

REPUBLIC OF VANUATU

Assent: 12/10/87.
Commencement: 1/6/89.

THE MARITIME (AMENDMENT) ACT No. 15 OF 1987

Arrangement of Sections

1. Amendment of section 8 of Act, No. 8 of 1981.
2. Replacement of section 10 of the principal Act.
3. Amendment of section 13 of the principal Act.
4. Amendment of section 18 of the principal Act.
5. Amendment of section 19 of the principal Act.
6. Amendment of section 49 of the principal Act.
7. Replacement of section 50 of the principal Act.
8. Amendment of section 52 of the principal Act.
9. Amendment of section 53 of the principal Act.
10. Amendment of section 54 of the principal Act.
11. Replacement of section 56 of the principal Act.
12. Insertion of new sections 56A and 56B in the principal Act.
13. Insertion of new section 65A in the principal Act.
14. Amendment of section 68 of the principal Act.
15. Insertion of new section 69A in the principal Act.
16. Amendment of section 73 of the principal Act.
17. Replacement of section 76 of the principal Act.
18. Replacement of section 85 of the principal Act.
19. Replacement of section 101 of the principal Act.
20. Replacement of section 113 of the principal Act.
21. Amendment of section 117 of the principal Act.
22. Insertion of new section 123A in the principal Act.
23. Amendment of section 141 of the principal Act.
24. Replacement of section 143 of the principal Act.
25. Replacement of section 145 of the principal Act.
26. Replacement of section 146 of the principal Act.
27. Commencement.

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THE MARITIME (AMENDMENT) ACT, No. 15 OF 1987

An Act to amend the Maritime Act, No. 8 of 1981.

BE IT ENACTED by the President and Parliament as follows:-

AMENDMENT OF SECTION 8 OF ACT, No. 8 OF 1981.

1. Section 8 of the Maritime Act, No. 8 of 1981 (principal Act) is amended as follows -
 - (a) in subsection (3) of that section, by the substitution for the word and figures "250 dollars" of the word and figures "1500 dollars"; and
 - (b) in subsection (4) of that section, by the substitution for the word and figures "100 dollars" of the word and figures "750 dollars".

REPLACEMENT OF SECTION 10 OF THE PRINCIPAL ACT

2. Section 10 of the principal Act is repealed and the following section substituted therefor -

- "Fees.
10. (1) The Minister may, on the recommendation of the Commissioner, establish by order all necessary and proper fees except in cases where the fee is already provided for in this Act.
 - (2) Where dual gross and net tonnages are assigned in a vessel's Certificate of Measurement, registration fees shall be computed on the greater of the two net tonnages.
 - (3) The net tonnage of unique design and special purpose vessels shall be stipulated prior to the registration for purposes of this section.
 - (4) With respect to any vessel which has been admitted to Vanuatu registry and thereafter undergoes structural alteration or re-measurement resulting in a change in net tonnage, there shall be paid prior to re-entry into service a corresponding adjustment of the registration fees computed on any increase in tonnage."

AMENDMENT OF SECTION 13 OF THE PRINCIPAL ACT

3. Section 13 of the principal Act is amended by the substitution for the word and figures "10,000 dollars" of the word and figures "25,000 dollars".

AMENDMENT OF SECTION 18 OF THE PRINCIPAL ACT

4. Section 18 of the principal Act, as amended, is further amended as follows -

(1) in subsection (1) of that section -

(a) by the substitution for the word and figures "1.50 dollars" of the word and figures "1.05 dollars";

(b) by the substitution for the word and figures "1.25 dollars" of the word and figures "0.87 dollar";

(c) by the substitution for the word and figures "1.00 dollar" of the word and figures "0.70 dollar";

(d) by the substitution for the word and figures "0.50 dollar" of the word and figures "0.35 dollar";

(2) in subsection (3) of that section, by the substitution for the word and figures "1,000 dollars" of the word and figures "10,000 dollars".

