“salvage” includes all expenses properly incurred by a salvor as determined in accordance with Sub-Part III of Part VI;

“Salvage Convention” means the International Convention on Salvage 1989;

“salvage operation” means an act or activity undertaken to assist a ship or other property in danger in navigable waters;

“salvage services” means services rendered in direct connection with a salvage operation;

“salvor” means a person who renders salvage services;

“seafarer” means a person engaged on a ship’s crew agreement other than –

- (a) the master or a pilot; and
- (b) a person temporarily engaged in a port or employed on duties which are not part of a seafarer’s normal duties;

“ship” –

- (a) means any kind of vessel, however propelled, used in navigation; and
- (b) includes a barge, lighter, dredger, mobile dredging unit, high speed craft and an air-cushion vehicle;

“ship’s agent” means any person who manages the affairs of a ship on behalf of the master or owner while she is in Mauritius waters;

“Superintendent of Shipping” means the person referred to in section 6;

“surveyor” or “inspector” means a person designated as such by the Director under section 7;

“territorial sea” has the same meaning as in the Maritime Zones Act;

“Tonnage Convention” means the International Convention on Tonnage Measurement of Ships 1969;

“Tonnage Regulations” means regulations made under section 228 (1) (d);

“unsafe ship” has the meaning given to it by section 128;

“voyage” means the time spent and the distance covered by a ship between its port of departure and its port of arrival;

“wages” includes emoluments and any other amount due to a seafarer from his employer during the currency of his employment.

3. Application of Act and non application of Labour Act

- (5) Subject to subsection (2), this Act shall apply to –
- (a) a Mauritius ship wherever it may be; and
 - (b) every other ship while in a Port or in any other place within Mauritius waters, including a ship on bareboat charter to the Government of the Republic of Mauritius.
- (6) This Act shall not apply to –
- (a) a naval vessel; or
 - (b) a Government ship which is not operated for profit.
- (7) The Minister may, by regulations, provide that an object designed or adapted for use at sea is or is not to be treated as a ship for the purposes of this Act.
- (8) The Labour Act shall not apply to a seafarer.

PART II – ADMINISTRATION

4. Director of Shipping

There shall be a Director of Shipping who shall have the general superintendence of this Act and the general supervision of all matters relating to shipping and seamen and may –

- (d) carry out such inspections or investigations as he thinks fit to determine whether this Act, or any International Convention or Code relating to shipping to which Mauritius is a party, is being complied with;
- (e) require a ship to be taken into dry docks for the purpose of surveying or inspecting its hull; and
- (f) detain a ship in respect of a contravention of this Act.

5. Registrar of Ships

(1) There shall be a Registrar of Ships who shall exercise the functions and powers conferred on him by this Act and perform such other duties as the Director may direct.

(2) The Registrar of Ships shall be a public officer.

6. Superintendent of Shipping

(1) There shall be a Superintendent of Shipping who shall exercise the functions and powers conferred on him by this Act and perform such other duties as the Director may direct.

(2) The Superintendent of Shipping shall be a public officer.

7. Other staff

(4) There shall be such surveyors, inspectors and other officers who shall exercise the functions conferred on them by this Act in connection with –

- (a) surveys of ships;
- (b) maritime security inspection; and
- (c) other matters incidental to their duties under this Act,

as the Director may direct.

(5) The Director may designate such persons to be surveyors or inspectors for the purposes of this Act at such Port as he thinks fit.

(6) Subject to such conditions as the Director may impose, surveys and inspections of ships under this Act may be carried out by a Classification Society, and in such instances the terms “surveyor” and “inspector” shall be construed to include such Classification Society.

(4) A surveyor shall be appointed as –

- (a) a nautical surveyor; or
- (b) a marine engineering surveyor.

8. Powers of officers

(1) Where the Director, the Registrar, the Superintendent of Shipping, a surveyor or an inspector has reason to suspect that this Act or any other enactment relating to seamen or navigation is not being complied with, he may –

- (a) at all reasonable times go on board a Mauritius ship or a foreign ship which is in a Port or at an offshore terminal;

- (b) inspect the ship and its equipment;
- (c) require the owner or master to –
 - (i) produce any log book, certificate or other document relating to the ship, the crew or any seafarer in his possession or control;
 - (ii) muster the crew; or
 - (iii) require the master to give any explanation concerning the ship, its crew or log book, certificate or other documents produced or required to be produced; or
- (d) take copies or extracts from any such document.

(2) Where a person referred to in subsection (1) has reasonable ground for believing that there are, on any premises, provisions or water intended for supply to a Mauritius ship which, if provided on the ship, would not be in accordance with this Act, he may enter the premises and inspect the provisions or water for the purpose of ascertaining whether they would be in accordance with this Act.

9. Officers' reports

Every surveyor or inspector shall -

- (c) report to the Director –
 - (i) on the nature and cause of any accident or damage which any ship has or is alleged to have sustained or caused;
 - (ii) whether any requirement, restriction or prohibition imposed by or under this Act has been complied with or not;
 - (iii) whether the hull, machinery and equipment of a ship are sufficient and in good condition; and
 - (iv) on any article found in, or document carried on, a ship; and
- (d) issue such certificates as the Director may require him to do.

10. Shipping casualties

- (1) Where a shipping casualty occurs, such as –

- (a) the loss or presumed loss, stranding, grounding, abandonment of, or damage to, a ship;
- (b) a loss of life or serious injury to any person, caused by fire on board, or by any accident to a ship or ship's boat, or by any accident occurring on board a ship or ship's boat; or
- (c) any damage caused by a ship,

and, at the time it occurs, the ship was registered under this Act or under the law of another country, the Director or a surveyor designated by him may hold a preliminary inquiry into the casualty and may, for that purpose, exercise any power conferred by section 8 (1) and such additional power as the Minister may confer on them for the particular inquiry.

(2) Whether or not a preliminary inquiry into a casualty has been held under subsection (1), the Minister may cause a formal investigation to be held by a Court of Investigation appointed by the Minister for that purpose which shall submit to the Minister a report of its findings and recommendations, if any, upon completion of the investigation.

(3) Where a death occurs on board a Mauritius ship or on board any foreign ship, and that ship calls at a Port, the Superintendent of Shipping shall, on arrival of the ship in Mauritius –

- (a) inquire into the cause of the death; and
- (b) make, in the official log book, a report of the result of the inquiry.

(4) Where, in the course of an inquiry under subsection (3), it appears to the Superintendent of Shipping that the death has been caused by violence or in suspicious circumstances, he shall report the matter –

- (a) to the Commissioner of Police; and
- (b) where the ship is a foreign ship, to the proper officer of the country in which the ship is registered.

11. Court of Investigation

(3) A Court of Investigation holding an investigation into a shipping casualty under section 10 shall consist of a Chairperson who holds or has held judicial office, and 2 other persons with skills and knowledge in maritime matters.

(4) The Court of Investigation shall hold meetings and conduct its proceedings in the same manner, and shall have the same powers, as a Commission of Inquiry under the Commissions of Inquiry Act.

(3) (a) Where, as a result of the investigation, the Court of Investigation recommends the cancellation, suspension or withdrawal of recognition of a ship's officer's certificate, the Director may act on the recommendation, and the ship's officer shall forthwith deliver the relevant certificate to the Director.

(b) Where the certificate was delivered by a foreign government, the Director shall inform the proper authority having delivered the certificate for any necessary action.

(4) Where a certificate has been cancelled, suspended or its recognition withdrawn under this section, the Director may, in an appropriate case and after considering representations made by the officer, reissue a cancelled certificate or reduce the period of its suspension and return the certificate, or may grant a new certificate of the same or a lower grade in place of the cancelled or suspended certificate, or reinstate the recognition of a certificate, as the case may be.

(5) Where an investigation has been held under subsection (2), the Minister may order the whole or part of the case to be reheard within 21 days of the findings of the Court of Investigation and shall do so where -

(b) new and important evidence which could not have been produced at the inquiry or investigation has been discovered;
or

(b) it appears to the Minister that there are other grounds for suspecting that a miscarriage of justice may have occurred.

(6) An order under subsection (5) may provide for the rehearing to be made by the Court of Investigation which held the investigation or by such differently-constituted Court of Investigation as the Minister may appoint.

(7) After the rehearing, the body that conducted the rehearing shall determine whether to quash or confirm the findings of the first Court of Investigation and its decision shall be final.

PART III – REGISTRATION OF SHIPS
Sub-Part I – General

12. The Register

(7) There shall be a Register for the registration of ships and their related mortgages which shall be divided into Parts as follows –

- (a) First Part for registration of ships that are not bareboat chartered;
- (b) Second Part for bareboat chartered ships;
- (c) Third Part for ships under construction;
- (d) Fourth Part for fishing vessels;
- (e) Fifth Part for pleasure vessels; and
- (f) Sixth Part for submersible craft.

(8) No registration shall be effected under more than one Part at the same time but registration may be transferred from one Part to another as may be appropriate according to the particular circumstances.

(9) The Register may consist of manual or electronic records or such other records as the Registrar may consider expedient.

(10) The Registrar shall maintain the Register in accordance with this Part and may establish such other procedures in relation to registration as he may consider expedient.

(11) The Registrar may amend an entry in the Register where a clerical error is apparent or there is evidence that the entry is otherwise incorrect, and in such cases a new certificate of registration may be issued.

(12) Any person may, on application to the Registrar and on good cause shown, obtain a transcript of an entry in the Register.

13. Entries in the Register

Entries in the Register in relation to the ownership of a ship shall be made in the following manner –

- (h) the property in a ship shall be divided into 100 shares;

- (i) subject to the provisions of this Act with respect to joint owners or owners by transmission, not more than 100 individuals shall be entitled to be registered at the same time as owners of a ship, but this provision shall not affect the beneficial title of any number of persons or of a company represented by or claiming under or through a registered owner or joint owner;
- (j) subject to paragraph (e), a person shall not be entitled to be registered as owner of a fractional part of a share in a ship, but a number of persons, not exceeding 5, may be registered as joint owners of a ship or of a share in the ship;
- (k) joint owners shall be deemed to constitute one person as regards the persons entitled to be registered, and shall not be entitled to dispose severally of any interest in a ship, or of any share in the ship in respect of which they are registered;
- (l) in the case of a ship wholly or partly owned by a maritime entity, without a legal personality separate and distinct from that of its members, a person may be entitled to be registered as owner of a percentage of a share in the ship;
- (m) a body corporate shall be registered as owner by its corporate name;
- (n) in the case of a ship owned by a maritime entity –
 - (i) where the maritime entity has a legal personality separate and distinct from that of its members, the name of the maritime entity may be entered in the Register as the owner of the ship;
 - (ii) where the maritime entity does not have a legal personality separate and distinct from that of its members, the names of all its members carrying on business in the name of the maritime entity and the number of shares in the ship owned by each member shall be entered in the Register; and
 - (iii) whether or not the maritime entity is one that has a legal personality separate and distinct from that of its members, only the name of the maritime entity may be entered in the certificate of registration as the owner of the ship.

14. Mauritius ships

(4) Every Mauritius ship of not less than 24 metres in length shall be registered under this Act.

(5) A ship shall be a Mauritius ship for the purposes of this Act, where it is registered in Mauritius under this Part.

(6) Where a ship entitled to be registered in Mauritius is so registered, the ship shall not be registered under the law of another jurisdiction except pursuant to permission granted under section 56.

15. Port of registration

The Port of Port Louis shall be the port of registration of every ship registered under this Part and the Port to which it belongs.

16. Ownership of Mauritius ships

(1) For the purposes of this Act, a person is qualified to be the owner of a Mauritius ship where he is –

- (a) a citizen of Mauritius;
- (b) a body corporate incorporated in Mauritius and the place where meetings of its directors are regularly held is in Mauritius; or
- (c) a maritime entity.

(2) Subject to subsection (3), a ship shall be entitled to apply for registration as a Mauritius ship if it is owned by one or more persons qualified to be owners of Mauritius ships by virtue of subsection (1).

(3) Where the holders of the majority interest in a ship are not resident in Mauritius, the ship shall only be entitled to be registered if a representative person resident in Mauritius is appointed in relation to the ship, who may be the managing owner of that ship so nominated for the purpose.

(4) For the purposes of subsection (3), one or more persons shall be treated as owning a majority interest in a ship if there is vested in that person, or in those persons taken together, the legal title to 51 or more of the 100 shares into which the property in the ship is divided for the purposes of section 13.

17. Representative person

(4) Where, under section 16(3), there is a requirement for a representative person, the owner of the ship shall ensure that, so long as the ship remains registered, an individual or body corporate remains so appointed.

(5) The owner of a ship in relation to which a representative person is appointed shall –

- (a) on application for the ship to be registered, notify the Registrar of the name and address of the representative person; and
- (b) in the event of a change in the identity, or in the address, of the representative person so appointed, notify the Registrar of the name and address of the new representative person, or of the new address, as the case may be, as soon as practicable after the change occurs,

and the Registrar shall record any particulars notified to him in the Register.

(6) Every representative person shall, on a request by the Registrar –

- (a) provide information with respect to the ship in relation to which he is a representative person, or the owner of the ship; and
- (b) carry out such instructions with respect to his duties and responsibilities in relation to the ship or those of its owner as the Registrar may give.

(4) (a) Subject to paragraph (b), a representative person shall, for the purposes of this Act –

- (iii) remain as the representative person in relation to the ship for which he was so appointed; and
- (iv) be subject to all the requirements of this Act applicable to representative persons and to owners,

until such time as the Registrar is notified in accordance with subsection (2) (b) of a change in the identity of the representative person.

(b) Paragraph (a) shall not apply where the Registrar is satisfied that it is not desirable or appropriate that the representative person remain as such.

18. Equitable interests

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

(7) Where, on the bankruptcy of a registered owner or mortgagee, his title is transmitted to his trustee in bankruptcy, that person may be registered as the owner or mortgagee of a Mauritius ship or of a share in the ship, where the ship remains entitled to be registered as a Mauritius ship under section 16.

(8) The expression “beneficial interest”, where used in this Part, includes interests arising under contract or by operation of law, and without prejudice to subsection (1) or to the powers of disposition and of giving receipts conferred by this Act on registered owners and mortgagees, interests arising under contract or by operation of law may be enforced by or against owners and mortgagees of ships in respect of their interest therein in the same manner as in respect of any other personal property.

(9) Where a person is beneficially interested, otherwise than by way of mortgage, in a ship or a share in a ship registered in the name of some other person as owner, the person so interested shall, as well as the registered owner, be subject to all pecuniary penalties imposed by this Act or any other enactment on the owner of a ship or a share in the ship.

Sub-Part II – Registration (other than bareboat charter ships)

19. Application for registration

(1) Every application for the registration of a ship shall be made to the Registrar in a prescribed form which shall contain the name and address of the applicant and sufficient information to enable the ship to be identified.

(2) Every application under subsection (1) in respect of a ship which has, immediately before the application, been registered in the registry of a foreign state shall be accompanied by a certified extract of the register of that registry pertaining to that ship.

(3) Every application under subsection (1) shall be supported –

- (a) in the case of a new ship, by the builder’s certificate; and
- (b) in the case of a ship which is not new, by a bill of sale or other equivalent document acceptable to the Registrar, evidencing the most recent transfer of ownership.

- (4) Every application under subsection (1) shall be made -
 - (a) in the case of an individual -
 - (i) by the person requiring to be registered as owner;
 - (ii) by one or more of the persons so requiring if more than one; or
 - (ii) or by his or their agent; and
 - (b) in the case of a body corporate or a maritime entity, by its agent, (and the authority of the agent shall be testified by writing), if appointed by individuals or maritime entities, under the hands of the appointers, and, if appointed by a body corporate, under the common seal of that body corporate or by deed or instrument under seal.

(10) Every application under subsection (1) shall be accompanied by a declaration of ownership –

- (a) made by the person who is to be registered as owner of the ship or of a share in the ship, or, in the case of a body corporate or a maritime entity, the person authorised to make the declaration on behalf of that body or entity; and
- (b) referring to the ship as described in the certificate of a builder or a surveyor, and containing a statement of the number of shares in the ship the legal title to which is vested in him or, as the case may be, the body corporate or maritime entity, and whether held alone or jointly with any other person.

20. Survey and measurement

(1) Every ship shall, before registration, be surveyed by a surveyor and its tonnage ascertained in accordance with the Tonnage Regulations, and the surveyor shall grant a certificate specifying the ship's tonnage and build, and such other particulars descriptive of the identity of the ship as may be required by the Director which shall be delivered to the Registrar.

(2) Where a ship intended to be registered in Mauritius has already been measured according to the Tonnage Convention in a foreign country, the Director may, without the ship being re-measured, treat it as being of the tonnage denoted by its previous certificate of registration, and in such a case the ship shall be considered to be in compliance with this section for the purposes of registration, except where a surveyor determines otherwise, in which case he shall issue a certificate to that effect, and the Director shall direct that ship to be re-measured in accordance with this section.

(3) Where the tonnage of a ship has been determined, that tonnage shall be treated as the tonnage of the ship until the ship is re-measured following a change to its physical dimensions, and in such a case the Register shall be amended accordingly.

(4) Where the tonnage of a ship has been determined, the Director shall issue a tonnage certificate to the ship.

(5) Where, under subsection (2), a ship is treated as being of the tonnage denoted by its previous certificate of registration, it may be issued with a tonnage certificate, unless it is in possession of a valid International Tonnage Certificate.

21. Carving and marking

(1) Subject to subsections (2) and (3), every ship shall, before registration, be marked permanently and conspicuously to the satisfaction of the Director in the following manner -

- (a) (i) its name shall be marked on each of its bows, and its name and the name of its port of registration shall be marked on its stern, in letters of a contrasting colour so as to be clearly visible of a length of not less than 10 centimetres, and of proportionate breadth; or
- (ii) its name and the name of its port of registration shall, with the Director's approval, be marked on its stern in the manner provided in subparagraph (i);
- (b) its official number and net tonnage shall be permanently marked on a main part of the ship's permanent structure that is readily visible and accessible in such manner as may be specified by a surveyor;

- (c) in the case of a ship built after 1 May 1988, a scale of metres, denoting its draught of water shall be marked on each side of its stem and of its stern post in figures at 20 centimetres' intervals, the capital letter "M" being placed after each metre figure, the top figure of the scale showing the metre figure and the lower line of the figures coinciding with the draught line so denoted, the figures and letters being not less than 10 centimetres in length and being marked by being cut in and painted in a contrasting colour so as to be clearly visible; and
- (d) in the case of a ship built before 1 May 1988, the marking shall be as specified in paragraph (c) or, a scale of feet denoting its draught of water shall be marked on each side of its stem and of its stern post in Roman capital numerals or in figures, not less than 15 centimetres in height, the lower line of such numerals or figures to coincide with the draught line so denoted, and the numerals or figures shall be marked by being cut in and painted in a contrasting colour so as to be clearly visible.

(3) The Director may exempt a ship or a class of ships from any requirement of this section subject to such conditions as he may impose.

(3) Every pleasure vessel shall be marked in such manner as may be prescribed,

22. Identification number

(5) Subject to subsection (4), every ship to which the ISPS Code applies shall have its identification number permanently marked in a contrasting colour –

- (a) in a visible place on the stern of the ship or on either side of the hull, amidships port and starboard, above the deepest assigned load line on either side of the superstructure or, in the case of passenger ships, on a horizontal surface visible from the air; and
- (b) in an easily accessible place on one of the end transverse bulkheads of the machinery spaces, as defined in regulation 11-2/ 3.30 of the Safety Convention, or on one of the hatchways or, in the case of tankers, in the pump-room or, in the case of ships with ro-ro spaces, as defined in regulation 11-2/ 3.41 of the Safety Convention, on one of the end transverse bulkheads of the ro-ro spaces.

(6) The markings referred to in subsection (1) (a) shall be not less than 200 millimetres in height, and that referred to in subsection (1) (b) shall not be less than 100 millimetres in height, the width of the marks being proportionate to the height.

(7) The markings may be made by raised lettering, by cutting them in, by centre-punching them or by any other equivalent method of marking which ensures that the markings are not easily expunged.

(8) The Director shall approve the method of marking a ship's identification number where it is constructed of material other than steel or metal.

23. Name of ship

(5) A ship shall not be described by a name other than that under which it is registered.

(6) A change shall not be made in the name of a ship without the written permission of the Registrar.

(7) A request for permission under subsection (2) shall be made by application in writing and, if the request is reasonable, the Registrar may grant permission, and require notice of the change to be published in such manner as he may specify.

(8) Where permission is granted under subsection (3), the name of the ship shall be altered in the Register, in the ship's certificate of registration and on its bows and stern.

24. National colours

(5) The flag of the Republic of Mauritius shall constitute the national colours of a Mauritius ship.

(6) A Mauritius ship shall hoist the proper national colours –

- (a) on a signal being made to it by any ship in the service of the Government;
- (b) on entering or leaving any foreign port; and
- (c) on entering or leaving a Port.

25. Insurance cover

(3) Every Mauritius ship shall carry insurance cover against risks of loss or damage to third parties, and in particular –

- (a) in respect of a shipowner's liabilities to a crew member under Part IV; and
- (b) against claims in respect of loss or damage caused by any cargo carried on board the ship.

(4) Every ship anchoring in, or trading in or from, Mauritius waters or entering a Port shall, in addition, carry insurance cover against wreck removal expenses in such amount as the Director may approve.

26. Registration and refusal to register

(5) Where the Registrar determines in respect of an application under section 19 that –

- (a) the ship has been duly carved and marked and that the appropriate survey or measuring certificate has been provided;
- (b) the particulars of the ship submitted to him as required by section 19 (1) are correct;
- (c) title to the ship has been adequately proved; and
- (d) the other relevant requirements of this Part have been met,

he shall register the ship by entering in the Register the particulars of the ship and its owner in such manner as may be prescribed and grant to the owner of the ship a certificate of registration containing such particulars as may be prescribed.

(6) Where the Registrar determines otherwise than as provided in subsection (1), he shall, subject to subsection (3), refuse the application and inform the applicant of his decision.

(7) Where the Registrar determines that the information or evidence referred to in this section is not correct or sufficient, he may require the owner to submit supplementary information or evidence.

(8) The Registrar may refuse to register a ship where he is satisfied that having regard to –

- (a) the condition of the ship so far as is relevant to safety or to a risk of pollution;
- (b) the safety, health and welfare of persons employed or engaged in any capacity on board the ship;
- (c) the possibility that the ship is being used for an unlawful purpose; or
- (d) the record of the owner's management and operational quality including matters mentioned in paragraphs (a) to (c),

it would be detrimental to the interests of Mauritius or to international shipping for the ship to be registered.

27. Retention of documents

(7) Where a ship is registered, the Registrar shall retain a copy of any builder's certificate or bill of sale or other evidence of title produced on registration, as well as any certificate of measurement or survey, and all declarations made in connection with registration as required by this Part.

(8) Every document which has been produced to the Registrar to establish title shall be returned to the applicant after it has been stamped by the Registrar to indicate that it has been used for the registration of a ship.

28. Right of owner and mortgagee

(4) Subject to any right or power appearing from the Register to be vested in any other person, the registered owner of a ship or a share in a ship may dispose of it where the disposal is made in accordance with this Act.

(5) Any interest arising under contract or by operation of law shall subsist in relation to a ship or a share in a ship and may be enforced by or against the owner or mortgagee of a ship in respect of his interest in the ship or share in it.

