



GOVERNMENT OF TUVALU

LN: /04

MERCHANT SHIPPING (REGISTRATION OF FOREIGN VESSELS) REGULATIONS 2004

In exercise of the powers conferred by section 3(2) of the Merchant Shipping Act 1987, as amended by the Merchant Shipping (Amendment No.2) Act 2004, the Minister makes the following regulations –

1. Short Title

- (1) These Regulations may be cited as the Merchant Shipping (Registration of Foreign Vessels) Regulations 2004.
- (2) These Regulations shall be deemed to come into effect retrospectively on the fifth day of May 2004.

2. Interpretation

All words and phrases defined in the Act shall bear the same meaning in these Regulations unless the context otherwise requires-

- (a) “Act” means the Merchant Shipping Act 1987 and any amendment thereof.
- (b) “Agent” means an agent appointed under regulation 3(2).
- (c) “Foreign Vessel Administrator” means the Tuvalu Registration of Foreign Vessel Administrator appointed under regulation 3(1).
- (d) “Foreign trade” means trade between Tuvalu and a foreign country or between one foreign country and another and includes transportation of goods between the ports of Tuvalu and ports of foreign countries and between the ports of one foreign country and another.
- (e) “Minister” means the Minister responsible for the Registrar of Ships and Seafarers within the meaning of the Act.
- (f) “Owner” means the owner, managing owner, part owner, and the agent of a vessel. The “owner” if a person is not a citizen of Tuvalu or in the case of a company is not a registered company in Tuvalu.
- (g) “Prescribed fee” means the fee specified in the Schedule to these Regulations;
- (h) “Registrar of Vessels” or “Registrar” means the Registrar of Ships referred to in section 5 of the Act.

- (i) “Vessel” means a sea-going ship of any type, class, size or weight engaged in any kind of trade, service or international maritime activity, including pleasure vessel.

3. Establishment of Tuvalu Registration of Foreign Vessel Administration

- (1) There is hereby created Tuvalu Registration of Foreign Vessel Administration to be headed by the Foreign Vessel Administrator who shall be appointed by notice by the Minister after consultation with Cabinet.
- (2) The Registrar, after recommendation from the Foreign Vessel Administrator, may from time to time appoint such persons, as he may think fit, as agents.
- (3) The Foreign Vessel Administrator or his or her agent is authorized-
 - (a) to issue all such licenses, certificates or other documents as are necessary or proper for carrying out the purposes of these Regulations or of any international convention to which Tuvalu is or may become a party;
 - (b) to suspend or to revoke any license, certificate, permit or document issued under the Regulations if their provisions are violated; and
 - (c) to operate a Register to be known as the Register of Foreign Vessel which shall be kept in an office at the place where the Foreign Vessel Administrator is located and also at the homeport.
- (4) The Registrar of Vessels, the Registrar of Seamen and the Foreign Vessel Administrator or an agent shall not be liable to damages or otherwise for any loss accruing to any person by reason of any act done or default by them in their official capacity.

4. General provisions

- (1) No vessel engaged in foreign trade shall be documented under the laws of Tuvalu or be accorded the rights and privileges of a Tuvalu vessel unless such vessel shall be registered in accordance with the provisions of these Regulations.
- (2) The homeport of every vessel so registered shall be Funafuti, and the homeport shall be shown on the Certificate of Registry.
- (3) A vessel registered in accordance with these Regulations shall be entitled to fly the Tuvalu flag.

5. Vessel eligible to be documented and re-documented

- (1) The following classes of vessels shall be eligible to be documented or re-documented-
 - (a) a vessel as defined in regulation 2(i);
 - (b) a vessel referred to in paragraph (a) of sub regulation (1) of this regulation shall not be eligible for initial documentation or re-documentation if, on January 1 of the year in which initial documentation or re-documentation is sought, such vessel is over fifteen years of age, computed from completion of first construction;
 - (c) the Foreign Vessel Administrator may document or re-document a vessel of over fifteen years of age where-
 - (i) the vessel meets all other applicable requirements; and
 - (ii) it has been satisfactorily demonstrated that there is a genuine need for such waiver.
 - (d) a vessel engaged solely in domestic commerce shall not be documented under the provisions of these Regulations.

6. Registration fees

- (1) The owner of a vessel shall pay the prescribed fee upon first registration and an annual fee.
- (2) The Minister, on the recommendation of the Foreign Vessel Administrator and after consultation with the Registrar, may by notice amend the prescribed fee.