AMENDMENT OF SECTION 19 OF THE PRINCIPAL ACT

5. Section 19 of the principal Act, as amended, is further amended -

(1) by the repeal of subsection (1) of that section and by the substitution therefor of the following subsection -

"(1) Except as herein otherwise provided, the annual tonnage tax on vessels provided for in section 18 shall be due on the first day in January in each year."

(2) by the insertion immediately after subsection (6), of the following subsections -

"(7) All unpaid tonnage taxes, fees and other charges owing under this Act or regulations made thereunder shall constitute a maritime lien on the vessel in respect of which such amounts are due, and such lien shall have priority over all others save those for wages and salvage.

(8) No Certificate of Registry shall be returned to the master of a vessel by an officer of Vanuatu with whom it may have been deposited until proof is furnished that the annual tonnage tax and annual fees for the then current year have been paid."

AMENDMENT OF SECTION 49 OF THE PRINCIPAL ACT

6. Section 49 of the principal Act is amended by the repeal of paragraph (a) of that section and substitution therefor of the following paragraph -

"(a) the mortgage is endorsed upon the vessel's document, whether provisional or permanent, original issue or reissue:"

REPLACEMENT OF SECTION 50 OF THE PRINCIPAL ACT

7. Section 50 of the principal Act is repealed and the following section is substituted therefor -

"Termination of Mortgagee's Interests. 50. A vessel which is the subject of a preferred mortgage may not be cancelled from the Register for so long as the indebtedness secured by the Preferred Mortgage remains unsatisfied or the Mortgage is not otherwise discharged. The interest of the mortgagee in a vessel registered under this Act shall not be terminated by a forfeiture of the vessel for a violation of any law of Vanuatu, unless the mortgagee authorized, consented, or conspired to effect the illegal act, failure, or omission which constituted such violation."

AMENDMENT OF SECTION 52 OF THE PRINCIPAL ACT

8. Section 52 of the principal Act is amended by the substitution for the words "upon payment of the prescribed fee" of the words "upon payment of a fee of fifty dollars".

AMENDMENT OF SECTION 53 OF THE PRINCIPAL ACT

9. Section 53 of the principal Act is amended by the substitution for the words "upon payment of the prescribed fee" of the words "upon payment of a fee of two hundred and fifty dollars".

AMENDMENT OF SECTION 54 OF THE PRINCIPAL ACT

10. Section 54 of the principal Act is amended by the insertion immediately after subsection (4) of that section, of the following new subsection -

"(4A). Whenever an endorsement is required to be made upon a vessel's document, such endorsement may be made upon the vessel's current document or the Commissioner or a Deputy Commissioner may reissue the document and the endorsement may be made thereon. For the sole purpose of determining when the endorsement is effective, a reissued document shall be deemed to be the vessel's document as of the date of reissuance."

REPLACEMENT OF SECTION 56 OF THE PRINCIPAL ACT

11. Section 56 of the principal Act is repealed and the following section is substituted therefor -

"Interest on Preferred Mortgage. 56. Notwithstanding anything to the contrary in any other law, a Preferred Mortgage may bear such interest on an obligation secured by the mortgage as the parties may agree which interest may be at fixed rates, variable rates, rates based upon formulas or by adding margins to the mortgagee's cost from time to time of funding an obligation secured by the mortgage, or by any other method to which the parties may agree."

INSERTION OF NEW SECTIONS 56A AND 56B IN THE PRINCIPAL ACT

12. The following sections are inserted immediately after section 56 of the principal Act -

"Advances and Repayments.

56A. (1) A Preferred Mortgage shall not be extinguished or lose its priority because all previously outstanding obligations secured thereby have been fully repaid or otherwise performed, provided that an advance or other value is to be given at a later time pursuant to commitment existing at the time the Mortgage is recorded. For the purpose of this paragraph an advance or other value is given "pursuant to commitment" if the mortgagee or other person entitled to the benefit of the security of the mortgage has bound himself to give it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation.