(6) The registered owner of a ship or of a share in a ship may give a valid receipt for any money paid or advanced by way of consideration on any disposal of the ship or share.

29. Alterations to ships

(3) Where a registered ship is so altered as not to correspond with the particulars relating to its tonnage or description contained in the Register, the Registrar shall, on application made to him and on receipt of a certificate from a surveyor stating the particulars of the alteration, cause the alteration to be registered or direct that the ship be registered anew.

(4) For the purpose of the registration of an alteration to a ship, the ship's certificate of registration shall be produced to the Registrar, and he shall, in his discretion, retain the certificate and grant a new certificate containing a description of the ship as altered, or endorse and sign on the existing certificate a notation of the alteration.

(3) The Registrar shall enter in the Register the particulars of the alteration, and the fact that a new certificate has been granted, or that the existing certificate has been endorsed.

30. Transfer or transmission of ship or share

Subject to section 35, where there is a transfer or transmission of a Mauritius ship or a share in it –

- (c) the person ceasing to own the ship or share, or in the event of his death, his heirs, shall notify the Registrar and surrender the certificate of registration; and
- (d) the certificate of registration shall be cancelled and the registration frozen pending an application for the registration of the transfer or transmission by the new owner of the ship or share.

31. Transfer of ship

(1) A transfer of a registered ship or of a share in it shall be effected by a bill of sale containing a description of the ship as in the surveyor's certificate, or some other description sufficient to identify the ship to the satisfaction of the Registrar, and the bill of sale shall be executed by the transferor in the presence of, and attested by, a witness.

(2) The transferee shall be entitled to be registered as owner if he makes and signs a declaration with reference to the ship to the effect that he is qualified to own a Mauritius ship and that, to the best of his knowledge and belief, the ship is otherwise entitled to be registered.

- (3) Where there is a transfer of a registered ship –

- (a) the new owner shall, within 30 days of the transfer, apply to the Registrar, in such form as may be approved by him, for the transfer to be registered; and
- (b) where the transfer is of all the shares in the ship, and no application is made under paragraph (a), the Registrar may cancel the registration of the ship and the certificate of registration; or
- (c) where the transfer is of one or more shares in the ship, and no application is made under paragraph (a), the Registrar shall serve a notice on the remaining registered owners notifying them that, unless an application to transfer the share or shares is made within 30 days of the date of the notice, the registration of the ship and the certificate of registration may be cancelled.

(4) Every application for a transfer under subsection (3) shall be accompanied by a duly executed bill of sale together with a declaration referred to in subsection (2), and where the ship is entitled to be registered, the Registrar shall enter in the Register the name of the transferee as owner of the ship or share, endorse the bill of sale indicating the date and time of the endorsement and issue a new certificate of registration.

32. Transmission of property

(1) Where the property in a registered ship or share in it is transmitted to a person by any lawful means other than a transfer under section 31 and the person is qualified to be the owner of a Mauritius ship –

- (c) that person shall authenticate the transmission by making and signing a declaration identifying the ship and containing the statements referred to in section 31 (2) and a statement of the manner in which the property has been transmitted;
- (d) where the transmission is as a result of bankruptcy, the declaration shall be accompanied by such evidence as is acceptable to the Registrar as proof of the title of person claiming under bankruptcy;
- (e) where the transmission is as a result of death, the declaration shall be accompanied by an affidavit of succession or such other proof as the Registrar may accept; and

- (f) where the transmission is consequent upon an order of a Court, the declaration shall be accompanied by a copy of the order or judgment of that Court.

(3) Where there is a transmission of a Mauritius ship pursuant to subsection (1) –

- (a) the new owner shall apply to the Registrar in a form approved by him, enclosing the declaration referred to in subsection (1) (a) and the proof required by subsection (1) (b), (c) or (d), for the transmission to be registered;
- (b) where the transmission is of all the shares in the ship, and application is not made within a reasonable time, the Registrar may cancel the registration of the ship and the certificate of registration; and
- (c) where the transmission is of one or more shares in the ship, and application is not made within a reasonable time, the Registrar shall serve a notice on the remaining registered owners notifying them that, unless an application to register the transmission of the share or shares is made within 30 days of the date of the notice, the registration of the ship and the certificate of registration may be cancelled.

(3) The Registrar, on receipt of an application under subsection (2), and on being satisfied that the ship remains entitled to be registered, shall enter in the Register the name of the person entitled under the transmission as owner of the ship or share in the property which has been transmitted, and where there is more than one such person, they shall be considered as one person.

33. Registration anew

(4) Where the ownership of a ship is changed, the Registrar may, on the application of the owner of the ship, register the ship anew.

(5) Where a ship is to be registered anew, the Registrar shall carry out the same procedure as in the case of a first registration, and upon surrender of the existing certificate of registration, and compliance with all other requirements for registration, the Registrar shall register the ship anew and grant a new certificate.

(6) The Registrar shall also cause the names of all persons appearing on the Register to be interested in the ship as owners or mortgagees to be entered in the new registration, and the registration anew shall not in any way affect the rights of any of those persons.

34. Refusal to register on transfer or transmission

Where, on an application for transfer or transmission of a ship or a share, it is determined by the Registrar that the ship is not eligible to be registered, he shall serve a notice of termination on the owner of the ship, and the registration of the ship shall terminate by virtue of this section at the end of the period of 14 days beginning with the date of the service of the notice.

35. Transfer by order of Court

Where a Court, under this Act or otherwise, orders the sale of a ship or of a share in it, the order of the Court shall contain a declaration vesting in some person named by the Court the right to transfer that ship or share, and that person shall thereupon be entitled to transfer the ship or share in the same manner and to the same extent as if he were the registered owner, and the Registrar shall deal with any application relating to the transfer of the ship or share made by the person so named as if that person were the registered owner.

36. Power of Judge

A Judge may, if he thinks fit and on the application of any interested person, make an order prohibiting for a specified time any dealing with a ship or any share in it, and the Registrar shall, on being served with the order or an official copy of the order, comply with it.

37. Duplicate certificate of registration

(8) The Registrar may, where he is satisfied upon submission of proof that a certificate of registration has been lost, stolen or destroyed or has become defaced or illegible, issue to the owner a duplicate of that certificate.

(9) Where a duplicate certificate is issued, the original, if then available or if subsequently found or recovered, shall be surrendered to the Registrar.

(10) The Registrar may, in special circumstances, issue a facsimile or other electronically transmitted version of the duplicate certificate which shall be surrendered as soon as an original duplicate certificate is received by the owner.

38. Provisional certificate of registration

(7) Where a ship becomes entitled to be registered while at a foreign port, the proper officer may, on the application of the owner or master of the ship, grant to him a provisional certificate stating –

- (a) the name of the ship;

- (b) the time and place of the purchase of the ship and the name of the purchaser; and
- (c) the best particulars respecting the tonnage, build and description of the ship which the person granting the certificate is able to obtain,

and shall forward a copy of the certificate at the first convenient opportunity to the Registrar.

(8) A provisional certificate shall have the effect of a certificate of registration until –

- (a) the expiration of 3 months from its date; or
- (b) the ship's arrival at the Port of Port Louis,

whichever occurs first, and shall then cease to be of any effect.

(9) Where a provisional certificate has been granted for a ship under this section, no further provisional certificate shall be granted to the ship within one year of the date of that certificate, except with the consent of the Director.

39. Interim registration

(7) The Registrar may, subject to subsection (2), where –

- (a) there is in existence a written contract for the transfer of a ship or a share in a ship;
- (b) under the terms of that contract, the owner has agreed –
 - (i) to transfer the ship or a share in the ship to a person qualified to own Mauritius ships and who intends to register the ship; and
 - (ii) to provide the transferee with a bill of sale of the ship and a certificate stating that the ship is free from registered mortgages; and
- (c) the ship will, on the execution of the bill of sale, be entitled to be registered,

register the ship by entering the particulars referred to in section 26 (1) and grant to the transferee a certificate of registration which is valid for 21 days from its date of issue.

- (8) The entry in the Register shall only be made where –
- (a) the transferee makes a declaration confirming his qualifications to own a Mauritius ship and containing –
 - (i) a statement that there is in existence a written contract for the transfer of the ship or a share in the ship and that the ship is not registered in Mauritius;
 - (ii) a statement that the owner has agreed –
 - (A) to transfer the ship or a share in the ship to the transferee;
 - (B) to provide the transferee with a bill of sale of the ship and a certificate stating that the ship is free from registered mortgages; and
 - (C) to procure the termination of the registration of the ship in the country in which it is then registered; and
 - (iii) a statement that, to the best of his knowledge and belief, on the execution of the bill of sale the ship will be owned by persons qualified to be owners of Mauritius ships, and the ship is otherwise entitled to be registered; and
 - (b) there is produced to the Registrar a certified copy of the contract referred to in the declaration made under paragraph (a).

(9) Where a ship is registered under subsection (1), the transferee shall, within 21 days of the date of issue of the certificate of registration, deliver to the Registrar a declaration made in accordance with section 19 (5) and a bill of sale executed under the contract, and the Registrar shall then make the entries in the Register required by section 26 (1) and grant a certificate of registration under that section.

(10) Where the transferee does not comply with the requirements of subsection (3), the registration of the ship shall automatically terminate at the expiry of the interim certificate which shall be delivered to the Registrar.

(11) Where a ship is registered under subsection (1), it shall be deemed to be a Mauritius ship for the purposes of this Act and it shall not display any colours other than the national colours of Mauritius.

(12) Where a ship is registered under subsection (1), any act or thing required to be done or not done under this Act by the owner of a ship shall be deemed to be required to be done or not done by the transferee.

40. Termination of registration

(1) The Registrar may, subject to subsection (6), terminate the registration of a ship where -

- (a) he is satisfied that -
 - (i) having regard to the matters mentioned in section 26 (1), it would be detrimental to the interests of the Republic of Mauritius or to international shipping for the ship to continue to be registered;
 - (ii) a fine imposed on the owner of the ship for a contravention of this Act has remained unpaid for more than 3 months; or
 - (iii) a summons for any such contravention has been served on the owner of the ship and the owner has failed to appear at the time and place appointed for the hearing;
- (b) the ship is no longer entitled to remain registered;
- (c) any fee due in respect of the ship has remained unpaid for a period of more than one year;
- (d) the owner states that he wishes to terminate the registration of the ship;
- (e) the ship becomes a total loss or is otherwise destroyed; or
- (f) section 17 (1) is contravened.

(2) Where a registered ship is in a condition referred to in subsection (1) (e), every owner of the ship or a share in it shall, immediately upon being made aware of the event, inform the Registrar who shall make an entry to that effect in the Register.

(3) Where the registration of a ship is terminated under subsection (1), the Registrar -

- (a) shall notify every registered mortgagee of the termination of the ship's registration and a mortgagee's interest in the ship shall remain registered except where the Registrar is satisfied that the mortgagee was privy to the possibility of the ship being used for an unlawful purpose, in which case the registration of his interest shall be deleted; and
- (b) may, at the request of the owner, issue a certificate of deletion confirming that the ship has been deleted from the Register, and stating the status of any mortgage registered in respect of that ship.

(10) Where registration is terminated under subsection (1) (d) or (e), the Registrar shall issue a certificate of deletion to the owner of the ship.

(11) On receipt of a certificate of deletion, the owner shall surrender the ship's certificate of registration to the Registrar for cancellation and remove from the ship the marking required under this Part and send a written confirmation of the removal to the Registrar.

(12) Where –

- (a) subsection (1) (a), (b), (c) or (f) applies, the Registrar may serve notice on the owner to produce, within 21 days, sufficient evidence that the ship is eligible to remain on the Register and if, at the expiry of that period, no such evidence is produced –
 - (i) extend the notice and ask for further information or evidence; or
 - (ii) serve a final notice informing the owner of the termination of the ship's registration, and such termination shall take effect 7 days after the service of that notice;
- (b) the Registrar serves a notice under this subsection on the owner of a ship in respect of which a mortgage is registered, he shall send a copy of that notice to the mortgagee at the address recorded for him in the Register;

- (c) a ship's registration is terminated under this subsection, the Registrar shall issue a certificate of deletion and the owner of the ship shall surrender its certificate of registration.

Sub-Part III – Mortgages and maritime liens

41. Mortgage of ship or share

(6) A registered or provisionally registered ship, a ship under construction or a share in any such ship may be made a security for the repayment of a loan or the discharge of any other obligation by means of a deed of mortgage in such form as may be prescribed.

(7) The Registrar shall register deeds of mortgage in the order in which they are produced to him and sign on each deed a statement to the effect that it has been registered.

(8) Where it is stated in the deed of mortgage that no further mortgage on a ship may be created without the written consent of the mortgagee, the Registrar shall make a note in the Register to that effect and any mortgage registered in contravention of this provision shall be of no effect.

(9) Where it is stated in the deed of mortgage that no transfer of ownership or termination of registration of a ship pursuant to section 40 (1) (d) may be made without the written consent of the mortgagee, the Registrar shall make a note in the Register to that effect and any recording in the Register of a transfer of ownership or a termination of the registration of the ship under that paragraph shall be of no effect.

(10) Where the registration of a ship under construction is transferred to another appropriate part of the Register, any entry relating to a mortgage shall also be transferred to the same appropriate part of the Register.

42. Priority of mortgages

(4) Where 2 or more mortgages are registered in respect of the same ship or share, the priority of the mortgagees between themselves shall, subject to subsection (2), be determined by the order in which the mortgages were registered.

(5) Where it is so prescribed, the Registrar may give an intending mortgagee a priority notice which, when recorded in the Register, shall determine the priority of the interest to which the notice relates.

43. Discharge of mortgage

(4) Subject to subsection (2), where a registered mortgage is discharged, the Registrar shall, on production of the deed, with a receipt for any sum due endorsed on it, make an entry in the Register to the effect that the mortgage has been discharged.

(5) Where, for good reason, the deed cannot be produced to the Registrar, he may, on being satisfied that the mortgage has been properly discharged, record in the Register that the mortgage has been discharged.

(6) The termination of the registration of a ship shall not affect any entry in the Register relating to an undischarged mortgage of that ship or any share in it except where the Registrar is satisfied that a person appearing on the Register to be interested as a mortgagee has consented to the entry ceasing to have effect.

44. Powers of mortgagee

(1) Where under a deed the mortgagee is entitled to take possession of a ship or where the mortgagor allows the ship to remain burdened with a maritime lien which impairs the security of the mortgage, the mortgagee may take possession of the ship and shall, on taking possession, have all the rights and powers of an owner in possession of the ship.

(2) Subject to subsection (3), every registered mortgagee shall have power, if the mortgage money is due, to sell the ship or share in respect of which he is registered, and to give effectual receipt for the purchase money.

(3) Where 2 or more mortgagees are registered in respect of the same ship or share, a subsequent mortgagee shall not, except under an order of a Court, sell the ship or share without the concurrence of every prior mortgagee.

45. Bankruptcy of mortgagor

A registered mortgage of a ship or share shall not be affected by any act of bankruptcy committed by the mortgagor after the date of the registration of the mortgage, and the mortgage shall be preferred to any right, claim or interest of any other creditor of the bankrupt or of any trustee or assignee on his behalf.

46. Transfer and transmission of mortgage

(1) A registered mortgage of a ship or share may be transferred to any person, and on production of the instrument effecting the transfer, the Registrar shall record it by entering in the Register the name of the transferee as mortgagee, and sign on the instrument of transfer a statement to the effect that it has been registered by him.

(2) (a) Where the mortgage interest in a ship or share is transmitted to a person by any lawful means, other than by a transfer under subsection (1), that person shall produce to the Registrar a statement of the manner in which, and the person to whom, the property has been transmitted together with such evidence as is required for a transmission of the ownership of a ship or share.

(b) The Registrar shall, on receipt of a statement referred to in paragraph (a), enter the name of the person entitled under the transmission in the Register as mortgagee of the ship or share.

47. Maritime liens

(1) Subject to subsection (2), a maritime lien may be created to secure a claim -

- (a) for wages or other sum due to a master, officer or crew member of a ship in respect of his employment on the ship, including costs of repatriation and social insurance contributions payable on his behalf;
- (b) in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;
- (c) for remuneration of salvage of a ship;
- (d) for port, canal and other waterways dues and pilotage dues;
or
- (e) based on tort arising out of physical loss or damage caused by the operation of the ship other than loss of or damage to cargo, containers and passengers' effects carried on the ship.

(2) No maritime lien shall attach to a ship to secure a claim referred to in subsection (1) (b) or (e) which arises out of or results from -

- (c) damage in connection with the carriage of oil or other hazardous or noxious substances by sea for which compensation is payable to the claimant under the appropriate International Convention; or
- (d) the radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or of radioactive products or waste.

(6) A maritime lien shall remain attached to the ship, notwithstanding any change of ownership, registration or flag.

(4) (a) A maritime lien shall be extinguished after a period of one year unless, before the expiry of such period, the vessel has been arrested or seized and the arrest or seizure has led to a judicial sale.

(b) The one-year period shall commence -

- (i) in the case of a maritime lien referred to in subsection (1) (a), on the claimant's discharge from the ship; and
- (ii) in the case of a maritime lien referred to in subsection (1) (b) to (e), when the claim arises.

(c) The one-year period shall not be subject to interruption or suspension except that time shall not run during the period that the arrest or seizure of the ship is not permitted by law.

(5) (a) Where a claim secured by a maritime lien is assigned or a person is subrogated to such a claim, there shall be a simultaneous assignment of, or subrogation to, the maritime lien.

(b) The holder of a maritime lien shall not be subrogated to the indemnification payable by an insurer to a ship owner under a contract of marine insurance.

48. Priority of maritime liens

(1) A maritime lien shall take priority over mortgages and preferential rights registered under the Bankruptcy Act and privileges arising under articles 2143 to 2162 of the Code Civil Mauricien, and except as provided in subsection (2), no other claim shall take priority over it.

(2) Maritime liens shall -

- (a) rank in the order in which they are listed in section 47 (1), except that a maritime lien securing a claim for remuneration of salvage shall take priority over every other maritime lien which has attached to the ship before the operation giving rise to the lien was performed;
- (b) in the case of claims arising under paragraphs (a), (b), (d) and (e) of section 47 (1), rank *pari passu* among themselves;
- (c) in the case of claims for remuneration of salvage arising under paragraph (c) of section 47 (1), rank in the inverse order of the time when the claim accrued, and for this purpose a claim shall be deemed to have accrued on the day on which the salvage operation was terminated.

(3) A claim in respect of general average contributions, and other maritime claims based on contract, shall rank lower in priority to the maritime liens set out in section 47 (1) and to mortgages.

49. Right of retention

(1) There shall be a right of retention in respect of a ship in the possession of a shipbuilder for securing a claim for the building of the ship, or of a ship repairer for securing a claim for the repair or reconstruction of the ship, effected during that possession.

(2) A right of retention shall be postponed to the maritime liens set out in section 47 (1) but shall take priority over any registered mortgage or other preferential right so long as the ship is in the possession of the shipbuilder or ship repairer.

(3) Subject to subsection (4), the right of retention shall be extinguished when the ship ceases to be in the possession of the shipbuilder or ship repairer, otherwise than in consequence of an arrest or seizure of the ship.

(4) Where at the time of the judicial sale of a ship it is in the possession of a shipbuilder or ship repairer, he shall be entitled to obtain satisfaction of his claim from the proceeds of sale of the ship, and his priority ranking under this section shall be preserved where he surrenders possession of the ship to the purchaser.

50. Judicial sale of ships

(1) Notwithstanding any other enactment, this section shall apply to the judicial sale of a ship following its arrest or seizure for the purpose of enforcement of a mortgage or a maritime lien.

(2) The Court shall, by written notice issued at least 30 days before the judicial sale of a ship, inform the owner and every mortgagee, holder of a charge or of a maritime lien who has notified the Court of his claim, of the pending sale.

(3) The notice referred to in subsection (2) shall contain -

- (a) the time and place of the sale, if they are certain, or if they are not certain, the approximate time and anticipated place followed by confirmation, at least 7 days in advance of the sale, of the actual time and place; and
- (b) such particulars concerning the sale as the Court determines are sufficient to protect the interests of persons entitled to notice.

(11) Where a ship is sold by judicial sale, every mortgage or other charge, except those assumed by the purchaser with the consent of the holder, and every lien or other encumbrance shall cease to attach to the ship when the ship is within the physical jurisdiction of the Court conducting the sale and the sale is conducted in accordance with this Act.

(12) The proceeds of sale shall be disposed of by the Court in the following order –

- (a) costs and expenses arising out of the arrest or seizure and the subsequent sale of the ship, including costs and expenses relating to the maintenance of the ship, crew wages and other sums referred to in section 47 (1) (a) incurred from the time of arrest or seizure;
- (b) costs of removal of a wrecked, stranded or sunken ship within the jurisdiction of Mauritius where the wreck has been removed by or under the direction of the Director in the interests of safe navigation or protection of the marine environment;
- (c) maritime, liens, mortgages, charges and other rights and claims provided for in this Sub-Part ranked in priority according to the relevant provisions in this Sub-Part; and
- (d) the balance, which shall be freely transferable, payable to the owner.

(13) Following a judicial sale, the Court may, at the request of the purchaser, issue a certificate stating that the ship has been sold free of all encumbrances except those assumed by the purchaser, provided there has been compliance with subsection (4).

(14) Where there has been a judicial sale of a Mauritius ship, the Registrar shall, on production to him of the certificate referred to in subsection (6), delete all mortgages from the Register except those assumed by the purchaser, and register the ship in the name of the new owner or issue a certificate of deletion for the purpose of registration anew of the ship, as the case may be.

Sub-Part IV – Bareboat charter ships

51. Registration of bareboat charter ship

- (1) Where a ship -
- (a) is registered under the laws of a foreign country;
 - (b) is chartered by the owner or by a charterer with the owner's consent to a person who is qualified to own a Mauritius ship;
 - (c) is operated under a bareboat charter for a period of not less than 2 years, or such lesser period as may be authorised by the Director; and
 - (d) is authorised by the proper officer of the foreign country to be registered in a bareboat charter registry of another jurisdiction, and an application for the registration of the ship under this section is made in such form and manner as may be prescribed,

the Registrar may register the ship, enter in the Register the particulars of the ship and issue a certificate of registration.

(2) The registration of a ship under this section shall, unless earlier terminated under section 55, terminate at the end of the bareboat charter period.

(3) Where a ship is registered under this section or where the registration of the ship is terminated under section 55, the particulars in respect of the ship shall be notified by the Registrar to the proper officer of the foreign country.

(4) Where a ship is registered under this section, it shall be a Mauritius ship for the purposes of this Act and, during the period that it is so registered, shall not display any colour other than the national colours of Mauritius.

52. Application of Act to bareboat charter ships

(1) This Act shall apply to a bareboat charter ship subject to the modifications set out in subsection (2).

(2) (a) Sections 13 (a) to (e), 18, 19 (3), 26 (1) (c) and 30 to 46 shall not apply to a bareboat charter ship.

(b) Any act or thing required to be done or not done under this Act by an owner of a ship shall be required to be done or not done by the charterer, and -

- (i) the charterer shall be liable for doing or omitting to do such act or thing as if he were the owner of the ship; and
- (ii) a reference to “owner” in this Act shall, in the case of a bareboat charter ship, be deemed to be a reference to “charterer”.