7. Annual tonnage tax

- (1) The owner of a vessel shall pay the prescribed fee as an annual tonnage tax on his or her vessel on the anniversary of the date of its registration.
- (2) If the owner fails to pay the tonnage tax as provided under sub-regulation (1), the Foreign Vessel Administrator or the Registrar may cancel the Certificate of Registry of the vessel with respect to which such tax has not been paid.
- (3) An unpaid tonnage tax and any other charges including penalties owing under these Regulations (not exceeding 10,000 dollars) due to the Foreign Vessel Administrator shall constitute a maritime lien on the vessel and such lien shall have priority over all others save those for wages and salvage.

8. Title of vessel's documents

The vessel's document shall be called the "Certificate of Registry".

9. Conditions precedent to issuance of Permanent Certificate of Registry

- (1) An application for permanent registration of a vessel under these Regulations shall be submitted to the Foreign Vessel Administrator or the Registrar who may issue a permanent Certificate of Registry for the vessel provided that the owner furnishes satisfactory proof to the issuing officer-
 - (a) as to the vessel's ownership;
 - (b) that any foreign marine document for the vessel has been surrendered with the consent of the government that issued it or has been legally cancelled;
 - (c) that the vessel, and in the case if it is over fifteen years old, has passed an inspection report and meets the highest classification requirements of one of the Classification Societies under regulations 18(1);
 - (d) that the owner has paid to the Administrator or his or her designee a sum equal to the initial registration fee;
 - (e) that the markings of name, official number, homeport and draft required by these Regulations have actually been made; and
 - (f) certificate of measurement has been issued.
- (2) There shall be no documents granted or papers issued to a vessel until all applicable provisions of these Regulations have been complied with.
- (3) Without prejudice to the provisions of the Penal Code or any other law any person who wilfully and with intent to defraud destroys makes or concurs in making any false entry in or omits or alters or concurs in omitting or altering any particulars under these regulations shall be liable to a fine of \$1000, and in the case of a continuing offence, to further fine of \$100 for each day, subsequent to the days on which he is convicted, during which the offence continues.

10. Oaths

- (1) In order to document a vessel, the owner shall take an oath declaring the name of the vessel, its net tonnage or tonnages, the place where built, the date when built, the name and residence of any other owner and his citizenship, each owner's proportion, and the name of the affiant and his citizenship.
- (2) The oath shall be taken before a notary public or an officer authorized to administer oaths pursuant to the Oaths and Statutory Declarations of the Laws of Tuvalu or by laws of the place where the oath is administered.
- (3) The names of the persons owning shares in an incorporated company owning such vessel need not be stated. The oath of any other person interested and concerned in the vessel shall not be required. An agent or attorney who

purchases any vessel shall take oath as to the ownership of the vessel and that he is the agent or attorney for the owner and in such capacity has made such purchase in good faith.

- (4) If the document of a vessel is lost or destroyed, the Master, or other person in command, may take the following oath at or nearest to the port where the vessel is first located after such loss or destruction before any person as prescribed in sub regulation 2 of this regulation:

“I, (insert name of the person swearing) being Master or in command of the (insert type of vessel) or vessel called the (insert name of the vessel) Official No. (insert No.) owned by (insert name of the owner) of (insert domicile of the owner) do swear (or affirm) that the said vessel has been, as I verily believe, registered according to the law of Tuvalu by the name of (insert again name of vessel), and that a Permanent (or Provisional) Certificate of Registry bearing No. (insert No. of lost Certificate) was issued for such vessel pursuant to the laws of Tuvalu at (insert date of issuance of lost certificate), which certificate has been lost (or destroyed); and that the same, if found, and within my power, will be delivered up to the Foreign Vessel Administrator.”

- (5) Where an oath is taken in the foregoing form, the officer or person administering such oath shall grant to the vessel a temporary Provisional Certificate of Registry and insert therein that it is issued in lieu of the one lost or destroyed. The officer or person shall forthwith send to the Foreign Vessel Administrator a written notice, accompanied by a copy of the oath, advising that such oath has been taken and such temporary Provisional Certificate issued. Upon receipt of such notice the Foreign Vessel Administrator, upon being satisfied that the vessel is entitled to a Certificate of Registry, may grant a new Certificate of Registry, identical with that which was lost or destroyed. As soon as practicable after the issuance of such a Certificate of registry, the temporary Provisional Certificate hereinbefore referred to must be surrendered to the Foreign Vessel Administrator.