(2) When a Preferred Mortgage secures an obligation in respect of which one or more advances or repayments may be made from time to time in the future and the maximum amount outstanding under the obligation at any one time is limited to a certain amount, the amount to be recorded and endorsed with respect to such obligation may be either -

(a) such maximum amount that may be outstanding at any one time; or

(b) the aggregate of all possible advances that may be made.

The recording and endorsement shall clearly indicate whether the amount is the maximum amount that may be outstanding at any one time or is the aggregate of all possible advances.

Units of Account. 56B. (1) The obligations secured by a Preferred Mortgage may be expressed in any unit or units of account to which the parties may agree, including but not limited to currency of the Republic of Vanuatu, currency or currencies of any foreign state or states, or in equivalents of any other unit or units of account established by inter-governmental organizations.

- (2) If a Preferred Mortgage secures an obligation in one or more specified units of account and there is an option to have a unit of account alternated from time to time, the principal amount of the mortgage to be recorded and endorsed shall be denominated in one or more of the said specified units of account. The recordation and endorsement may include as additional words "or an equivalent amount in any alternate unit of account," or similar language, and if such additional words are recorded and endorsed, no change in the recorded and endorsed amount shall be required to reflect the fact that the obligation or any portion thereof is subsequently denominated in a different unit or units of account, unless the parties otherwise agree.

- (3) When a Preferred Mortgage secures an obligation in respect of which there is an option to have the obligation amount denominated from time to time in alternate units of account but which continues to be payable in, or by reference to, a specified unit of account -
 - (a) the amount of the obligation to be recorded and endorsed shall be expressed in the specified unit of account; and
 - (b) notwithstanding any exercise of the option, no change in the recorded and endorsed amount shall be required."

INSERTION OF NEW SECTION 65A. IN THE PRINCIPAL ACT

13. The following section is inserted immediately after section 65 of the principal Act -

"Abolition of
Endorsement.

65A. (1) Except as provided in subsection (2) of this section, nothing in this Act or in any other provision of law, shall after the date of commencement of this Act, require, permit or be construed as requiring or permitting, endorsements of any nature upon any vessel's documents in connection with the validity, recording, designation as a preferred mortgage, or preferred status of any mortgage in respect of any such vessel, or the clearance to be given to such vessel following the recording of any such mortgage.

- (2) Any vessel's document issued or reissued prior to the date of commencement of this Act and any instrument made, recorded and endorsed prior to that date shall remain subject to the endorsement requirements under this Act until such time as the vessel's document is surrendered or reissued or a new document is issued, as the case may be."

AMENDMENT OF SECTION 68 OF THE PRINCIPAL ACT

14. Section 68 of the principal Act is amended by the insertion of the following marginal note -

"Responsibilities and Liabilities."

INSERTION OF NEW SECTION 69A. IN THE PRINCIPAL ACT

15. The following new section is inserted immediately after section 69 of the principal Act -

"Defences.

- 69A. (1) The defences and limits of liability provided for in this Chapter shall apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage whether the action be founded in contract or in tort.
- (2) If such an action is brought against a servant or agent of the carrier (such servant or agent not being an independent contractor), such servant or agent shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under this Chapter.
- (3) The aggregate of the amounts recoverable from the carrier, and such servants and agents, shall in no case exceed the limit provided for in this Chapter.
- (4) Nevertheless, a servant or agent of the carrier shall not be entitled to avail himself of the provisions of this section, if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

(5)(a) Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding 566.67 units of account per package or unit or 2 units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher.

(b) The total amount recoverable shall be calculated by reference to the value of such goods at the place and time at which the goods are discharged from the ship in accordance with the contract, or should have been so discharged.

The value of the goods shall be fixed according to the commodity exchange price, or, if there be no such price, according to the current market price, or if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

(c) Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the bill of lading as packed in such article of transport shall be deemed the number of packages or units for the purpose of this paragraph (5) as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.

(d) The unit of account mentioned in this section is the Special Drawing Right as defined by the International Monetary Fund. The dollar value in terms of the Special Drawing Right shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in questions for its operations and transactions.