(c) Instead of the particulars referred to in section 19 (1), the following particulars shall be entered in the Register in respect of a bareboat charter ship -

- (i) the name of the charterer;
- (ii) the name and address of the owner;
- (iii) the name and address of any person who has been granted a mortgage of the ship or a share in it and such particulars of the mortgage as the Registrar may request; and
- (iv) the previous name, if any, of the ship.

(d) The declaration required under section 19 (5) shall be replaced by a statement that the ship is subject to a bareboat charter.

(e) A bareboat charter ship shall not be required to be surveyed for the purpose of ascertaining the tonnage of the ship under section 20 if there is in force in respect of the ship an International Tonnage Certificate.

(f) The Registrar shall retain in his possession, in addition to the surveyor's certificate issued under section 20, the certified copy of the bareboat charter.

53. Interest in ships registered under section 51

In respect of a ship registered under section 51, neither the rights nor proprietary interests of the owner, nor the rights and obligations of parties to a contract, bill of sale, mortgage, charge or other instrument creating or disposing of an interest in the ship whether existing at the date of registration of the ship under section 51 or created thereafter, shall be affected by such registration or governed by this Act.

54. Refusal to register bareboat charter ship

The Registrar may, in addition to the reasons specified in section 26 (4), refuse to register a ship under section 51 where –

- (a) it is evident that the owner or a mortgagee has not consented to the registration of the ship;
- (b) the tonnage of the ship cannot be determined in accordance with this Act;
- (c) the ship cannot be marked in accordance with this Act;
- (d) the ship would be precluded by the law of a foreign country from flying the national colours of Mauritius; or
- (e) the bareboat charter has an unexpired period of registration of less than one year on the date when the application to register the ship is made.

55. Termination of registration of bareboat charter ship

(1) The Registrar may, in addition to the reasons specified in section 40 (1), terminate the registration of a bareboat charter ship where -

- (a) it ceases to be operated under a bareboat charter;
- (b) the transfer by the charterer of his rights and obligations causes the registration of the ship to cease;
- (c) the registration of the ship in the foreign country is closed or annulled; or

- (d) the authorisation referred to in paragraph 51 (1) (d) is revoked or withdrawn.

(2) Where the Registrar intends to terminate the registration of a bareboat charter ship, he shall serve a notice to that effect on the charterer stating the grounds for the termination.

(3) The Registrar shall give an opportunity to the charterer to show cause within such period as may be specified in the notice referred to in subsection (2) as to why the registration should not be terminated.

56. Registration of Mauritius ships in foreign bareboat charter registry

(1) The Registrar may, with the Minister's approval, on an application to that effect made in the prescribed manner, grant permission to the owner of a Mauritius ship to register the ship in the bareboat charter registry of another jurisdiction where -

- (d) the ship is subject to a bareboat charter pursuant to which the owner is not responsible for the management, operation or control of the ship for the period of the charter;
- (e) every mortgagee of the ship has consented to the permission being granted;
- (f) the owner has delivered to the Registrar –
 - (i) a certified copy of the bareboat charter;
 - (ii) the certificate of registration granted under section 26 (1); and
 - (iii) any other certificate issued in respect of the ship under this Act; and
- (d) the Registrar has received confirmation of acceptance of bareboat charter registration from the proper officer of the country where the ship is intended to be registered.

(2) The registration of the ship under section 26 shall be suspended while the ship is registered in a bareboat charter registry of another country.

(3) The Port of Port Louis shall no longer be the port of registration for a ship in respect of which permission has been granted under this section, and the marking of the name "Port Louis" on its stern as provided in section 21 (1) (a) shall be removed.

57. Consequences of registration under section 56

(1) (a) Where a Mauritius ship is registered pursuant to section 56, any matter in relation to proprietary interests in the ship shall be governed by this Act and the registration of any proprietary interest pertaining to the ship in that other country shall, for the purposes of Mauritius law, be null and void.

(b) The Registrar shall notify the proper officer of the other country of any entry made in the Register in relation to proprietary interests in a ship referred to paragraph (a).

(2) During the period during which the status of bareboat charter registration in the foreign registry is in force, the ship shall cease to pay any fee that may be prescribed and to be subject to the same financial obligations as other Mauritius ships, except for payment of crew fees and radio fees.

(3) A ship that has been registered under section 56 shall not, for the duration of the registration, fly the national colours of Mauritius.

58. Revocation of permission granted under section 56

The Registrar may revoke a permission granted under section 56 –

- (a) where the ship ceases to be registered in the bareboat charter registry at which it is registered;
- (b) where the bareboat charter terminates;
- (c) on an application from the owner or mortgagee of the ship; or
- (d) on the request of the proper officer of the other country.

PART IV – ENGAGEMENT, DISCHARGE AND WELFARE OF SEAMEN

Sub-Part I – General

59. Interpretation of Part IV

- (1) In this Part -
- “crew agreement” has the meaning given to it by section 60;

“relief and maintenance” includes the provision of surgical or medical treatment and such dental and optical treatment (including the repair or replacement of any appliance) as cannot be postponed without impairing efficiency; and

“ship’s boat” includes a life-raft.

(2) A reference in this Part to “going to sea” includes a reference to going to sea from any country outside Mauritius.

(9) For the purposes of this Part –

(a) a seafarer is discharged from a ship when his employment in that ship is terminated; and

(b) a seafarer discharged from a ship in any country and left there shall be deemed to be left behind in that country, notwithstanding that the ship also remains there.

Sub-Part II – Engagement, wages and discharge

60. Crew agreements

(6) An agreement in writing shall be made between each person employed as a seafarer in a Mauritius ship and the person employing him and shall be signed by both parties.

(7) Agreements made under this section with persons employed in the same ship shall be contained in one document (referred to in this Part as a “crew agreement”).

(8) The terms and form of a crew agreement shall be approved by the Director.

(9) A crew agreement or a certified copy shall be carried in the ship to which it relates whenever the ship goes to sea and a copy or extract shall be provided to a seafarer on request.

(10) Before a crew agreement is signed or any condition with any person is added to those contained in a crew agreement, the Superintendent of Shipping or the proper officer, as the case may be, shall be notified.

61. Medical Certificate

(1) Prior to signing the Articles of Agreement, a seafarer shall produce a valid medical certificate attesting that he is medically fit to perform the duties he is to carry out at sea.

(2) Each medical certificate shall state in particular that –

- (a) the hearing and sight of the seafarer concerned, and the colour vision in the case of a seafarer to be employed in capacities where fitness for the work to be performed is liable to be affected by defective colour vision, are all satisfactory; and
- (b) the seafarer concerned is not suffering from any medical condition likely to be aggravated by service at sea or to render the seafarer unfit for such service or to endanger the health of other persons on board.

(3) Unless otherwise provided -

- (a) a medical certificate shall be valid for a maximum period of 2 years unless the seafarer is under the age of 18, in which case the maximum period of validity shall be one year; and
- (b) a certification of colour vision shall be valid for a maximum period of 6 years.

(4) If the period of validity of a certificate expires in the course of a voyage, the certificate shall continue in force until the next port of call where the seafarer can obtain a medical certificate from a qualified medical practitioner, provided that the period shall not exceed 3 months.

62. Premature termination of employment

(1) Where the employment of seafarer terminates before the date contemplated in the agreement and is left on shore by reason of his unfitness or inability to proceed on the voyage, he shall be entitled to wages for time served up to the time of that termination.

(2) Where the employment of a seafarer terminates before the date contemplated in his agreement by reason of the loss or foundering of the ship on which he was employed, he shall be entitled to receive wages in respect of each day on which he is unemployed during a period of 2 months from the date of termination of his service at the rate stipulated in his agreement.

63. Improper discharge

Where a seafarer who has signed a crew agreement is discharged otherwise than in accordance with its terms before the commencement of the voyage, or before one month's wages has been earned, without fault on his part justifying that discharge, and without his consent, the seafarer shall be entitled to receive from the person employing him, in addition to any wages which he has earned, compensation for the damage caused to him by the discharge not exceeding 1 month's wages.

64. Payment of wages and account of wages

(1) Where a seafarer employed under a crew agreement relating to a Mauritius ship leaves the ship on being discharged from it, the wages due to the seafarer under the agreement calculated from the day that the seafarer reports for duty on board shall, subject to this section, be paid to him in full at the time when he leaves the ship (referred to in this section as the "time of discharge").

(2) Where any amount payable to a seafarer is not paid at the time at which it is payable, it shall carry interest at the legal rate except when the failure to pay was due to –

- (a) a reasonable dispute as to liability;
- (b) the act or default of the seafarer; or
- (c) any other cause, not being the wrongful act or default of the person liable to pay his wages.

(3) Where a seafarer, pursuant to section 75, is discharged from a ship outside Mauritius but returns to Mauritius under arrangements made by the person who employed him, this section shall have effect as if for the reference to the time of discharge there were substituted a reference to the time of his return to Mauritius, and as if subsection (6) were omitted.

(10) Where any amount of wages is not paid in cash at the time of discharge, the amount shall be deemed to have been paid –

- (a) on the date when a cheque, money order or postal order for that amount was dispatched by the recorded delivery service of the post office to the seafarer's last known address; or
- (b) on the date when any account kept by the seafarer with a bank or other institution was credited with that amount.

(11) The master of every Mauritius ship shall deliver to every seafarer employed in the ship under a crew agreement an account of the wages due to him under that crew agreement and of the deductions subject to which the wages are payable.

(12) The account shall be delivered not later than 24 hours before the time of discharge or, if the seafarer is discharged without notice or at less than 24 hours' notice, at the time of discharge.

65. Disputes on wages

(1) Any dispute relating to the amount payable to a seafarer employed under a crew agreement may be submitted by the parties to the Superintendent of Shipping for decision but the Superintendent shall not be bound to accept the submission or, if he has accepted it, to decide the dispute, where he is of the opinion that the dispute, whether by reason of the amount involved or for any other reason, ought not to be decided by him.

(2) The decision of the Superintendent on a dispute submitted to him under this section shall be final.

66. Termination of employment due to illness

Where the engagement of a seafarer terminates before the date contemplated in his agreement by reason of his being left ashore at any place outside his port of return, under a medical certificate of unfitness or inability to proceed on a voyage, the seafarer shall be entitled to wages up to the time of the termination.

67. Attachment and assignment of wages

Notwithstanding any other enactment but subject to section 69 –

- (a) the wages due or accruing to a seafarer employed in a Mauritius ship shall not be subject to attachment or assignment;
- (b) an assignment made before they have accrued shall not bind the seafarer, and the payment of the wages to the seafarer shall be valid; and
- (c) a power of attorney or authority for the receipt of the wages shall not be irrevocable.

68. Interest on wages due

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

- (a) a mistake;
- (b) a reasonable dispute as to liability;
- (c) the act or default of the person claiming the amount; or
- (d) any other cause, not being the wrongful act or default of the person liable to make the payment,

may order the payment of interest at the legal rate for the period beginning 7 days after the sum became due and ending when the sum is paid.

69. Allotment of wages

(1) A crew agreement may contain a stipulation that a part of the wages due to a seafarer not exceeding 50 percent of his monthly wages may, during his absence from Mauritius, be allotted to such person and at such time as may be specified in the agreement.

(2) Any person who becomes entitled to an allotment under this section may sue and recover the amount of the allotment as if it were a debt due to him.

70. Right or loss of right to wages

(1) Where a Mauritius ship is wrecked or lost, a master or seafarer whose employment in the ship is thereby terminated before the date contemplated in the agreement shall, subject to subsections (2) and (3), be entitled to wages at the rate payable under the agreement at the date of the wreck or loss for every day on which he is unemployed in the 2 months following that date.

(2) Where a Mauritius ship is sold while outside Mauritius or ceases to be a Mauritius ship and a master's or a seafarer's employment in the ship is thereby terminated before the date contemplated in the agreement under which he is employed, he shall, subject to subsection (3), be entitled to wages at the rate payable under the agreement at the date on which his employment is terminated for every day on which he is unemployed in the 2 months following that date.

(3) A master or seafarer shall not be entitled to wages under subsection (1) or (2) for a day on which he was unemployed, where it is shown that -

- (a) the unemployment was not due to the wreck or loss of the ship or, as the case may be, the termination of his employment on the sale of the ship or its ceasing to be a Mauritius ship; or
- (b) the master or seafarer was able to obtain suitable employment for that day but unreasonably refused or failed to take it.

71. Protection of wages and liens

(1) A seafarer may not renounce his lien, his remedies for the recovery of his wages, his right to wages in case of the wreck or loss of his ship and any right he may have or obtain in the nature of salvage.

(2) Subsection (1) shall not affect any agreement made with a seafarer belonging to a ship which, in accordance with the agreement, is to be employed on salvage service, provides for the remuneration to be paid to him for salvage services rendered by that ship.

(3) Subject to subsection (2), a seafarer employed on a Mauritius ship, other than crew specifically employed for salvage services who have saved or assisted in saving another ship or its property or the life of a person belonging to that ship, shall be entitled to share in the salvage remuneration awarded to his own ship.

72. Master's lien

The master of a ship shall have the same lien for his salary, and all disbursements or liabilities property made or incurred by him on account of the ship, as a seafarer has for his wages.

73. Discharge of seafarer outside Mauritius.

Where it is so prescribed no seafarer shall be discharged outside Mauritius from a Mauritius ship without the consent of the proper officer and on such conditions as may be prescribed.

74. Seafarer left behind abroad

Where it is so prescribed, no seafarer employed in a Mauritius ship shall be left behind outside Mauritius otherwise than on being discharged from the ship or on such conditions as may be prescribed.

75. Discharge where ship ceases to be registered

Where a Mauritius ship ceases to be registered, any seafarer employed in the ship shall be discharged from the ship unless he consents in writing to continue his employment in the ship, and sections 64 to 66 shall apply in relation to his wages as if the ship had remained a Mauritius ship.

76. Death or personal injury

(1) Where a seafarer dies during his employment, his wages shall be payable up to the date of his death to his heirs or to any other person in accordance with the law.

(2) A compensation shall be payable by the person employing a seafarer for the death of, or injury caused to, the seafarer employed on a Mauritius ship, who is not covered under the Workmen's Compensation Act and the compensation shall not be less than that provided under the Workmen's Compensation Act.

(7) Where a seafarer is killed while carrying out any act or duty for the safety of the ship or in its defence, his wages shall be payable in full for the remaining duration of his employment contract in addition to such compensation as may be determined by the Court.

(8) Where a vessel is lost without trace, every seafarer's dependants shall be entitled to receive compensation as may be determined by the Court.

77. Personal effects

Where the personal effects of a seafarer are lost or destroyed by shipwreck, fire on board or any other act of God or case of '*force majeure*', the shipowner shall be liable to compensate the seafarer in an amount determined by the Court.

Sub-Part III – Safety, health and welfare

78. Obligation as to seaworthiness

(1) Subject to subsection (2), in every contract of employment between the owner of a Mauritius ship and the master of, or a seafarer employed in, the ship, there shall be implied an obligation on the owner that the owner, master and agent of the ship charged with –

- (a) loading the ship;
- (b) preparing the ship for sea; or
- (c) sending the ship to sea,

to use all reasonable means to ensure the seaworthiness of the ship at the time of commencement of the voyage and to keep the ship in a seaworthy condition throughout the voyage.

(2) No liability on the owner of a ship shall arise under subsection (1) in respect of the ship being sent to sea in an unseaworthy condition where, owing to special circumstances, the sending of the ship to sea in that condition was reasonable and justifiable.

79. Complaint about provisions or water

(1) Where 2 or more seamen employed in a Mauritius ship consider that the provisions or water for the seamen are not in accordance with such standards as may be prescribed, they may complain to the master who shall investigate the complaint.

(2) Where the seamen are dissatisfied with the action taken by the master as a result of his investigation or by his failure to take any action, they may state their dissatisfaction to him and complain to the Superintendent of Shipping or the proper officer, and the master shall make adequate arrangements to enable the seamen to make their complaint as soon as the service of the ship permits.

(3) The Superintendent of Shipping or proper officer to whom a complaint is made under subsection (2) shall investigate the complaint and may require the master to take such remedial action as he thinks fit.

80. Medical and other treatment during voyage

(1) Where a seafarer, while employed in a Mauritius ship, receives outside Mauritius any surgical, medical, dental or optical treatment, including the repair or replacement of any appliance, which cannot be postponed without impairing efficiency, the reasonable expenses of the treatment shall be borne by the person employing him.

(2) Where a seafarer dies while employed in a Mauritius ship and is buried or cremated outside Mauritius, the expenses of his burial or cremation shall be borne by the person employing him.

(3) Where a Mauritius ship does not carry a doctor among the seamen employed in it, the master shall make arrangements for ensuring that any medical attention on board the ship is given either by him or under his supervision by a person appointed by him for the purpose.

81. Minimum age

(1) No person under the age of 16 shall be employed or engaged, or shall work, on board any Mauritius ship.

(2) No person under the age of 18 shall perform night work on a Mauritius ship except -

- (a) when the effective training of the seafarers concerned, in accordance with established programmes and schedules, would otherwise be impaired; or
- (b) the specific nature of the duty or a recognised training programme requires that the seafarers perform duties at night.

82. Fitness or conduct of officer

(1) Where it appears to the Director that an officer -

- (a) is unfit to discharge his duties by reason of incompetence or misconduct or for any other reason;
- (b) has been seriously negligent in the discharge of his duties; or
- (c) has failed to comply with section 100,

the Director may cause an inquiry to be held by a Board of Inquiry consisting of one or more persons appointed by him and, if he does so, may, if he thinks fit, suspend, pending the outcome of the inquiry, the use of any certificate issued to the officer or recognised by the Director.

(2) In the case of a certificate delivered by a foreign Government, the Director shall inform the proper officer for such action as he deems fit.

(3) An inquiry under this section shall be conducted in such manner as the Board of Inquiry thinks fit, and it shall, if it deems it necessary, be assisted by one or more assessors.

(4) The Board of Inquiry -

(c) may, if satisfied of any of the matters referred to in subsection (1) (a) to (c), cancel or suspend any certificate issued to the officer or withdraw the recognition of the certificate or censure him; and

(d) shall make a report on the case to the Director.

83. Holders of certificate who are not officers

(1) Where it appears to the Director that a seafarer other than an officer who is the holder of a certificate of competency, is unfit to be the holder of such a certificate, by reason of incompetence, misconduct or for any other reason, the Director may give him notice in writing that he is considering the suspension or cancellation of the certificate.

(2) The notice shall state the reason why it appears to the Director that the seafarer is unfit to be the holder of such a certificate and shall state that within a period specified in the notice the seafarer may make representations to the Director.

(3) After considering any representation made under subsection (2), the Director shall decide whether or not to suspend or cancel the certificate, and shall give the holder written notice of his decision.

(4) The seafarer may, where the Director has decided to suspend or cancel his certificate, require his case to be dealt with by an inquiry, and the Minister shall cause an inquiry to be held by a Board of Inquiry consisting of one or more persons appointed by him.

(5) An inquiry under this section shall be conducted in such manner as the Board of Inquiry thinks fit and the Board shall, if it deems it necessary, be assisted by one or more assessors.

- (6) The Board of Inquiry holding an inquiry under this section -
 - (a) may quash, confirm or vary the decision of the Director, on the certificate; and
 - (b) shall make a report on the case to the Minister.

84. Rehearing of inquiry

(4) Where an inquiry has been held under section 82 or 83, the Minister may order the whole or part of the case to be reheard within 21 days of the decision of the Board of Inquiry, and shall do so –

- (a) if new and important evidence which could not be produced at the inquiry has been discovered; or
- (b) if there appear to the Minister to be other grounds for suspecting that a miscarriage of justice may have occurred.

(5) A further hearing under this section shall be conducted by the Board of Inquiry which conducted the first hearing or, if the Minister so determines, by a differently-constituted Board appointed by him.

(6) On a fresh hearing under this section, the Board of Inquiry may quash, confirm or vary the findings of the first Board and its decision shall be final.

85. Power to restore certificate

Where a certificate has been cancelled or suspended under section 82, 83 or 84, the Director may, if he thinks that the justice of the case so requires, re-issue the certificate, reduce the period of suspension and return the certificate or grant a new certificate of the same or a lower grade in place of the cancelled or suspended certificate or reinstate the previously withdrawn recognition of a certificate.

86. Seafarer left behind or shipwrecked

- (1) Where -
 - (a) a person employed as a seafarer in a Mauritius ship is left behind in a foreign country or is taken to such a country on being shipwrecked; or

- (b) a person who became so employed under an agreement entered into outside Mauritius is left behind in Mauritius or is taken to Mauritius on being shipwrecked,

the person who last employed him as a seafarer shall, whether or not he is discharged from the ship, make provision for this return and his relief and maintenance until his return, including the repayment of expenses incurred in bringing the shipwrecked seafarer ashore and maintaining him until he is brought ashore and the payment of the expenses of the burial or cremation of a seafarer who dies before he can be returned.

(2) The Superintendent of Shipping or the proper officer, as the case may be, shall -

- (d) determine the place to which the seafarer is to be returned;
- (e) require the master of any Mauritius ship to convey a person to a place determined in accordance with paragraph (a) and give the master directions for that purpose; and
- (f) require the person who last employed the seafarer to make the necessary payment in respect of the conveyance of the seafarer.

87. Employer's liability under section 86

Where a seafarer left behind in, or taken to, a country pursuant to section 86, remains there after the end of a period of 3 months, the person who last employed him as a seafarer shall not be liable under that section to make provision for his return or for any matter arising after the end of that period where the person who last employed him proves that the reason for the seafarer remaining in that country beyond the 3 months is not attributable to any default on his part.

88. Recovery of expenses from employer

Where expenses are incurred in respect of a matter for which the employer of a seafarer is required to make provision under section 86 and –

- (c) the expenses are incurred by the Government, or by a foreign government and repaid to it on behalf of the Government, the Government may recover them from the employer; or

- (d) the expenses are incurred by the seafarer, he may recover them from the employer unless the latter proves that under the terms of his employment they were to be borne by him or that he would not have been left behind but for his own wrongful act or neglect.

89. Recovery of expenses from seafarer

Where, in the case of any seafarer, expenses are incurred by the Government or by a foreign government and repaid to it on behalf of the Government –

- (c) in respect of any matter for which, but for section 87, the seafarer's last employer would have been required to make provision under section 86; or
- (d) in respect of any matter falling under section 86 (2) (b),

the Government may recover them from the seafarer or, if he has died, from his heirs.

90. Relief and repatriation of foreign seafarer

(6) Where a foreign ship proceeds or intends to proceed to sea and leaves or intends to leave behind a foreign seafarer in Mauritius, the cost of his repatriation shall be borne by the owner of the ship or, where the owner is not in Mauritius, by the agent of the ship.

(7) Where expenses referred to in subsection (1) are incurred by the Government, they shall be recoverable from the owner or agent of the ship.

91. Application of sections 86 to 90 to ship's master

Sections 86 to 90 shall, with such adaptations or modifications as may be necessary, apply to the master of a ship as they apply to a seafarer.

92. Official log book

(9) The Master shall cause an official log book in a form approved by the Director to be carried on board every Mauritius ship.

(10) Every entry to be made in an official log book shall be in English and shall be made as soon as possible after the occurrence to which it relates.

(11) Every entry in an official log book shall be signed by the master and by another member of the crew, and where it is an entry regarding illness, injury or death, it shall be signed by the ship's doctor if one is available on board.

(12) The master of every Mauritius ship shall, whichever occurs earlier, at intervals of 90 days or on the ship's arrival at a Port and foreign port, deliver the official log book covering the period since it was last delivered, to the Superintendent of Shipping or to the proper officer, as the case may be.

