

REPUBLIC OF KIRIBATI
MERCHANT SHIPPING (AMENDMENT) ACT 2006
(No. 3 of 2006)

I assent,

Beretitenti
Assented on 7 July 2006

**AN ACT TO AMEND THE MERCHANT SHIPPING ACT 1983, TO PROVIDE
FOR REGISTRATION OF FOREIGN SHIPS, AND MATTERS ANCILLARY
THERE TO**

Commencement:
2006

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti.

PART I – PRELIMINARY

1. Short title and commencement

- (1) This Act may be cited as the Merchant Shipping (Amendment) Act 2006.
- (2) This Act shall enter into force on such date as the Minister may, by notice in the Gazette, appoint.

2. Definition of principal Act

In this Act, "principal Act" means the Merchant Shipping Act 1983.

PART II – AMENDMENT OF PART I

3. Amendment of section 2

Section 2 of the principal Act is amended –

- (a) by inserting before the definition of ‘Court’ the following definition –

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

(b) by inserting after the definition of ‘Court’ the following definition –

"foreign ship’ means a ship that is owned by a person who –

(a) if the person is a natural person, is not a citizen of Kiribati; or

(b) if the person is a body corporate, is not established, registered or incorporated under the law of Kiribati;";

(c) by inserting after the definition of ‘government ship’ the following definitions-

"Liens and Mortgages Convention’ means the International Convention on Maritime Liens and Mortgages done at Geneva on 6 May 1993, and any amendment, unless that amendment has been objected to by Kiribati;

Maritime Authority’ means the Authority appointed by the Minister under section 47A to administer the registration of foreign ships;";

(d) by repealing the definition of ‘qualified person’ and substituting the following definitions –

"qualified person’ means –

(a) in relation to a ship which is not a foreign ship –

(i) a natural person who is a citizen of Kiribati; or

(ii) a body corporate which is established, registered or incorporated under the law of Kiribati; or

(b) in relation to a foreign ship –

(i) a natural person who is not a citizen of Kiribati; or

(ii) a body corporate which is not established, registered or incorporated under the law of Kiribati;

‘Register’ means –

(a) the Register of Ships kept by the Registrar under section 4; or

(b) the Register of Foreign Ships kept by the Registrar of Foreign Ships appointed under section 2A(2)(b)";

‘Registrar’ means the Registrar appointed under section 3;

‘Registrar of Foreign Ships’ means the Registrar of Foreign Ships under section 47B;”;

(e) after the definition of ‘surveyor’, by repealing the definitions of ‘the Register’ and the ‘Registrar’;

(f) by inserting after the definition of ‘tonnage certificate’ the following definition –

"underlying registry’ means the registry of the State in which a ship to which section 47E applies is registered and to which jurisdiction and control will revert upon the termination of a bareboat charter registration under section 47E."

4. New sections 2A and 2B

After section 2 of the principal Act the following sections are inserted –

"2A. Application of Act to foreign ships

(1) Subject to subsection (2) –

(a) this Act applies to foreign ships; and

(b) unless the context otherwise requires, a reference in this Act to a ship includes a reference to a foreign ship.

(2) This Act applies to foreign ships with the following modifications –

(a) the powers and functions of the Registrar shall be exercised and performed in relation to foreign ships by the Registrar of Foreign Ships;

(b) particulars of all foreign ships registered under this Act, and such other entries as may be required under this Act, shall be entered in the Register of Foreign Ships, to be kept by the Registrar of Foreign Ships;

(c) the power of a diplomatic representative of Kiribati to grant a provisional certificate of registry under section 18 may be exercised in relation to foreign ships by the Registrar of Foreign Ships;

(d) the functions of a surveyor under section 11 shall be performed in relation to foreign ships by a Surveyor (Foreign Ships);

(e) the jurisdiction of the Court under section 33 may be exercised in relation to a foreign ship may such court as may be expressly provided for in the mortgage;

(f) the powers and functions of the Minister shall be exercised and performed in relation to foreign ships by the Maritime Authority, however the Minister may give to the Maritime Authority directions of a general nature as to the exercise or discharge of such powers and functions, and the Maritime Authority shall comply with such directions; and

(g) any fees, tonnage taxes and other charges payable under this Act for the registration, and maintenance and renewal of registration, of any foreign ship, and for any other service provided by the Maritime Authority in connection with a foreign ship for the purposes of this Act shall be collected by the Maritime Authority on behalf of the government.

(3) For the avoidance of doubt, the powers and functions to be exercised or performed by the Maritime Authority or the Registrar of Foreign Ships under this Act shall be exercised exclusively by the Maritime Authority or the Registrar of Foreign Ships, as the case may be.

