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SHIP REGISTRATION ACT, 2015
A LAW TO PROVIDE FOR THE
REGISTRATION OF SHIPS IN THE
REPUBLIC OF UGANDA

A Legislation Drafting Project submitted in partial fulfillment of the requirements for the award of the Degree of Master of Laws (LL.M.) in International Maritime Law at the IMO International Maritime Law Institute

Submitted By: Ms. SANDRA MUNDURU (UGANDA)

Supervisor: Ms. RAMAT JALLOH

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1.0 INTRODUCTION

The Ship Registration Act will provide for the registration of ships in Uganda. The law will seek to incorporate the rules laid down by International law on registration of ships.

Registration is a term used to describe the attribution of national character to a vessel, meaning the entry of a vessel in the public records of a State.¹ Registration thus gives the vessel its national character. Nationality of ships is the legal tie between a vessel and her flag State. When a State confers upon a ship the right to fly its flag, the State extends to that ship certain rights and privileges. The effect of nationality is that a State which has granted a ship the right to sail under its flag, has the exclusive right to exercise effective jurisdiction over that ship on the high seas.

The legal concept of Ship Registration stems from one of the fundamental principles of public international law, which is the freedom of the high seas. The ‘high seas’ was defined in article 1 of the Geneva Convention on the High Seas, 1958 (High Seas Convention)² as all parts of the sea not included in the territorial sea or internal waters of a State. This definition was modified under Article 86 of the United Nations Convention of the Law of the Sea, 1982 (UNCLOS)³ as all parts of the sea that are not included in the exclusive economic zone, in the territorial sea, in the internal waters of a State, or in the archipelagic waters of an archipelagic State.⁴

The high seas are open to all States, and no State may validly purport to subject any part of them to its sovereignty.⁵ This principle of freedom of the high Seas is a rule of customary international law codified in the High Seas Convention and UNCLOS.

¹ Ready, N.P. ; Ship Registration, 3rd Edition, Lloyd’s of London Press Ltd., London, U.K., 1994, p.2.

² Adopted 29th April 1958; Came into force 30th September 1962; 63 Ratifications.

³ Adopted 10th December 1982; Came into force 16th November 1994; 167 Ratifications.

⁴ Churchill R.R & Lowe A.V. ; The Law of the Sea, 3rd Edition, Manchester University Press, Manchester, UK, 1999, p. 208.

⁵ Article 2, High Seas Convention.

Article 87 of UNCLOS states that the high seas are open to all States whether coastal or land-locked and this freedom is exercised under the conditions laid down by the Convention and other rules of international law.

This provision applies to all States both coastal and non-coastal and therefore no State has claim to jurisdiction on the oceans. Such freedom means the unrestricted access of vessels belonging to all nations, including landlocked States, to all parts of the sea which are not included in the territorial sea or internal waters of another State.⁶

The rules of international law provide that the principle of freedom of the high Seas only extends to ships having nationality and a ship possessing no nationality, a stateless ship, enjoys no protection in International law. Therefore all vessels on the High Seas must possess a national character and jurisdiction over a vessel on the High seas resides with the State to which the vessel belongs.

In *R v Anderson*⁷, Byles J. referred to a ship being “like a floating island” when he stated that a ship is in effect a floating piece of a nation whose flag it is entitled to fly and Blackburn J. reaffirmed this position when he said:

“..... a ship on the high seas, carrying a national flag, is the part of the territory of that nation whose flag she carries; and all persons on board her are to be considered as subject to the jurisdiction of the laws of that nation, as much so as if they had been on land within that territory.”

In the celebrated *SS Lotus case*, the Permanent Court of International Justice held that:

*“.....a ship on the high seas is assimilated to the territory of the State of the flag which it flies, for just as in its own territory, that State, exercises its authority upon it, and no other state may do so.”*⁸

⁶ Coles, Richard and Watt, Edward; *Ship Registration: Law and Practice*, Lloyd's Shipping Law Library, Infoma Law Routledge, 2nd Edition, London, 2009, p.1.

⁷ (1868), II Cox Crim. Cas. 198; cited in Mukherjee K. Proshanto, *Brownrigg Mark; Farthing on International Shipping*, 4th Edition, Springer, London, p. 200.

⁸ (1927), PCIJ Series A, No. 10 at p. 25 cited in Mukherjee et al., *Ibid.*

The proposition of the principle of freedom of the high seas extended to a ship possessing no nationality was rejected by the privy council in *Naim Molvan v. Attorney General for Palestine (the Re: Asya)*,⁹ where it was stated that a vessel not sailing under the maritime flag of a State enjoys no protection whatsoever, for the freedom of navigation on the open sea is freedom only as sail under the flag of a State. Therefore a ship with no nationality is a 'stateless' ship and enjoys no protection in international law.

A vessel on the high seas must possess a national character; nationality of a vessel is given to it by registering in a State Ship Registry and to which State's flag it subsequently becomes entitled to fly. The jurisdiction of a State extends to the vessel which flies its flag as it was rightly stated in the *SS Lotus case*.

The Convention on Certain Questions Relating to the Conflict of Nationality Laws, 1930 (Hague Convention)¹⁰ provides in article 1 that it is for each State to determine under its own laws who are its nationals. This law shall be recognised by other States in so far as it is consistent with international conventions, international customs and principles of law generally recognised with regard to nationality. Article 2 provides that any question as to whether a person possesses the nationality of a particular State shall be determined in accordance with the law of the State. These provisions therefore point out that a State has the right to determine who its nationals are under its own laws.

The right of States to unilaterally fix the conditions for the grant of nationality to merchant vessels was stated by the Permanent Court of Arbitration in 1905 in the case of the *Muscat Dhows* between Great Britain and France¹¹. France was held entitled to authorize vessels belonging to subjects of his Highness the Sultan of Muscat to fly the French flag, only bound by her own legislation and administrative rules. The court stated explicitly that it belongs to every sovereign to decide to whom he will accord the right to fly his flag and to prescribe the rules governing such grants.

⁹ 1948 A.C. 351; cited in Ready; p. 1-2.

¹⁰ Entered into force on 1 July 1937.

¹¹ Ready, p.9; Hague Court Reports 1916, p.93.

The principle enunciated in the *Muscat Dhows* case was upheld by the United States Supreme Court in the case of *Lauritzen v. Larsen*¹²

“Each State under international law may determine for itself the conditions on which it will grant its nationality to a merchant ship, thereby accepting responsibility for it and acquiring authority over it. Nationality is evidenced to the world by the ship’s papers and its flag. The United States has firmly maintained that the regularity and validity of registration can be questioned only by the registering State.”

In the 1955 decision of the International Court of Justice in the *Nottebohm case*¹³ it was held that nationality serves above all to determine that the person upon whom it is conferred enjoys the rights and is bound by the obligations which the law of the State in question grants or imposes on its nationals. The court further stated that the fundamental principle on which nationality is based is the existence of a real, effective link between a State and its citizens.

Registration therefore is the administrative act by which the nationality and the collateral rights and duties are conferred on vessels. It is the entry of the vessel in the public records (registry of Ships) of the State. Registration is the official confirmation that the vessel meets the relevant national requirements.

Documentation is the issuance to a vessel by the competent authorities of the State of a document evidencing the vessel’s nationality and attesting to her right to fly the national flag of that state.¹⁴ Article 5 (2) of High Seas Convention and Article 91 (2) of UNCLOS both provide that each State shall issue to ships to which it has granted the right to fly its flag documents to that effect. As such documentation will be given to a ship as evidence of registration of that ship by the State after the ship meets all of the criteria for registration as laid down by the State.

¹² Ready, p.10; 345 U.S. 571 (1953).

¹³ Ready, p.11; [1955] I.C.J. Rep. 4.

¹⁴ Ready,p.5.

2.0 GENUINE LINK

The High Seas Convention provides that each State shall fix the conditions for the registration of ships in its territory, and for the right to fly its flag and that there must exist a genuine link between the State and ship; in particular, the State must effectively exercise its jurisdiction and control over ships flying its flag.¹⁵

Article 91(1) of UNCLOS also provides:

“Every state shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the state whose flag they are entitled to fly. There must exist a genuine link between the state and the ship”.

Both Conventions provide that there must exist a “*genuine link*” between a ship and the State purporting to confer its nationality upon that ship. Neither Convention, however, defines or states what is meant by a genuine link.

The requirement for ‘genuine link’ in Nationality was influenced by the *Nottebohm case*¹⁶ where the Court found that the following principles were generally recognized:

“[N]ationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties. It may be said to constitute the juridical expression of the fact that the individual upon whom it is conferred [...] is in fact more closely connected with the population of the State conferring nationality than with that of any other state.”

In the Constitution of the Maritime Safety Committee (MSC) of the IMCO case,¹⁷ the court was asked the meaning of the phrase, ‘the largest ship-owning nations’ in article 28 (a) of the Convention of IMCO (Intergovernmental Maritime Consultative Organisation),

¹⁵Article 5 (1).

¹⁶ Nottebohm case, 2nd phase (Liechtenstein v. Guatemala), Judgement of 6 April 1955, International Court of Justice (ICJ Reports, 1955).

¹⁷ Advisory Opinion of 8 June 1960 on the Constitution of the Maritime Safety Committee of the Intergovernmental Maritime Consultative Organization, International Court of Justice (ICJ Reports, 1960).

as the IMO was then known, which states that the MSC shall consist of 14 members elected by the Assembly from the Member governments of those nations having important interest in maritime safety, of which not less than 8 shall be the largest ship-owning nations. The court held that the determination of the largest ship-owning nations depends solely upon the tonnage registered in the countries in question and rejected the proposal of combining two criteria, namely registered tonnage and nationality of ownership

The *ad hoc* Intergovernmental Working Group, established under the auspices of United Nations Conference on Trade and Development (UNCTAD), on the Economic Consequences of the Existence of a lack of genuine link between Vessel and Flag of Registry concluded in its Report that the following elements are normally relevant when establishing whether a genuine link exists between a vessel and its country of registry:

- i. the merchant fleet contributes to the national economy of the country;
- ii. revenues and expenditure of shipping , as well as purchases and sales of vessels, are treated in the national balance-of-payments accounts;
- iii. the employment of nationals on vessels;
- iv. the beneficial ownership of the vessel. ¹⁸

A recent confirmation of the rules applying to genuine link came in 1999 from the International Tribunal of the Law Of the Sea (ITLOS) in the case of the *M/V Saiga*¹⁹ where it was held inter alia that the purpose of the provisions of the Convention on the need for a genuine link between a ship and its flag State is to ensure more effective implementation of the duties of the flag State, and not to establish a criteria by reference to which the validity of the registration of ships in a flag State may be challenged by other States.

As such it is important to notice that the fundamental principle on which nationality is based is the existence of a real, effective link between the State and its ships. The purpose

¹⁸ Ready; p.18.

¹⁹ MV Saiga case (No.2) (Saint Vincent and the Grenadines v. Guinea) Volume 3 (1999) International Tribunal for The Law of The Sea: Reports of Judgements, Advisory Opinions and Orders 199, p. 42 para 83.

of the ‘genuine link’ principle is to ensure effective exercise of jurisdiction and control by the State over the ships flying its flag.

3.0 INTERNATIONAL CONVENTIONS

3.1 GENEVA CONVENTION ON THE HIGH SEAS 1958 (HIGH SEAS CONVENTION)

The International Law Commission (ILC), established by the UN General Assembly in 1947 to promote the progressive development of International law and its codification commenced its work on the codification of the law of the sea at its first session in 1949. In its eight session in 1956, the ILC submitted its final report on ‘Articles Concerning the Law of the Sea’ to the United Nations. This report provided the basis for the work of the First United Nations Conference on the Law of the Sea (UNCLOS I). UNCLOS I was convened in Geneva on 24 February 1958 and eighty-six States participated and the conference adopted the Convention on the High Seas.²⁰ The treaty was signed 29 April 1958 and entered into force 30 September 1962. As of 2014, the treaty had been ratified by 63 states. Uganda ratified this Convention on 14th September 1964.²¹

The main purpose of the High Seas Convention was to codify the rules of international law relating to the High Seas. Article 4 re-affirms the freedom of navigation on the high seas, it provides that every State, whether coastal or not, has the right to sail ships under its flag on the high seas.