(13) Where a Mauritius ship is lost or abandoned, the owner or master of the ship shall, if practicable and as soon as possible, deliver to the Superintendent of Shipping or the proper officer, as the case may be, the official log book duly completed.

(14) Where a Mauritius ship is deregistered or its registration is otherwise terminated, or where its ownership is transferred or transmitted, the owner or master of the ship shall within 30 days deliver to the Superintendent of Shipping or the proper officer, as the case may be, the official log book duly completed.

(15) Where a person ceases to be the master of a Mauritius ship, he shall deliver to his successor the documents relating to the ship and its crew which are in his custody and the successor shall forthwith enter in the official log book a list of the documents received by him.

(16) The Director may exempt a Mauritius ship trading solely within the waters of Mauritius from compliance with subsection (1) to (4) subject to such conditions as he may impose.

93. Entries in official log book

The master of every Mauritius ship which is required to carry an official log book shall enter or cause to be entered in the official log book particulars of the following -

- (j) any conviction by a Court of a member of the crew of an offence and the sanction inflicted;
- (k) any offence committed by a member of the crew for which it is intended to institute proceedings in Court, or if it is a disciplinary offence, for which a sanction has been imposed on board by the master;
- (l) every case of illness or injury describing its nature, the medical treatment, if any, administered to the person and any other relevant details;
- (m) every birth and death occurring on board together with any other relevant details;

- (n) the name of every seafarer who ceases to be a member of the crew stating the place, time, and reason and any other relevant details concerning the matter;
- (o) where a seafarer dies during a voyage, details of the wages due to him including details concerning deductions and allotments in relation to those wages, and details of the sale of his personal effects if such sale takes place;
- (p) the details of any collision or other maritime casualty occurring during the voyage and the action taken in relation thereto;
- (q) the date and time of any boat and fire drill carried out on board pursuant to the requirements of this Act and, where such drills are not carried out, the reason therefor;
- (r) the ship's draught and freeboard each time the ship enters and leaves a port, offshore terminal or anchorage and the date and time of posting of a notice containing those particulars;
- (j) record of inspections of crew accommodation;
- (k) record of inspection of food and water provided for the crew; and
- (l) any other entry required to be made under this Act.

94. Deck and engine room log books

Every Mauritius ship shall, in addition to the official log book, carry on board a deck log book and an engine room log book in which shall be recorded in English on a daily basis, particulars relating to the deck watch and the engine room watch respectively.

95. Lists of crew

(1) The master of every Mauritius ship shall make and maintain a list of the crew containing such particulars as may be prescribed.

(2) The crew list may be contained in the same document as the crew agreement such that any particulars in the crew agreement may be treated as forming part of the particulars entered in the list.

(8) The crew list shall be produced by the master on demand to any competent authority of a foreign port or offshore terminal where a Mauritius ship may be for the time being.

(9) The crew list or a copy shall be delivered by the owner or master to the Superintendent of Shipping at intervals and in the manner specified by the Superintendent, which may include transmission by electronic means, and every occasion when a change is effected in the list.

(10) The Director may exempt a Mauritius ship from the requirements of subsections (1) and (3) subject to such conditions as he may impose.

96. Continuous discharge book

(7) The Superintendent of Shipping may, on application, issue to a seafarer engaged for service on a Mauritius ship, a book referred to in this section as “the continuous discharge book”, which shall contain a continuous record of service of the seafarer.

(8) The master of a Mauritius ship shall, on the discharge of a seafarer from the ship, make an entry in the continuous discharge book of the seafarer stating the period of the seafarer’s service on that ship and the time and place of his discharge, and sign the entry.

(9) An entry made under subsection (2) shall not contain any statement as to the wages, quality of work or character of the seafarer.

(10) The holder of a continuous discharge book shall produce or surrender it on demand to the Superintendent of Shipping or the proper officer, as the case may be, in such circumstances as may be stipulated by the Director.

(11) The Director may order a seafarer to surrender a continuous discharge book in consequence of a recommendation to that effect made by a disciplinary body or a Board of Inquiry acting pursuant to the relevant provisions of this Act.

(12) The Director may, if a particular case so warrants, reissue a continuous discharge book that has been surrendered in the circumstances referred to in subsection (5).

PART V – SAFETY OF NAVIGATION

Sub-Part I – Collisions and preventive measures

97. Lights and fog signals

(5) No ship shall carry or exhibit any light or use any fog signal, other than a light or signal which is prescribed.

(6) No person shall show a light, including light from a fire, in such a place or manner as to mislead ships navigating in Mauritius waters.

98. Liability for collision

(10) Liability for collision damage, including damage to ships, their cargoes, the effects or other property of the crew, passengers or other persons on board, or to third parties, shall be apportioned according to the degree of fault of each ship involved in a collision.

(11) Where it is not possible to determine the degree of fault of each ship, or it appears that the faults are equal, liability shall be apportioned equally.

(12) There shall be no presumption of fault against a ship for a contravention of any regulations relating to collisions without proof of fault or negligence.

(13) Where a collision is accidental or caused by '*force majeure*', or the cause is left in doubt, the damages shall be borne by those who have suffered them, notwithstanding that the ships, or any one of them, may have been at anchor, or was otherwise made fast, at the time of the collision.

(14) Where a collision is caused by the fault of one of the ships, liability to make good the damage shall attach to the one which has committed the fault.

(15) In respect of damage caused by death or personal injury, the ships at fault shall be jointly and severally liable to third parties, without prejudice, however, to the right of the ship which has paid a larger part than that which, in accordance with subsections (1) and (2), it ought ultimately to bear, to obtain a contribution from the other ship at fault.

(16) Collision liability shall attach in accordance with this section in a case where the collision is caused by the fault of a pilot, whether or not the pilot is required to be carried by law.

(17) The right of action for the recovery of damages resulting from a collision is not conditional upon the entering of a protest or the fulfilment of any other special formality.

(18) Where no collision has actually taken place, liability for damage to the ships involved in the incident, or to goods or persons on board the ships resulting from the execution or non-execution of a manoeuvre or a contravention of any regulations relating to collisions, shall be determined in accordance with this section.

(10) This section shall have effect notwithstanding any other enactment.

99. Inspection of lights, shapes and signals

A surveyor or inspector may inspect a ship of any nationality in a Port to determine whether the ship is properly provided with lights and shapes and the means of making sound signals as required by law, and, where he finds that the ship is not so provided, he shall specify in writing the action required to rectify the deficiency and the Director may detain the ship until such deficiency is rectified to his satisfaction.

100. Duty to give assistance following collision

(3) In every case of collision between ships, the master of each ship shall, so far as he can do so without damage to his own ship, crew and passengers, if any –

- (a) render to every other ship, the master, crew and passengers, if any, such assistance as may be practicable and necessary to save them from any danger by the collision, and stand by the other ship until he has ascertained that such ship has no need for further assistance; and
- (b) give the master of every ship the name and port of registration of his ship, and the names of the ports from which his ship sailed and to which his ship is bound.

(4) Subsection (1) shall apply to the master of a Mauritius ship anywhere and to the master of a foreign ship when in Mauritius waters.

101. Master to notify hazards to navigation

(6) Where the master of a Mauritius ship encounters a danger to navigation specified in subsection (2), he shall send information of the danger by any means of communication at his disposal to the appropriate shore-based authorities via a coast radio station, and repeat the information to such ships in the vicinity as may be practicable.

- (7) The dangers to navigation referred to in subsection (1) are –
- (a) dangerous ice;
 - (b) a dangerous derelict;
 - (c) a hurricane, typhoon, cyclone or other similar storm;

- (d) air temperatures below freezing point associated with gale force winds causing severe ice accretion on the superstructure of ships;
 - (e) winds of force 10 or above on the Beaufort scale for which no storm warning has been received; and
 - (f) any other direct danger to navigation.
- (3) The information referred to in subsection (1) shall -
- (c) be sent on the authority of the master of the ship in English, or by means of the International Code of Signals, and where it is transmitted by radio, it may be sent in one of the working languages of the International Telecommunications Union and, where language difficulties are encountered, the Organisation Standard Communication Phrases may be used; and
 - (d) when sent on the authority of the master of the ship by means of radio, be preceded by such safety signal or code sequence as may be prescribed and be in such format as may be prescribed.

(4) Every person in charge of a radio station or in charge of radio communication on board a Mauritius ship shall, on receiving a signal indicating that a message is about to be sent under this section, refrain from sending messages for a time sufficient to allow other stations to receive the message, and transmit the message in such manner as may be prescribed.

102. Master's duty where ice is reported

The master of a Mauritius ship shall, where ice is reported on or near his course at night, proceed at a safe speed adapted to the prevailing circumstances or change his course so as to keep amply clear of the ice reported and of the area of danger.

103. Duty to assist ships or persons in distress

(1) The master of a ship shall, so far as he can do so without serious danger to his own ship and the persons on board, render assistance to any person in danger of being lost at sea.

(2) The master of a ship shall, on receiving at sea a signal from any source that a ship or aircraft or a survival craft is in distress, proceed with all speed to the assistance of the persons in distress, informing them, if possible, that he is doing so, and where -

- (a) he is unable to do so; or
- (b) in the special circumstances of the case, he considers it unreasonable or unnecessary to proceed to their assistance,

he shall enter in the official log book of the ship the reason for failing to proceed to their assistance.

(3) The master of a ship shall be released from the duty imposed by subsection (2) as soon as he is informed of the requisition of one or more ships, other than his own, under section 104 and that the requisition is being complied with by the ship or ships requisitioned.

104. Right to requisition ships when in distress

(5) The master of a ship in distress may, after consultation, so far as may be possible, with the masters of ships which answer his call for assistance, requisition one or more of those ships as he considers best able to render assistance, and it shall be the duty of the master of a ship which is requisitioned to comply with the requisition by proceeding with all speed to the assistance of persons in distress.

(6) The master of a ship shall be released from the duty imposed by section 103 (1) and, if his ship has been requisitioned, from the duty imposed by subsection (1), if he is informed by the persons in distress or by the master of another ship which has reached such persons that assistance is no longer required.

105. Report of accident to a ship

- (1) Where a ship -
 - (a) has sustained or caused any accident occasioning loss of life or serious injury to any person; or
 - (b) has sustained any material damage affecting its seaworthiness or its efficiency, either in its hull or in any part of its machinery,

the owner or master shall, within 24 hours after the happening of the accident or causing of the damage or as soon as possible thereafter, transmit to the Director or to a proper officer, a report of the accident or damage.

(2) Every report made under subsection (1) shall be signed by the owner or master and state -

- (d) the name of the ship, the port to which the ship belongs, the official number, if any, of the ship and the place where the ship is located;
- (e) the circumstances in which the accident or damage occurred; and
- (f) the probable cause of the accident or damage.

(3) (a) Where the owner, the representative person of the owner, or the agent of a ship to which this section applies, has reason to believe that the ship has sustained or caused any such accident or received any such damage as is mentioned in subsection (1), he shall satisfy himself that the accident or damage has been reported to the Director by the master;

(b) Where any such owner, representative person or agent has reason to believe that the accident or damage has not been so reported, he shall, as soon as possible, send to the Director notice in writing stating the name of the ship, its official number and its port of registration or the port to which it belongs, stating to the best of his knowledge and belief, the nature and extent of the accident or damage, its probable cause and the location of the ship.

106. Apprehended loss of ship

Where the owner or agent of a Mauritius ship has reason, owing to the non-appearance of the ship or to any other circumstance, to believe that the ship has been lost, he shall cause a reasonable search to be made for the ship and shall, as soon as may be convenient, send to the Director a notice in writing signed by him and stating –

- (a) the name of the ship, the port to which the ship belongs and official number, if any, of the ship;
- (b) the circumstances and probable cause of the loss; and
- (c) the last known position of the ship, if possible.

107. Aids to navigation

(1) (a) The State shall ensure that there are, within the coastal areas of Mauritius, such aids to navigation as may be necessary to facilitate safe navigation.

(b) Where it is proposed to set up or discontinue an aid to navigation, or alter the lighting characteristics or any other distinguishing features of an aid, the Director shall be consulted before any such proposal is carried into effect.

(2) The Director may cause the publication and updating of information on aids to navigation and declare such publications, and any other publications, to be approved nautical publications.

(3) Every Mauritius ship shall carry and use such nautical charts, sailing directions, list of lights, list of radio signals, tide tables, current atlases and such other publications and information as may be necessary or expedient for the safe navigation of ships and approved by the Director.

(4) The Director may determine the system of lighting and other characteristics, and marks and features of aids to navigation and in doing so, shall have due regard to the International Association of Marine Aids to Navigation and Lighthouse Authorities Harmonised Buoyage "System A", or any other international system of buoyage which may replace it.

108. Application of Safety Convention

(1) Subject to subsection (2), the Safety Convention shall, unless she is exempted by section 109, apply to a Mauritius ship engaged on an international voyage and to a foreign ship engaged on such a voyage while she is in Mauritius waters.

(2) The Safety Convention shall not apply to -

- (a) warship and troop ships;
- (b) cargo ships of less than 500 tons;
- (c) ships not propelled by mechanical means;
- (d) wooden ships of primitive build;
- (e) pleasure vessels not engaged in trade; and
- (f) fishing vessels.

(7) Notwithstanding subsection (1), this section and sections 110 and 111 shall not apply to a foreign ship that would not be within a Port but for such stress of weather or any other circumstances that neither the master, owner nor charterer, if any, of the ship could have prevented or forestalled.

109. Exemptions

(1) The Director may exempt any ship or class of ships from any safety requirements imposed by this Act subject to such conditions as he thinks fit.

(2) Where a ship not normally engaged on international voyages is required to undertake a single international voyage, the Director may, where he is of the opinion that the ship complies with safety requirements imposed by this Act, exempt the ship while engaged on that voyage.

(3) Where a ship embodies features of a novel kind, the Director may exempt it from any requirement imposed by this Act relating to safety construction, life-saving appliances and radio communications, the application of which might seriously impede research into the development of such features and their incorporation in ships engaged in international voyages, but the ship shall comply with any safety requirement which, in the opinion of the Director, is adequate for the service for which it is intended and is such as to ensure the overall safety of the ship.

(8) Where the Director considers that the sheltered nature and conditions of a voyage are such as to render the application of a specific requirement relating to safety construction, life-saving appliances and radio communications unreasonable or unnecessary, he may exempt from that requirement a Mauritius ship, or a class of ships which, in the course of their voyage, do not proceed more than 20 miles from the nearest land.

110. Inspection of ships holding Safety Convention Certificates

(1) Where a valid Safety Convention Certificate is produced to in respect of a foreign ship, it shall be accepted, and the ship shall be exempted from a survey or inspection under this Part, unless there are clear grounds for believing that the condition of the ship or of its equipment does not correspond substantially with the particulars of the certificate or that the ship and its equipment are not in compliance with any regulations respecting the maintenance of conditions of such ships and their equipment after survey.

(2) Where a Safety Convention Certificate is not acceptable due to the circumstances referred to in subsection (1), or the Certificate has expired or ceased to be valid, the ship shall not be granted clearance and shall be detained until it can proceed to sea or to the appropriate repair yard without causing danger to the ship or persons on board, and the following persons shall be notified in writing of the circumstances -

- (c) the local Consular Officer of the ship's flag State or, in his absence, the nearest diplomatic representative of the ship's flag State; and
- (d) the surveyor or recognised organisation responsible for the issue of the certificate referred to in subsection (1).

(3) Where a ship referred to in subsection (2) is unduly detained or delayed, it shall be entitled to compensation for any loss or damage suffered as a direct result of such undue detention or delay.

111. Ships to carry stability information

(1) Every Mauritius ship shall carry on board such information about the ship's stability as may be prescribed.

(2) The information, a copy of which shall be sent to the Director, shall be based on the determination of the ship's stability by means of an inclining test of the ship but the Director may allow the information to be based on a similar determination of the stability of a sister ship.

Sub-Part II – Load Lines

A - General

112. Interpretation of Sub-Part II

(1) In this Sub-Part -

“alteration” includes deterioration;

“1966 Convention” means the International Convention on Load Lines 1966;

“Convention State” means a State that is party to the 1966 Convention or a territory of such State to which the Convention has been extended;

“load line” means a mark on a ship indicating the maximum depth to which a ship may be loaded;

“post-1966 Convention ship” means a ship whose keel is laid, or which is at a similar stage of construction, on or after the material date and “pre-1966 Convention ship” means a ship which is not a post-1966 Convention ship;

“valid Convention Certificate” means a certificate which –

- (a) has been issued under subsection (2) and is for the time being in force; or
- (b) having been issued as mentioned in subsection (2), is produced in circumstances in which it is required by the Load Line Regulations to be recognised for the purposes of this Sub-Part.

(2) For the purposes of the definitions of “pre-1966” and “post-1966 Convention ship”, the material date -

- (a) in relation to a ship which is registered in or flies the flag of a Convention State other than Mauritius, is the date from which the 1966 Convention is declared to be effective in respect of that State or its territory to which the Convention extends; and
- (b) in relation to any other ship, is 21 July 1968.

(7) In this Sub-Part, subject to subsection (4), “international voyage” means a voyage between –

- (a) a Port and a foreign port; or
- (b) a port in a Convention State other than Mauritius and a port in any other country or territory (whether or not a Convention State) outside Mauritius.

(8) In determining , for the purposes of subsection (3), what are the ports between which a voyage is, no account shall be taken of any deviation by a ship from its intended voyage made solely because of stress of weather or any other circumstances which neither the master, owner nor charterer, if any, of the ship could have prevented or forestalled.

113. Application of Sub-Part II

- (1) Subject to subsection (2), this Sub-Part applies to all ships except -
- (d) warships;
 - (e) fishing vessels; and
 - (f) pleasure vessels not engaged in trade.
- (2) This Sub-Part applies to any foreign ship, other than a ship referred to in subsection (1), which -
- (c) is registered in a Convention State or flies the flag of a Convention State; and
 - (d) is a pre-1966 Convention ship of not less than 150 gross tonnage or a post-1966 Convention ship of not less than 24 metres in length.

114. Load Line regulations

The Minister may make regulations, referred to in this Act as “the Load Line Regulations”, to give effect to the 1966 Convention and to provide for –

- (j) surveys, and periodical inspections of ships to which this Sub-Part applies;
- (k) determining the freeboards to be assigned to such ships including timber freeboards and the conditions for such assignment;
- (l) determining, in relation to any such ship, the deck which is to be taken to be the freeboard deck of the ship, and requiring the position of that deck to be indicated on each side of the ship by a mark of a prescribed description;
- (m) determining, by reference to that mark and the freeboards assigned to any such ship, the positions in which each side of the ship is to be marked with lines of a prescribed description, indicating the various maximum depths to which the ship may be loaded in prescribed circumstances;
- (n) the determination and assignment of load lines to Mauritius ships to which the 1966 Convention does not apply;

- (o) the requirements with respect to the carriage of cargo in any uncovered space on the deck of a ship;
- (p) determining the period during which a certificate issued under this Sub-Part is to remain in force;
- (q) determining the period during which an exemption order under section 115 shall remain in force; and
- (r) the issue and recognition of certificates, including exemption certificates.

115. Exemption orders

(8) Where, in the opinion of the Director, the sheltered nature and conditions of international voyages –

- (a) between a Port and a near neighbouring port in another Convention State; or
- (b) between near neighbouring ports in any 2 or more States or territories outside Mauritius,

make it unreasonable or impracticable to apply this Sub-Part to ships plying on such voyages, and the Director is satisfied that the Government of the other State concurs in that opinion, the Director may, by order specifying those ports, direct that ships plying on international voyages between those ports shall be exempt from this Sub-Part.

(9) The Director may, by order, direct that ships under 24 metres in length engaged solely in the coasting trade, shall be exempt from this Sub-Part while not carrying cargo, or, if the order so provides, shall be exempt from the Sub-Part whether carrying cargo or not.

(10) On the application of the owner of a Mauritius ship to which this Sub-Part applies which is either a pre-1966 Convention ship of not less than 150 gross tonnage or a post-1966 Convention ship of not less than 24 metres in length, the Director may exempt the ship where, in his opinion, the ship embodies features of a novel kind such that, if the ship had to comply with all the requirements of this Sub-Part and of the Load Line Regulations, the development of those features and their incorporation in ships engaged on international voyages might be seriously impeded.

(11) On the application of the owner of a Mauritius ship to which this Sub-Part applies which is –

- (a) a pre-1966 Convention ship of less than 150 gross tonnage or a post-1966 Convention ship of less than 24 metres in length; or
- (b) a ship not falling within paragraph (a) which does not ply on international voyages,

the Director may exempt the ship.

(12) Without prejudice to subsection (4), where a Mauritius ship to which this Sub-Part applies which is a pre-1966 Convention ship of not less than 150 gross tonnage or a post-1966 Convention ship of not less than 24 metres in length, does not normally ply on international voyages but is, in exceptional circumstances, required to undertake a single international voyage, the Director may, on the application of the owner of the ships, exempt the ship while engaged on that voyage.

(13) Where the Director exempts a ship under subsection (3), (4) or (5), he shall issue the appropriate certificate to the owner of the ship.

(14) For the purposes of subsection (6), the appropriate certificate –

- (a) where the exemption is conferred under subsection (3) or (5), is an International Load Line Exemption Certificate; or
- (b) where the certificate is conferred under subsection (4), is a Mauritius Load Line Exemption Certificate.

B – Mauritius ships

116. Compliance with regulations

Subject to any exemption conferred under this Sub-Part, no Mauritius ship shall proceed or attempt to proceed to sea unless –

- (f) the ship has been surveyed in accordance with the Load Line Regulations;
- (g) the ship is marked with a deck-line and with load lines in accordance with those regulations;
- (h) the appropriate certificate has been issued under section 118;
- (i) the ship complies with the conditions of assignment; and

- (j) any information required by those regulations to be provided for the guidance of the master of the ship in the prescribed manner has been so provided.

117. Submersion of load lines

(1) (a) Where a Mauritius ship is marked with load lines, the ship shall not be so loaded that –

- (i) if the ship is in salt water and has no list, the appropriate load line on each side of the ship is submerged; or
- (ii) in any other case, the appropriate load line on each side of the ship would be submerged if the ship were in salt water and had no list.

(b) For the purposes of this section, “appropriate load line” means the load line which, in accordance with the Load Line Regulations, indicates the maximum depth to which the ship may be loaded in salt water in certain circumstances.

(2) Where, pursuant to the Load Line Regulations, a Mauritius passenger ship is marked with subdivision load lines, and the lowest of those lines is lower than the line which, apart from this subsection, would be the appropriate load line, subsection (1) shall have effect as if that subdivision load line was the appropriate load line for the purposes of this section.

118. Issue of certificate

(1) (a) Where a Mauritius ship has been surveyed and marked in accordance with the Load Line Regulations, the appropriate certificate shall be issued to the owner of the ship on his application.

(b) For the purposes of paragraph (a), the appropriate certificate -

- (i) in the case of a pre-1966 Convention ship of not less than 150 gross tonnage, and in the case of a post-1966 Convention ship of not less than 24 metres in length, is a certificate called an International Load Line Certificate (1966); and
- (ii) in the case of any other ship, is a certificate called a Mauritius Load Line Certificate.

(2) Subject to subsection (3), a certificate required by subsection (1) to be issued shall be issued by the Director and be in such form as may be prescribed.