- (e) Neither the carrier nor the ship shall be entitled to the benefit of the limitation of liability provided for in this paragraph (5) if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result.
- (f) The declaration mentioned in subparagraph (a) of this paragraph (5), if embodied in the bill of lading, shall be prima facie evidence, but shall not be binding or conclusive on the carrier.
- (g) By agreement between the carrier, Master or agent of the carrier, and the shipper, other maximum amounts than those mentioned in subparagraph (a) of this paragraph (5) may be fixed, provided that no maximum amount so fixed shall be less than the appropriate maximum mentioned in that subparagraph (a).
- (h) Neither the carrier nor the ship shall be responsible for any event for loss or damage to, or in connection with, goods if the nature or value thereof has been knowingly misstated by the shipper in the bill of lading."

AMENDMENT OF SECTION 73 OF THE PRINCIPAL ACT

16. Section 73 of the principal Act is amended by the addition at the end of that section, of the following paragraph -

"The provisions of this Chapter shall not affect the provisions of any International Convention or national law governing liability for nuclear damage."

REPLACEMENT OF SECTION 76 OF THE PRINCIPAL ACT

17. Section 76 of the principal Act is repealed and the following section is substituted therefor -

"Scope of Chapter 76. This Chapter shall apply to all contracts for carriage of goods by sea -

- (a) on board Vanuatu vessels in foreign trade; or
- (b) to or from ports of Vanuatu in foreign trade whatever may be the nationality of the ship, the carrier, the shipper, the consignee, or any other interested person."

REPLACEMENT OF SECTION 85 OF THE PRINCIPAL ACT

18. Section 85 of the principal Act is repealed and the following section substituted therefor -

"Vessel Under Oars. 85. The term "vessel under oars" as set forth in the foregoing Regulations shall be interpreted to include canoes and various non descript local craft."

REPLACEMENT OF SECTION 101 OF THE PRINCIPAL ACT

19. Section 101 of the principal Act is repealed and the following section substituted therefor -

"Penalty for misuse of Licences or Certificates. 101. Any person who shall receive or shall have in his possession any licence, certificate or document issued to officers or crew by the Commissioner or Deputy Commissioner to which he is not lawfully entitled, or any false licence, certificate or document, with intent to use the same unlawfully, or who without lawful authority shall alter or change any genuine license, certificate or document; or who shall in any manner transfer or arrange for the transfer of any such license, certificate or document; or who shall aid or abet the preparation of any of the foregoing acts shall, for each offence, be liable to a fine of not more than 10,000 dollars or imprisonment for not more than one year, or both."

REPLACEMENT OF SECTION 113 OF THE PRINCIPAL ACT

20. Section 113 of the principal Act is repealed and the following section substituted therefor -

"Minimum Age at Sea. 113. (1) Notwithstanding any other provision in this Act, persons under the age of sixteen shall not be employed or work on Vanuatu vessels registered under this Act, except on vessels upon which only members of the same family are employed, school-ships or training ships.

(2) The Master shall keep a register of all persons under the age of sixteen years employed on board his vessel, as required by Regulation.

- (3) Provided, that such persons may occasionally take part in the activities on board such vessels during school holidays, subject to the conditions that the activities in which they are engaged -
- (a) are not harmful to their health or normal development;
 - (b) are not such as to prejudice their attendance at school; and
 - (c) are not intended for commercial profit.
- (4) Persons under the age of eighteen years shall not be employed or work on coal-burning vessels as trimmers or stokers."

AMENDMENT OF SECTION 117 OF THE PRINCIPAL ACT

21. Section 117 of the principal Act is amended by the insertion of the following marginal note -

"Grounds for Discharge."