Article 3 provides for States having no sea coast to have free access to the sea in order to enjoy the freedom of the seas on equal terms with coastal States. It also provides for mutual agreement between States situated between the sea and a State having no sea coast on matters relating to freedom of transit and access to seaports and the use of such ports. The Convention also provides for treatment to ships flying the flag of a State with no sea coast or to the ships of any other States equal to that accorded to their own ships.

²⁰ Tanaka Yoshifumi; *The International Law of The Sea*; Cambridge University Press, New York, 2012, p.22.

²¹ United Nations Treaty Collection; <https://treaties.un.org>.

The Convention under Article 4 provides that every State, whether coastal or not has the right to sail ships under its flag on the high seas.

The Convention states that each State shall fix the conditions for the grant of Nationality to ships, for the registration of ships in its territory and for the right to fly its flag. It also states that each State shall issue to ships to which it has granted the right to fly its flag documents to that effect.²²

Article 6 provides that ships shall sail under the flag of one State only save for change of registry and a ship which sails under the flags of two or more States may be assimilated to a ship without nationality.

The Convention however points out certain types of ships that have complete immunity from jurisdiction of any other State other than the flag State and these are warships²³ and ships owned and operated by a State and used only on government non-commercial service.²⁴

3.2 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA, 1982 (UNCLOS)

The United Nations Convention on the Law of the Sea was signed in Montego Bay on 10 December 1982 and was ratified by Uganda on 9 November, 1990. The Convention was adopted after a series of sessions of the Conference between 1973 and 1982, as a result of a great need to review the existing rules of the law of the Sea as a whole.

Article 90 of the Convention provides for the right of navigation on the high seas. Every State whether coastal or land-locked, has the right to sail ships on the high seas. The Convention specifically provides under Article 125 (1) that land-locked States shall have right of access to and from the sea for the purpose of exercising the rights provided for in the Convention, such as freedom of the high seas.

²² Article 5; High Seas Convention.

²³ Article 8; High Seas Convention.

²⁴ Article 9; High Seas Convention.

Nationality of ships is under Article 91, every State shall fix the conditions for the grant of its nationality to ships, for registration of the ships in its territory, and for the right to fly its flag. Every state shall issue to ships to which it has granted the right to fly its flag documents to that effect.

Article 92 provides that ships shall sail under the flag of one State only and shall be subject to its exclusive jurisdiction on the High seas. A ship which sails under the flags of two or more States, may not claim any of the nationalities with respect to any of the States, and may be assimilated to a ship without nationality.

The articles of the Convention do not prejudice the question of ship employed on the official service of the United Nations and its specialised agencies flying the flag of the Organisation.²⁵

Article 95 and 96 also exclude warships and ships owned by a States and used only on government non-commercial service from the jurisdiction of any State other than the flag State.

3.2.1 Flag State Responsibilities

International law looks to individual flag States to ensure compliance with the rules it lays down for the exercise of the freedom of the High seas. UNCLOS under Article 87 provides that such freedom is exercised under the conditions laid down by the Convention and by rules of international law.

UNCLOS under Article 94 (1) provides for the duties of the flag State to effectively exercise its jurisdiction and control in administrative and control in administrative, technical and social matters over ships flying its flag. The Article provides in particular for States to maintain a register of ships containing the names and particulars of ships flying its flag and to assume jurisdiction under its internal law over each ship flying its flag.

²⁵ Article 93; UNCLOS.

In accordance with Article 91 (2) flag State duties include taking the necessary measures for ships flying its flag as are necessary to ensure safety at sea as to the seaworthiness of ships, labour conditions, manning and training of seafarer's. Such measures will include surveys before registration, ensuring that each ship is in charge of a master and officers who possess appropriate qualifications and that the master and crew are fully conversant and observe the applicable international regulations.

The flag State has a duty to ensure that the master, officers and to the extent appropriate, the crew observe the applicable international regulations concerning the safety of life at sea, the prevention of collisions, the prevention, reduction and control of marine pollution, and the maintenance of communications by radio.

3.2.2 IMO Conventions

The flag State also has the duty to safeguard and supervise the standards set out in other Conventions on ships flying its flag. The International Maritime Organisation (IMO) which is the United Nations specialised agency responsible for improving maritime safety and preventing pollution from ships. To improve this IMO has prepared several important conventions which are important as ships to be registered have to satisfy the requirements set out in the Conventions.

Conventions such as the International Convention for the Safety of Life at Sea 1974 (SOLAS)²⁶, the International Convention on Standards of Training Certification and Watchkeeping for Seafarers 1978 (STCW)²⁷, the International Convention for the Prevention of Pollution from Ships 1973 (MARPOL)²⁸ and the Maritime Labour Convention 2006 (MLC)²⁹ among many others.

²⁶ Adopted November 1974, came into force May 1980, read together with its protocols of 1978 and 1988 together with 36 amendments.

²⁷ Adopted in 1978 and came into force in 1984.

²⁸ Adopted in November 1973 and is a combination of two treaties adopted in 1973 and 1978 and includes the protocol of 1997.

²⁹ Adopted in February 2006.

These Conventions as are considered the four pillars of the maritime industry and specify minimum standards for which the flag State is responsible for ensuring that ships under their flag comply with their requirements and a number of certificates are prescribed under the Conventions to be issued as proof of the ship meeting those minimum requirements.

SOLAS sets minimum safety standards in construction, equipment and operation of seagoing ships while STCW sets qualification standards for masters, officers and watch personnel on seagoing merchant ships.

MARPOL is the main international Convention covering the prevention of pollution of the marine environment by ships from operational or accidental causes. Article 217 of UNCLOS obliges flag States to ensure compliance by their vessels with international rules and standards as well as laws and regulations adopted in accordance with the Convention for the protection of the marine environment from pollution.

MLC confers obligations on State parties to adopt laws at least substantially equivalent to those contained in articles and regulations listed. The flag State also has the obligation to exercise jurisdiction and to verify compliance by the ships flying its flag.

Under MLC State parties shall exercise effective jurisdiction and control over ships registered in its territory in respect of: safety standards, including standards of competency, hours of work, manning, social security measures, shipboard conditions of employment and shipboard living arrangements prescribed by national laws and regulations.

Uganda will need to ratify and domesticate these instruments as it is important that ships registered under her flag comply with the requirements of these International regulations.

3.3 THE UN CONVENTION ON THE CONDITIONS FOR REGISTRATION OF SHIPS, 1986 (UNCCROS)

The UN Convention on the Conditions for Registration of Ships (UNCCROS) was adopted by the United Nations Conference on Conditions for Registration of Ships on 7 February 1986. This Convention lays down rules to solve in a spirit of mutual understanding and co-operation, all issues relating to the conditions for the grant of nationality to and for the registration of ships.

Article 4 of UNCCROS like the High Seas Convention and UNCLOS also provides for the right of every State, whether coastal or land-locked, to sail ships flying its flag on the high seas. It also states that ships shall have the nationality of the State whose flag they are entitled to fly and that ships shall sail under only one flag.

The Convention also provides for certain flag State duties such as to have an effective maritime administration, including proper ship registration machinery and enforcement arrangements.³⁰ Article 5 gives the flag State the duty to ensure that ships flying the flag of such State comply with its laws and regulations and applicable international standards in relation to safety, pollution control, surveys and competence of officers and crew.

Article 6 deals with identification and accountability; the flag state must ensure that those responsible for the management and operation of its registered ships are readily identifiable and accountable.

The adoption of UNCCROS set a number of conditions under which a ship should be accepted for registration by a flag State. Essentially it defined, or re-defined the concept of genuine link in earlier Conventions previously discussed and the degree of jurisdiction and control a flag State should have over ships flying its flag.³¹

It was not until UNCCROS that we see any attempt in an international treaty law to determine precisely what is meant by the “genuine link” when applied to merchant ships.

³⁰ Article 5, UNCCROS.

³¹ Farthing on International Shipping; p.211.

Article 1 of the Convention spells out the objective of the Convention, which is to strengthen the genuine link between a State and ships flying its flag, and in order to exercise effectively its jurisdiction and control over such ships. It also provides that a flag State shall apply the Convention with regard to identification and accountability of shipowners and operators as well as with regard to administrative, technical, economic and social matters.³²

The relevant provisions for this purpose are contained in Articles 7, 8, 9 and 10. Article 7 grants States of registration the option to either comply with the ownership requirements in Article 8 or with the manning requirements in Article 9. Article 8 requires the flag State to make provisions in its laws and regulations for participation by that State or its nationals as owners of ships flying its flag. Article 9 provides that a satisfactory part of the complement shall consist of officers and crew of ships flying its flag be nationals or persons domiciled or lawful permanent resident in that State. The Convention also permits partial manning of ships by non-nationals, but their level of competence and conditions of employment must be in conformity with applicable international rules and standards.³³

Article 10 sets out the role of the flag State in respect of the management of shipowning companies and ships on its register to ensure that the shipowning company or a subsidiary shipowning company is established and/or has its principal place of business within its territory. However where these circumstances do not exist, the requirement may be satisfied by the appointment of a representative or management person who shall be a national of the flag State or domiciled therein.³⁴ The Convention provides that where there is such a case, there must be a representative or management person, natural or juridical, who or which must be a national of the flag State and must be available to meet all legal, financial and other obligations of the shipowner.³⁵

This is an attempt to solidify the concept of the genuine link by requiring that a Flag State is so closely linked to a ship such that it is put in a position to be able to adequately

³² Ready, p.13.

³³ Article 9(6), UNCCROS.

³⁴ Coles and Watt , p.17.

³⁵ Article 10, UNCCROS.

exercise effective jurisdiction and control over the ship. Whilst the earlier Conventions envisaged the “genuine link”, UNCCROS introduces the concept of the economic link, providing for the participation by nationals of the flag State in the ownership, manning and management of ships.³⁶

Article 19 of UNCCROS provides that the Convention shall enter into force 12 months after the date on which not less than 40 States, the combined tonnage of which amounts to at least 25 per cent of the World tonnage, have become Contracting parties to it. As of January 2015, 15 states have ratified the Convention as such it is not yet in force.³⁷ The Convention however is the first all-encompassing international regulation on registration as such its provisions are relevant for registration of ships.

4.0 THE NEED FOR A SHIP REGISTRATION ACT IN UGANDA

Uganda is a landlocked developing State and is faced with a challenge of low economic growth levels of 3 percent. The Gross Domestic Product of Uganda represents 0.03 percent of the world economy.³⁸ As such Uganda needs to explore areas that have never been tapped economically before such as building a national merchant fleet of its own. Registration of ships will help bring capital and investment into the country and build the shipping industry which will in turn increase economic activities and enhance economic growth.

Uganda will also be able to benefit from having a national fleet on the high seas such as in times of war, crisis or disaster and in times of peril. The shipping industry will in turn aid training and development for Uganda as it will help build human resources on an international level and help in providing employment opportunities for her citizens.

Uganda is a landlocked State that has no presence on the high seas and as such has not yet exercised her rights to navigation on the high seas. However it is very possible and economically viable for a landlocked State to have vessels on the high seas and to register

³⁶ Ready, p.13.

³⁷ UN Treaty Collection; <https://treaties.un.org>.

³⁸ www.tradingeconomics.com/uganda/gdp.

ships such as in the case of Bolivia, Switzerland, Mongolia and Moldova. Today only 13 out of 45 landlocked States possess merchant feet, only 2 of those are African States (Ethiopia and Malawi)³⁹ These States albeit landlocked have managed to develop ship registries in their countries. There is no rule of international law prohibiting landlocked States from having ships flying their flags on the High seas.

Being land-locked, most of Uganda's maritime regulatory regime covers inland water transport and most of the country's domestic maritime legislation are obsolete. Uganda is a party to the Lake Victoria Transport Act the regional maritime legislation, which governs Lake Victoria that is shared with Kenya and Tanzania but most of its provisions have not been implemented in Uganda. However, Uganda has the capacity to build a formidable ship registry owing to the fact that she has experience in maritime affairs owing to her capacity to regulate her in-land waters. Further, only three International Maritime treaties have been ratified by Uganda. There needs to be a complete overhaul and consolidation of domestic maritime legislation and ratification of various international conventions and protocols.