(3) The Director may request the Government of a Convention State to issue an International Load Line Certificate (1966) in respect of a Mauritius ship falling within subsection (1) (b) (i).

(4) Where a certificate, issued under this section and for the time being in force, is produced in respect of the ship to which the certificate relates -

- (b) the ship shall be deemed to have been surveyed in accordance with the Load Line Regulations; and
- (b) where lines are marked on the ship corresponding in number and description to the deck-line and load lines required by the Load Line Regulations, and the positions of those lines so marked correspond to the positions of the deck-line and load lines so specified in the certificate, the ship shall be deemed to be marked as required by those regulations.

119. Publication and entry of certificate

(1) (a) Where a certificate is issued in respect of a ship under section 118, the owner of the ship shall, on receipt of that certificate, cause it to be posted in some conspicuous place on board the ship and cause it to be kept so posted and legible so long as the certificate remains in force and the ship is in use.

(b) The master of the ship, before making any other entry in the official log book of the ship, shall enter in it particulars as to the positions of the deck and the load lines which are specified in the certificate.

(2) Before a Mauritius ship leaves any dock, wharf, harbour or other place for the purpose of proceeding to sea, the master of the ship shall cause a notice to be posted in some conspicuous place on board the ship, which shall be in such form and contain such particulars relating to the depth to which the ship is for the time being loaded as may be prescribed and cause those particulars to be entered in the official log book.

(3) Where a notice required by subsection (2) has been posted, the master of the ship shall cause it to be kept so posted and legible until the ship arrives at some other dock, wharf, harbour or place.

C – Foreign ships

120. Compliance with regulations

(1) Subject to subsection (2), and to any exemption conferred under this Sub-Part, no foreign ship shall proceed or attempt to proceed to sea from any Port unless -

- (f) the ship has been surveyed in accordance with the Load Line Regulations;
- (g) the ship is marked with a deck-line and with load lines in accordance with those regulations;
- (h) the appropriate certificate under this Sub-Part has been issued;
- (i) the ship complies with the conditions of assignment; and
- (j) any information required by those regulations to be provided for the guidance of the master of the ship in the prescribed manner has been so provided.

(2) Subsection (1) does not apply to a ship in respect of which a valid Convention Certificate is produced.

121. Submersion of load lines

(5) Where a foreign ship is within any Port, and is marked with load lines, the ship shall not be so loaded that –

- (a) if the ship is in salt water and has no list, the appropriate load line on each side of the ship is submerged; or
- (b) in any other case, the appropriate load line on each side of the ship would be submerged if the ship were in salt water and had no list.

(6) In relation to a ship in respect of which a valid Convention Certificate is produced, “load line”, in subsection (1), means a line marked on the ship in the position of a load line specified in that certificate, and for the purposes of any circumstances for which a particular load line is specified in the certificate, “appropriate load line” means the load line which, in accordance with the certificate, indicates the maximum depth to which the ship may be loaded in salt water in those circumstances.

(7) Where a valid Convention certificate is not produced in respect of a ship, for the purposes of any circumstances prescribed by the Load Line Regulations in accordance with section 114(d), "appropriate load line" means the load line which, in accordance with those regulations, indicates the maximum depth to which the ship may be loaded in salt water in those circumstances.

(8) Where, pursuant to the Load Line Regulations, a foreign passenger ship is marked with subdivision load lines, and the lowest of those load lines is lower than the line which, apart from this subsection, would be the appropriate load line, subsection (1) shall have effect as if that subdivision load line was the appropriate load line for the purposes of this section.

122. Issue of certificate

(1) Where a foreign ship has been surveyed and marked in accordance with the Load Line Regulations, on the application of the owner of the ship, a Mauritius Load Line Certificate shall be issued to him by the Director.

(2) Subject to subsection (3), section 118 (4) shall have effect in relation to a certificate issued under subsection (1) as it has effect in relation to a certificate issued under that section.

(8) Any certificate issued under subsection (1) in respect of a ship to which section 113 (2) applies shall be valid only so long as the ship is not plying on international voyages, and shall be cancelled by the Director if he has reason to believe that the ship is plying on international voyages

(4) The Director may, at the request of the Government of a country referred to in section 113 (2), issue in respect of a ship referred to in that subsection a certificate in such form as may be prescribed by the Load Line Regulations, where he is satisfied that he could properly issue a certificate in respect of the ship under subsection 118 (1) as if the ship were a Mauritius ship.

123. Production of certificate

(1) Subject to any exemption conferred under this Sub-Part, before a foreign ship proceeds to sea from any Port, the master of the ship shall produce the appropriate certificate to the Director and request a clearance for the ship which shall not be granted unless the appropriate certificate is produced.

(2) For the purposes of subsection (1), the appropriate certificate -

(d) where a clearance for the ship is requested in respect of an international voyage, is a valid Convention certificate;

- (e) where a clearance for the ship is requested in respect of a voyage, other than an international voyage, is either a valid Convention certificate or a Mauritius Load Line Certificate for the time being in force in respect of the ship; and
- (f) in any other case, is a Mauritius Load Line Certificate for the time being in force in respect of the ship.

124. Inspection of foreign ships

(1) Subject to subsections (2) to (5) and to section 8, a surveyor may inspect a foreign ship while the ship is within a Port.

(2) The surveyor may go on board the ship for the purpose of demanding production of an International Load Line Certificate (1966) or a Mauritius Load Line Certificate for the time being in force in respect of the ship.

(3) Where a valid Convention certificate is produced to the surveyor in respect of the ship, the powers of the surveyor under subsection (1) shall be limited to seeing that -

- (e) the ship is not loaded beyond the limits allowed by the certificate;
- (f) lines are marked on the ship in the positions of the load lines specified in the certificate;
- (g) no material alterations or other changes have taken place in the hull or superstructure of the ship which affect the position in which any of those lines ought to be marked; and
- (h) the fittings and appliances for the protection of openings, the guard rails, the free ports and the means of access to the crew's quarters have been maintained on the ship in as effective a condition as they were in when the certificate was issued.

(9) Where the ship is found to have so deteriorated or to have been so materially altered in respect of the matters referred to in subsection (3)(c) or (d) that the ship is manifestly unfit to proceed to sea without danger to human life, it shall be deemed to be unsafe for the purposes of Sub-Part IV.

(10) Where a ship is detained pursuant to a finding under subsection (4), the Director shall order the ship to be released as soon as he is satisfied that the ship is fit to proceed to sea without danger to human life.

Sub-Part III – Grain and dangerous goods

125. Application of Sub-Part III

(5) Subject to this section, this Sub-Part applies to all ships to which the Safety Convention applies and to cargo ships of less than 500 gross tonnage.

(6) The provisions of this Sub-Part respecting the carriage of dangerous goods in packaged form or in solid form in bulk do not apply to ships' stores and equipment, including ships' distress signals.

(7) This Sub-Part and any regulations made under this Act relating to dangerous goods shall apply to all Mauritius ships and to all foreign ships while loading or discharging cargo or fuel, or embarking or disembarking passengers, at any place in Mauritius.

126. Carriage of grain

(5) A cargo ship carrying grain shall comply with the requirements of the International Grain Code.

(2) Without prejudice to subsection (1) or any other requirement of this Act, the master or owner of every ship shall ensure that –

- (a) a ship loading grain complies with the International Grain Code; and
- (b)
 - (i) in the case of a foreign ship, the ship has on board a document of authorisation as required under the International Grain Code;
 - (ii) in the case of a Mauritius ship, the ship has on board a document of authorisation issued by or on behalf of the Ministry.

(3) Except for stress of weather or any other circumstance that neither the master, owner nor charterer, if any, could have prevented or forestalled, neither the owner nor the master shall permit a ship loaded with grain in bulk outside Mauritius to enter a Port so laden unless the ship has been laden in accordance with the International Grain Code.

(4) No person shall order the commencement of the loading of grain on a ship in Mauritius unless he is satisfied that -

- (a) the ship has on board a document as referred to in subsection (2)(b); or
- (b) where there is no document of authorisation on board, the master has demonstrated to the satisfaction of the Director that the ship, will, in its proposed loading condition, comply with the requirements of the International Grain Code and has obtained from the administration where the ship is registered, a certified document to this effect.

127. Carriage of dangerous goods

(5) No person shall send or carry any dangerous goods in any ship, except in accordance with this Sub-Part and any regulations made under this Act.

(6) No person shall send by or carry in a Mauritius ship any dangerous goods without first distinctly marking their nature on the outside of their outermost package in such manner as may be prescribed and giving written notice of the nature of the goods and of the name and address of the sender to the master or owner of the ship at or before the time of sending such goods to be shipped or carried on board the ship.

(7) The master or owner of a ship may refuse to take on board any package or parcel that he suspects might contain any dangerous goods and may require the package to be opened to ascertain its nature.

(8) Where any dangerous goods, or any goods that, in the opinion of the master or owner of the ship, are dangerous goods, have been sent on board any ship without the marking or the written notice described in subsection (2), the master or owner of the ship may cause the goods, together with any package or container, to be thrown overboard; and neither the master nor the owner of the ship shall be subject to any civil or criminal liability in any Court in respect of such action.

Sub-Part IV – Unsafe ships

128. Power to detain unsafe ships

(1) Subject to subsection (3), where the Director has reason to believe that any ship, being in Port or at sea in Mauritius waters, is an unsafe ship by reason of any of the matters specified in subsection (2) and unfit to remain at sea or proceed to sea without serious danger to human life or the environment having regard to the nature of the service for which it is intended, he may cause the ship to be detained.

- (6) The matters referred to in subsection (1) are -
- (a) the condition, or the unsuitability for its purpose, of the ship or its machinery or equipment; or
 - (b) undermanning;
 - (c) failure to comply with the conditions of assignment under section 116 or 120;
 - (d) alternations or other changes referred to in section 126;
 - (e) improper carriage of dangerous goods;
 - (f) overloading or unsafe or improper loading; or
 - (g) any other matter relevant to the safety of the ship,

and the reference in subsection (1) to proceeding to sea shall, in a case where the service for which the ship is intended consists of going on voyages or that do not involve going to sea, be construed as a reference to going on such a voyage.

(3) Notwithstanding any other enactment, a foreign ship that is exercising the right of innocent passage under the United Nations Convention on the Law of the Sea 1982 shall not be detained pursuant to this section.

129. Compensation and security

(1) Subject to subsection (2), where a ship is detained under this Act, and the owner proves to the satisfaction of the Government that there was no reasonable cause for the detention of the ship, the Government may pay compensation to the owner for any loss or damage sustained by him by reason of the detention.

(2) Subject to subsection (3), where a complaint is made to the Director that a Mauritius ship is unsafe, or otherwise does not comply with this Act, the Director may require the complainant to give security to his satisfaction for any compensation which may become payable by the Government under subsection (1).

(3) The security referred to in subsection (2) shall not be required where the complaint is made by one fourth, being not less than 3, of the seamen belonging to the ship and is not, in the opinion of the Director, frivolous or vexatious.

(8) Where a ship is detained in consequence of any complaint, and the circumstances are such that the Government determines to pay compensation to the owner of the ship under subsection (1), the complainant shall be liable to repay to the Government the compensation which the Government may pay under subsection (1) in respect of the detention of the ship.

130. Safe operation of ships

(12) Where -

- (a) a Mauritius ship is within or outside Mauritius waters; or
- (b) a ship which is registered under the law of, or flies the flag of, any foreign country is within Mauritius waters while proceeding to or from a Port otherwise than because of weather conditions or any other unavoidable circumstances,

the owner of the ship shall take all reasonable steps to ensure that the ship is operated in a safe manner.

(13) Where a ship referred to in subsection (1) is bareboat chartered, or is managed by a person other than the owner under the terms of a management agreement, any reference to the owner of the ship in subsection (1) shall be construed as including a reference –

- (a) to the charterer under the bareboat charter;
- (b) to any manager under the management agreement; or
- (c) if the ship is both chartered and managed, under a management agreement to both the charterer and the manager.

PART VI – WRECK AND SALVAGE

Sub-Part I – Interpretation

131. Interpretation of Part VI

(1) In this Part -

“damage to the environment” means substantial physical damage to human health or to marine life or resources in coastal or inland waters or adjacent areas, caused by pollution, contamination, fire, explosion or a similar major incident;

“maritime casualty” means a collision of vessels, stranding or other incident of navigation or other occurrence on board a vessel or external to it, resulting in material damage, or imminent threat of material damage, to a vessel or cargo;

“payment” means any remuneration or compensation due under this Part;

“property” –

- (a) means any property not permanently and intentionally attached to the shoreline; and
- (b) includes freight at risk and wherever the context so requires, a vessel, cargo, equipment and effects;

“Receiver” means the Receiver of Wrecks designated in section 132;

“remuneration” means any amount paid in return for salvage services;

“vessel” includes any ship, dredger, boat or vessel of any other description used in navigation; and

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

- (2) Fishing vessels or fishing gear lost or abandoned at sea and -
 - (c) found or taken possession of within Mauritius waters; or
 - (d) found or taken possession of beyond those waters and brought within those waters,

shall be treated as wreck for the purposes of this Part.

Sub-Part II – Wreck

132. Receiver of Wrecks

(1) The Director shall be the Receiver of Wrecks, and in that capacity shall exercise general direction and supervision over all matters relating to wreck and salvage.

(2) Subsections (6) to (10) apply in circumstances where any vessel is wrecked, stranded or in distress at any place on or near the coast of Mauritius or any tidal water within Mauritius waters.

(14) The Receiver may designate a suitably qualified person to assist him in the performance of his duties as Receiver.

(15) There shall be paid to the Receiver the expenses properly incurred by him in the performance of his duties and such fees in respect of such other matters as may be prescribed, and the Receiver shall not be entitled to any other remuneration.

(16) The Receiver shall, in addition to all other rights and remedies for the recovery of the expenses and fees referred to in subsection (4), have the same rights and remedies as a salvor has in respect of salvage due to him and may, if the property in respect of which any such expenses and fees are due is not under arrest in any Court, seize or detain the property until his expenses and fees are paid, or until security is given to his satisfaction.

(17) All fees received by the Receiver, in respect of any services performed by him as Receiver, shall be retained by him, and a separate account shall be kept by him and the moneys shall be applied in defraying any expenses duly incurred in carrying this Sub-Part into effect.

(18) Subject to subsection (8), where the Receiver is informed that any of the circumstances specified in subsection (2) exists, he shall –

- (a) forthwith proceed to the place where the vessel is;
- (b) take command of all persons present; and
- (c) assign such duties and give such directions to each person as he thinks fit for the preservation of the vessel and of the lives of the shipwrecked persons and of the cargo and apparel of the ship.

(19) The Receiver shall not interfere between the master and crew of the vessel in relation to the management of the vessel unless he is requested to do so by the master.

(9) The Receiver may, for the purpose of the preservation of shipwrecked persons or of the vessel, cargo and apparel, require -

- (f) such persons as he thinks necessary to assist him;
- (g) the master, or other person having the charge of any vessel near at hand, to give such assistance with his men or vessel, as may be in his power; and
- (h) the use of any vehicle that is near at hand.

(10) (a) In circumstances where this subsection applies, any person may, subject to paragraphs (c) and (d), for the purpose of -

- (i) rendering assistance to a vessel;
- (ii) saving the lives of shipwrecked persons; or
- (iii) saving the cargo or equipment of a vessel,

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

(b) The right of passage is a right of passage with or without vehicles.

(c) No right of passage is conferred where there is some public road equally convenient.

(i) The right of passage shall be so exercised as to do as little damage as possible.

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

(11) Where the Receiver has reason to believe that -

- (c) any wreck is being concealed by, or is in the possession of, some person who is not its owner; or

- (d) any wreck is being otherwise improperly dealt with,

he may apply to a Magistrate for a search warrant.

(13) Where a search warrant is granted under subsection (1) to the Receiver, he may, by virtue of the warrant -

- (a) enter any house, or other place wherever situated, or any vessel; and
- (b) search for, seize and detain any wreck found there.

(13) Where any seizure of wreck is made under this section in consequence of information given by any person to the Receiver, the person giving the information shall be entitled, by way of salvage, to such reasonable sum as the Receiver may allow.

133. Duty of finder of wreck

(1) Any person who finds or takes possession of any wreck in Mauritius waters or finds or takes possession of any wreck outside Mauritius waters and brings it within those waters shall -

- (j) where he is the owner of it, give notice to the Receiver stating that he has found or taken possession of it and describing the marks by which it may be recognised; or
- (k) where he is not the owner of it, give notice to the Receiver that he has found or taken possession of it and, as directed by the Receiver, either hold it to the Receiver's order or deliver it to the Receiver.

(2) Any person who fails, without reasonable excuse, to comply with subsection (1) shall -

- (d) forfeit any claim to salvage; and
- (e) be liable to pay twice the value of the wreck –
 - (i) if it is claimed, to the owner of the wreck; or
 - (ii) if it is unclaimed, to the person entitled to the wreck.

(7) Where a vessel is wrecked, stranded or in distress at any place on or near the coast of Mauritius, any cargo or other article belonging to or separated from the vessel which is washed on shore or otherwise lost or taken from the vessel shall be delivered to the Receiver.

(8) The Receiver or a person authorised by him may take any such cargo or article, if necessary by force, from any person who refuses to deliver it.

134. Notice of wreck

(4) Where the Receiver takes possession of any wreck, he shall within 48 hours make a record describing the wreck and any marks by which it is distinguished.

(5) The record made by the Receiver under subsection (1) shall be kept by him available for inspection by any person during reasonable hours without charge.

(6) Where the Receiver takes possession of any wreck, he shall, within 48 hours –

- (a) cause to be posted at the office of the Director of Shipping; and
- (b) where he thinks it desirable, send to the Secretary of Lloyd's in London,

a description of the wreck and any marks by which it is distinguished.

135. Claim of owner of wreck

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

(7) Where –

- (a) a foreign ship has been wrecked on or near the coast of Mauritius; or
- (f) any article belonging to or forming part of, or of the cargo of a foreign ship which has been wrecked on or near the coast of Mauritius is found on or near the coast or is brought into any Port,

any diplomatic representative of the country in which the ship is registered may, in the absence of the owner and of the master or agent of the owner, be treated as the agent of the owner for the purposes of the custody and disposal of the wreck or the article.

136. Immediate sale of wreck

(5) The Receiver may, at any time, sell any wreck in his possession where in his opinion –

- (a) it is under the value of 20,000 rupees;
- (b) it is so damaged or of so perishable a nature that it cannot with advantage be kept; or
- (c) it is not of sufficient value to pay for storage.

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

137. Unclaimed wreck

(5) The Government shall be entitled to any unclaimed wreck found in Mauritius or in Mauritius waters, except in cases where the Government has granted to any person the right to the wreck.

(6) Any person who is entitled to unclaimed wreck found at any place in Mauritius or in Mauritius waters shall give the Receiver a statement containing the particulars of his entitlement and specifying an address to which notices may be sent.

(7) Where a statement has been given to the Receiver under subsection (2) and the entitlement is proved to his satisfaction, he shall, on taking possession of any wreck found at a place to which the statement refers, within 48 hours send to the specified address a description of the wreck and of any marks distinguishing it.

(8) (a) Where, in respect of any wreck found in Mauritius or in Mauritius waters and in the possession of the Receiver, no owner establishes a claim to it within one year after it came into the Receiver's possession, the wreck shall be dealt with as provided in this subsection.

(b) Where the wreck is claimed by a person who has delivered the statement required by subsection (2) and has proved to the satisfaction of the Receiver his entitlement to receive unclaimed wreck found at the place where the wreck was found, the wreck shall, on payment of all expenses, costs, fees and salvage due in respect of it, be delivered to that person.

(c) Where the wreck is not claimed by a person in accordance with subsection (2), the Receiver shall sell the wreck and pay the proceeds into the Consolidated Fund, after deducting all expenses, costs and fees and all salvage due in respect of it.

138. Delivery of wreck and payment of proceeds

(1) Any delivery of wreck or payment of the proceeds of sale of wreck by the Receiver under this Sub-Part shall discharge the Receiver from all liability in respect of their delivery or payment.

(2) Any delivery of wreck by the Receiver under this Sub-Part shall not, however, prejudice or affect any question which may be raised by third parties concerning the right or title to the wreck.

139. Release of goods by Customs

(1) The Director-General of Customs shall, subject to taking security for the protection of the revenue in respect of the goods, permit all goods saved from any ship stranded or wrecked on its homeward voyage to be forwarded to the port of its original destination.

(2) The Director-General of Customs shall, subject to taking such security, permit all goods saved from any ship stranded or wrecked on its outward voyage to be returned to the port at which they were shipped.

140. Wreck in territorial sea

(1) (a) Where any vessel is sunk, wrecked or stranded within the territorial sea of Mauritius but outside the limits of any Port in such a manner as to be or be likely to become an obstruction or danger to navigation, the master, owner or agent shall raise, remove or destroy the vessel within 15 days of the occurrence of the event.

(b) After the 15 day period, on failure of the master, owner or agent to act, the Receiver may exercise any of the powers conferred by subsection (2).

- (2) The powers referred to in subsection (1) (b) are -
- (a) to take possession of, and raise, remove or destroy the vessel and any other property to which the power extends;
 - (b) to light or buoy the vessel and any other such property until it is raised, removed or destroyed;
 - (c) subject to subsections (5) and (6), to sell, in such manner as the Receiver thinks fit, the vessel so raised or removed and any other property referred to in subsection (3) and recovered in the exercise of the powers conferred by paragraph (a) or (b); and
 - (d) to reimburse himself, out of the proceeds of the sale, for the expenses incurred by him in relation to the sale.

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

(4) Any surplus of the proceeds of a sale under subsection (2) (c) shall be held by the Receiver in trust for the person entitled thereto.

(5) Except in the case of property which is of a perishable nature or which would deteriorate in value by delay, no sale shall be made under subsection (2) (c) until at least 7 days' notice of the intended sale has been given by advertisement in a local newspaper.

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

(7) The market value of property for the purposes of subsection (6) shall be that agreed to between the Receiver and the owner or, failing agreement, that determined by a valuer appointed for that purpose by the Minister.

(8) The sum paid to the Receiver in respect of any property under subsection (6) shall, for the purposes of this section, be treated as the proceeds of sale of the property.

Sub-Part III – Salvage

141. Application of Sub-Part III

This Sub-Part shall not apply to –

- (a) fixed or floating platforms or mobile off-shore drilling units where such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed mineral resources; or
- (b) warships or other non-commercial vessels owned or operated by a foreign State and entitled, at the time of the salvage operation, to immunity under generally recognised principles of international law, unless that State has decided to apply the Salvage Convention to those ships or vessels.

142. Life salvage

(1) Where salvage services are rendered in saving life from any vessel in or outside Mauritius waters, the owner of the vessel, cargo or equipment saved shall pay to the salvor a reasonable amount of salvage.

(2) Salvage in respect of the preservation of life, when payable by the owner of a vessel, shall have priority over all other claims for salvage.

(3) Salvage shall, under no circumstances, be due from a person whose life has been saved.

(4) Where –

- (a) services are rendered in Mauritius waters in saving life from a vessel of any nationality or elsewhere in saving life from a Mauritius ship; and
- (b) the vessel and other property are destroyed or the sum to which the salvor is entitled under section 145(2) is less than a reasonable amount for the services rendered in saving life,

the Receiver may, if he thinks fit, pay to the salvor such sum or, as the case may be, such additional sum as he thinks fit in respect of the services rendered in saving life.