INSERTION OF NEW SECTION 123A IN THE PRINCIPAL ACT

22. The following new section is inserted immediately after section 123 of the principal Act -

"Benefits of Compensation for Loss of Life.	123A.	In addition to wages, maintenance and cure under section 123, and in addition to any liability for wrongful death under section 124, a seaman on board a vessel under signed shipping articles or off the vessel pursuant to an actual mission assigned to him by or by the authority of the master, shall be entitled as provided by Regulation to the benefit of a direct compensation for loss of life, payable to his designated beneficiary or beneficiaries. It shall be the shipowner's obligation to provide such benefit free of any charge to the seaman."
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AMENDMENT OF SECTION 141 OF THE PRINCIPAL ACT

23. Section 141 of the principal Act is amended -

- (1) by the renumbering that section as subsection (1); and
- (2) by the insertion immediately after subsection (1) of the following new subsection -

"(2) A copy of any labour contract between the employer and an organization representing seaman employed on a vessel shall be placed on board the said vessel and shall be made available to maritime or judicial authorities when requested."

REPLACEMENT OF SECTION 143 OF THE PRINCIPAL ACT

24. Section 143 of the principal Act is repealed and the following section is substituted therefor -

"Provisions Prohibited in Labour Contracts.	143.	It shall be unlawful for any employer or employer organization or employee or labour organization to attempt to bargain for, or to enter into, any labour contract containing any provision which attempts to set aside the application of or is inconsistent with or is violative of the laws of the Republic of Vanuatu, or which prescribes terms or conditions of employment less favourable to seamen than those set forth in this Chapter, or which discriminates as to terms and conditions of employment on the basis of race, colour or creed."
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REPLACEMENT OF SECTION 145 OF THE PRINCIPAL ACT

25. Section 145 of the principal Act is repealed and the following section substituted therefor -

"Strikes Picketing and Like Inteference.	145. (1)	It shall be unlawful for any person or labour organization to promote or to engage in any strike or picketing, or any boycott or like interference with the internal order or operation of a vessel, unless: (a) a majority of seamen on the vessel involved have voted by secret ballot that such action be taken; and
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- (b) at least thirty days written notice of intention to take such action has been given to the employer or the Master; and
 - (c) the procedures of conciliation, mediation and arbitration under section 146 have been followed to conclusion.
- (2) Nothing contained in paragraph (1) hereof shall be deemed to permit any strike or picketing, or any boycott or like interference with the internal order or operation of a vessel contrary to the provisions in any existing labour contract or any contract for seafaring labour."

REPLACEMENT OF SECTION 146 OF THE PRINCIPAL ACT

26. Section 146 of the principal Act is repealed and the following section substituted therefor -

"Conciliation,
Mediation and
Arbitration of
Labour Disputes,
Differences or
Grievances.

146.

It is declared to be the policy of the Republic of Vanuatu to place upon employers and employer organizations and employees and labour organization the primary responsibility for avoidance of any interruption in foreign or domestic maritime commerce.

In the event that an agreed settlement between the parties to any dispute, difference or grievance is not effected, the following conciliation, mediation and arbitration procedures, as may be further implemented by Regulation, shall apply:

- (1) If the dispute is not resolved, crew members shall present their case to the employer through the Master or his appointee, or, if the matter is to the prejudice of the Master, then directly to the employer. Crew members may be represented in the matter by a labour organization which is a party to a labour contract entered into pursuant to section 141, and which covers the crew members. Efforts shall be made to conciliate the matter and to find an agreeable solution thereto.

- (2) If a conciliation acceptable to both parties cannot be made at this stage, either party may call upon the Commissioner or a Deputy Commissioner of Maritime Affairs, or a representative appointed by the Commissioner or a Deputy Commissioner, to act as mediator to endeavor to find a solution to the matter satisfactory to the parties.
- (3) In the event that the dispute cannot be resolved by conciliation or mediation, either party may submit the matter to an independent arbitrator or arbitrators for a final determination, as provided by Regulation. If the parties cannot agree upon a choice of arbitrator or arbitrators, the matter shall be finally determined by the Commissioner of Maritime Affairs or his appointed representative, acting as sole arbitrator.

Any arbitration award may be enforced, if necessary, by any Court of competent jurisdiction."

COMMENCEMENT

27. This Act shall come into force on the date of its publication in the Gazette.