

SAMOA

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2001, No. 4

AN ACT to amend the Shipping Act 1998 to provide for Bareboat Charters under the Samoa Shipping Register.

[24th January 2001]

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

1. Short title and commencement-(1) This Act may be cited as the Shipping Amendment (Bareboat Charter) Act 2001 and is to be read together with and is deemed to be part of the Shipping Act 1998 ("the principal Act").

(2) This Act shall come into force on the day on when it is assented to by the Head of State.

(3) This Act shall have retrospective application and shall have full force and effect from the 1st day of July 2000.

2. Definitions - Section 2 of the principal Act is amended by inserting the following definitions:

"Act" means the Shipping Act 1998:

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

"Bareboat Charter Registration" means the registration of a ship in a bareboat charter registry under the name of the charterer:

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

"Compatible Registry" means a ship registry of a foreign State declared by the Minister to be a compatible registry in terms of section 50.A of the Act:

"Day" means calendar day:

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

3. Bareboat Charter Registry - Part III of the principal Act is amended by inserting Part IIIA as follows:

PART IIIA

BAREBOAT CHARTER REGISTRY

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

50.B Conditions for Registration-(1) Notwithstanding anything contained in Part III of the Act, a ship shall be eligible to be registered as a Samoan ship under this Part provided that-

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

- (a) Within seven days from such amendments or modifications being effected communicate to the Registrar any such amendments or modifications; and
- (b) Within thirty days of such amendments or modifications having been entered in the underlying register produce to the Registrar a transcript or an extract of the underlying registration showing such amendments or modifications.

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

(5) Notwithstanding any other provision of the Act a qualified person for the purposes of this Part shall include -

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

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

50.D Name of Ship Bareboat Charter Registered in Samoa-(1) Subject to the provisions of subsection (2) of this section a ship shall be registered under this Part of the Act by the name under which it is registered in the underlying registry,

provided that such name is not already the name of a registered Samoan Ship or a name so similar as to be likely to deceive.

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

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

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

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

50.F Duration of Bareboat Charter Registration - Subject to the provisions of section 50G of the Act the duration of such registration shall be for a period not exceeding the

duration of the bareboat charter or the expiry date of the underlying registration, whichever is the shorter period, but in no case for a period exceeding two years.

50.G Extension of Bareboat Charter Registration-

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

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

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

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

50.I Jurisdiction Over a Ship Registered Under this Part-(1) A ship registered under this Part of the Act shall be deemed to be a Samoan ship and except where otherwise

provided shall be under the jurisdiction and control of Samoa and shall comply with all the laws applicable to Samoan ships.

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

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

50.J Ownership of Ship Registered under this Part-

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

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

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

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

50.M Closure of Bareboat Charter Registration-(1)

The Minister may order that the registration of a ship under this Part shall be closed -

- (a) If any of the provisions of the Act, in as far as the same may be applicable to a ship registered under this Part are not complied with; or
 - (b) For any reason specified by regulation.
- (2) Where the charterer of a ship, registered under this Part desires to close the bareboat charter registration of such ship, he shall make an application to that effect to the Registrar giving all such particulars and information as the Registrar may require for the purpose, and such application once made and substantiated shall be acceded to if all liabilities and obligations in respect of the ship towards the Government of Samoa whether for fees, charges, fines or otherwise have been paid.
- (3) The Registrar shall close the registration of a ship under this Part and shall make an entry to that effect in the register, if -
- (a) The Minister has ordered such closure in terms of subsection (1) of this section;
 - (b) A voluntary closure of registry has been requested and such request has been acceded to by the Registrar in terms of subsection (2) of this section;
 - (c) The appropriate authorities of the underlying registry, or the owners, or any of the mortgagees, if any, have withdrawn their consent to the bareboat charter registration in Samoa;
 - (d) The registration in the underlying registry has for any reason been terminated;
 - (e) The charter lapses or is terminated by any of the parties to it; or
 - (f) The period for which the ship has been bareboat charter registered lapses and no extension has been granted in accordance with Section 50G of the Act.
- (4) Upon the closure of a registration in terms of subsection (3) of this section the ship shall cease to be a Samoan ship and the Registrar shall immediately notify the

appropriate authorities of the underlying registry, the owners and the mortgagees, if any, of such closure.