143. Salvage of cargo

(4) Where a vessel is wrecked, stranded or in distress in Mauritius waters and services are rendered –

(a) by any person assisting the vessel or saving the cargo or equipment of the vessel; or

(b) by a person other than the Receiver in saving any wreck,

the owner of the vessel, cargo, equipment or wreck shall pay to the salvor a reasonable amount of salvage.

(5) A salvor of human life, who has participated in services rendered in the event of a maritime casualty giving rise to salvage, shall be entitled to a fair share of the remuneration awarded to the salvor for salvaging the vessel or other property or preventing or minimising damage to the environment.

144. Excluded services

Nothing in this Sub-Part shall entitle a person to remuneration –

(a) in respect of salvage services rendered contrary to any express and reasonable prohibition of such services on the part of the vessel or aircraft or by the owner of property to which such services are rendered;

(b) in respect of services rendered by a tug to or in respect of the vessel or aircraft which it is towing or its cargo, except where the services are of an exceptional character and outside the scope of the contract of towage;

(c) where he has caused the distress giving rise to the salvage intentionally or through negligence; or

(d) where and to such extent as it appears that he has concealed or unlawfully disposed of any property salvaged.

145. Salvage remuneration

(1) Subject to section 153, no remuneration shall be due under this Sub-Part where salvage operations have no useful result.

(2) A salvor shall be entitled to remuneration notwithstanding that the vessel performing the salvage operation and the vessel, cargo or other property salvaged belong to the same owner.

146. Salvage contracts

(1) Subject to subsection (3), this Sub-Part shall not apply to any salvage operation where a contract expressly or by implication provides otherwise.

(2) The master of a Mauritius vessel shall have the authority to conclude contracts for salvage operations on behalf of the owner of the vessel, and the master and the owner of a Mauritius vessel shall have the authority to conclude contracts on behalf of the owner of property on board the vessel.

(6) Any contract relating to salvage may be annulled or modified by the Supreme Court, where it appears to the Court that –

- (a) the contract has been entered into under undue influence or the influence of danger and its terms are inequitable; or
- (b) the payment under the contract is too large or too small for the services actually rendered.

147. Duties of salvor

Every salvor shall owe a duty to the owner of the vessel or other property in danger to –

- (a) carry out the salvage operation with due care;
- (b) exercise due care to prevent or minimise damage to the environment in performing the duty specified in paragraph (a);
- (c) seek assistance from other salvors whenever the circumstances reasonably so require; and
- (d) accept the intervention of other salvors when reasonably requested to do so by the owner or master of the vessel or the owner of other property in danger, but the amount of his remuneration shall not be prejudiced where he proves that such a request was unreasonable.

148. Duties of owner and master

The owner and master of a vessel or the owner of other property in danger shall owe a duty to the salvor –

- (a) to co-operate fully with him during the course of the salvage operation;

- (b) in performing the duty specified in paragraph (a), to exercise due care to prevent or minimise damage to the environment; and
- (c) where the vessel or other property has been brought to a place of safety, to accept redelivery when reasonably requested to do so by the salvor.

149. Duties of other persons

Any person who is reasonably within the vicinity of a vessel or person in distress or danger of being lost at sea shall render assistance to save the vessel and life by cooperating in –

- (a) procuring and providing facilities to a salvor;
- (b) the admittance to a Port of a vessel in distress;
- (c) ensuring the efficient and successful performance of the salvage operation for the purpose of salvaging life or property; and
- (d) preventing or minimising damage to the environment.

150. Powers of Director

- (1) The Director may -
 - (a) give directions in relation to any salvage operation; and
 - (b) take measures in accordance with generally recognised principles of international law to protect the environment from pollution following a maritime casualty, or acts relating to such casualty which may reasonably be expected to result in harmful consequences.

(2) The Director shall, in exercising his powers under subsection (1), take into account the need for cooperation between salvors, other interested parties and the public authorities in order to ensure the efficient and successful performance of salvage operations and to prevent damage to the environment.

(3) Any public officer or other person acting under directions pursuant to subsection (1) shall be under a duty to exercise due care in preventing or minimising damage to the environment.

151. Criteria for determining remuneration

(1) Remuneration shall be determined with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are listed -

- (a) the salved value of the vessel and other property;
- (b) the skill and efforts of the salvor in preventing or minimising damage to the environment;
- (c) the measure of success achieved by the salvor;
- (l) the nature and degree of the danger;
- (m) the skill and efforts of the salvor in salvaging the vessel, other property and life;
- (n) the time spent and the expenses and losses incurred by the salvor;
- (o) the risk of liability and other risks run by the salvor or his equipment;
- (p) the promptness of the services rendered;
- (q) the availability and use of vessels or other equipment intended for salvage operations; and
- (r) the state of readiness and efficiency of the salvor's equipment and its value.

(2) Remuneration, excluding any interest and recoverable legal costs that may be payable, shall not exceed the salved value of the vessel and other property salvaged.

152. Responsibility for payment

(1) Payment of remuneration shall be made by the owners of the vessel and other property interests in proportion to their respective salved values.

(2) For expediency, the ship owner shall pay the remuneration on behalf of all interests referred to in subsection (1) subject to his retaining the right to be reimbursed by these other interests.

(3) The ship owner who makes a payment under subsection (2) may require the other interests to provide security not exceeding the values of their respective salvaged interests until he has been fully reimbursed.

153. Special compensation

(1) Where a salvor has carried out a salvage operation in respect of a vessel which by itself or its cargo threatened damage to the environment, and has failed to earn remuneration under this Sub-Part equivalent at least to the special compensation assessable under subsection (2), he shall be entitled to special compensation from the owner of that vessel equivalent to the out-of-pocket expenses reasonably incurred by him in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in paragraphs (h), (i) and (j) of section 151 (1).

(2) Where, in the circumstances set out in subsection (1), the salvor by his salvage operation has prevented or minimised damage to the environment, the special compensation payable by the owner to the salvor under subsection (1) may be increased, but in no event shall the total increase be more than 100% of the expenses incurred by the salvor.

(3) The total special compensation assessable under this section shall be paid only if and to the extent that such compensation is greater than any remuneration recoverable under section 151.

(4) Where the salvor, in carrying out the salvage operation, has acted negligently and thus failed to prevent or minimise damage to the environment, he may be deprived of any special compensation payable under this section.

(5) In determining remuneration under sections 151 and 152, and assessing special compensation under this section, it shall not be necessary to award remuneration up to the maximum salvaged value of the vessel and other property before assessing the special compensation to be paid under this section.

154. Services rendered pursuant to a contract

No payment shall be due under this Sub-Part unless the services rendered exceed what can be reasonably considered as due performance of a contract entered into before the danger giving rise to the salvage operations arose.

155. Apportionment of remuneration

(1) The apportionment of remuneration between salvors shall be made on the basis of the criteria listed in section 151.

(2) The apportionment of remuneration between the owner, master and other persons in the service of each salving vessel shall be determined by the law of the State in which the vessel is registered.

(3) Where the salvage referred to in subsection (1) has not been carried out from a vessel, the apportionment shall be determined by the law governing the contract between the salvor and his servant and, in the absence of a contract, according to the merits of the case in order to reach a fair and just decision.

156. Salvor's misconduct

A salvor may be deprived of any payment due to him under this Sub-Part to the extent that the salvage operation has become necessary or more difficult because of fault or neglect on his part or if he has been guilty of fraud or other dishonest conduct.

157. Maritime lien

Nothing in this Sub-Part shall affect a salvor's maritime lien under this Act, but a salvor may not enforce his maritime lien where reasonable security for his claim, including interest and costs, has been tendered or provided.

158. Duty to provide security

(1) A person liable for a payment under this Sub-Part shall, at the request of a salvor, give security to the satisfaction of the salvor for the claim, including interest and costs.

(2) The owner of a salvaged vessel shall take all reasonable steps to ensure that the owner of the cargo provides security to his satisfaction or that of the salvor for the claims against them, including interest and costs, before the cargo is released.

(3) A salvaged vessel and property shall not, without the consent of the salvor, be removed from the port or place at which they first arrive after the completion of the salvage operation until security to the satisfaction of the salvor has been put up for the salvor's claim against the relevant vessel or property.

159. Interim payment

(1) The Court or any other person adjudicating the claim of a salvor may, upon the application of the salvor, make an interim order for payment to the salvor of such amount as the Court or person may deem fair and just, and on such terms, including terms as to security where appropriate, as may be fair and just in the circumstances of the case.

(2) In the event of any interim payment under subsection (1), any security provided under section 158 shall be reduced accordingly.

160. Humanitarian cargo

No humanitarian cargo donated by a State shall be subject to seizure, arrest or detention, where that State has agreed to pay for salvage services rendered in respect of that cargo.

161. Salvage dispute

(1) Any dispute as to the amount of salvage for services rendered within or outside Mauritius, arising between a salvor and the owner of a vessel, cargo, apparel or wreck may, if not settled by agreement, arbitration or otherwise, be determined by the Court.

(2) The Court may, for the purpose of determining any such dispute, call to its assistance, as an assessor, a person knowledgeable in salvage or maritime matters and there shall be paid as part of the costs of the proceedings to every such assessor in respect of his assistance such sum as may be prescribed.

162. Valuation of property salvaged

(1) Where any dispute relating to salvage arises, the Receiver may, on the application of either party, appoint a valuer to value the property, and when the valuation has been made, shall give a copy of the valuer's report to each party.

(2) Any copy of the valuation report, purporting to be signed by the valuer and certified as a true copy by the Receiver, shall be admissible as evidence in any subsequent proceedings.

(3) Such fee as the Receiver may direct shall be paid in respect of any valuation made under this section by the person applying for it.

163. Detention of property

(1) Where salvage is due to any person under this Sub-Part, the Receiver shall -

- (a) where the salvage is due in respect of services rendered in assisting any vessel or in saving life or cargo or equipment, detain the vessel, cargo or equipment; and
- (b) where the salvage is due in respect of the saving of any wreck, and the wreck is not sold as unclaimed under Sub-Part II, detain the wreck.

(2) Subject to subsection (3), the Receiver shall detain the vessel, cargo, equipment or wreck, as the case may be, until payment is made for salvage or process is issued for the arrest or detention of the property by the Court.

(3) The Receiver may release any property detained under subsection (2) where security is given to his satisfaction or, where the claim for salvage exceeds 50,000 rupees and any question is raised as to the sufficiency of the security, to the satisfaction of the Court.

164. Sale of detained property

(1) The Receiver may sell any property detained pursuant to section 163 where the person liable to pay the salvage in respect of which the property is detained is aware of the detention and -

- (a) the amount is not in dispute and payment of the amount due is not made within 30 days after it has become due; or
- (b) the amount is disputed and within 30 days after the decision of the Court neither payment of the sum due has not been made and no proceedings for an appeal have been started.

(2) The proceeds of sale of detained property shall, after payment of the expenses of the sale, be applied by the Receiver in payment of the expenses, fees and salvage, and any excess shall be paid to the owner of the property or any other person entitled to it or, in the absence of any such owner or person, into the Consolidated Fund.

165. Apportionment by Receiver

(1) Where the aggregate amount of salvage payable in respect of salvage services rendered in Mauritius has been finally determined and does not exceed 50, 000 rupees, but a dispute arises as to its apportionment among several claimants, the person liable to pay the amount may apply to the Receiver for leave to pay it to him.

(2) The Receiver shall, if he thinks fit, receive the amount referred to in subsection (1) and give to the person paying it a certificate stating the amount paid and the services in respect of which it is paid.

(3) A certificate granted under subsection (2) shall be a full discharge to the person by whom the amount is paid and to his vessel, cargo, equipment and effects, against the claim of any person in respect of the services mentioned in the certificate.

(4) The Receiver shall, as soon as reasonably practicable, distribute any amount received by him under this section among the persons entitled to it on such evidence and in such shares and proportions as he thinks fit, and may retain any money which appears to him to be payable to any person who is absent.

166. Apportionment by Court

Where the aggregate amount of salvage payable in respect of salvage services rendered in Mauritius has been finally determined and exceeds 50,000 rupees, or where the aggregate amount of salvage payable in respect of salvage services rendered outside Mauritius has been finally determined whatever that amount may be, if any delay or dispute arises as to the apportionment, the Court may –

- (a) cause the amount to be apportioned among the persons entitled to it in such manner as it thinks just and, if it thinks fit, appoint any person to carry that apportionment into effect; and
- (b) compel any person, in whose hands or under whose control the amount may be, to distribute the amount or to bring it into Court to be dealt with as the Court directs.

167. Limitation of action

(1) No action shall be instituted in respect of any salvage services unless proceedings are commenced within 2 years of the date on which the salvage operation was terminated.

(2) An action for indemnity by a person liable under this Sub-Part may be instituted within 2 years of the date of termination of the salvage operation.

PART VII – CONTROL OF AND RETURNS ON PERSONS ON SHIPS

168. Objectionable persons

The master of a passenger ship may refuse to receive on board any person who, by reason of intoxication or otherwise, is in such a state, or misconducts himself in such a manner, as to cause annoyance or injury to passengers on board, and may put any such person who is already on board ashore at any convenient place.

169. Stowaways

(1) Where a person, referred to in this Act as a “stowaway”, without the consent of the master or of any other person authorised to give it, goes to sea or attempts to go to sea in a Mauritius ship, the master may -

- (a) where the stowaway is a Mauritius citizen -
 - (i) detain him and hand him over to the police authorities on the ship’s arrival in Mauritius; or
 - (ii) if the ship is not scheduled to call at a Port, after consultation with the proper officer at the next convenient foreign port of call, hand him over to the local immigration authorities for his repatriation to Mauritius; or
- (b) where the stowaway is not a Mauritius citizen -
 - (i) hand him over to the immigration authorities of the port at which he embarked; or
 - (ii) if he is discovered on the high seas or at a port other than that at which he embarked -

- (A) hand him over to the local immigration authorities at the next port of call or at the port at which he is discovered; or
- (B) if the ship is scheduled to arrive in Mauritius within a reasonable time after the stowaway is discovered, detain him on board and arrange for his repatriation at the ship's expense.

(2) A stowaway shall, for as long as he remains on board a Mauritius ship, belong to the ship and be subject to the law governing the conduct of the crew as if he were a member of the crew.

170. Master's power of arrest

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

171. Status of person conveyed on Mauritius ship

Where a person is conveyed in a Mauritius ship pursuant to section 86 (2) (b), he shall, for as long as he remains on board, belong to the ship and be subject to the law governing the conduct of the crew as if he were a member of the crew.

172. Passenger returns

(1) The master of every Mauritius passenger ship, regardless of where the ship plies, and of every foreign ship carrying passengers from or to a place in Mauritius, shall provide to the Director in a manner directed by him, a return giving the total number of any passengers carried on every voyage.

(2) Any passenger so requested shall provide the master of the ship with any information required by him for the purpose of the return.

173. Births and deaths on ships

(1) The master of every Mauritius ship shall make a return to the Registrar of –

- (a) the birth or death of a person occurring on the ship; and
- (b) the death of a person employed on the ship occurring outside Mauritius,

and shall notify any such death to such person, if any, as the deceased may have named to him as his next-of-kin.

(2) The master of a foreign ship which calls at a Port shall make a return to the Registrar of any birth or death of a Mauritius citizen which has occurred on the ship during the voyage.

(3) The Registrar shall send certified copies of returns made under this section to the Registrar of Civil Status who shall record the births and deaths to which the returns relate in the manner provided by law.

PART VIII – CARRIAGE OF PASSENGERS AND LUGGAGE

174. Interpretation of Part VIII

(1) In this Part -

“Athens Convention” means the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974;

“cabin luggage” -

(a) means luggage which a passenger has in his cabin or which is otherwise in his possession, custody or control; and

(b) includes, except for the purposes of subsection (2) and section 181, luggage which the passenger has in or on his vehicle;

“carriage” has the meaning assigned to it in subsection (2);

“carrier” means a person by or on behalf of whom a contract of carriage has been concluded, whether the carriage is actually performed by him or by a performing carrier;

“contract of carriage” means a contract for reward made by or on behalf of a carrier for the carriage by sea of a passenger or of a passenger and his luggage, as the case may be;

“international carriage” means carriage in which, according to the contract of carriage, the place of departure and the place of destination are situated in two different States, or in a single State if, according to the contract of carriage or the scheduled itinerary, there is an intermediate port of call in another State;

“loss of, or damage to, luggage” –

- (a) includes pecuniary loss resulting from the luggage not having been redelivered to the passenger within a reasonable time after the arrival of the ship on which the luggage has been or should have been carried; but
- (b) does not include delay in delivery luggage resulting from labour disputes;

“luggage” –

- (a) means any article or vehicle carried by the carrier under a contract of carriage; but
- (b) does not include -
 - (i) articles and vehicles carried under a charter party, bill of lading or other contract primarily concerned with the carriage of goods; or
 - (ii) live animals;

“passenger” means a person carried on a ship –

- (a) under a contract of carriage; or
- (b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods;

“performing carrier” means a person, other than the carrier, who is the owner, charterer or operator of a ship and who actually performs the carriage;

“ship” –

- (a) means a seagoing vessel; but
- (b) does not include an air-cushion vehicle.

- (2) For the purposes of this Part -

“carriage” covers the following periods –

- (a) with regard to the passenger and his cabin luggage, the period during which the passenger and his cabin luggage are on board the ship or in the course of embarkation or disembarkation, and the period during which the passenger and his cabin luggage are transported by water from land to the ship or vice versa, where the cost of such transportation is included in the fare or where the vessel used for the purpose of auxiliary transportation has been put at the disposal of the passenger by the carrier;
- (b) with regard to the passenger, the period referred to in paragraph (a), but excluding the period during which the passenger is in a marine terminal or station or on a quay or in or on any other port installation;
- (c) with regard to cabin luggage, the period referred to in paragraph (a) as well as the period during which the passenger is in a marine terminal or station or on a quay or in or on any other port installation where the luggage has been taken over by the carrier or his agent and has not been re-delivered to the passenger; and
- (d) with regard to luggage other than cabin luggage, the period from the time it is taken over by the carrier or his agent ashore or on board until the time it is redelivered by the carrier or his servant or agent.

175. Application of Part VIII

(1) Subject to subsection (2), where a dispute concerning the carriage of a passenger or his luggage by sea is brought before a Court, this Part shall apply to an international carriage where -

- (a) the ship is flying the flag of, or is registered in, a State party to the Athens Convention;
- (b) the contract of carriage has been made in a State party to the Athens Convention; or
- (c) the place of departure or destination according to the contract of carriage is in a State party to the Athens Convention.

(2) Notwithstanding subsection (1), this Part shall not apply where the carriage is subject to any other international convention concerning civil liability with respect to the carriage of passengers or luggage by another mode of transportation, in so far as that convention has mandatory application to carriage by sea.

(3) For the purposes of subsection (2), any provision of an international Convention which does not have mandatory application to carriage by sea shall be treated as having mandatory application to carriage by sea if it is stated in the contract of carriage that the provision is to apply to the carriage.

(4) This Part shall apply to commercial carriage undertaken by ships owned by the Government of the Republic of Mauritius or a public authority under a contract of carriage.

(5) Nothing in this Part shall affect the operation of section 211 (3) which limits a shipowner's liability in certain cases of loss of life, injury or damage.

(6) Nothing in section 212, which limits a shipowner's liability for the loss of or damage to goods in certain cases, shall relieve a person of any liability imposed on him by this Part.

176. Liability of carrier

(1) A carrier shall be liable for the damage suffered as a result of the death of or personal injury to a passenger and the loss of or damage to luggage where the incident which caused the damage occurred in the course of the carriage and was due to the fault or neglect of the carrier or of his agent acting within the scope of his employment.

(2) Subject to subsections (3) and (4), a claimant shall have the burden of proving -

- (a) that the incident which caused the damage occurred in the course of the carriage, and the extent of the damage; and
- (b) fault or neglect on the part of the carrier or of his agent acting within the scope of his employment.

(3) Where the death of or personal injury to the passenger, or the loss of or damage to cabin luggage, arose from or in connection with the shipwreck, collision, stranding, explosion of, or fire or defect in, the ship, there shall be a rebuttable presumption of fault or neglect on the part of the carrier or his agent acting within the scope of his employment.

(4) In respect of loss of or damage to luggage other than cabin luggage, there shall be a rebuttable presumption of fault or neglect on the part of the carrier or his agent acting within the scope of his employment, irrespective of the nature of the incident which caused the damage.

177. Performing carrier

Where the performance of the carriage has been entrusted to a performing carrier –

- (a) subject to paragraphs (b), (c), (d) and (e), the carrier shall be liable for the entire carriage, and in relation to the carriage performed by the performing carrier, shall be liable for the acts and omissions of the performing carrier and of his agent acting within the scope of his employment;
- (b) subject to paragraphs (a), (c), (d) and (e), the performing carrier shall be subject to this Part and entitled for the part of the carriage performed by him;
- (c) any special agreement, under which the carrier assumes obligations not imposed by this Part or any waiver of rights conferred by this Part, shall not affect the performing carrier unless the performing carrier so agrees expressly and in writing;
- (d) where, and to the extent that, both the carrier and the performing carrier are liable, their liability shall be joint and several;
- (e) nothing in this section shall prejudice any right of recourse as between the carrier and the performing carrier.

178. Valuables

A carrier shall not be liable for the loss of or damage to moneys, negotiable securities, gold, silverware, jewellery, ornaments, works of art or other valuables, except where such valuables have been deposited with the carrier for the agreed purpose of safe-keeping, in which case the carrier shall be liable up to the limit provided for in section 181.

179. Contributory fault

Where the carrier proves that the death of or personal injury to a passenger, or the loss of or damage to his luggage was caused or contributed to by the fault or neglect of the passenger, the carrier may be exonerated wholly or partly from liability.

180. Limits of liability for death or personal injury

(1) With respect to the limit of liability of a carrier for death or personal injury -

- (a) subject to paragraphs (b), (c), and (d), liability for the death of or personal injury to a passenger shall not exceed 46,666 special drawing rights per carriage;
- (b) where damages are awarded in the form of periodical income payments, the equivalent capital value of those payments shall not exceed the limits prescribed in paragraph (a);
- (c) interest on damages and legal costs shall not be included in the limits of liability prescribed in paragraphs (a) and (b); and
- (d) the carrier and the passenger may agree, expressly and in writing, to limits of liability higher than those prescribed in paragraphs (a) and (b).

(2) Notwithstanding subsection (1)(a), the Minister may prescribe a limit of liability higher than that provided for in subsection (1)(a) for a carrier whose principal place of business is in Mauritius.

181. Limits of liability for loss of, or damage to, luggage

With respect to the limit of liability of a carrier for the loss of or damage to luggage –

- (a) subject to paragraphs (b) and (c), the liability of a carrier shall not exceed -
 - (i) for the loss of or damage to cabin luggage, 833 special drawing rights per passenger, per carriage;
 - (ii) for the loss of or damage to vehicles including all luggage carried in or on the vehicle, 3,333 special drawing rights per vehicle, per carriage; and
 - (iii) for the loss of or damage to luggage other than those mentioned in subparagraphs (i) and (ii), 1,200 special drawing rights per passenger, per carriage;
- (b) a carrier and a passenger may agree -

- (i) that the liability of the carrier shall be subject to a reduction not exceeding 117 special drawing rights in the case of damage to a vehicle, and not exceeding 13 special drawing rights per passenger in the case of loss of or damage to other luggage to be deducted from the damage; or
- (ii) expressly and in writing, to a limit of liability higher than what is provided in paragraph (a); and
- (c) interest on damages and legal costs shall not be included in the limits of liability provided in paragraph (a).