The following are Uganda's current laws covering in-land water transport only:

- The Vessel (Registration) Act, 1904;
- The Ferries Act, 1905;
- The Rivers Act, 1907;
- The Foreign Seamen Deserters' Act, 1908;
- The Inland Water Transport (Licensing) Rules, 1938;
- The Inland Water Transport (Control) Act 1939;
- The Uganda Railways Corporation Act, 1992; (Sections 71 - 79)
- The Lake Victoria Transport Act, 2007 (East African Community Region)

As such the proposed Act will provide a legislation wholly applying to Ugandan registered ships on the high seas.

The current regulatory institutions in Uganda are not set up to efficiently and safely regulate the maritime sector. There is a need to establish a new maritime authority

³⁹ Ganjaliyev Elchin; Building Azerbaijan's Legal Framework for Marine Operations on the basis of UNCLOS; United Nations- Nippon Foundation Scholar 2011-12.

created by statute with sufficient capacity devoted to its regulation. This can be through the creation of an autonomous body, with the sole remit of regulating the maritime industry in Uganda. The law will give the minister the power to establish this maritime administration in Uganda and a Registrar and Deputy Registrars and establish offices worldwide.

There is a real and acute lack of adequate and qualified personnel in the maritime sector. The RVR Marine Division has less than six qualified staff. There is no active merchant navy captain in the country. There are no qualified surveyors or engineers to survey and register vessels. There are no formal training institutions in Uganda and Most Officers are sent to the Maritime Institute in Dar-es-salam, Tanzania. As such this law will provide for training and capacity building so that Uganda can benefit as a crew supplying state so as to build the human resource of the country. The law will also delegate some functions such as inspections and surveys to Recognised Organisations.

5.0 METHOD OF DOMESTICATION OF THE CONVENTIONS

Uganda is a party to the High Seas Convention and UNCLOS; both these Conventions have provided rules for the registration of ships. The Ship Registration Act of Uganda will seek to domesticate the international law rules on registration of ships as envisaged in both UNCLOS and UNCCROS.

Uganda is dualist in nature and therefore a legislative instrument is required to make an international convention (treaty) binding on the domestic courts and on the citizens of the State. Therefore an international convention (treaty) even after ratification will only become part of Uganda's domestic law when domesticated under a legislative instrument and gazetted.

Implementation of an International Convention (or treaty) into relative domestic law can take place either by enactment in a new separate law or by adoption or transformation into the existing maritime law. In this case it is my proposal that a new law is enacted.

The Ship Registration Bill will be submitted by the Minister responsible for transport to the cabinet secretariat for approval before it is tabled before Parliament for debate. Once passed by Parliament, it will require assent by the President to pass it into law. The Ship Registration Act will then come into operation upon such date as the minister may, by notice in the Uganda Gazette determine.

6.0 EXPLANATION OF THE DRAFT TEXT

The draft law shall contain 72 sections divided into 6 chapters.

6.1 Chapter I: Application of the Act

The Ship Registration Act (the Act) will provide for the registration of ships in Uganda. The Act shall apply to all Ugandan merchant ships and will not apply to vessels of the Uganda Peoples Defence Forces and of the Uganda Police Services.

6.2 Chapter II: Administration of the Act

The Act will provide for the designation of a maritime administration to undertake regulatory functions with regard to maritime safety and security and charged with the administration of the Act. The law will give powers to a Registrar and Deputy Registrar of Ships to oversee the administration of the Act and also establishes the Ugandan Ship Registration Office. The law further gives the Minister power to establish branch offices anywhere in the world so as this is necessary for effective control over ships considering Uganda's position as a landlocked State.

Section 5 of the proposed Act is pursuant to article 5 (1) of UNCCROS which provides that the flag State shall have a competent and adequate national maritime administration.

Article 5 (3) of UNCCROS provides that the maritime administration shall ensure that ships flying the flag of such State are periodically surveyed to ensure compliance with applicable international rules and standards concerning, in particular, the safety of ships and the prevention of pollution of the marine environment. These provisions are covered

under section 6 (7) of the Act which deals with surveying and inspection of vessels and section 6 (14) which deals with overseeing matters related to marine pollution from ships.

Section 6 (1) of the Act provides for the overall function of the maritime authority to register and certify ships pursuant to article 5 (3) (b) of UNCROSS which provides that the maritime authority should ensure that the ships flying the flag of such State carry on board documents evidencing the right to fly its flag and other relevant documents.

6.3 Chapter III: Registration of Ugandan Ships

The Act will provide for the registration of Ugandan ships and confers on them the right to fly the Ugandan flag. The Act lays down the national requirements such as nationality and ownership for a ship to be registered as a Ugandan ship. The Act also provides for inspections, tonnage measurement, marking of ships and registration certificates.

Part A, section 15 (1) of the Act gives Ugandan ships entitlement to fly the Ugandan flag pursuant to article 4 (2) of UNCCROS which provides that ships shall have the nationality of the State whose flag they are entitled to fly. Under section 15 (5) of the Act the Registrar must issue a certificate to the owner stating that the ship is entitled to fly the national flag as provided for by article 5 (3) (c) of UNCCROS.

Part B of the Act under section 18 provides for ships entitled to be registered if it is a Ugandan owned ship. This provision is pursuant to article 8 of UNCCROS which provides that a flag State shall provide in its laws and regulations for the ownership of ships flying its flag. Article 7 read together with article 8 (2) of UNCCROS provides that the flag State in its laws and regulations shall include appropriate provisions for participation by that State or its nationals as owners of ships flying its flag or in the ownership of such ships and for the level of such participation, this is also dealt with under section 18 and section 3 (3) of the Act.

Section 21 of the Act prohibits dual registration pursuant to article 92 of UNCLOS which provides that ships shall sail under the flag of one State only and article 4 (4) of

UNCROSS which provides that no ships shall be entered in the registers of ships of two or more States at a time subject to articles 11 (4) and (5) and article 12.

Article 11 (2) (g) of UNCCROS provides for a register to record the evidence of the date of deletion or suspension of the previous registration of the ship before entering that ship in its registry, this is provided for under section 21 (3) of the Act where an application for registration of a ship that has at any time been registered under the laws of another State to submit evidence that such registration has been terminated in accordance with the law of that State.

Part C deals with identification and marking of a ship. Section 22 (1) of the Ship Registration Act provides *inter alia* that a ship may not be registered until it has been marked in the prescribed manner, this is pursuant to article 11 (2) (b) of UNCCROS which provides that the register shall record the official number or mark of identification of the ship.

Under Part D, section 25 (1) of the Act provides that the Registrar must issue a registration certificate on completion of registration of a ship pursuant to article 6 (1) of UNCCROS which provides that the State of registration shall issue documentation as evidence of registration of the ship.

6.4 Chapter IV: Private Law Provisions

The Act will provide for registration of and protection of title and security interests in ships. The Act provides for the types of interests registerable under the law and seeks to regulate the dealings with such interests such as transfers and transmission.

Section 44 of the Act deals with bareboat charter registration for ships chartered-in by Ugandan charterers. It is pursuant to articles 11 and 12 of UNCCROS. Article 11 (2) (h) of UNCCROS provides for registration of details of a bareboat charterer where national laws and regulations provide for the registration of ships bareboat chartered-in.

Article 12 of UNCCROS which generally provide that in accordance with its laws and regulations a State may grant registration and the right to fly its flag to a ship bareboat chartered-in by a charterer in that State who fully complies with the conditions for registration under the Convention. These are dealt with under section 44 of the Act.

However the private law provisions for registered ships will not apply to ships bareboat chartered-in under section 44 (7) of the Act.

6.5 Chapter V: The Register

This provides for a Uganda Ship Register and how it is to be administered. The Uganda Ship register is a hybrid registry seeking to attract shipowners from anywhere in the world especially in Africa in addition to promoting the Ugandan maritime industry.

Chapter V is pursuant to article 11(1) of UNCCROS which provides that a State of registration shall establish a register of ships flying its flag, which register shall be maintained in a manner determined by that state and in conformity with the provisions of the Convention.

Section 47 of the Act provides for access to the register pursuant to article 6 (3) of UNCCROS which provides that registers of ships should be available to those with a legitimate interest in obtaining information contained therein, in accordance with the laws and regulations of the flag State.

6.6 Chapter VI: General Provisions

The final chapter of the Act deals with the administration of shipping. It contains provisions affecting the Act as a whole.

Section 54 of the Act provides for the name and address of a registered representative person to be entered in the Register in respect of every registered ship. This is pursuant to article 6 of UNCCROS which provides that the State of registration shall enter in its

register of ships *inter alia* information concerning the ship and its owner or owners and operator when the operator is not the owner.

Article 10 of UNCCROS provides that the State of registration shall ensure that the shipowning company or its subsidiary is established and has its principal place of business within its territory in accordance with its laws and regulations and where it is not established in the flag State, the latter shall ensure, before entering a ship in its register of ships, that there is a representative or management person who shall be a national of the flag State. This is provided for under section 54 (4) (b).

This part of the law also provides for notices, fees, jurisdiction, administrative penalties, offences and penalties. The general provisions also give the Registrar powers of delegation and give the Minister the powers to make regulations under the Act.

Section 69 empowers the Minister and provides for the list of areas under which regulations can be made under the Act. The section is wide and is left open as it is easier and more expedient to for the Minister to pass regulations than go through the lengthy process of amending an Act. This is also to make it flexible to include any future developments in the maritime industry that may be mandatory.

SHIP REGISTRATION ACT, 2015

To provide for the Registration of Ships in Uganda

BE IT ENACTED by the Parliament of Uganda, as follows:-

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CHAPTER I
APPLICATION OF THE ACT

1. Short title

This Act may be cited as the Ship Registration Act, 2015

2. Commencement

This Act shall come into operation upon such date as the Minister may, by Notice in the *Gazette*, determine.

3. Interpretation

(1) In this Act, unless the context indicates otherwise-

- (a) “**bareboat charter**”, means the charter of the ship for a fixed period on terms that give the charterer possession and control of the ship, including the right to appoint the master and crew;
- (b) “**branch office**” means a branch office of the Registration Office;
- (c) “**clearance**” includes any clearance procedure carried out and documented by the relevant customs authority;
- (d) “**commercial yacht**” means, a yacht engaged in trade or commerce or on charter for hire;
- (e) “**convention**” means, any bilateral or multilateral treaty, convention, or agreement, to the extent to which Uganda is bound and includes any understanding concluded by Uganda and the government of any other country;
- (f) “**court**” means the High Court of Uganda;
- (g) “**currency unit**” has the meaning assigned to it in Schedule 1;
- (h) “**demise charter**” in relation to a vessel means, the demise, letting, hire or delivery of the vessel to the charterer, by virtue of which the charterer has the whole possession and control of the vessel including the right to appoint its master and crew;
- (i) “**deputy Registrar**” means a Deputy Registrar of Ships;
- (j) “**fees**” means any fees contemplated in section 70 of this Act;
- (k) “**fishing vessel**” means a vessel used for or, intended to be used for or in connection with fishing but does not include a vessel used or intended to be used for fishing, other than for profit;