11. Forms of documents

- (1) The Foreign Vessel Administrator or his or her duly authorized agent shall prescribe and furnish forms of Provisional and Permanent Certificate of Registry.
- (2) The Foreign Vessel Administrator may prescribe endorsements that may be made on vessel documents from time to time with or without issuance of a new document or surrender of the old document.

12. Numbering of Registry Certificates

- (1) The Foreign Vessel Administrator or his or her duly authorized agent shall progressively number the Certificates of Registry granted by him or her beginning anew at the commencement of each year and shall record them in a book kept for that purpose in the office at the place where the Foreign Vessel Administrator is located and at the homeport. He or she shall also retain permanently copies of all such documents issued by or surrendered to him or her.
- (2) The Foreign Vessel Administrator's office and the homeport office in Funafuti shall maintain all of the following documents-
 - (a) certificates of permanent and provisional registry and licences;
 - (b) bill of sale and other instruments of conveyance of vessel;
 - (c) mortgages of vessel;
 - (d) assignments of mortgages; and
 - (e) all other documents relating to a vessel which are entitled to be recorded.

13. Use of Certificate of Registry

- (1) The Certificate of Registry shall be used only for the lawful navigation of the vessel.
- (2) The Certificate of Registry shall not be subject to detention by reason of any title, lien, charge or interest whatsoever had or claimed by an owner, mortgagee or another person to, on or in the vessel.
- (3) Except as otherwise provided therein, regulation 10(4) shall apply where the Certificate of Registry of a Tuvalu vessel is mislaid, lost or destroyed.
- (4) The owner of a Tuvalu vessel may make written application to close its registry if there is no:
 - (a) unsatisfied mortgage entered in its register;
 - (b) unpaid fees under these Regulations with respect to the vessel; and
 - (c) outstanding claims of the master or seamen of the vessel in respect of wages which have been notified to the Foreign Vessel Administrator or the agent.
- (5) The application shall specify the name of the vessel, the intended port and country or registry (if applicable) or otherwise the reason for the closure. On receipt of the application, and satisfied of the matters mentioned above, the Foreign Vessel Administrator or the Agent shall close the registry of the vessel and make an entry thereof in the register.

14. Names, numbers and marks on vessel

- (1) Every registered vessel shall have her name marked upon each bow and upon the stern. The homeport of vessel shall also be carved upon the stern. These names shall be painted or gilded, or consist of cut or carved or cast Roman letters in light colour on a dark background, or in a dark colour on a light background, secured in place and distinctly visible. The smallest letter used shall not be less than one hundred millimetres in height.
- (2) The Foreign Vessel Administrator or his or her agent may prescribe a system of numbering registered vessel. The designated number of each vessel shall be carved deeply or otherwise marked permanently on her main beam.
- (3) The draft of every registered vessel shall be marked on each side of her stem and upon the sternpost, in metres or in decimetres, in either Arabic or Roman numerals. The bottom of each numeral shall indicate the draft to that line.
- (4) Upon initial registration of a vessel, the Foreign Vessel Administrator shall assign to the vessel an official number.

15. Change in name of vessel

- (1) The Foreign Vessel Administrator may change the name of a Tuvalu vessel on application of the owner and the payment of the prescribed fee. In the event of change of the vessel name the Foreign Vessel Administrator shall issue a new Certificate of Registry to the owner.
- (2) The Foreign Vessel Administrator shall, in consultation with the Registrar of Vessel, establish necessary Rules and procure necessary evidence as to age, condition, where built, and pecuniary liability of the vessel so as to prevent injury to public or private interests. The person desiring the change of name shall pay the prescribed of procuring evidence.
- (3) If the name of a Tuvalu vessel is changed by any device or contrivance with intent to deceive as to its true name or character such vessel shall be liable to be struck off from the Register.

16. Inspection of document

Any officer designated by the Foreign Vessel Administrator, or who within Tuvalu is concerned in the collection of government revenue, may at all times inspect the Certificate of Registry and tonnage tax receipt of a vessel of Tuvalu. A Master who fails to exhibit the same, when required by such officer, shall be liable to a penalty of one hundred dollars (\$100), and if his failure is willful shall be liable to a penalty of not more than one thousand dollars (\$1,000) or imprisoned for not more than one year, or both.