182. Conversion of special drawing rights

(1) For the purpose of converting into rupees the amounts of special drawing rights mentioned in sections 180 and 181 in respect of which a judgment is given, one special drawing right shall be treated as equal to such a sum in rupees as determined by the Bank of Mauritius, being the rupee equivalent of the dollar amount fixed by the International Monetary Fund as being the equivalent of one special drawing right, for -

- (a) the day on which the judgment is given; or
- (b) if no sum has been so determined for that day, the last day before that day for which a sum has been so determined.

(2) A certificate given by a Deputy Governor of the Bank of Mauritius stating -

- (a) that a particular sum in rupees has been determined for a particular day as mentioned in subsection 45B of the Bank of Mauritius Act 2004; or
- (b) that no sum has been so determined for that day and a particular sum in rupees has been so determined for a day which is the last day for which a sum has been so determined before the particular day,

shall be conclusive evidence of those matters for the purpose of sections 180 and 181, and a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

183. Defences and limits for agents

Where an action is brought against an agent of a carrier or of a performing carrier arising out of damage covered by this Part, the agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the defences and limits of liability which a carrier or a performing carrier is entitled to invoke.

184. Aggregation of claims

(1) Where the limits of liability provided in sections 180 and 181 take effect, they shall apply to the aggregate of the amounts recoverable in all claims arising out of the death of or personal injury to any one passenger or the loss of or damage to his luggage.

(2) In relation to carriage performed by a performing carrier, the aggregate of the amounts recoverable from the carrier and the performing carrier and from their agents acting within the scope of their employment shall not exceed the highest amount which could be awarded against either the carrier or the performing carrier under this Part, but none of the persons referred to shall be liable for a sum in excess of the limit applicable to him.

(7) In any case where an agent of a carrier or of a performing carrier is entitled under section 183 to avail himself of the limits of liability prescribed in sections 180 and 181, the aggregate of the amounts recoverable from the carrier or the performing carrier and from that agent shall not exceed those limits.

(8) The limitations on liability set out in this section in respect of a passenger or his luggage apply to the aggregate liabilities of the persons in question in all proceedings for enforcing the liabilities or any of them which may be brought whether in Mauritius or elsewhere.

185. Loss of right to limit liability

(5) A carrier shall not be entitled to the benefit of the limits of liability provided in sections 180 and 181 where it is proved that the damage resulted from an act or omission of the carrier, done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

(6) The agent of a carrier or of a performing carrier shall not be entitled to the benefit of those limits where it is proved that the damage resulted from an act or omission of that agent done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

186. Notice of loss of or damage to luggage

(4) Subject to subsection (3), a passenger shall give written notice to the carrier or his agent -

- (a) in the case of loss of or apparent damage to luggage -
 - (i) for cabin luggage, before or at the time of disembarkation of the passenger; and
 - (ii) for all other luggage, before or at the time of its redelivery; and
- (b) in the case of damage to luggage which is not apparent, or loss of luggage, within 15 days from the date of disembarkation or redelivery or from the time when such redelivery should have taken place.

(5) Where a passenger fails to comply with subsection (1), he shall be presumed, unless the contrary is proved, to have received the luggage undamaged.

(6) A notice under subsection (1) need not be given where the condition of the luggage has, at the time of its receipt, been the subject of a joint survey or inspection.

187. Time bar for actions

(1) Subject to subsections (2), (3) and (4), an action for damages arising out of the death of or personal injury to a passenger, or for the loss of or damage to luggage, shall be time-barred after a period of 2 years.

- (2) The limitation period shall be calculated -
 - (a) in the case of personal injury, from the date of disembarkation of the passenger;
 - (b) in the case of death occurring during carriage, from the date when the passenger should have disembarked, and in the case of personal injury occurring during carriage and resulting in the death of the passenger after disembarkation, from the date of death, but this period shall not exceed 3 years from the date of disembarkation; or

- (c) in the case of loss of or damage to luggage, from the date of disembarkation or from the date when disembarkation should have taken place, whichever is later.

(3) A Court may, at its discretion, order the suspension or interruption of limitation periods, but in no case shall an action under this Part be brought after the expiration of 3 years from the date of disembarkation of the passenger or from the date when disembarkation should have taken place, which ever is later.

(4) Notwithstanding subsections (1), (2) and (3), the period of limitation may be extended by a declaration in writing of the carrier or by agreement in writing of the parties after the cause of action has arisen.

188. Competent jurisdiction

(1) Proceedings under this Part may be brought before a Court by a plaintiff where -

- (a) the permanent residence or principal place of business of the plaintiff or the defendant is situated in Mauritius;
- (b) the place of departure or destination according to the contract of carriage is in Mauritius; or
- (c) the contract of carriage was entered into in Mauritius and the defendant has a place of business in, and is subject to, the jurisdiction of Mauritius.

(2) After the occurrence of an incident causing damage, subject to agreement by the parties, a claim for damages may be submitted to arbitration, and section 187 shall, in such case apply to an arbitration as it applies to an action.

(3) The Court before which proceedings are brought under subsection (1) to enforce a liability which is limited by virtue of section 186 may, at any stage of the proceedings, make such orders as appear to the Court to be just and equitable and shall, where the liability is or may be partly enforceable in other proceedings in Mauritius or elsewhere have jurisdiction to award an amount less than the Court would have awarded if the limitation applied solely to the proceedings before the Court, or to make any part of its award conditional on the result of any other proceedings.

189. Invalidity of certain agreements

Any agreement, other than an agreement pursuant to section 181 (b) (i), concluded before the occurrence of an incident which has caused the death of or personal injury to a passenger or the loss of or damage to his luggage, purporting to relieve the carrier of his liability towards the passenger or to prescribe a lower limit of liability than that fixed in this Part or purporting to shift the burden of proof which rests on the carrier, or having the effect of restricting the application of section 188 (1), shall be null and void, but that nullity shall not render void the contract of carriage which shall remain subject to this Part.

190. Application of other limitation regimes

This Part shall not affect the rights or duties of a carrier, a performing carrier and their agents provided for in international conventions applicable to Mauritius or in any other enactment relating to the limitation of liability of owners of seagoing ships.

191. Nuclear damage

No liability shall arise under this Part for damage caused by a nuclear incident if liability arises under an international convention relating to nuclear damage applicable to Mauritius, or under any other enactment relating to nuclear damage.

192. States parties to Athens Convention

Where the Minister certifies that a State is a party to the Athens Convention, the certificate shall be conclusive evidence for the purposes of this Part that the State is a party to the Athens Convention.

PART IX – LIMITATION AND DIVISION OF LIABILITY FOR MARITIME CLAIMS

193. Persons entitled to limit liability

(1) A shipowner and a salvor may limit their liabilities in accordance with this Part.

(2) An insurer of liability for claims subject to limitation under this Part shall be entitled to the benefit of limitation to the same extent as the assured.

(3) A person for whose act, neglect or default a shipowner or salvor is responsible may limit his liability under this Part.

194. Claims subject to limitation

(1) Subject to section 195, a claim shall be subject to limitation of liability regardless of the basis of liability where it is -

- (a) in respect of loss of life or personal injury or loss of or damage to property, including damage to harbour works, basins and waterways and aids to navigation, occurring on board or in direct connection with the operation of the ship or with a salvage operation, and any consequential loss;
- (b) in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;
- (c) in respect of other loss resulting from a infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or a salvage operation;
- (d) in respect of the raising, removal, destruction or rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board the ship;
- (e) in respect of the removal, destruction or rendering harmless of the cargo of the ship; or
- (f) made by a person other than the person liable, in respect of measures taken in order to avert or minimise loss, for which the person liable may limit his liability in accordance with this Part, and further loss caused by those measures.

(2) A claim referred to in subsection (1) shall be subject to limitation of liability even if brought by way of counter claim or for indemnity under a contract or otherwise, but a claim referred to in subsection (1) (d), (e) or (f) shall not be subject to limitation to the extent that it relates to remuneration under a contract with the person liable.

(3) For the purposes of this Part, the liability of a shipowner shall include liability in an action against his ship, and the act of invoking limitation shall not constitute an admission of liability.

(4) A person liable shall not be entitled to limit his liability where it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

195. Claims excepted from limitation

Limitation of liability under this Part shall not apply to a claim –

- (a) for salvage and corresponding claims under a contract;
- (b) for contribution in general average;
- (c) by an employee of a shipowner or salvor whose duties are connected with the ship or a salvage operation, including a claim by his heirs, dependants or other persons entitled to make such a claim, where, under the contract of service between the shipowner or salvor and the employee, the shipowner or salvor is not entitled to limit his liability in respect of the claim, or he is under the contract only permitted to limit his liability to an amount greater than that provided for in section 197;
- (d) for oil pollution damage in respect of any liability incurred;
- (e) subject to any enactment governing or prohibiting limitation of liability for nuclear damage; or
- (f) against the shipowner of a nuclear ship for nuclear damage.

196. Counter claims

Where a person entitled to limitation of liability under this Part has a claim against the plaintiff arising out of the same occurrence, their respective claims shall be set off against each other and this Part shall only apply to the balance, if any.

197. Limitation calculations

The limits of liability for claims, other than those provided for in section 203, arising on any distinct occasion, shall be calculated as follows –

- (a) in respect of claims for loss of life or personal injury -
 - (i) 333000 special drawing rights for a ship with a tonnage not exceeding 500 tons;
 - (ii) for a ship with a tonnage in excess of 500 tons, the following amounts in addition to that mentioned in subparagraph (i) –
 - (A) for each ton from 501 to 3000 tons, 500 special drawing rights;

- (B) for each ton from 3001 to 30000 tons, 333 special drawing rights;
 - (C) for each ton from 30001 to 70000 tons, 250 special drawing rights; and
 - (D) for each ton in excess of 70000 tons, 167 special drawing rights;
- (b) in respect of any other claim -
- (i) 167000 special drawing rights for a ship with a tonnage not exceeding 500 tons;
 - (ii) for a ship with a tonnage in excess of 500 tons, the following amounts in addition to that mentioned in subparagraph (i) -
 - (A) for each ton from 501 to 30000 tons, 167 special drawing rights;
 - (B) for each ton from 30001 to 70000 tons, 125 special drawing rights; and
 - (C) for each ton in excess of 70000, 83 special drawing rights.

198. Limits of liability for salvors

The limits of liability for a salvor not operating from a ship or for a salvor operating solely on the ship on which, or in respect of which, he is rendering salvage services, shall be calculated according to a tonnage of 1,500 tons.

199. Limitation calculations for fixed claims

Where the amount calculated in accordance with section 197 (a) is insufficient to pay the claims referred to in that paragraph in full, the amount calculated in accordance with section 197 (b) shall be available for payment of the unpaid balance of claims under section 197 (a) and that unpaid balance shall rank rateably with claims referred to in section 197 (b).

200. Liability of dock owner

- (1) In this section -

“dock” includes wet docks and basins, tidal docks and basins, locks, cuts, entrances, dry docks, graving docks, slips, quays, wharves, piers, stages, landing places and jetties;

“owner of a dock” includes any authority or person having the control and management of a dock.

(2) The liability of the owner of a dock for any loss or damage caused to a ship, or to any goods or other things on board a ship, shall be limited, in accordance with subsection (5), by reference to the tonnage of the largest Mauritius ship which, at the time of the loss or damage is, or within the preceding five years has been, within the dock of which the person is an owner.

(3) The limitation of liability under this section relates to the whole of any loss or damage which may arise on any one occasion, although the loss or damage may be sustained by more than one person, and shall apply whether or not the liability arises under an enactment.

(4) This section does not exclude the liability of the owner of a dock for any loss or damage resulting from any personal act or omission referred to in section 194 (4).

(5) The limit of liability shall be ascertained by applying to the ship, by reference to which the liability is to be determined, the method of calculation specified in section 197 (b).

(6) Sections 204 and 205 shall apply for the purposes of this section.

(7) For the purposes of subsection (2), a ship shall not be treated as having been within the dock owned by the owner of the dock by reason only that it has been built or fitted out within that dock, or that it has taken shelter within or passed through the dock on a voyage between two places situated outside that dock, or that it has loaded or unloaded mail or passengers within the dock.

201. Limits for passenger claims

(1) (a) In respect of a claim arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner shall be an amount of 46666 special drawing rights multiplied by the number of passengers which the ship is authorised to carry according to the ship’s certificate, but not exceeding 25 million special drawing rights.

(b) In this subsection -

“claim for loss of life or personal injury to passengers of a ship” means any such claim brought by or on behalf of any person carried in that ship –

- (i) under a contract of passenger carriage; or
- (ii) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods.

(2) In the case of a ship for which there is in force a Passenger Ship Safety Certificate or Passenger Certificate, as the case may be, issued under or recognised by any relevant Safety Regulations, the ship’s certificate mentioned in subsection (1) shall be that certificate.

202. Conversion of special drawing rights

(1) For the purpose of converting the amounts mentioned in sections 197, 198, 199 and 200 from special drawing rights into rupees, one special drawing right shall be treated as equal to such a sum in rupees as the International Monetary Fund has fixed as being the equivalent of one special drawing right for –

- (a) the date on which the limitation fund shall have been constituted and guarantee given under section 204; or
- (b) the date on which payment is effected if no limitation fund shall have been constituted; or
- (c) if no sum has been so fixed for those dates, the last preceding date for which a sum has been so fixed.

(2) Section 182 (2) shall apply to subsection (1).

203. Aggregation of claims

(1) The limits of liability determined in accordance with sections 197, 198 and 199 shall apply to the aggregate of all claims which arise on any distinct occasion against -

- (a) the shipowner and any person for whose act, neglect or default he is responsible;
- (b) the shipowner of a ship rendering salvage services from that ship, the salvor operating from such ship and any person for whose act, neglect or default he or they are responsible; or

- (c) the salvor who is not operating from a ship or who is operating solely on the ship to, or in respect of which, the salvage services are rendered and any person for whose act, neglect or default he is responsible.

(2) The limits of liability determined in accordance with section 201 shall apply to the aggregate of all claims subject thereto which may arise on any distinct occasion against the shipowner in respect of the ship referred to in section 201 and any person for whose act, neglect or default he may be responsible.

204. Constitution of limitation fund

(1) Any person alleged to be liable and seeking to limit his liability under this Part may constitute a fund by depositing in the Registry of the Supreme Court an amount at least equivalent to the limit provided for in section 197, 198, 199 or 201 as appropriate, or by producing a guarantee acceptable to the Court, together with interest from the date of the occurrence giving rise to the liability until the date of the constitution of the fund, and the fund so constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.

(2) A fund constituted by a person referred to in section 203 (1) or his insurer or by a person or his insurer in respect of section 203 (2), shall be deemed to have been constituted by all the persons mentioned in section 203 (1) or all the persons in respect of section 203 (2), as the case may be.

(3) The Court may determine the rate of interest to be applied for the purposes of subsection (1).

(4) Where a fund is constituted under this section for the payment of claims arising out of any occurrence, the Court may stay any proceedings relating to any claim arising out of that occurrence which are pending against the person by whom the fund has been constituted.

(5) Where a limitation fund is constituted in Mauritius, the rules relating to its constitution and distribution, and the rules of procedure relating to it, shall be governed by Mauritius law.

205. Distribution of fund

(1) Subject to sections 197, 198, 199 and 201, a limitation fund shall be distributed among the claimants in proportion to their established claims against the fund.

(2) The Court may proceed, as to the exclusion of any claimants who do not come in within a certain time and as to payment of costs, in such manner as the Court thinks just.

(3) No lien or other right in respect of a ship or property shall affect the proportions in which any amount is distributed among several claimants.

(4) All sums paid for or on account of any loss or damage in respect of which the liability of owners is limited under this Part and all costs incurred may be brought into account among part owners of the same ship in the same manner as money disbursed for its use.

(5) If, before the fund is distributed, the person liable or his insurer has settled the claim, such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Part.

(6) In making any distribution in accordance with this section, the Court may, if it thinks fit, postpone the distribution of such part of the amount to be distributed as it deems appropriate having regard to any claims, subrogated or otherwise, that may be established later.

206. Bar to other actions

(1) Where a limitation fund has been constituted in accordance with section 204, a person having made a claim against the fund shall be barred from exercising any right in respect of the claim against any other assets of a person by or on behalf of whom the fund has been constituted.

(2) Where a ship or other property is attached or arrested in connection with a claim which appears to the Court to be founded on liability to which limitation is applicable under this Part, and in respect of which a limitation fund has been constituted or a guarantee has been deposited, the Court shall order the release of the ship or property where the limitation fund has been constituted in Mauritius or at -

- (a) the port where the occurrence took place, or, if it took place out of port, at the first port of call thereafter;
- (b) the port of disembarkation in respect of claims for loss of life or personal injury; or
- (c) the port of discharge in respect of damage to cargo,

but where the release is ordered, the person on whose application it is ordered shall be deemed to have submitted to the jurisdiction of the Court to adjudicate on the claim for which the ship or property was attached or arrested.

(3) This section shall apply only where the plaintiff brings a claim before the Court and the limitation fund is actually available and freely transferable in respect of that claim.

207. Apportionment of liability

(1) (a) In this section -

“freight” includes passage money and hire.

(b) In this section, reference to damage or loss caused by the fault of a ship includes a reference to any salvage or other expenses, consequent upon that fault, recoverable by way of damage under this Act.

(2) Where, by the fault of 2 or more ships, damage or loss is caused to one or more of those ships, to their cargoes or freight or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each ship was at fault.

(3) Where, in any such case, having regard to all the circumstances, it is not possible to establish different degrees of fault, the liability shall be apportioned equally.

(4) This section applies to persons other than the owners of the ships who are responsible for the faults of the ships, as well as to the owners of the ships and where, by virtue of any charter or demise, or for any other reason, the owners are not responsible for the navigation and management of the ship in question, this section applies to the charterers or other persons for the time being so responsible instead of the owners.

(5) Nothing in this section shall operate so as to render any ship liable for any loss or damage to which the fault of the ship has not contributed.

(6) Nothing in this section shall affect the liability of any person under a contract of carriage or any other contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of this Act, or as affecting the right of any person to limit his liability in the manner provided by this Act.

208. Joint and several liability

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

(2) Section 207 (4) shall apply to subsection (1).

(3) Nothing in this section shall be construed as depriving any person of any right of defence on which, apart from this section, he might have relied on in an action brought against him by the person injured, or any person entitled to sue in respect of such loss of life, or shall affect the right of any person to limit his liability in the manner provided by this Act.

209. Right of contribution

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

(2) Section 207 (4) shall apply to subsection (1).

(3) Nothing in this section authorises the recovery of any amount which could not, by reason of any 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 the persons entitled to sue for the amount.

(4) In addition to any other remedy provided by law, the persons entitled to any contribution recoverable under this section shall, for the purposes of recovering it, have the same rights and powers as the persons entitled to sue for damages in the first instance.

210. Time limit for proceedings against owner of ship

(1) This section applies to any proceedings to enforce a claim or lien against a ship or its owner –

- (a) in respect of damage or loss caused by the fault of that ship to another ship, its cargo or freight or any property on board it; or
- (b) for damages for loss of life or personal injury caused by the fault of that ship to a person on board another ship.

(2) Subject to subsections (4) and (5), no proceedings to which this section applies shall be brought after the period of 2 years from the date when -

- (a) the damage or loss was caused; or
- (b) the loss of life or injury was suffered.

(3) Subject to subsections (4) and (5), no proceedings under section 207, 208 or 209 to enforce any contribution in respect of any overpaid proportion of any damages for loss of life or personal injury shall be brought after the period of one year from the date of payment.

(4) The Court may extend the period allowed for bringing proceedings to such extent and on such conditions as it thinks fit.

(5) The Court, if satisfied that there has not been, during any period allowed for bringing proceedings, any reasonable opportunity of arresting the defendant ship within -

- (a) the jurisdiction of the Court; or
- (b) the territorial sea of the country to which the plaintiff's ship belongs or in which the plaintiff resides or has his principal place of business,

shall extend the period allowed for bringing proceedings to an extent sufficient to give a reasonable opportunity of so arresting the ship.

211. Scope of application of Part IX

(3) Subject to subsection (3), this Part shall apply whenever a person referred to in section 194 seeks to limit his liability before a Court or seeks to procure the release of a ship or other property, or the discharge of any security given within the jurisdiction of Mauritius.

(4) This Part shall apply in relation to –

- (a) a ship of which the beneficial interest is vested in the Government;
- (b) a ship which is registered as a Government ship; and
- (c) a ship which is, for the time being, bareboat chartered or sub-chartered to, or in the exclusive possession of, the Government.

(3) This Part shall not apply to any liability in respect of loss of life or personal injury caused to, or loss of or damage to, any property of a person who is on board the ship in question or employed in connection with that ship, or with the relevant salvage operation, where he is so on board or employed under a contract of employment governed by Mauritius laws.

212. Exclusion of liability

(6) Subject to subsection (3), the owner of a Mauritius ship shall not be liable for any loss or damage where –

- (a) any property on board the ship is lost or damaged by reason of fire on board the ship; or
- (b) any gold, silver, watches, jewels or precious stones on board the ship are lost or damaged by reason of theft, robbery or other dishonest conduct and their nature and value were not at the time of shipment declared by their owner or shipper to the owner or master of the ship in the bill of lading or otherwise in writing.

(7) Subject to subsection (3), where the loss or damage arises from anything done or omitted by a person in his capacity as master or member of the crew or, otherwise than in that capacity, in the course of his employment as an employee of the owner of the ship, subsection (1) shall also exclude the liability of –

- (a) the master, member of the crew or employee; and
- (b) in a case where the master or member of the crew is the employee of a person whose liability would not be excluded by that subsection apart from this paragraph, the person whose employee he is.

(3) This section does not exclude the liability of a person for any loss or damage resulting from any such personal act or omission of his as is referred to in section 194 (4).

PART X – PIRACY, HIJACKING AND OTHER OFFENCES

Sub-Part I – Piracy and hijacking

213. Piracy

(1) In this Sub-Part, subject to subsection (3) -

“high seas” has the same meaning as in the United Nations Convention on the Law of the Sea 1982;

“piracy” means –

- (a) any illegal act of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or private aircraft, and directed –
 - (i) on the high seas, against another ship, or against persons or property on board the ship; or
 - (ii) against a ship or persons or property on board the ship in any other place outside the jurisdiction of any State;
- (b) any voluntary act of participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft; or
- (c) any act of inciting or intentionally facilitating an act described in paragraph (a) or (b);

“pirate ship or aircraft” means a ship or aircraft under the dominant control of persons who –

- (c) intend to use the ship or aircraft for piracy; or
- (d) have used the ship or aircraft for piracy, so long as it remains under the control of those persons;

“private ship” and “private aircraft” means a ship or aircraft that is not owned by the Government or held by a person on behalf of, or for the benefit of, the Government.

(2) Where an act of piracy is committed by the crew or the passengers of a warship, a Government ship or a Government aircraft which has mutinied and taken control of the ship or aircraft, the act shall be deemed to be an act of piracy committed by the crew or the passengers of a private ship or aircraft.

(3) This section applies to aircraft only when it is on the high seas.

(4) Any person who commits an act of piracy shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 60 years.