- (l) “**foreign port**” means any place in another State, whether proclaimed a public harbour or not, to which ships may resort for shelter or to ship or unship goods or passengers;
- (m) “**lodged**” means lodged with the Registrar in accordance with this Act;
- (n) “**Maritime Administration**” means the Administration responsible for maritime safety and security established under section 5;
- (o) “**master**” means the person having lawful command or charge, or for the time being in charge, of a ship, but does not include a pilot aboard a ship solely for the purpose of providing navigational assistance;
- (p) “**Minister**” means the Minister in charge of Transport;
- (q) “**mortgage**” means a mortgage registered in accordance with this Act in section 35 (2);
- (r) “**National Flag**” means the national flag of Uganda;
- (s) “**officer**”, except as provided in section 62, means a person, including the Minister, exercising powers or performing duties in terms of this Act;
- (t) “**owner**”, except as provided in section 54, means the registered owner;
- (u) “**private pleasure craft**” means any vessel used for navigation that neither carries passengers for hire nor is engaged in trade or commerce but which is used solely for the pleasure or recreational purposes of its owner or charterer;
- (v) “**person**” includes a trust;
- (w) “**prescribed**” means prescribed under regulations in accordance with this Act;
- (x) “**provisional registration certificate**” means a provisional registration certificate issued in terms of sections 27, 28 or 29;
- (y) “**qualified person**” means, either-
 - (i) a person who is resident in Uganda; or
 - (ii) an entity which:
 - a) is incorporated in Uganda; or
 - b) is registered or established in Uganda; or
 - c) a person who, being an owner of a commercial yacht or a private pleasure craft, is a current member of an organisation or other entity which is notified by the Minister in the Gazette;
- (z) “**Register**” means the Ugandan Ships Register, established by section 45;

- (aa) **“registered”**, except with reference to the law of another state, means registered or deemed to be or regarded as registered in accordance with this Act;
- (bb) **“registered representative person”**, in relation to a ship, means the person whose name and address are entered in the Register in respect of the ship in terms of section 54;
- (cc) **“Registrar”** means the Registrar of Ships referred to in section 9(1);
- (dd) **“registration certificate”**, means the document issued by the competent authority which certifies that a vessel is registered in the Ship Registry of Uganda ;
- (ee) **“Registration Office”** means the Ugandan Ship Registration Office, established by section 8 and includes branch registration offices worldwide;
- (ff) **“regulation”** means a regulation made under section 69;
- (gg) **“ship”** means any type of vessel capable of navigation by water, including-
- (i) a barge, lighter or other floating vessel; and
 - (ii) a structure that is able to float or be floated and is able to move or be moved as an entity from one place to another; and includes all gear, equipment, stores, cargo and fuel aboard the ship, and any article belonging to or to be used in connection with or necessary for the operation and safety of the ship;
- (hh) **“ship entitled to be registered”** means a ship entitled to be registered in terms of section 18;
- (ii) **“Ugandan national”** means-
- (i) a Ugandan Citizen in terms of the Ugandan Citizenship Act 1962 Chapter 65, or;
 - (ii) a body corporate established in terms of a law of Uganda with a place of business in Uganda or ;
 - (iii) a trust in which-
 - a) the majority of trustees having the controlling power at any given time are Ugandan nationals referred to in paragraphs (i) and (ii) or ;
 - b) a majority of the beneficial interests are held by such Ugandan nationals; and
 - (iv) the Government of Uganda or;
 - (v) being a qualified person.

- (jj) **“Ugandan port”** means a harbour or a fishing harbour or any place in Uganda that has been designated under any law as a place from or at which any ship or any ship of a particular type may be launched, beached, moored or berthed;
- (kk) **“Ugandan resident”** means-
- (i) a natural person whose permanent place of abode is in Uganda, whether or not he or she is from time to time temporarily absent from the Uganda;
 - (ii) a natural person whose domicile is in Uganda, unless his or her permanent place of abode is outside Uganda;
 - (iii) a body corporate, wherever incorporated, that has its principal place of business in Uganda; and
 - (iv) a trust in which-
 - a) the majority of trustees having the controlling power at any given time are Ugandan residents referred to in paragraphs (i), (ii) and (iii); or
 - b) a majority of the beneficial interests are held by such Ugandan residents;
- (ll) **“Ugandan ship”** means a ship having Ugandan nationality in terms of section 14;
- (mm) **“this Act”** includes the regulations issued hereunder;
- (nn) **“unregistered”**, in relation to a ship, means not registered in accordance with this Act or in terms of the law of another state;
- (oo) **“vessel”** means any ship, small ship, commercial yacht or private pleasure craft whether or not under construction.
- (2) In this Act, unless the context indicates otherwise, a reference to the owner of a ship is, if the ship has more than one owner, a reference to each of the owners.
- (3) A reference in this Act to a Ugandan-owned ship is a reference to-
- (a) a fishing vessel that is owned, or owned and controlled by Ugandan national; or
 - (b) any other ship, other than a fishing vessel, that-
 - (i) is wholly owned by one or more Ugandan nationals;
 - (ii) is owned by three or more persons as joint owners of the ship, where the majority of those persons are Ugandan nationals; or
 - (iii) is owned by two or more persons as owners in common, where the majority of the shares in the ship are owned by Ugandan nationals; and
 - (iv) is wholly owned by foreign nationals approved by the Minister

- (4) A reference in this Act to a ship on bareboat charter to a Ugandan national is a reference to a ship that-
- (a) is registered in terms of the law of another state;
 - (b) is not a prescribed ship or a ship of a prescribed class or description;
 - (c) is on bareboat charter to one or more Ugandan nationals, and to no other person.
- (5) In the application of this Act, a ship is deemed to be constructively lost if-
- (a) the ship is reasonably abandoned for the reason that its actual total loss appears to be unavoidable;
 - (b) the ship cannot be preserved from actual total loss without an expenditure that would exceed its value when the expenditure has been incurred; or
 - (c) the ship has been damaged to the extent that the cost of repairing the damage would exceed its value when repaired.

4. Application of Act

- (1) Unless otherwise expressly provided, this Act shall apply to all Ugandan ships wherever they may be.
- (2) This Act shall not apply to-
- (a) vessels of the Uganda Peoples Defence Forces; and
 - (b) vessels of the Uganda Police Services

CHAPTER II ADMINISTRATION OF THE ACT

5. Power of the minister to establish a Maritime Administration

- (1) In the exercise of powers vested in him under this Act, the Minister may, by Order published in the *Gazette*, designate a public authority to undertake, regulatory function with regard to maritime safety and security.
- (2) Without prejudice to subsection (1), pending the designation of any public authority to perform regulatory functions, all regulatory functions and powers relating to maritime safety and security shall be performed and exercised by the Minister.

- (3) For the purpose of this section ‘public authority’ means any public institution, department or agency designated as such by the Minister.

6. Functions of the Maritime Administration

- (1) Registering and certifying ships.
- (2) Overseeing engagement and welfare of seafarers.
- (3) Overseeing manning of vessels, qualifications and training of seafarers.
- (4) Dealing with seafarers affairs.
- (5) Drafting Shipping Regulations and forwarding to the Minister responsible for approval and signing.
- (6) Dealing with prevention of collisions of ships, safety of navigation, including investigation of accidents and incidents.
- (7) Surveying and inspecting of vessels and issuing the relevant safety certificates including-
 - (a) Appointment of surveyors and inspectors
 - (b) Flag State activities
- (8) Measuring the tonnage of ships.
- (9) Marking of ships.
- (10) Ensuring that unsafe ships do not operate due to-
 - (a) Unsuitability for its purpose of machinery or equipment.
 - (b) Under manning.
 - (c) Overloading or unsafe or improper loading.
 - (d) Any other matter relevant to the safety of the ship.
- (11) Dealing with wrecks, including, removal of wrecks.
- (12) Overseeing matters related to maritime security.
- (13) Overseeing matters relating to coordination of maritime search and rescue activities.
- (14) Overseeing matters related to the prevention of marine pollution from ships.
- (15) Initiating the ratification and implementation of the relevant maritime conventions

7. Minister to give directions

The Minister may, in addition to exercising any powers vested in him under this Act, give to any public authority designated as such, directions of a specific or general nature on any matter of policy.

8. Registration office

- (1) The Uganda Ship Registration office is hereby established.
- (2) The Uganda Ship Registration office and its branch offices may be established by the maritime administration in accordance with this Act.

9. Registrar and Deputy Registrar of Ships

- (1) There shall be an officer called the Registrar of Ships, who, subject to the directions of the Minister, is responsible for the maintenance of the Register and has chief control of the Registration Office.
- (2) There may be appointed Deputy Registrars of Ships, the number of which may be determined by the Minister, who, subject to the directions of the Registrar, have all the powers and duties conferred on the Registrar by this Act, except the power of delegation in terms of section 71.
- (3) The Registrar and Deputy Registrars within Uganda shall be appointed by the Minister from the staff of the Maritime Administration in accordance with this Act
- (4) The Minister may also appoint deputy registrars in Registration offices worldwide.

10. Powers and duties of Registrars

- (1) The Registrar may do all necessary activities in connection with, or incidental to, the exercise of his or her powers in accordance with this Act or any other law including, but without prejudice to the generality of the foregoing, powers that may be prescribed for and in relation to requiring the furnishing of information and documents, as well as the delivery of certificates and other documents granted or issued in accordance with this Act.
- (2) In addition to any other duty imposed by this Act or any other law, the Registrar must maintain the Register and must for that purpose-
 - (a) receive and record all information and documents required or permitted to be lodged with the Registrar in accordance with this Act;

- (b) grant, issue, vary or revoke the certificates and other documents that are required or permitted to be granted or issued in accordance with this Act; and
- (c) issue copies of and excerpt from-
 - (i) any certificate or other document contemplated in paragraph (b); and
 - (ii) any entry in the Register.

11. Seal of Registration Office and Signature of Registrar

- (1) There shall be a seal of the Registration Office, in a form approved by the Minister, which is under the control of the Registrar.
- (2) In all judicial proceedings judicial notice must be taken of the impression of the seal of the Registration Office on a document and it must be presumed, in the absence of evidence to the contrary, that the seal was duly impressed.
- (3) If a signature on a document purports to be the signature of the Registrar or of a person authorised to sign the document by virtue of a delegation in accordance with section 71, it must be presumed, in the absence of evidence to the contrary, that the signature is that of a person who at the relevant time was holding the office of Registrar or was performing the duties of the office of the Registrar, or was empowered to sign that document, as the case may be.

12. Protection from Liability

The State, Minister, Maritime Administration, or any person in the service of or acting in the Maritime Administration, or any person appointed to exercise any power or to perform any duty in terms of this Act, is not liable in respect of any loss or damage resulting from anything done or not done in good faith in accordance with this Act.

13. Minister to delegate certain powers

- (1) The Minister may, by Notice in the *Gazette*, delegate to the Registrar of Ships or any other officer appointed under this Act and specified in such notification, the exercise of any powers, other than the powers to make Regulations, or the performance of any duties conferred or imposed on him by or under this Act, subject to such conditions and restrictions as he may specify.
- (2) The delegation under subsection (1) shall not affect the exercise of such powers or the performance of such duties by the Minister.

- (3) Every officer purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of such delegation.

CHAPTER III

REGISTRATION OF UGANDAN SHIPS

Part A

Ugandan ships

14. A ship is a Ugandan ship if-

- (1) the ship is registered in Uganda under section 18(a) or (b); or
- (2) the ship is, as a Government ship, registered in Uganda; or
- (3) the ship is a small ship and-
 - (a) is wholly owned by qualified owners, and
 - (b) is not registered under the law of a country outside Uganda.
- (4) In this part-
 - (a) 'qualified owners' means persons of such description qualified to own Ugandan ships in accordance with this Act, and
 - (b) 'small ship' means a ship less than 24 metres in length.

15. Uganda National Flag

- (1) Every Ugandan ship is entitled to fly the national flag, without any defacement or modification.
- (2) The master of a Ugandan ship must cause the national flag to be hoisted-
 - (a) upon a signal being made to the ship by any other ship or in the naval service of Uganda
 - (b) upon entering or leaving any foreign port; and
 - (c) if the ship is of 50 or more gross tons, on entering or leaving any Ugandan port.
- (3) No person on board a Ugandan ship may hoist-

- (a) any distinctive national colours except the national flag;
 - (b) any colours usually worn by ships in the naval service of Uganda or colours resembling such colours; or
 - (c) any pennant usually carried by ships in the naval service of Uganda or any pennant resembling such pennant.
- (4) Any owner of a Ugandan ship who permits anything to be done on board the ship that is an offence in terms of subsection (3), is guilty of an offence.
- (5) On application in the prescribed manner by the owner of a ship contemplated in subsection (3)(b), the Registrar must issue a certificate to that owner stating that the ship is entitled to fly the national flag in terms of this section.