2B. Application of international conventions

The international conventions set forth in the Second Schedule, and any amendments thereto (unless and amendment has been objected to by Kiribati), shall have the force of law in Kiribati, subject to any reservation as Kiribati may make at the time of accession, from and after the date that convention enters into force for Kiribati following the deposit of the instrument of accession with relevant depositary."

PART III – AMENDMENT OF PART II

5. Repeal of section 7

Section 7 of the principal Act is repealed.

6. Amendment of section 8

Section 8 of the principal Act is amended by repealing subsection (1) and substituting the following subsection –

"(1) Every ship, other than an exempt ship, which is owned wholly by a qualified person, or by persons each of whom is a qualified person –

(a) if the ship is not a foreign ship, shall be registered under this Act; or

(b) if the ship is a foreign ship, may be registered under this Act."

7. Amendment of section 15

Section 15 of the principal Act is amended by inserting the following subsections after subsection (2) –

"(2A) The Registrar of Foreign Ships shall not register a foreign ship unless the owner or owners of the ship have lodged a declaration in writing, undertaking that the ship will not be used for any of the following activities –

- (a) storage and transportation of illegal drugs;
- (b) people smuggling, trafficking in persons or unlawful carriage of refugees;
- (c) involvement in any war or armed conflict;
- (d) supporting civil unrest in any State or territory;
- (e) terrorism or activities in support of terrorism; and
- (f) any other activity which would be contrary to the laws of Kiribati or any international convention to which Kiribati is a party,

and the Registrar of Foreign Ships shall immediately cancel the registration of any foreign ship which he has reasonable grounds to believe has been used contrary to the provisions of the undertaking."

8. Amendment of section 18

Section 18 of the principal Act is amended by repealing subsections (3) and (4) and substituting the following subsections –

"(3) A provisional certificate of registry issued under this section shall be deemed to be a certificate of registry granted under section 16 until the expiry of –

- (a) if the ship in respect of which is granted is not a foreign ship –
 - (i) 60 days after the date on which it was granted; or
 - (ii) 10 days after the arrival of the ship in Betio,whichever first occurs; or
- (b) if the ship in respect of which it is granted is a foreign ship, six months after the date on which it was granted.

(4) Upon application of the owner, the Registrar may extend the period of validity of a provisional certificate of registry if the circumstances warrant such an extension."

9. New section 30A

After section 30 of the principal Act the following section is inserted –

"30A Maritime liens

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

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

(a) describing the claim against the owner, demise charterer, manager or operator of the ship secured by the maritime lien on the ship; and

(b) the date of the event which gave rise to the maritime lien against the ship; and

(c) the name and address of the lien holder for the service of notice or documents.

(3) Subject to Article 9 of the Liens and Mortgages Convention, a maritime lien shall be extinguished after the period of one year.

10. Amendment of section 32

Section 32 of the principal Act is amended –

(a) in the marginal note, by inserting the words "maritime liens" at the end thereof; and

(b) by inserting after subsection (2) the following –

"(3) A maritime lien recorded in the Register shall rank in priority as against other maritime liens and registered mortgages in accordance with the provisions of the Liens and Mortgages Convention."

PART IV – NEW PART II A

11. New Part II A

After Part II of the principal Act the following Part is inserted –

"PART II A – REGISTRATION OF FOREIGN SHIPS

47A. Maritime Authority

The Minister, acting in accordance with the advice of the Cabinet, may, by notice in writing published in the Gazette, appoint a reputable and suitably qualified person to be the Maritime Authority.

47B. Registrar of Foreign Ships

The Minister, acting in accordance with the advice of the Cabinet, tendered after consultation with the Maritime Authority, may, by notice in writing published in the Gazette, appoint a reputable and suitably qualified person to be the Registrar of Foreign Ships.

47C. Registrar of Seafarers (Foreign Ships)

The Minister, acting in accordance with the advice of the Cabinet, tendered after consultation with the Maritime Authority, may, by notice in writing published in the Gazette, appoint a reputable and suitably qualified person to be the Registrar of Seafarers (Foreign Ships), who shall have responsibility under the Shipping Act 1990 for certification of seafarers serving aboard foreign ships.

47D. Appointment of officers and agents

The Maritime Authority may appoint such officers and agents as it considers necessary for the efficient and effective exercise and performance of its powers and functions under this Act.

47E. Bareboat charters

(1) This section applies to any ship which –

- (a) is registered under the law of a country other than Kiribati; and
- (b) is chartered on bareboat charter terms to a charterer who is a qualified person.

(2) Subject to subsection (3), a ship to which this section applies may be registered as a foreign ship upon application from the charterer.

(3) No ship to which this section applies may be registered as a foreign ship without the prior approval in writing of the underlying registry.