17. Transfers and Transmissions

- (1) The ownership of registered vessel shall be transferred by a bill of sale followed by the delivery of the vessel to the purchaser.
- (2) The execution by the purchaser of a protocol of delivery and acceptance shall be deemed sufficient evidence that the vessel has been delivered to the purchaser.
- (3) The signature on the bill of sale and the protocol of delivery and acceptance shall be authenticated by a notary public or a head office agent in the place where such documents are issued before they can be registered at the head office.
- (4) The registration of the title to the vessel at the head office shall be necessary to complete the vessel's registration and the permanent registration of a mortgage thereon.
- (5) The owner of a vessel may execute a mortgage as security for a loan or other valuable consideration or to meet any lawful obligation, present or future.
- (6) The mortgage, duly executed by the owner or his or her authorized representative, shall be registered at head office in order to create *in rem* rights against the vessel.
- (7) The deed of the mortgage may be executed in the form prescribed by the Foreign Vessel Administrator made hereunder and shall contain the following information-
 - (a) names and addresses of the mortgagor and the mortgagee;
 - (b) maximum amount secured by the mortgage, including (in addition to the capital) all interest accrued, costs, collection expenses, any amounts resulting from currency fluctuations and other sums agreed between the parties;
 - (c) maturity dates of both capital and interest or the manner of determining these dates, unless the mortgage has been executed as security for obligations repayable on demand or as security for future obligations or for obligations which have not arisen at the date of execution of the mortgage;
 - (d) rate of interest payable (in cases where the parties have agreed on the payment of interest), or the manner of determining such rate of interest;
 - (e) full description of the vessel, including its tonnage, dimensions, registrations number and radio call sign;
 - (f) any other provisions that may be agreed between the parties.

- (8) The signature(s) on the deed of mortgage shall be authenticated in like manner as provided under sub-regulation (3) before the deed can be registered at the Head Office.
- (9) The mortgage deed may stipulate that the mortgagee may proceed to the private sale of the vessel in the event of default by the mortgagor.
- (10) (a) A vessel which is subject to a registered mortgage in its previous registry shall deliver the mortgagee's written consent to the transfer of flag not later than sixty calendar days after its provisional registration with the Foreign Vessel Administrator. A notary public shall notarise such document.
 - (b) The mortgagee's written consent, duly notarized, shall also be required for the issue of new navigation licences due to the transfer of ownership, or the change of name of the vessel or its owner, as well as for the vessel's deregistration.

18. Survey and safety

- (1) Surveyors of vessel are appointed under the Merchant Shipping (Amendment) Act 1991.
- (2) Every vessel shall be surveyed or inspected in accordance with section 11 of the Act.
- (3) No Tuvalu vessel shall proceed to sea unless the required safety certificates are carried on board.
- (4) The Master of a Tuvalu vessel shall produce to the Port Officer at the port from which clearance for the vessel is sought for an international voyage the certificate required by the foregoing regulations to be in force when the vessel proceeds to sea. A clearance shall not be granted, and the vessel may be detained, until the said certificate or certificates are so produced.

19. Compliance with International Conventions and Agreements

- (1) It shall be the duty of the owner and the Master to ensure that their vessel is in compliance with the requirements of the International Maritime Organisation Conventions, the International Labour Organisation Conventions and other relevant International Instruments as may be specified under the Act.
- (2) It shall be the duty of the owner and the Master to ensure that their vessel's personnel are provided with publications, instruction booklets and manuals or other information sufficient to enable their vessel to be operated in accordance with the Conventions referred to in sub-regulation (1) of this regulation.

- (3) In the event of failure to comply with sub-regulation (1) of this regulation or any Conventions or Agreements entered into by Tuvalu before or after the commencement of these Regulations, the Registrar may suspend or cancel a vessel's Certificate of Registry and impose a monetary penalty not to exceed \$100,000, and such other conditions as may be necessary to bring about compliance with maritime or maritime-related Conventions and others which are in force, or the provisions of which are applied by Tuvalu in advance of entry into force.

20. Miscellaneous

- (1) A Tuvalu vessel shall hoist the proper national colours on entering or leaving any port.
- (2) Unless otherwise stated, any person who is convicted by a court of competent jurisdiction of a violation of any of the provisions of these Regulations or any other law in accordance with these Regulations shall, upon conviction, be liable to a fine up to the sum of \$100,000 or to imprisonment for a term not exceeding five (5) years or both.
- (3) The fees specified under Schedule 1 of these regulations shall apply to the registration of bareboat charter.