16. Offences relating to Ugandan ship

- (1) Subject to subsection (2), if the master or owner of a ship that is not a Ugandan ship does anything, or permits anything to be done, to cause the ship to appear to be a Ugandan ship, that ship is subject to forfeiture in terms of this Act, and the master or owner, as the case may be, is guilty of an offence.
- (2) Subsection (1) does not apply-
- (a) where the assumption of Ugandan nationality has been made for the purpose of escaping capture by an enemy or by a foreign ship of war in the exercise of some belligerent right; or
 - (b) in respect of any prescribed mark displayed on a ship within a period of 14 days after the date of termination of that ship's registration in terms of any provision of this Act.
- (3) If the master or owner of a Ugandan ship does anything, or permits anything to be done, for the purpose of-
- (a) concealing the nationality of the ship from any person entitled by law to inquire into the nationality of the ship;
 - (b) deceiving a person contemplated in paragraph (a); or
 - (c) causing the ship to appear not to be a Ugandan ship, that ship is subject to forfeiture in terms of this Act, and the master or owner, as the case may be, is guilty of an offence.

- (4) Without prejudice to the generality of subsections (1) and (3), those subsections apply in particular to acts or deliberate omissions relating to-
- (a) the flying of a national flag;
 - (b) the carrying or production of registration certificates or other documents relating to the nationality of a ship; and
 - (c) the display of marks required by the law of any state.

17. Duty to declare national character of ship

- (1) Clearance may not be granted in respect of any ship until the master of the ship has declared the nationality of the ship.
- (2) A ship that attempts to proceed without obtaining an appropriate clearance may be detained by an officer referred to in section 62 until the relevant nationality declaration is made

Part B

Registration

18. Ships entitled to be Registered

- (1) Subject to this Chapter, a ship is entitled to be registered if-
- (a) it is a Ugandan owned ship;
 - (b) small ships, other than fishing vessels, that are-
 - (i) wholly owned by Ugandan residents or both Ugandan residents and Ugandan nationals; or
 - (ii) operated solely by Ugandan residents or Ugandan nationals or both such residents and such nationals;
 - (c) ships on bareboat charter to Ugandan nationals;
 - (d) foreign owned ships with the consent of the Minister;
 - (e) ships where the owner is a qualified person; and
 - (f) such other conditions are satisfied are prescribed under subsection (2) (b)below
- (2) It shall be for registration regulations-
- (a) to determine the persons who are qualified to be owners of Ugandan ships, or Ugandan ships of any class or description, and to prescribe the extent of the ownership required for compliance with subsection (1) (a) above;

- (b) to prescribe other requirements designed to secure that, taken in conjunction with the requisite ownership, only ships in compliance with the conditions of entitlement under imposed under subsection (1) are registered.

19. Inspection and tonnage measurement of ship before registration

- (1) No ship may be registered, unless-
 - (a) it has undergone the prescribed inspection; and
 - (b) a certificate relating to the tonnage measurement of the ship, issued in accordance with this Act has been lodged with the Registrar.
- (2) Subsection (1) (b) does not apply to a prescribed ship, or ships of a prescribed class or description.
- (3) Notwithstanding subsection (1) above, the Registrar may provisionally register a vessel for the purpose of such vessel undergoing inspections within the period of such provisional registration. If inspection results are not satisfactory, the ship should not receive registration until all deficiencies are rectified.
- (4) When the tonnage of any ship has been ascertained and registered in accordance with the tonnage regulations that tonnage shall be treated as the tonnage of the ship except so far as registration regulations provide, in specified circumstances, for the ship to be re-measured and the register amended accordingly.

20. Refusal of registration

- (1) Despite a ship being entitled to be registered, the Registrar may refuse to register the ship if he or she is satisfied that-
 - (a) it would be inappropriate for the ship to be registered having regard-
 - (i) to the relevant requirements of the Shipping Acts in respect of-
 - a) the condition of the ship in respect of its safety or any risk of pollution;
and
 - b) the safety, health and welfare of persons employed or engaged on the ship;
or
 - (ii) to the interests of Uganda or international merchant shipping;
 - (b) the prescribed conditions have not been complied with; or
 - (c) the registration of the ship is prohibited in terms of regulations under section 69(3)(d).

- (2) If the Registrar refuses in terms of this section to register a ship, he or she must serve a notice on the applicant stating that registration is refused because he or she is satisfied as contemplated in subsection (1)(a), (b) or (c).

21. Prohibition on dual registration

- (1) The Registrar shall not register a ship in terms of this Act if it is registered in terms of the law of another state.
- (2) Where a ship becomes registered at a time when it is already registered under the law of a country other than Uganda, the owner of the ship shall take all reasonable steps to secure the termination of the ship's registration under the law of that other country.
- (3) If, in respect of a ship that has at any time been registered in terms of the law of another state, an application is made for the registration of the ship in terms of this Act, the application must be accompanied by the evidence required by the Registrar to establish-
 - (a) that the ship is no longer registered in accordance with the law of another state;
 - (b) that steps have been taken or are proposed to terminate registration in accordance with the law of another state before the ship is registered under this Act;
- (4) Any person who contravenes subsection (2) above shall be guilty of an offence and liable on conviction to a fine not exceeding 100 Currency units.

Part C

Identification

22. Marking of ship

- (1) A ship shall not be registered until it has been marked in the prescribed manner with the marks directed by the Registrar by notice in writing served on the owner or one of the owners, and the prescribed evidence that the ship has been so marked is lodged with the Registrar.
- (2) Subject to subsection (4), if the markings placed on a registered ship in accordance with the requirements of subsection (1) are not maintained, the owner and master of the ship are each guilty of an offence.

- (3) Subject to subsection (4), no person shall conceal, remove, alter, deface or obliterate, or allow any person under his or her control to conceal, remove, alter, deface or obliterate any marking that is on a registered ship in accordance with the requirements of subsection (1).
- (4) Subsections (2) and (3) do not apply in respect of anything authorised by the regulations or done for the purpose of escaping capture by an enemy or by a foreign ship of war in the exercise of some belligerent right.

23. Name of registered ship and change of name

- (1) A registered ship shall not be described by any name other than the name by which the ship is for the time being registered.
- (2) Subject to this Act, an application may be made to the Registrar in the prescribed manner for a change in the name of a registered ship.
- (3) The Registrar shall disallow a name if-
 - (a) the name proposed for a ship in an application for the registration of the ship has already been reserved for use by another Ugandan registered ship, or
 - (b) the new name proposed for a registered ship in an application in terms of subsection (2), is a prescribed name, or a name included in a prescribed class of names, or
 - (c) the proposed ship's name is likely, in the Registrar's opinion, likely to mislead the public.
- (4) If the Registrar grants an application in terms of subsection (2)-
 - (a) he or she shall cause the new name to be entered in the Register and endorsed on the ship's registration certificate; and
 - (b) section 22 applies in respect of the marking of the new name on the ship as if the ship had been registered by that name.

24. Power of Minister to disallow proposed name for ship

If the Minister has reason to consider that the description of a ship by a certain name is likely to prejudice Uganda's international relations, the Minister may, by notice in writing given to the Registrar, disallow-

- (1) the name proposed for a ship in an application for the registration of the ship; or

- (2) the new name proposed for a registered ship in an application in terms of section 23(2).

Part D

Registration certificates

25. Registration certificate

- (1) On completion of the registration of a ship, the Registrar must issue a registration certificate in respect of the ship in the prescribed form.
- (2) The certificate contemplated in subsection (1) must contain the particulars entered in the Registry in respect of the ship, and any other matter that may be prescribed.

26. Status and custody of registration certificate

- (1) In this section, “registration certificate” includes a provisional registration certificate.
- (2) The registration certificate shall be used only for the lawful navigation of the ship, and shall not be subject to detention by reason of any title, lien, charge, or interest whatever had or claimed by any owner, mortgagee, or other person to, on, or in the ship.
- (3) A person who has possession or control of a registration certificate may not fail, without reasonable grounds, to deliver the certificate on demand to-
 - (a) the person entitled to the custody thereof for the purposes of the lawful navigation of the ship;
 - (b) the Registrar, a Deputy Registrar or a proper officer;
 - (c) any other person entitled by law to require its delivery.
- (4) If the person required by subsection (3) to deliver a registration certificate is outside Uganda, or persists in not delivering the certificate, the certificate must be regarded as lost and section 27 below is applicable.
- (5) If in any criminal proceedings in respect of a contravention of this section a court is of the opinion that a certificate is lost, an order to that effect must be made and a copy of the order is to be served on the Registrar.

27. New certificate and provisional certificate

(1) If a registration certificate-

- (a) is mislaid, lost or destroyed; or
- (b) is lodged with the Registrar,

the Registrar shall, on application in the prescribed manner, issue a new certificate in substitution for that certificate.

(2) If an event contemplated in subsection (1)(a) occurs while the ship concerned-

- (a) is at a foreign port at which there is a proper officer; or
- (b) is at sea or at a foreign port at which there is no proper officer and, subsequently, but before arriving at a Ugandan port, the ship arrives at a foreign port at which there is a proper officer, the Registrar or the proper officer at that port must, subject to the regulations, on application to him or her, issue a provisional registration certificate in respect of that ship in the prescribed form.

(3) Subject to subsection (5), a provisional registration certificate issued in terms of subsection (2) must be regarded as a registration certificate until the expiration of a period of six months, calculated from the date on which the certificate was issued, whichever may occur first.

(4) A proper officer who issues a provisional registration certificate in terms of this section must forward a copy of the certificate to the Registrar.

(5) If, while a provisional registration certificate issued in terms of subsection (2) above is valid, an application is made in the prescribed manner, the Registrar may by notice in writing served on the applicant extend the period referred to in subsection (3)(b), and in that event the reference in that provision to a period of six months must be regarded as a reference to such extended period.

(6) A person who has possession of a provisional registration certificate issued in terms of subsection (2) must lodge that certificate with the Registrar within 10 days after arrival at a foreign port where there is a proper officer.

(7) On lodgement of a provisional registration certificate in terms of subsection (6), the Registrar may-

- (a) issue a further provisional registration certificate in respect of that ship; or
- (b) issue a new registration certificate in respect of that ship.

(8) A provisional registration certificate issued in terms of subsection (7)(a) must with effect from the date on which it was issued be regarded as a registration certificate for the period that the Registrar may determine in that certificate.

28. Provisional certificate for ship becoming entitled to be registered while abroad

- (1) If, while a ship-
 - (a) is at a foreign port at which there is a registration office, it becomes a ship entitled to be registered; or
 - (b) is at sea or at a foreign port at which there is no registration office, it becomes a ship entitled to be registered and, subsequently the ship arrives at a foreign port at which there is a registration office, the proper officer at that port may, subject to the regulations, on application to him or her, issue a provisional registration certificate in respect of that ship in the prescribed form.
- (2) Subject to subsection (4), a provisional registration certificate issued in terms of this section must be regarded as a registration certificate until—
 - (a) an application for a new registration certificate is made; or
 - (b) the expiration of a period of six months, calculated from the date on which the certificate was issued, whichever may occur first.
- (3) A proper officer who issues a provisional registration certificate in terms of this section must forward a copy of the certificate to the Registrar.
- (4) If, while a provisional registration certificate issued in terms of subsection (1) is valid, an application is made in the prescribed manner, the Registrar may by notice in writing served on the applicant extend the period referred to in subsection (2)(b), and in that event the reference in that provision to a period of six months must be regarded as a reference to such extended period.
- (5) A person who has possession of a provisional registration certificate issued in terms of subsection (1) must lodge the certificate with the Registrar within 10 days of arrival at a registration office.
- (6) On lodgement of a provisional registration certificate in terms of subsection (5), the Registrar may issue a further provisional registration certificate in respect of that ship.
- (7) A provisional registration certificate issued in terms of subsection (6) must with effect from the date on which it was issued be regarded as a registration certificate for the period that the Registrar may determine in that certificate.