(4) The registration of a ship registered under this section shall remain in force (unless terminated earlier under this Act) until the end of the charter period and shall then terminate.

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

(6) Where –

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

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

the Registrar of Foreign Ships may give his consent in writing."

PART V – AMENDMENT OF PART III

12. Substitution of section 56

Section 56 of the principal Act is repealed and the following section is substituted –

"56. Contravention of manning Regulations

Where Regulations have been made prescribing the extent to which those manning any ship shall be citizens of Kiribati, the master or owner of a ship registered under this Act who suffers or permits that ship to go to sea while the ship is manned in contravention of such Regulations is guilty of an offence."

13. Amendment of section 57

Section 57 of the principal Act is amended by inserting after subsection (3) the following subsection –

"(4) This section does not apply to foreign ships."

14. New section 75A

After section 57 of the principal Act the following section is inserted –

"75A Survey of foreign ships

(1) The Maritime Authority shall, by notice in writing published in the Gazette, appoint a reputable and suitably qualified person to be the Principal Surveyor (Foreign Ships).

(2) The Principal Surveyor (Foreign Ships) shall be responsible for carrying out, in relation to foreign ships, obligations in respect of flag State and port State control contained in the relevant international conventions set forth in the Second Schedule.

(3) The Maritime Authority may appoint a person to be a classification society for the purposes of this Act.

(4) The Maritime Authority may appoint a person (including a classification society) to be a Surveyor (Foreign Ships) for the purposes of this Act.

(5) Where the Maritime Authority appoints a classification society, the classification society shall, subject to the approval of the Maritime Authority, nominate one or more persons to carry out surveys, issue reports, make declarations of compliance and do all things necessary on its behalf."

15. Amendment of section 61

Section 61 of the principal Act is amended by inserting after subsection (2) the following subsection –

"(3) Section 24(e) of the Interpretation and General Clauses Ordinance (which limits the maximum allowable penalties under subsidiary legislation) shall not apply to regulations made under this Act."

PART IV – AMENDMENT OF THE SCHEDULES

16. Amendment of the First Schedule

The First Schedule to the principal Act is repealed and the following schedule substituted-

"FIRST SCHEDULE

(Section 55)

OFFENCES

Section	Offence	Maximum Penalty
12 (3)	Failing to mark, or keep marked, a ship	\$50,000, one year, or both
12 (4)	Concealing, removing, altering, defacing or erasing a mark on a ship	\$100,000, two years or both
16(3)	Unlawful use of a certificate of registry	\$250,000, five years or both
16(4)	Refusing to deliver a certificate of registry	\$50,000, one year, or both

18(5)	Failing to deliver a provisional certificate of registry	\$50,000, one year or both
21(9)	Failing to give notice of loss of ship or change of ownership	\$50,000 one year or both
22(2)	Failing to register an alteration	\$100,000 two years or both
37(1)	Concealing the Kiribati character of a ship	\$250,000, five years or both
40(2)	Failing to hoist the national flag	\$25,000
40(3)	Hoisting colour other than the national flag	\$25,000
41(2)	Failing to comply with a direction to furnish information	\$100,000, two years or both
46(1)	Using a name other than the name by which a ship is registered	\$100,000, two years or both
50(1)	Making or uttering a false statement	\$100,000, two years, or both
56	Contravening manning Regulations	\$100,000, two years, or both

17. Amendment of the Second Schedule

The Second Schedule to the principal Act is repealed and the following schedule substituted –

"SECOND SCHEDULE

(Sections 60 and 61(2))

INTERNATIONAL CONVENTIONS

The *International Convention on Load Lines* done at London on 5 April 1966;

The *International Convention on Tonnage Measurement of Ships* done at London on 23 June 1969;

The *Convention on the International Regulations for Preventing Collisions at Sea*, done at London on 20 October 1972, together with the International Regulations for Preventing Collisions at Sea, 1972, constituted by the rules and other annexes attached to that Convention, as corrected by Procès-Verbal of Rectification dated 1 December 1973;

The *International Convention for Safe Containers* done at Geneva on 2 December 1972;

The *International Convention for the Prevention of Pollution from Ships* done at London on 2 November 1973, as modified by the 1978 Protocol relating thereto;

The *International Convention for the Safety of Life at Sea*, done at London on 1 November 1976;

The *Convention on Limitation of Liability for Maritime Claims* done at London on 19 November 1976;

The *International Convention on Maritime Search and Rescue* done at Hamburg on 27 April 1979;

The *International Convention on Salvage* done at London on 28 April 1989;

The *International Convention on Maritime Liens and Mortgages* done at Geneva on 6 May 1993;

The *International Convention on the Control of Harmful Anti-fouling Systems on Ships* done at London on 18 October 2001; and

The *International Convention for the Control and Management of Ships' Ballast Water and Sediments* done at London on 13 February 2004."