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

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

50.N Bareboat Charter Registration in a Foreign Registry - Notwithstanding any other provision of the Act a Samoan ship registered under Part III of the Act may be bareboat charter registered in a foreign registry if the Registrar gives his consent in writing thereto in terms of section 50.O of the Act.

50.O Consent of the Registrar-(1) The Registrar may give his consent referred to in section 50N of the Act if -

- (a) The ship is registered as a Samoan ship under Part III of the Act, provided that a ship provisionally registered under Part III of the Act shall not be considered as registered for the purpose of this paragraph;
- (b) The bareboat charter registry where the ship is to be registered is a compatible registry; and
- (c) The following documents are submitted to him;
 - (i) an application for bareboat charter registration in a foreign registry made by the owners containing such information as may be required by the Registrar;
 - (ii) the consent in writing to such registration of all registered mortgagees, if any;
 - (iii) a written undertaking by the owners to surrender the certificate of registration issued under the Act within fifteen days from entry into the bareboat charter registry;

(iv) a copy of the bareboat charter.

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

50.P Name of Ship Bareboat Charter Registered in a Foreign Registry-(1) Subject to the provisions of subsection (2) of this section a ship registered under Part III of the Act shall be bareboat charter registered in a foreign registry by the name under which it is registered under the Act.

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

50.Q Registration in a Foreign Bareboat Charter Registry - The registration in a foreign bareboat charter registry of a ship registered under the Act not made in accordance with the provisions of this Part shall be null and void.

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

- (a) The owners shall immediately notify the Registrar of such registration, and within thirty days surrender to the Registrar the certificate of registration issued to the ship under the Act and deliver to the Registrar a transcript or an extract of the foreign bareboat charter registration; and
- (b) The Registrar, if satisfied that such registration has been effected according to the provisions of the Act, shall make an entry in the register of the ship.

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

extract of the foreign bareboat charter registration showing such closure.

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

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

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

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

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

50.U International Convention Certificates of Ship Bareboat Charter Registered in Foreign Registry - A Samoan ship bareboat charter registered in a foreign registry required to be issued with international convention certificates in terms of an international convention to which Samoa is a party shall be issued with such certificates under the authority of the Government of the bareboat charter registry provided that where the State of the bareboat charter registry is not a party to such convention the certificate required under such

convention may be issued under the authority of the Government of Samoa.

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

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

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

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

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

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

Provided that the Registrar shall withdraw such consent if,

- (a) The Minister, in the national interest or in the interest of Samoan shipping and after giving the owners and the charterers of the ship a reasonable opportunity to make representations, has ordered the Registrar to withdraw his consent;
 - (b) Any of the conditions required to be fulfilled in terms of subsection (1) of section 50.O of the Act is not so fulfilled; or
 - (c) The charter terminates or is terminated by any of the parties to it.
- (2) Upon the withdrawal of the consent of the Registrar in terms of subsection (1) of this section -

- (a) The Registrar shall inform the appropriate authorities of the bareboat charter registry, the owners, the charterers, and the mortgagees, if any, of such withdrawal; and
 - (b) The bareboat charter registration shall be terminated.
- (3) Upon the termination of the bareboat charter registration -
- (a) The Registrar shall make an entry thereof in the register, and the ship shall thereupon be again subject to all the provisions of Samoan law;
 - (b) Within thirty days from the termination of such registration the owners shall make and deliver a declaration to the Registrar that the certificate of a bareboat charter registration has been surrendered to the foreign bareboat charter registry, and thereupon the Registrar, unless the registration of the ship under Part III of the Act is also closed, shall again deliver to the owners the certificate of registration which had been surrendered to him in terms of section 50R(1)(a) of the Act; and
 - (c) Within thirty days from the termination of such registration the owners shall deliver to the Registrar a transcript or an extract of register showing that the bareboat charter registration has been cancelled.

50.X Application of International Maritime Conventions - Subject to the Act and any other law of Samoa for the purposes of this Part of the Act, the Safety of Life at Sea (SOLAS) Convention 1974, the Load Line Convention 1966, the Tonnage Measurement Convention 1969, the Collisions Convention 1972, the Limitation of Liability for Maritime Claims Convention, the Maritime Liens and Mortgages (MLM) Convention, the International Telecommunication Convention, the International Convention on Standards of Training, Certification and Watchkeeping for

Seafarers 1978, Marpol 73/78 Convention, the Law of the Sea Convention, the Civil Liability Convention and the Fund Convention shall have the force of law in Samoa.

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

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

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