29. Provisional certificate issued by Registrar or Deputy Registrar

- (1) If, while a ship is at sea or at a foreign port, becomes a ship entitled to be registered, the Registrar may, subject to the regulations, on application to him or her, issue a provisional registration certificate in respect of that ship in the prescribed form.
- (2) Subject to subsection (3), a provisional registration certificate issued in terms of this section must be regarded as a registration certificate until-
 - (a) an application is made for a new registration certificate; or
 - (b) the expiration of a period of six months, calculated from the date on which the certificate was issued, whichever may occur first; or
- (3) If, while a provisional registration certificate issued in terms of subsection (1) is valid, an application is made in the prescribed manner, the Registrar may by notice in writing served on the applicant extend the period referred to subsection (2)(b), as the case may be, and in that event the reference in the relevant provision to a period of six months must be regarded as a reference to such extended period.
- (4) A person who has possession of a provisional registration certificate issued in terms of subsection (1) must lodge the certificate with the Registrar within 10 days after the ship's arrival at a foreign port with a registered office.
- (5) On lodgement of a provisional registration certificate in terms of subsection (5), the Registrar may issue a further provisional registration certificate in respect of that ship.
- (6) A provisional registration certificate issued in terms of subsection (6) must with effect from the date on which it was issued, be regarded as a registration certificate for the period that the Registrar may determine in that certificate.
- (7) If a provisional certificate of registry expires before an application for extension by the owner or manager, such provisional registration of the vessel is cancelled.

30. Provisional certificate not to be issued in certain circumstances

A provisional registration certificate may not be issued by a proper officer in terms of section 28(1), or by the Registrar in terms of section 29(1), unless the person who issues the certificate is satisfied that, at the time when he or she issues the certificate, an application for registration of the ship has been lodged with the Registrar and that the application has yet to be dealt with.

31. Improper use of certificate

A person who, in relation to a ship, whether or not it is a registered ship, uses or permits the use of an invalid registration certificate, provisional registration certificate is guilty of an offence.

CHAPTER VI PRIVATE LAW PROVISIONS

32. Registerable interest

- (1) For the purposes of this Act, a registerable interest in a ship means-
 - (a) an interest in ownership;
 - (b) an interest in a mortgage and
 - (c) an interest in a bareboat charter.
- (2) Only a registerable interest may be entered upon the Register.

33. Transfer of Registered ship

- (1) Any transfer of a registered ship, or a share in such ship, shall be effected by a bill of sale satisfying the prescribed requirements, unless the transfer will result in the ship ceasing to be a Ugandan ship.
- (2) The transfer of a vessel or share by an owner shall be effected by a bill of sale which shall-
 - (a) contain the description of the vessel or share sufficient to identify it to the satisfaction of the Registrar; and
 - (b) be executed by the owner or the owner's duly authorised agent.
- (3) Every person who is a transferee of a ship or a share including each joint owner shall complete a declaration of transfer in the prescribed form.
- (4) Where any such ship or share has been transferred in accordance with this section, the transferee shall be registered as the owner of the ship or share if the Registrar is satisfied that-
 - (a) the prescribed application has been made to the registrar;
 - (b) a correctly completed declaration of transfer has been received; and
 - (c) the ship is entitled to be or remain registered.

- (5) If an application under subsection (4) above is granted by the registrar, the Registrar shall register the bill of sale in the prescribed manner.
- (6) Bills of sale shall be registered in the order in which they are produced to the Registrar for the purposes of registration.

34. Transfer by operation of law

- (1) The transfer of a vessel or share by operation of law shall be effected by a declaration of transmission in the prescribed form which shall-
 - (a) contain the description of the vessel or share sufficient to identify it to the satisfaction of the Registrar; and
 - (b) be executed by the person to whom the vessel or share is to be transferred.
- (2) The person disclosed in a declaration of transmission as the transferee shall be registered as the owner of the vessel or share if the Registrar is satisfied that-
 - (a) a correctly completed declaration of transmission has been received; and
 - (b) the vessel is entitled to remain registered; and
 - (c) every person having a registered interest in the vessel has consented to the transmission; and
 - (d) sufficient proof of transmission has been received.
- (3) Subject to subsection (2), the Registrar shall-
 - (a) endorse on a declaration of transmission the date and time that it is received;
 - (b) if more than one declaration is received, register the owners of the ship or share in the order that the declarations are received; and
 - (c) issue a new certificate of registration for the vessel.

35. Mortgages of registered ships

- (1) A ship or a share in a ship shall be capable of being made a security for the repayment of a loan or the discharge of any other obligation by way of mortgage.
- (2) The instrument creating a mortgage shall be in the form prescribed by or approved under registration regulations.
- (3) A mortgagee shall be entitled to register a mortgage and the Registrar shall register a mortgage in the manner prescribed.
- (4) Mortgages shall be registered in the order in which they are produced to the registrar for the purposes of registration.

- (5) A mortgage shall be registered on the date and time that it is accepted for registration by the Registrar at a Registration office or a place decided by the Minister and shall rank in priority over every other mortgage or interest registered after that date and time notwithstanding the dates of execution and notwithstanding any express, implied or constructive notice.
- (6) A registered mortgage shall not be affected by any act of bankruptcy or insolvency committed by the mortgagor after the date of registration of the mortgage and such mortgage shall be preferred to any right, claim, or interest in the vessel of the other creditors and any trustee or assignee in their behalf.
- (7) If a mortgage is registered, the Registrar shall not, without the prior written consent of the mortgagee, except in accordance with an order of the Court-
 - (a) register any subsequent registerable interest;
 - (b) cancel the registration of the vessel;
 - (c) register a transfer of ownership in the ship.
- (8) For the purposes of subsection (5), a mortgage shall have been accepted and registered when-
 - (a) either the mortgage so made is lodged with or notice in the prescribed form of its particulars signed by the mortgagor is transmitted to the Registrar; and
 - (b) particulars of the mortgage are entered in the Register; and
 - (c) there is endorsed on the mortgage or notice the fact of the entry having been made together with the date and time of the making of the entry.
- (9) Where notice of a mortgage is transmitted to the Registrar under subsection (7)(a), the mortgagee shall within 14 days of transmitting the notice, cause the original notice and the mortgage so made to be lodged with the Registrar.

36. Variation of mortgage

- (1) The parties to a registered mortgage may vary the terms of the mortgage by memorandum of variation, executed by each of them and registered in the prescribed manner.
- (2) A memorandum of variation shall not be binding on any other mortgagee or mortgagor unless consent is given by them in writing.

37. Transfer of mortgages

- (1) The transfer of a mortgage of a vessel or share may be effected by memorandum of transfer executed by the mortgagee and the transferee and registered in the prescribed manner.
- (2) The transfer of a mortgage of a vessel or share by operation of law shall be effected by a declaration of transfer executed by the transferee who shall be registered as the mortgagee of the vessel or share, if the Registrar is satisfied that-
 - (a) a correctly completed declaration of transfer has been received; and
 - (b) every person having a registered interest in the vessel has consented to the transfer; and
 - (c) sufficient proof of transfer has been received.

38. Transmission of registered mortgages by operation of law

Where the interest of a mortgagee in a registered mortgage is transmitted to any person by any lawful means other than by transfer under section 37 above, the Registrar shall, on production of the prescribed evidence, cause the name of that person to be entered in the register as mortgagee of the ship or share in question.

39. Registered Mortgagees power of sale

- (1) Subject to subsection (2) below every registered mortgagee shall have the power, if the mortgage money or any part of it is due, to sell the ship or share in respect of which he is registered and to give effectual receipts for the purchase money.
- (2) If two or more mortgages are registered in respect of the same ship or share, a subsequent mortgagee shall not sell the ship without –
 - (a) the written consent of each prior mortgagee; or
 - (b) an order of the Court.
- (3) A mortgagee intending to exercise the power of sale shall give notice of that intention to the Registrar in the prescribed manner who shall give notice of that intended sale to each subsequent mortgagee.

40. Protection of Registered mortgagees

Where a ship or share is subject to a registered mortgage then-

- (1) except so far as may be necessary for making the ship or share available as security for the mortgage debt, the mortgagee shall not by reason of the mortgage be treated as owner of the ship or share; and
- (2) the mortgagor shall be treated as not having ceased to be owner of the ship or share.

41. Discharge of registered mortgage

Where a registered mortgage has been discharged, the Registrar shall, on production of the mortgage deed and such evidence of the discharge as may be prescribed, cause an entry to be made in the register to the effect that the mortgage has been discharged.

42. Other registerable interests

The following interests may only be registered subject to the consent of all other persons having a registered interest in respect of the vessel or in accordance with a final order of the Court-

- (1) an interest arising out of or relating to ownership of a vessel or a share;
- (2) an interest arising out of or relating to possession of a vessel;
- (3) a title reservation relating to the sale of a vessel;
- (4) an interest including a priority interest arising out of or relating to any mortgage of a vessel;
- (5) any other interest prescribed by regulation.

43. Bareboat charter registration

A bareboat charter of a Ugandan ship may be registered by the charterer and the Registrar shall register the charter in the prescribed manner if-

- (1) the owner and every other person having a registered interest consents in writing; and
- (2) a certified copy of the charter is received by the Registrar.

44. Ships bareboat chartered-in by Ugandan charterers

- (1) This section applies to any ship which-
 - (a) is registered under the law of a country other than Uganda (“the country of original registration”),

- (b) is chartered on bareboat charter terms to a charterer who is a person qualified to own Ugandan ships, and
 - (c) is so chartered in circumstances where the conditions of entitlement to registration prescribed under section 18 (2) (b), read with the requisite modifications, are satisfied in respect of the charterer and the ship.
- (2) The modifications of those conditions are the substitution for any requirement to be satisfied by or in respect of the owner of a ship of a corresponding requirement to be satisfied by or as respects the charterer of the ship.
 - (3) A ship to which this section applies is entitled to be registered if an application for registration is duly made, but section 20 (1) applies also in relation to registration by virtue of this section.
 - (4) The registration of a ship registered by virtue of this section shall remain in force unless terminated earlier by virtue of registration regulations and subject to any suspension thereunder, until the end of the charter period and shall then terminate by virtue of this subsection.
 - (5) Section 21 does not apply to a ship registered by virtue of this section but registration regulations shall include provision for ensuring that the authority responsible for the registration of ships in the country of original registration is notified of the registration of the ship and of the termination of its registration whether by virtue of subsection (4) above or registration regulations.
 - (6) Accordingly, throughout the period for which a ship is registered by virtue of this section shall-
 - (a) as a Ugandan ship, be entitled to fly the Ugandan flag;
 - (b) subject to subsections (7) and (8) below, apply to the ship as a Ugandan ship as it applies to other Ugandan ships; and
 - (c) subject to subsection (8) below, apply to the ship as a Ugandan ship any other enactment applicable to Ugandan ships.
 - (7) The private law provisions for registered ships shall not apply to a ship registered by virtue of this section and any matters or questions corresponding to those for which the private law provisions make provision shall be determined by reference to the law of the country of original registration.
 - (8) The Minister may, subject to subsection (9) below, by way of regulations, provide that any enactment falling within subsection 6 (b) or (c) above:

- (a) shall not have effect in accordance with that subsection in relation to a ship registered by virtue of this section, or
 - (b) shall so have effect subject to such modifications as may be so specified in the regulations.
- (9) No provision shall be made by the Minister under subsection (8) above which would have the effect of relaxing the relevant requirements of this Act in their application to a ship to which this section applies.

CHAPTER V

THE REGISTER

45. Uganda Ships Register

- (1) There is hereby established the Uganda Ships Register, in which must be entered all matters required or permitted by this Act to be entered in the Register.
- (2) The Register may be divided into parts so as to distinguish between-
 - (a) ships' tonnages; or
 - (b) types of ships; or
 - (c) any other specified matter, or
 - (d) any combination of matters falling within one or more of the preceding subsections;as well as a category of registries to which no restriction applies.
- (3) The Register and copies of the Register, or of such part or parts of the Register that the Maritime Administration may direct, must be kept at the Registration Office or at the branch offices that the Maritime Administration may direct.
- (4) The entry upon the Register shall be public notice of those registerable interests.

46. Seal and signature of Registrar

- (1) There shall be a seal of Uganda Ship Registry in a form determined by, and under the control of, the Registrar.
- (2) All courts and persons acting judicially shall take judicial notice of the seal and shall presume that it was duly affixed.
- (3) Where the seal is affixed to a document and a signature on the document purports to be the signature of the Registrar or of a person empowered to sign the document by

virtue of a delegation, it shall be presumed until the contrary is proved, that the signature is that of the Registrar or the person so empowered, as the case may be.