PART VII – AMENDMENT OF THE SHIPPING ACT 1990

18. New section 2A, Shipping Act 1990

After section 2 of the Shipping Act 1990 the following section is inserted in Part I –

"2A. Application of Act to foreign ships

(1) In this section –

‘foreign ship’ means a ship that is registered as a foreign ship under the Merchant Shipping Act 1983;

‘Registrar of Seafarers (Foreign Ships)’ means the Registrar of Seafarers (Foreign Ships) appointed under section 47C of the Merchant Shipping Act 1983.

(2) Subject to subsection (3) –

(a) this Act applies to foreign ships; and

(b) unless the context otherwise requires, a reference in this Act to a vessel includes a reference to a foreign ship.

(3) This Act applies to foreign ships with the following modifications –

(a) the powers and functions of the Director of Marine and licensing officers as regards certification of seafarers serving aboard foreign ships (including the issuing of dispensations) shall be exercised and performed

in relation to foreign ships by the Registrar of Seafarers (Foreign Ships);
and

(b) a certificate issued under section 22 to a seafarer serving aboard a foreign ship need not be in the Kiribati language, as required by section 22(3).

(4) For the avoidance of doubt, the powers and functions to be exercised or performed by the Registrar of Seafarers (Foreign Ships) under this Act shall be exercised or performed exclusively by the Registrar of Seafarers (Foreign Ships)."

MERCHANT SHIPPING (AMENDMENT) ACT 2006

EXPLANATORY MEMORANDUM

This Act amends the *Merchant Shipping Act 1983* to provide a legal framework for the establishment of an open shipping registry. Under an open registry, ships without a direct connection to Kiribati may be registered as Kiribati ships and fly the Kiribati flag. It is considered essential in establishing an open registry that the international obligations of the flag State are effectively implemented. The amendments effected by this Act provide a foundation for such implementation.

The Act is divided into seven Parts, of which Part I deals with preliminary matters.

Part II provides for amendments to the definitions provision of the principal Act. New Sections 2A and 2B are inserted. The new section 2A expressly applies the Act to foreign ships. "Foreign ships" is the term used to describe ships without a direct connection to Kiribati, although in actuality all ships registered under the Act will be Kiribati ships. Various modifications are made as regards to the application of certain provisions of the Act to allow for the performance of functions in relation to foreign ships by the new entities established under the new Part IIA. These functions are to be performed exclusively by the new entities. The new section 2A provides for the incorporation into domestic law of the provisions of various international conventions upon accession by Kiribati to those conventions.

Part III of the Act amends various sections within Part II of the Act. Section 4 repeals section 7 of the Act, as the expression 'qualified person' is now defined under section 2. Section 6 inserts a new subsection (2A) into section 15, requiring the Registrar of Foreign Ships to obtain from the owner of a foreign ship an undertaking that the vessel will not be used for or involved in various nefarious activities. The Registrar of Foreign Ships will be able to cancel the registration of any ship where the undertaking is breached. Section 8 inserts a new section 30A into the Act, providing for legal recognition of maritime liens. Such recognition protects purchasers of ships from vendors who neglect to inform a purchaser of outstanding liens attaching to the ship, while at the same time ensuring that such liens are fully enforceable against those incurring the debt giving rise to the lien.

Part IV of the Act inserts a new Part IIA into the Act, providing the key machinery provisions for the establishment of an open registry. The new section 47A creates the Maritime Authority, which performs the functions of the Minister in relation to foreign ships. The office of Registrar of Foreign Ships, whose role is to perform the functions of the Registrar of Ships in relation to foreign ships, is created by a new section 47B. The Registrar of Seafarers (Foreign Ships) – created by a new section 47C – will perform the functions of the Director of Marine under the *Shipping Act* 1990 as regards to the certification of seafarers employed on foreign ships. The new section 47F will allow for a vessel under a bareboat charter to be registered as a foreign ship for the duration of the charter period.

Part V makes various amendments to Part III of the Act, in particular by inserting a new section 57A, dealing with the survey of foreign ships. A new office of Principal Surveyor (Foreign Ships) is created to assume these responsibilities.

Part VI of the Act replaces the Schedules to the Act. The new First Schedule provides for increased penalties for offenses against the Act. The new Second Schedule adds to the original list of international conventions relevant to international shipping, accession to which will need to be considered in order to render an open registry as attractive as possible to reputable shipowners.

Part VII provides for consequential amendments to the *Shipping Act* 1990, principally concerning the functions of the Registrar of Seafarers (Foreign Ships).

Titabu Tabane
Attorney General
19 April 2006