214. Hijacking and destroying ships

(1) Subject to subsection (4), a person who unlawfully, by the use of force or by threats of any kind, seizes a ship or exercises control of it, commits the offence of hijacking a ship.

(2) Subject to subsection (4), a person commits an offence where he unlawfully and wilfully -

- (a) destroys a ship;
- (b) damages a ship or its cargo so as to endanger, or to be likely to endanger, the safe navigation of the ship;
- (c) commits on board a ship an act of violence which is likely to endanger the safe navigation of the ship; or
- (d) places or causes to be placed on a ship any device or substance which is likely to destroy the ship or is likely to so damage it or its cargo as to endanger its safe navigation.

(3) Subject to subsection (4), subsections (1) and (2) shall apply -

- (d) whether the ship referred to in those subsections is in Mauritius or elsewhere;
- (e) whether any such act as is mentioned in those subsections is committed in Mauritius or elsewhere; and
- (f) irrespective of the nationality of the person committing the act.

(4) Subsections (1) and (2) do not apply in relation to any warship or any other ship used as a naval auxiliary or in customs or police service, or any act committed in relation to such a warship or such other ship unless -

- (d) the person seizing or exercising control of the ship under subsection (1), or doing the act under subsection (2), as the case may be, is a Mauritius citizen;
- (e) the act is committed in Mauritius; or

(f) the ship is used in the customs service, or in the service of the police force, in Mauritius.

(5) Any person who commits an offence under this section shall, on conviction, be liable to penal servitude for a term not exceeding 60 years.

(6) In this section -

“act of violence” means –

(c) any act done in Mauritius which constitutes the offence of murder, attempted murder, manslaughter or assault; or

(d) any act done outside Mauritius which, if done in Mauritius would constitute an offence referred to in paragraph (a); and

“unlawfully” –

(c) in relation to the commission of an act in Mauritius, means so as to constitute an offence independent of this Sub-Part under Mauritius laws; and

(d) in relation to the commission of an act outside Mauritius, means that the commission of the act would have been an offence independent of this Sub-Part under Mauritius laws, if it had been committed in Mauritius.

215. Endangering safe navigation

(1) Subject to subsection (8), any person who unlawfully and intentionally -

(c) destroys or damages any property to which this subsection applies; or

(d) seriously interferes with the operation of any such property,

where the destruction, damage or interference is likely to endanger the safe navigation of a ship, shall commit an offence.

(2) Subsection (1) applies to any property used for the provision of maritime navigation facilities, including any land, building or ship so used, and including any apparatus or equipment so used, whether it is on board a ship or elsewhere.

(7) Subject to subsection (8), any person who intentionally communicates that which he knows to be false in a material particular, where the communication of the information endangers the safe navigation of a ship, shall commit an offence.

(8) It shall be a defence for a person charged with an offence under subsection (3) to prove that, when he communicated the information, he was lawfully employed to perform duties which consisted of, or included, the communication of information and that he communicated the information in good faith in performance of those duties.

(5) A person who, in order to compel any other person to do or abstain from doing any act, threatens that he or some other person will do in relation to a ship an act which is an offence by virtue of section 214 (2) (a), (b) or (c) where the making of that threat is likely to endanger the safe navigation of the ship, shall commit an offence.

(6) Subject to subsection (8), a person who in order to compel any other person to do or abstain from doing any act, threatens that he or some other person will do an act which is an offence by virtue of subsection (1), where the making of that threat is likely to endanger the safe navigation of a ship, shall commit an offence.

(7) Except as provided by subsection (8), subsections (1), (3), (5) and (6) shall apply whether any act referred to in those subsections is committed in Mauritius or elsewhere and whatever the nationality of the person committing the act.

(8) For the purposes of subsections (1), (3) and (6)(b), any danger, or likelihood of danger, to the safe navigation of a warship or any other ship used as a naval auxiliary or in customs or police service shall be disregarded unless -

- (d) the person committing the act is a Mauritius citizen;
- (e) the act is committed in Mauritius; or
- (f) the ship is used in the customs service of Mauritius or in the service of the police force in Mauritius.

(20) It shall be an offence for any person in Mauritius to induce or assist the commission outside Mauritius of any act which would -

- (a) but for section 214(4), be an offence under that section; or
- (b) but for subsection (8), be an offence under this section.

(21) In this section –

“unlawfully” has the same meaning as in section 214(6).

(22) Any person who commits an offence under this section shall, on conviction, be liable to penal servitude for a term not exceeding 60 years.

216. Master’s power of delivery

(1) Where the master of a ship, wherever that ship may be, and whatever the State, if any, in which it may be registered, has reasonable ground to believe that any person on board the ship has –

- (a) committed any offence under section 214 or 215;
- (b) attempted to commit such an offence; or
- (c) aided, abetted, counselled, procured or incited the commission of such an offence,

in relation to any ship other than a warship or other ship used as a naval auxiliary or in customs or police service, he may deliver that person to the Commissioner of Police in Mauritius or to the proper officer in any other Convention State.

(2) Where the master of a Mauritius ship intends to deliver any person in Mauritius or any other Convention State in accordance with subsection (2) he shall notify the Director if the delivery is to be in Mauritius, or, if delivery is to be in another Convention State, to the proper officer in that State –

- (a) of his intention to deliver that person; and
- (b) of his reasons for intending to do so.

(8) A notification under subsection (2) shall be given –

- (a) before the ship has entered the territorial seas of Mauritius or the other State concerned; or
- (b) if, in the circumstances it is not reasonably practicable to comply with paragraph (a), as soon as reasonably practicable after the ship has entered that territorial sea.

(9) Where the master of a Mauritius ship delivers any person to the Commissioner of Police in Mauritius or to the proper officer in any other State under subsection (1), he shall -

- (a) make to the Commissioner of Police if the person is to be delivered in Mauritius, or, if the person is to be delivered in another State, to a proper officer in that State, such oral or written statements relating to the alleged offence as the Commissioner of Police or that officer, as the case may be, may reasonably require; and
 - (b) deliver to the Commissioner of Police or the appropriate officer, as the case may be, such other evidence relating to the alleged offence as is in his possession.
- (10) In this section -

“Convention State” means a State in which the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988 is in force.

Sub-Part II - Other offences

217. Other offences

(9) Where a ship is in contravention of, or fails to comply with, a requirement of this Act, the master, owner, charterer, representative person or ship’s agent, as the case may be, shall commit an offence unless he proves that –

- (a) he was not aware of the contravention or failure to comply; and
- (b) he had taken all reasonable steps to ensure that it would not occur.

(10) Where a ship fails to comply with section 25 (1), the person referred to in subsection (1) shall, on conviction, be liable to pay a fine not exceeding 1 million rupees.

(11) Where a ship is in contravention of section 130, the person referred to in subsection (1) shall, on conviction, be liable to pay a fine not exceeding 100,000 rupees.

(12) In every other case referred to in subsection (1), the person referred to in that subsection shall, on conviction, be liable to a fine not exceeding 50,000 rupees.

(13) Where a person fails to comply with section 140, he shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees.

(14) Where the master, owner, charterer or ship's agent fails to comply with section 231, he shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees.

(15) Where a ship which is detained pursuant to a detention order under section 220 which has been served on the master of the ship, proceeds to sea, the master shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees.

(16) Any person who –

- (a) where so required, fails to provide any information or provides information which is false or misleading in a material particular;
- (b) where so required, fails to surrender a certificate or other document issued under this Act;
- (c) makes use of a certificate or other document not lawfully issued under this Act;
- (d) fails to notify an alteration or other change to a ship or to its ownership or other particulars;
- (e) where so required, fails to apply for registration or reregistration of a ship;
- (f) while being an employer, contravenes this Act in relation to a crew agreement, the capacity of an officer or a seafarer, the age or status of a person employed on a ship or the payment of wages or the keeping of accounts of wages;
- (g) boards a ship without being authorised to do so;
- (h) destroys or damages an official log book or other similar document;
- (i) damages or renders unusable any aid to navigation;

- (j) on board a ship so conducts himself that he is likely to endanger the safe navigation of the ship or to cause interference or annoyance to the other persons on board the ship;
- (k) unlawfully sells any wreck or stranded ship or its cargo;
- (l) unlawfully interferes with a wreck or a stranded ship or its cargo;
- (m) obstructs or assaults any person exercising his lawful powers or duties under this Act;
- (n) being a seafarer, refuses to obey the master's order, neglects this duty or assaults any member of the crew;
- (o) having been summoned pursuant to section 223 –
 - (i) fails to attend or to produce a document or other article as required; or
 - (ii) gives evidence which is false or misleading in a material particular; or
- (p) in any other manner contravenes this Act,

shall commit an offence and shall, on conviction, be liable, where no specific penalty is provided, to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 2 years.

PART XI – LEGAL PROCEEDINGS

218. Jurisdiction in criminal matters

(9) Notwithstanding section 114 of the Courts Act and section 72 of the District and Intermediate Courts (Criminal Jurisdiction) Act, a Magistrate shall have jurisdiction to try an offence under this Act and may impose any penalty provided under this Act.

(10) A Court shall have jurisdiction respecting offences under this Act over any vessel being on, or lying or passing off, the coast of Mauritius, or being in or near any bay, channel or navigation water in Mauritius and over all persons on board that vessel or for the time being belonging to it.

(11) Where a person who is charged with having committed an offence under this Act is found within the jurisdiction of a Court in Mauritius, the Court shall have jurisdiction to try the offence where the person –

- (a) is a Mauritius citizen and is charged with having committed it –
 - (i) on board any Mauritius ship on the high seas;
 - (ii) in any foreign port or harbour; or
 - (iii) on board any foreign ship to which he does not belong; or
- (b) is not a Mauritius citizen and is charged with having committed it on board a Mauritius ship on the high seas or, in the case of a stowaway, in a foreign country.

(4) Any act or omission, in relation to property or person, done in or at any place, ashore or afloat, outside Mauritius by a master or a seafarer who, at the time, is employed on a Mauritius ship, which, if done in Mauritius would be an offence under a Mauritius law, shall be treated as an offence under that law and a Court shall have jurisdiction to try the offence.

219. Powers of arrest

- (1) (a) A police officer may arrest, without warrant, any person committing an offence under this Act.
- (b) Where a seafarer is arrested and detained under subsection (1), the master shall make an entry to that effect in the official log book as soon as convenient after the arrest.

(2) The master of a Mauritius ship which is at sea may arrest and detain any seafarer who commits an offence on board the ship where he has reasonable ground to believe that the arrest is necessary to prevent serious disorder on board the ship.

220. Detention of ships

- (1) The Director may detain a ship where it –
 - (a) has damaged or destroyed an aid to navigation;
 - (b) does not contain appropriate crew accommodation;

- (c) does not carry the necessary medical stores;
- (d) does not comply with the Safe Manning Regulations;
- (e) is not equipped with appropriate measures of communicating with members of the crew who do not understand English;
- (f) is not fitted with necessary lights, shapes or signals;
- (g) is carrying more passengers than it is entitled to;
- (h) is overloaded;
- (i) is not carrying the required certificates issued pursuant to this Act or any international Convention to which Mauritius is a party;
- (j) is deemed to be an unsafe ship;
- (k) has been salvaged and any remuneration is still unpaid; or
- (l) is so provided in this Act.

(2) Where a ship is to be detained pursuant to subsection (1), the Director shall issue a detention order and cause it to be served on the master of the ship.

(3) Where, a ship is the subject of a detention order, no outward port clearance shall be granted to that ship until a release order is issued, and, in the case of a foreign ship, the Director shall cause the consular officer, if any, or the proper officer of the country where the ship is registered to be informed.

(12) Subject to subsection (7), where proceedings are to be instituted in respect of an alleged contravention of this Act, the person exercising the power of detention shall immediately release the ship where –

- (a) no proceedings for the offence in question are instituted within 7 days beginning with the day on which the ship is detained;
- (b) such proceedings, having been instituted within that period, are concluded without the person charged being convicted;
- (c) the sum of 500,000 rupees is paid into Court by way of security;

- (d) the person charged is convicted and any costs or expenses and any fine imposed have been paid; or
- (e) the release is ordered by a court or tribunal referred to in Article 292 of the United Nations Convention on the Law of the Sea 1982, and any bond or other financial security ordered by such a court or tribunal is posted.

(13) The Court shall repay any sum paid under subsection (4) (c) as security within 30 days beginning with the day on which the sum is paid –

- (a) if no proceedings for the offence in question are instituted; or
- (b) if such proceedings, having been instituted within that period, are concluded without the person charged being convicted.

(14) Where a sum has been paid by any person under subsection (4)(c), and the person charged is convicted of the offence in question, the sum so paid shall be applied –

- (a) in payment of any costs or expenses ordered by the Court to be paid by the convicted person; and
- (b) in payment of any fine imposed by the Court,

and the balance shall be repaid to the person who paid the sum as security.

(15) Where a ship is detained under section 128, it shall not be released until the deficiency for which the ship was detained is rectified to the satisfaction of the Director.

(16) Where a ship detained under this Act is to be released, a release order shall be issued by the Director.

221. Forfeiture of ships

- (4) A ship shall be liable to forfeiture where –
 - (a) its nationality or port of registration is being concealed;
 - (b) it is a foreign ship and is being used and being passed off as a Mauritius ship;
 - (c) it is deemed to be an unsafe ship; or

(d) it is carrying dangerous goods.

(5) Where a ship is liable to forfeiture under subsection (1), the Commissioner of Police or an inspector designated by the Minister for that purpose may seize and detain the ship for adjudication by the Supreme Court.

(6) Where a ship is subject to adjudication under subsection (2), the Supreme Court may –

(a) adjudge the ship and its equipment to be forfeited to the State; and

(b) make such order for costs as it thinks fit.

222. Recovery of fines and judgment debts from shipowners

Without prejudice to any enactment relating to the recovery of fines or of judgment debts –

(c) where the owner of a ship, who is convicted of an offence under this Act, fails to pay any fine imposed on him, the amount due may be recovered in the manner a mortgage debt in favour of the State in respect of the ship would have been recovered; and

(d) any judgment debt against the owner of a ship may be recovered in the manner a mortgage debt in favour of the judgment creditor in respect of the ship would have been recovered.

223. Summons to witness

A Board of Inquiry, a Court of Investigation or the Director may, for the purposes of an inquiry or an investigation under this Act –

(a) summon any person to attend and give evidence or to produce any document or other article; and

(b) administer an oath.

224. Depositions of persons made abroad

(1) Where the evidence of any person is required in the course of any proceedings in Mauritius in relation to the subject matter of the proceedings and it is proved that that person cannot be found in Mauritius, any deposition that he may have previously made at a place outside Mauritius in relation to the same subject matter shall, subject to subsection (2), be admissible in evidence in those proceedings.

(2) For a deposition to be admissible under subsection (1) in any proceedings, the deposition shall -

- (a) have been taken under oath;
- (b) have been taken before, and authenticated by the signature of, a judge, magistrate or similar officer in that place outside Mauritius; and
- (c) if the proceedings are criminal proceedings, have been taken in the presence of the accused or his counsel, and so certified by the person who had taken the deposition.

(8) No proof need be given of the signature or official character of the person appearing to have signed any such deposition and, in any criminal proceedings, a certificate stating that the deposition was taken in the presence of the accused or his counsel shall, unless the contrary is proved, be evidence of that fact.

(9) This section also applies to proceedings before a person authorised by law or consent of the parties to receive evidence.

(10) Nothing in this section affects the admissibility in evidence of depositions under any other enactment or the practice of the Court.

225. Admissibility of documents

(6) Any certificate issued under this Act, any official log book, crew agreement, crew list or other similar document kept on a ship pursuant to this Act, any maritime chart used on a ship and any entry in the Register shall be admissible in evidence in any proceedings.

(7) Where a document is admissible in evidence under subsection (1), it shall, on its production from proper custody –

- (a) be so admissible in the Court or before a person having by law or consent of parties authority to receive evidence; and
- (b) subject to all just exceptions, be evidence of the matters stated in the document.

(8) A copy of, or extract from, any document so made admissible in evidence shall, subject to subsection (4), also be admissible in evidence and be evidence of the matters stated in the document.

(9) A copy of, or extract from, a document shall not be admissible by virtue of subsection (3), unless it purports to be signed and certified as a true copy or extract by the officer to whose custody the original document was entrusted, and that officer shall furnish the certified copy or extract to any person who applies for it at a reasonable time and pays such reasonable fee as the Director determines.

(10) A person shall, on payment of such reasonable fee as the Director determines, be entitled to have a certified copy of any declaration or document a copy of which is made evidence by this Act.

226. Inspection and admissibility of copies of certain documents

(3) Where, under any enactment, a document is open to public inspection when in custody of the Director –

- (a) there may be supplied for public inspection a copy or other reproduction of the document instead of the original; but
- (b) the original shall, nevertheless, be made available for public inspection if the copy or other reproduction is illegible.

(4) Where the Director destroys any document which has been sent to him under or by virtue of any enactment and keeps a copy or other reproduction of that document, then –

- (a) any enactment providing for that document to be admissible in evidence or open to public inspection; and
- (b) in the case of a document falling within subsection (1), that subsection,

shall apply to the copy or other reproduction as if it were the original.

227. Service of documents

(1) A notice or document authorised or required to be served on the master of a ship may be served -

- (a) where there is a master, by leaving it for him on board the ship with the person appearing to be in command or charge of the ship; and
- (b) where there is no master –
 - (i) on the owner of the ship;

- (ii) if there is no owner, on any agent of the owner; or
- (iii) where no such agent is known or can be found, by leaving a copy of the document fixed to a conspicuous part of the ship.

(2) A document required or authorised by or under any enactment to be served on the owner of a Mauritius ship shall, where there are 2 or more registered owners, be treated as duly served if served on any one of the registered owners.

PART XII – MISCELLANEOUS

228. Regulations

(1) The Minister may, for the purposes of this Act, make such regulations as he thinks fit, including regulations -

- (o) for determining which sea-going objects shall be deemed to be ships;
- (p) for the safety and security of Mauritius ships and those of foreign ships while they are within a Port as well as those of the persons on any of those ships (referred to in this Act as “Safety Regulations”);
- (q) for giving effect to any international Convention to which Mauritius is a party;
- (r) to regulate the registration, survey, marking, tonnage (referred to in this Act as “Tonnage Regulations”), ownership and deregistration of ships;
- (s) to control the carriage of persons or goods on ships;
- (t) relating to the presence of medical practitioners and the availability of medical stores on ships;
- (u) for the engagement, welfare and discharge of seamen;
- (v) concerning salvage in relation to Government ships;
- (w) to provide for the procedure of any inquiry or investigation;

- (x) to ensure adequate means of communication on and to and from ships;
 - (y) to control the use and operation of pleasure vessels;
 - (z) for the setting up of a disciplinary board to enquire into misconduct, unfitness to discharge duties and negligence in the discharge of duties of seamen;
 - (aa) for the education, training and certification of deck and engine seafarers; and
 - (bb) for prescribing anything that is to be prescribed under this Act.
- (2) Regulations made under this Act may -
- (a) provide for the levying of fees and forms to be used;
 - (b) provide that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and imprisonment for a term not exceeding 5 years.

229. Minister's power to dispense

The Minister may exempt any ship from any specific requirement of, or prescribed under, this Act, or dispense with the observance of any such requirement in the case of any ship, where he is satisfied that –

- (c) the requirement has been substantially complied with in the case of that ship or that compliance with it is unnecessary in the circumstances; and
- (d) the action taken or provision made as respects the subject matter of the requirement in the case of the ship is as effective as, or more effective than, actual compliance with the requirement.

230. Immunity of Government and public officers

(4) Any person who acts in the performance of his duties under this Act shall be deemed to be a public officer for the purposes of the Public Officers' Protection Act and a public functionary within the meaning of the Criminal Code.

(2) No action shall lie against the Government or any public officer or other person appointed or authorised to perform any function under this Act in respect of anything done or omitted to be done by him in good faith in the exercise or performance of any power, authority or duty conferred or imposed on him under this Act.

231. Port clearances

(1) No ship shall leave a Port unless the master of the ship has obtained, not later than 2 hours before the expected time of departure, a port clearance from the Director.

(5) Where the master of a ship obtains a port clearance and does not sail within 12 hours of the expected time of departure, he shall report to the Director his reasons for not sailing and obtain a fresh port clearance.

(6) The Director shall not issue a port clearance for a ship until the master of the ship, if so required, produces the certificate of registration of the ship and declares to him –

- (a) the name of the country to which the ship belongs; and
 - (b) whether or not a detention order for the ship is in force.
- (4) Where the Director is satisfied that -
- (d) a person engaged on board a Mauritius ship;
 - (e) a Mauritius citizen engaged on board a foreign ship; or
 - (f) a seafarer engaged on a foreign ship,

has not been paid any wages due to him, or, in the case of any seafarer engaged on a foreign ship, that arrangements have not been made for his repatriation to his home port, the Director may refuse to issue a port clearance unless the wages are paid, or the necessary arrangements for the repatriation of the seafarer have been made, or the owner or master of the ship furnishes adequate security to the satisfaction of the Director, for the payment of the wages claimed to be unpaid or the repatriation costs.

232. Restriction on trading

No ship other than a Mauritius ship shall be engaged in trade that is exclusively between Mauritius, Rodrigues and the outer islands.

233. Consequential amendments

The Bank of Mauritius Act 2004 is amended by inserting, immediately after section 45 A, the following new section -

45B. Special Drawing Rights

In any proceedings before any Court, a certificate by a Deputy Governor of the Central Bank stating –

- (a) that a sum in rupees has been determined for a special drawing right for a particular date; or
- (b) that a sum in rupees has been so determined for a date which is the last preceding date for which a sum has been so determined,

shall be conclusive evidence of those matters for the purposes of the Merchant Shipping Act 2007 and a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

234. Repeal

The following enactments are repealed –

- (a) the Merchant Shipping Act;
- (b) Chapitre Troisième, articles 210 to 230;
Chapitre Quatrième, articles 231 to 244 ;
Chapitre Cinquième, articles 245 to 256 ;
Titre Sixième, articles 324 to 331 ; and
Titre Huitième Chapitre Premier et Chapitre Deuxième, articles 397 to 416
of the *Code de Commerce*;
- (c) the Merchant Shipping (Safety of Life at Sea) Regulations 1993;
- (d) the Merchant Shipping (Mortgage of Ships) Regulations 1994;
- (e) the Merchant Shipping (Payment of Fees) Regulations 1994;
- (f) the Merchant Shipping (Registration of Ships) Regulations 1994.

235. Transitional provisions

(1) Any certificate or other instrument issued under an enactment repealed by this Act shall remain in force until it is superseded, revoked or otherwise terminated.

(2) Any ship registered in Mauritius under an enactment repealed by this Act shall be deemed to have been registered under this Act.

(3) Any mortgage or lien inscribed on any ship before the commencement of this Act shall be held valid for all intents ad purposes and shall be deemed to have been inscribed after the commencement of this Act.

(a) Every person who is required to obtain a licence, permit or authorisation under this Act shall, within one month of the commencement of this Act, make an application for the licence, permit or authorisation

(b) Any licence or permit issued or authorisation given under an enactment repealed by this Act and which has not expired at the commencement of this Act shall remain valid until a licence, permit or authorisation is issued pursuant to paragraph (a).

(4) Pending the appointment of a Registrar of Ships, the functions required to be performed by the Registrar shall be performed by such officer as the Director of Shipping may designate.

236. Commencement

This Act shall come into operation on a day to be fixed by Proclamation.