47. Access to the Register

- (1) Any person may inspect the Register during the hours when the Registration Office or a branch office, as the case may be, is open for business.
- (2) Any person is entitled against payment of the relevant charge to be furnished with a copy of or extract from any entry in the Register or document associated with any such entry.

48. Registrar's discretion

- (1) If anything required to be done-
 - (a) cannot be done or is omitted to be done at or within the time required by this Act;
or
 - (b) is done irregularly in manner or form; or
 - (c) is insufficiently provided for by or under this Act,the Registrar may, extend that time for the thing to be done, or validate anything so done irregularly, or make such other provision for the doing of that thing as the Registrar thinks fit.
- (2) No registration or other act by the Registrar shall be declared void by reason of any irregularity in the application for registration or failure to comply with the provisions of this Act or by reason of any mistake in the manner or form of the registration or act, if there was otherwise substantial compliance with the requirements of this Act.

49. Obsolete or incorrect entries in Register

- (1) The Registrar may, by notice in writing served on the registered representative person or any owner of a ship, require him or her to furnish the Registrar within a period determined in the notice, but not less than 30 days after the date of service of the notice, with the information and documents relating to the ship that are determined in the notice, if-
 - (a) in respect of the particular ship, no entry or amendment of an entry has been made in the Register for the prescribed period; and
 - (b) the Registrar has reason to suspect that-

- (i) any particular entered in the Register in respect of that ship, other than particulars relating to a mortgage, are incorrect;
 - (ii) in respect of that ship, any notice, information or document in respect of which an entry in the Register is required by this Act to be made has not been lodged with the Registrar within the period contemplated in paragraph (a); or
 - (iii) the ship has been either actually or constructively lost, taken by an enemy, burnt or broken up.
- (2) If a person on whom a notice is served in terms of subsection (1):
- (a) fails to furnish the Registrar within the period determined in the notice with the information and documents determined in the notice; or
 - (b) furnishes information or documents that in the opinion of the Registrar justify the closure of the registration of the ship or the alteration of any entry made in the Register in respect of that ship, the Registrar must inform the Maritime Administration of that failure or furnish the Maritime Administration with that information or those documents, as the case may be.
- (3) If the Maritime Administration is of the opinion that the failure of a person to comply with a notice served on him or her in terms of subsection (1), or any information or document it was furnished with by the Registrar justifies further action, the Maritime Administration may by notice in writing give the Registrar the directions that it deems fit in respect of the closure of the registration of the ship or in respect of any entry or amendment of an entry to be made in the Register.
- (4) The Registrar must comply with any direction given in terms of subsection (3) and, where the Maritime Administration directs the closure of the registration of the ship-
- (a) if the Maritime Administration states in the direction that it is of the opinion that the ship has been either actually or constructively lost, taken by an enemy, burnt or broken up, the Registrar must make an entry in the Register of that statement, and the registration of the ship must be regarded as closed, except in so far as it relates to any unsatisfied mortgage of the ship; or
 - (b) in any case other than contemplated in paragraph (a), the directions contemplated in subsection (3) must be regarded as a notice in terms of section 72.

50. Correction of clerical errors in Register

The Registrar may correct or cause to be corrected, without deleting, any clerical error or obvious mistake in the Register.

51. Rectification of Register

- (1) In this section, “court” means any division of the High Court within its area of jurisdiction.
- (2) If an entry-
 - (a) is omitted from the Register;
 - (b) is made in the Register without sufficient cause;
 - (c) wrongly exists in the Register; or
 - (d) in the Register contains an error or defect, whether or not by reason of a decision of an officer, including a decision that the officer was empowered in terms of this Act to make,any interested person or the Registrar may apply to a court for rectification of the Register, and that court may make the order that it deems fit in respect of the rectification of the Register.
- (3) Without prejudice to the generality of subsection (2)(a), the reference in that provision to an entry omitted from the Register includes a reference to a matter that is required or permitted by this Act to be entered or to remain in the Register, but is not entered in or is removed from the Register.
- (4) A court may in proceedings in terms of this section decide any question that it is necessary or expedient to decide in connection with the rectification of the Register.
- (5) Notice of an application in terms of this section by an interested person must be served on the Registrar, who may appear and be heard in court and who must appear if so directed by the court.
- (6) A copy of an order in terms of this section must be served on the Registrar, and on receipt of the order the Registrar must rectify the Register accordingly.

52. False entries in Register

No person may intentionally make a false entry or cause a false entry to be made in the Register.

CHAPTER VI
GENERAL PROVISIONS

53. Interpretation

In this Part, “owner”, except in section 54, means-

- (1) in relation to a ship registered in terms of section 18(a) or (b)(i), the registered owner of the ship; and
- (2) in relation to a ship registered in terms of section 18(b)(ii) or (c), the registered representative person of the ship.

54. Registered Representative Person

- (1) In respect of every registered ship the name and address of a person must be entered in the Register as the registered representative person of that ship for all purposes of this Act.
- (2) The registered representative person of a ship must be-
 - (a) in the case of a ship referred to in section 18(b)(ii), the operator or one of the operators of the ship;
 - (b) in the case of a ship referred to in section 18(c), the charterer or one of the charterers of the ship;
 - (c) in the case of a ship without a managing owner, other than a ship referred to in paragraph (a) or (b), the person or one of the persons who is a ship’s agent in respect of the ship or a person managing the ship; or
 - (d) in any other case, the managing owner or one of the managing owners.
- (3) If a change occurs in the person or the address of the registered representative person, a notice of the change, containing the prescribed information, must be lodged with the Registrar within 14 days after the change has occurred-
 - (a) by the person whose name appears as the registered representative person in the Register if that person is not the owner of the ship; or
 - (b) in any case other than paragraph (a), the owner of the ship.
- (4) A reference in subsections (1) and (3) to the address of a person is a reference to-
 - (a) in the case of a natural person-
 - (i) the address of the place in Uganda at which the person ordinarily resides; or

- (ii) if the person does not ordinarily reside in Uganda, the address in Uganda to which all communications to that person should be sent in terms of subsection (5); or
 - (b) in the case of a juridical person, the address of the principal place of business in Uganda of that person; or
 - (c) in the case of a shipowning company, the principal place of business of the company.
- (5) Any document required or permitted to be served in accordance with this Act, or required or permitted to be served in terms of any other law for the purpose of the institution of, or otherwise in connection with, proceedings for the contravention of any provision of this Act, or in terms of any instrument in terms of those Acts, on the owner of a ship, must be regarded as duly served on that owner if-
- (a) delivered to the registered representative person;
 - (b) sent to the registered representative person by post at the last address notified in terms of subsection (3); or
 - (c) left for the registered representative person at the address provided in paragraph (b).

55. Alterations to ship

If a registered ship has been altered to the extent that it no longer corresponds with the particulars relating to the ship's tonnage or description contained in the Register, the registered representative person must give notice of the alteration to the Registrar in the prescribed manner and within the prescribed period, and the Registrar must, subject to sections 19 and 22, enter the alteration in the Register as prescribed and issue a new registration certificate in respect of the ship as if the ship were not registered.

56. Ship lost or ceasing to be entitled to be registered

- (1) If a registered ship-
- (a) is either actually or constructively lost, taken by an enemy, burnt or broken up; or
 - (b) ceases to be entitled to be registered,
- the owner of the ship must, immediately after obtaining knowledge of the event, give notice of the event in writing to the Registrar.

- (2) When the Registrar receives a notice contemplated in subsection (1), the Registrar must make an entry of the event to which the notice relates in the Register.
- (3) Where an entry has been made in the Register in terms of subsection (2), the registration of the ship must be regarded as closed, except in so far as it relates to any unsatisfied mortgage of the ship.
- (4) If a ship in respect of which the Registrar has received notice in terms of subsection (1) is subject to an unsatisfied mortgage-
 - (a) the registration of the ship, in so far as it relates to the mortgage, but subject to subsections (5) and (6), is not closed; and
 - (b) the Registrar must give notice in writing to each mortgagee that he or she has received notice in terms of subsection (1) of the event so referred to.
- (5) Subject to subsection (6), where the Registrar gives notice in terms of subsection (4), the registration of the ship, in so far as it relates to the mortgage, must be regarded as closed on the expiration of a period of 60 days after the date of the notice.
- (6) If a mortgagee makes an application to a court within 60 days after the date of the notice in terms of subsection (4) or within the extended period that the court, on application made either before or after the expiration of that period, may allow, the court may-
 - (a) order that the ship and the ship's equipment be sold;
 - (b) make any other order for and in respect of the distribution of the proceeds of the sale that it deems fit; and
 - (c) make the orders and give the directions with respect to the closure of the registration of the ship that it deems fit, including, in the case of an application for an extension of time, an order that the registration may not be regarded as closed for the period that the court may determine.
- (7) Notice of an application made in terms of subsection (6), including an application for an extension of time, must be served on the Registrar.
- (8) An order in terms of subsection (6) may be on the terms and conditions as to costs and otherwise that the court deems fit.
- (9) The Registrar must give effect to any order or direction given by the court in terms of this section in so far as such order relates to the Register.
- (10) Where the registration of a ship is closed or regarded as closed in terms of this section, the person having possession of the registration certificate or provisional

registration certificate relating to that ship must deliver the certificate to the Registrar or a proper officer in accordance with the regulations.

57. Power to remove ship from Register

- (1) Where the Maritime Administration-
 - (a) has reason to suspect that a registered ship is not entitled to be registered; or
 - (b) is satisfied that, having regard to the matters referred to in section 18(1), it would be inappropriate for a registered ship to continue to be registered,it may serve a notice in terms of subsection (2) on the registered representative person of the ship.
- (2) A notice contemplated in subsection (1) above must state that the Maritime Administration:
 - (a) is not satisfied that the ship in question is entitled to be registered or to continue to be registered, as the case may be; and
 - (b) intends on the expiration of a period of 30 days after the date of service of the notice to direct that the ship's registration be closed, unless it is satisfied that it would be inappropriate to do so in view of representations that may be made to it by the registered representative person within that period.
- (3) If, after consideration of the representations contemplated in subsection (2) above, the Maritime Administration is of the opinion that the ship's registration should be closed, it may by notice in writing given to the Registrar direct that the ship's registration be closed.
- (4) The Registrar must comply with a notice in terms of subsection (3), and that notice must be regarded as a notice in terms of section 70.

58. Unregistered ship entitled to be registered not to leave foreign port

- (1) Where an unregistered ship entitled to be registered is at a foreign port at which there is a proper officer, the ship may not depart from that port on a voyage unless and until a registration certificate, or a provisional registration certificate is issued in respect of that ship.
- (2) The master of a ship that departs from a foreign port in contravention of subsection (1) and any owner of that ship who orders or permits such departure are each guilty of

an offence and liable on conviction to a fine not exceeding 100 Currency units or to imprisonment for a period not exceeding three years.

- (3) Subsection (1) does not apply to a prescribed ship, or a ship of a prescribed class or description.

59. Effects of non-registration

- (1) A ship contemplated in section 58(2)-
- (a) is not recognised as a Ugandan ship; and
 - (b) is not entitled to any benefit, privilege, advantage or protection usually enjoyed by a registered ship.
- (2) A ship to which subsection (1) applies, is dealt with in the same manner in all respects as if the ship were registered for the purposes of any law providing for-
- (a) the payment of levies, fees or other charges;
 - (b) the liability for fines, detention and forfeiture; and
 - (c) the punishment of offences committed on board a ship or by any person belonging to a ship.

60. Notice to consular representative

If any foreign ship is detained in terms of this Act, or if any criminal proceedings are instituted in terms of this Act against the master or owner of any foreign ship, notice must forthwith be served by the Maritime Administration on the consular representative of the flag state at or nearest to the port where the ship is for the time being, and such notice must state the grounds on which the ship has been detained or the proceedings have been taken.

61. Forfeiture

- (1) In this section, “**officer**” means:
- (a) an officer of the Maritime Administration appointed in writing to be an officer for the purposes of this section;
 - (b) a member of the Ugandan Police Service; or
 - (c) a member of the Ugandan National Defence Force.

- (2) Where a ship is subject to forfeiture in terms of this Act, an officer may seize and detain the ship and the Minister may apply to a court for an order contemplated in subsection (3).
- (3) On application being made in terms of subsection (2), the court may order a ship and its equipment to be forfeited to the State.
- (4) Anything forfeited in terms of this section becomes the property of the State and may be sold or otherwise dealt with as the Minister deems fit.

62. Detention of ships

- (1) Where it is provided by this Act that a ship may be detained, the ship may be detained by an officer referred to in section 61.
- (2) Where a ship detained in terms of this Act goes to sea before it is released from detention by a competent Maritime Administration, the master and any owner of that ship who orders or permits such action are each guilty of an offence.
- (3) No clearance may be granted to a ship that is detained in terms of this Act.

63. Co-operation with officials

- (1) If an officer is taken to sea in a ship without his or her consent, the master, and any owner of the relevant ship who orders or permits such action, are each guilty of an offence and, in addition to any penalty for that offence, are jointly and severally liable to pay all expenses incidental to the officer's return.
- (2) The master and each member of the crew of any ship must-
 - (a) immediately comply with any lawful instruction given or request made by an officer and must facilitate safe boarding and inspection of the ship; and
 - (b) must take all measures to ensure the safety of an officer in the performance of his or her duties.

64. False statements

- (1) A person who, by means of a statement that he or she knows to be false or misleading or by means of a document that to his or her knowledge contains information that is false or misleading, causes or attempts to cause an officer to do or refrain from doing any act or thing in the exercise of powers or the performance of duties in terms of this Act, is guilty of an offence.

- (2) No person may-
 - (a) make a statement to an officer, whether orally or in writing; or
 - (b) present a statement in writing to an officer, knowing it to be false or misleading in a material aspect.
- (3) For the purposes of the application of this section in respect of a body corporate, but without prejudice to the liability of any person other than the body corporate-
 - (a) a statement made or presented or otherwise used by a person acting on behalf of a body corporate is deemed to have been made, presented or otherwise used by the body corporate; and
 - (b) the knowledge of any person employed by or concerned in the management of a body corporate is deemed to be knowledge of the body corporate.

65. Offences and penalties

- (1) Any person who fails to comply with or contravenes any provisions of this Act shall be guilty of an offence.
- (2) With the exception contained in sub-paragraph (3) below, where the Act creates an offence, any person failing to comply with or contravenes the relevant section will be liable on conviction to a fine of 100 Currency units or to imprisonment for a period not exceeding two years.
- (3) A person convicted in contravention of sections 16, 26, 31, and 64, will be liable to a fine of 100 Currency unit or to imprisonment for a period not exceeding five years.
- (4) Where a body corporate is guilty of an offence in terms of this Act, a director, manager, secretary or other officer of the body corporate who is in any way, by act or omission, directly or indirectly, knowingly concerned in or a party to the offence, is also guilty of that offence and is punishable accordingly.

66. Administrative penalty on admission of guilt

- (1) If a person-
 - (a) admits to the Maritime Administration that he or she has contravened or failed to comply with any provision of this Act, which contravention or failure constitutes an offence;
 - (b) agrees to abide by the decision of the Maritime Administration; and

- (c) deposits with the Maritime Administration the sum determined by it, but not exceeding the maximum fine that may be imposed on a conviction for the contravention or failure in question, the Maritime Administration may, after any enquiry that it may deem fit, determine the matter summarily and may, without legal proceedings, order the whole or any part of the said deposit to be forfeited to the State by way of a penalty.
- (2) When a penalty exceeding 100 Currency units is imposed, there is a right of appeal to the Minister from a determination or order by the Maritime Administration in terms of subsection (1), provided that such right must be exercised within a period of three months from the date of the determination or order.
- (3) The imposition of a penalty in terms of subsection (1) is deemed not to be a conviction of an offence, and no prosecution in respect of the offence in question may thereafter be instituted.

67. Admissibility of documentary evidence

- (1) A document that is admissible in evidence in terms of this Act is on mere production thereof admissible in evidence in any proceedings as *prima facie* evidence of any matter stated in the document in pursuance of this Act or in pursuance of any duty in terms of this Act, and of the fact that it was signed by the person by whom it purports to be signed.
- (2) The Registrar may, subject to this Act, supply copies of or extracts from any entry in the Register or any document forming part of or associated with the Register, and certify them in writing, signed by him or her.
- (3) The person to whose custody a document referred to in subsection (1), other than a copy or extract referred to in subsection (2), is entrusted, must against payment of the relevant charge, supply a copy of or extract from the document, certified in writing and signed by him or her, to any person applying for such a copy or extract.
- (4) A document purporting to be a copy or extract supplied in terms of subsection (2) or (3) is admissible in evidence.

68. Jurisdiction

- (1) Any offence in terms of this Act is, for purposes in relation to the jurisdiction of a court to try the offence, deemed to have been committed within the area of jurisdiction of the court in which the prosecution is instituted.
- (2) Notwithstanding anything to the contrary in any other Act, a High Court has jurisdiction to impose any penalty prescribed by this Act.

69. Regulations

- (1) The Minister may make regulations, prescribing all matters required contemplated or permitted by this Act to be prescribed or expedient necessary or convenient to be prescribed for carrying out or giving effect to this Act and its due administration.
- (2) Without limiting the generality of subsection (1), regulations may be made for and in relation to-
 - (a) the administration of the Register;
 - (b) the registration of registerable interests;
 - (c) the requirements and conditions for the registration of commercial yachts and fishing vessels;
 - (d) the requirements and conditions for the registration of platforms and structures used on or over water;
 - (e) extending or modifying the functions, duties or powers of the Registrar;
 - (f) the form and content of documents contemplated or required by this Act;
 - (g) the appointment of a representative person in Uganda in relation to a vessel for the purposes of compliance by the vessel with the requirements of this and any other Act;
 - (h) offences for the contravention of or non-compliance with regulations made under this Act and the imposition of fines in respect of any offence and, in the case of continuing offences, the imposition of further fines for each day during which the offence has continued.
 - (i) the persons by whom, the manner in which and the period within which applications in connection with registration and the issue of any certificate or pass are to be made;

- (j) the information and evidence to be provided in connection with the applications contemplated in paragraph (a) and any supplementary information and evidence that may be required by any specified Maritime Administration;
- (k) the restriction and regulation of the names of ships registered or to be registered;
- (l) the marking of ships registered or to be registered;
- (m) the survey and inspection of ships registered or to be registered and the recording of their tonnage as ascertained or re-ascertained;
- (n) the period for which the registration of a ship is to remain effective without renewal;
- (o) the refusal, suspension and closure of registration in specified circumstances;
- (p) matters arising out of the expiration, suspension and closure of registration, including the removal of marks and the surrender and cancellation of certificates;
- (q) the registration of ships on bareboat charter to Ugandan nationals;
- (r) the registration of registered ships on bareboat charter to persons other than Ugandan nationals or Ugandan residents;
- (s) the re-registration of ships entitled to be registered, which have been abandoned or whose registration in terms of this Act, or in terms of any law repealed by this Act, has been closed;
- (t) the keeping of the Register and copies of the Register, or a part or parts of the Register;
- (u) the entries to be made in the Register;
- (v) the manner in which and the period within which documents and information are to be lodged, including provisions empowering the Registrar:
- (w) to direct a person who has lodged, or is seeking to lodge, any document or information to do anything that is necessary to ensure that it is in accordance with the requirements of this Act; or
- (x) to treat any document or information as not having been lodged until it is in accordance with the requirements of this Act;
- (y) the registration, whether by way of entry in the Register or otherwise, of documents and information;
- (z) the verification of information and documents required for the purposes of this Act;

- (aa) the qualifications required of, and other requirements relating to, registered representative person;
 - (bb) the retention or return by the Registrar of documents lodged in accordance with this Act;
 - (cc) the selection and change of home ports for registered ships;
 - (dd) the matters to be recorded or endorsed on registration certificates, provisional registration certificates and any other certificates;
 - (ee) the making of any declaration or the doing of anything required or permitted by this Act to be made or done in the name and on behalf of a person incapable of making such a declaration or doing any such thing by reason of minority, mental disorder or defect, or other cause;
 - (ff) the manner in which instruments, notices and other documents in terms of this Act may be given to, or served on, persons;
 - (gg) the payment of fees and expenses to persons required in terms of this Act to attend and give evidence or make declarations before the Registrar or other persons;
 - (hh) the imposition of charges in respect of ship registration;
 - (ii) the conduct of any matter relating to the Registration Office;
 - (jj) the declaration of specified documents, or of documents included in specified classes of documents, to be admissible in evidence for the purposes of section 67;
 - (kk) the form of any instrument, notice or other document permitted or required to be issued, furnished, lodged or registered for the purposes of this Act.
- (3) The regulations may-
- (a) make different provision for different classes or descriptions of ships and for different circumstances;
 - (b) without prejudice to the generality of paragraph (a), make provision for the granting of exemptions or dispensations by the Maritime Administration from specified requirements of the regulations, subject to any condition that it may deem fit to impose;
 - (c) make provision for the registration of any class or description of ships and may regulate the transfer, transmission or mortgaging of ships of the class or description so provided;
 - (d) prohibit the registration of any class or description of ships;

- (e) make the incidental or supplementary provisions that appear to the Minister to be necessary or expedient, including provisions authorising investigations and conferring powers of inspection.
- (4) A regulation made under this Act may provide that a person who contravenes or fails to comply with a provision thereof, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three years.
- (5) Regulations made under this Act may come into force either in part or whole on a date either before or after the date that they are made.

70. Fees

The Maritime Administration may, for the purposes of this Act, impose charges as prescribed in respect of-

- (1) applications in terms of this Act;
- (2) the lodging and registration of documents or information;
- (3) the registration and re-registration of ships;
- (4) the issue of registration certificates, provisional registration certificate and certificates contemplated in section 15(5);
- (5) the supplying of copies of or extracts from entries in the Register or documents forming part of or associated with the Register; and the inspection of ships.

71. Delegation of powers

- (1) The Registrar may, either generally or subject to conditions, in writing delegate to an officer of the Maritime Administration any power vested in him or her by or under this Act.
- (2) A power delegated in terms of this section, when exercised by the delegated officer, must be regarded to have been exercised by the Registrar.
- (3) A power delegated in terms of this section may not be delegated by the delegated officer.
- (4) A delegation in terms of this section does not prevent the exercise of a delegated power by the Registrar.

72. Notices

- (1) Except as otherwise specified under this Act, where any notice Court proceeding or other document is to be given, served on, or furnished to any person (in this section referred to as the first person) or in respect of any vessel, that notice proceeding or other document, as the circumstances so require, may be-
 - (a) given personally to the first person or another person authorised to act on behalf of the first person; or
 - (b) sent by registered post to the first person or another person authorised to act on behalf of the first person at their usual or last known place of business or abode; or
 - (c) sent to the first person, or another person authorised to act on the person's behalf, at their usual or last known address; and, for the purposes of this paragraph-
 - (i) the term “electronic transmission” means any transmission of information sent electronically; and includes any transmission sent by fax, electronic mail, or electronic data transfer;
 - (ii) the term “address” means a fax number or an electronic mail address.
- (2) Any notice proceeding or other document so sent by registered post shall be deemed to have been given, served, or received 7 days after the date on which it was posted, unless the person to whom it was posted proves that, otherwise than through that person's fault, the notice proceeding or document was not received.
- (3) Any notice proceeding or other document so sent by electronic transmission shall be deemed to have been given, served, or received at the time of transmission, unless the person to whom it was transmitted proves that, otherwise than through that person's fault, the notice proceeding or document was not received.
- (4) For the purposes of this section, a notice, proceeding or other document given or sent to a representative person in accordance with subsection (1), shall be deemed to also be the giving or sending of that notice, proceeding or other document to the first person.

SCHEDULE I

1 Currency unit equals to 20,000 Uganda Shillings.