

**GIBRALTAR MERCHANT SHIPPING (REGISTRATION)  
ACT**

**Principal Act**

<b>Act. No. 1995-12</b>	<i>Commencement</i>	22.12.1997
	<i>Except as follows</i>	
	ss. 2, 3(3), 5 6(4), 10, 11, 14, 17 and 25, Part IV, VIII and 86	1.12.1997
		<i>For extent of implementation see LN. 1997/152</i>
	<i>Assent</i>	22.9.1995

Amending enactments	Relevant current provisions	Commencement date
Acts. 2001-26	s.2	2.8.2001
2004-37	s.2	24.11.2004
2005-34	s. 14(3)(vii)	23.5.2005

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AN ACT TO MAKE PROVISION FOR THE REGISTRATION OF MERCHANT SHIPS AND PLEASURE YACHTS IN GIBRALTAR, TO REPEAL THE APPLICATION TO SHIPS REGISTERED IN GIBRALTAR OF CERTAIN ACTS AND ACTS OF PARLIAMENT AND FOR MATTERS CONNECTED WITH AND INCIDENTAL TO THE FOREGOING.

## PART I. PRELIMINARY PROVISIONS.

### **Title and commencement.**

1. This Act may be cited as the Gibraltar Merchant Shipping (Registration) Act, 1993 and shall come into effect on such day as the Governor may, by order in the Gazette, appoint and different days may be so appointed for different purposes and such notice may contain such transitional or other incidental and supplementary provisions as may appear to the Governor necessary or expedient.

### **Interpretation.**

2. In this Act, unless the context shall otherwise require—

“administrative instructions” means the instructions, written or oral made and issued by the Maritime Administrator for the purpose of giving proper effect to the operation of this Act in accordance with section 3(5);

“approved” means approved by the Maritime Administrator;

“bareboat charter”, in relation to a ship, means the hiring of a ship for a stipulated period on terms which give the charterer possession and control of the ship, including the right to appoint the master and crew and “bareboat charterer” shall be construed accordingly;

“bareboat registration” means—

- (a) in respect of a registration to which section 32 applies, a registration on the Register of a ship under a bareboat charter; or
- (b) in respect of a registration to which section 33 applies, a registration on a registry outside of Gibraltar of a ship registered on the Register under a bareboat charter;

- “builder’s mortgage” means a mortgage in favour of a ship builder, and when recorded, having the effect prescribed in section 41;
- “Certificate of Bareboat Registry” means a certificate issued by the Maritime Administrator under section 32(1) ;
- “Certificate of Permission” means a certificate issued by the Maritime Administrator under section 33(1)(d);
- “Certificate of Registry” means the certificate issued under section 20;
- “Certifying Authority” means the Certifying Authority provided for in the instructions made under section 9;
- “commencement date” means in respect of any section of this Act the date appointed under section 1;
- “consular official” means a person appointed by the responsible state to be or to perform the functions of a consular official in respect of Gibraltar outside of Gibraltar;
- “contravene”, in relation to any provision, includes a failure to comply with that provision, or with any requirement of an International Convention ratified by the United Kingdom and the application of which has been extended to Gibraltar and to which the provision relates;
- “Council Directive” means a directive of the European Economic Communities;
- “crew agreement” means an agreement, which agreement may be referred to as the “Articles of Agreement”, between the master of a ship and the crew thereof entered into in accordance with the Gibraltar Merchant Shipping (Safety etc.) Act, 1993;
- “declaration of ownership” means the declaration required by section 12(2);
- “fishing boat” means a ship of whatever size, and in whatever way propelled, which for the time being is employed in sea fishing except a ship for the time being used (or intended to be used) wholly for the purpose of conveying persons wishing to fish for pleasure;
- “foreign maritime entity” means a legal entity, whether or not a body corporate, recognised as having the capacity to own a ship under

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the laws of the jurisdiction in which the entity has its existence and which satisfies the provisions set out in Schedule 2;

“Government ship” means a ship falling within Part VII;

“index” has the meaning given to it in section 39(2);

“log book” means the ship’s journal or tabulated summary of the performance of the ship, its engines and other daily events;

“manifest” means any document containing a statement of the ship’s cargo;

“Maritime Administrator” means the person appointed under section 3;

“master” includes every person (except a pilot) having command or charge of a seaplane, ship or other craft when it is on or in or close to the water and, in relation to submersible apparatus which is a submersible craft, means the person in charge of the parent craft;

“maritime lien” means a lien or charge falling within Part VI;

“Minister” means the Minister for the Port and Shipping;

“mortgage” means a written instrument providing security for the performance of a duty or the payment of a debt and shall include a hypothecation, pledge or such other instrument having like effect the form of which shall be approved from time to time by the Maritime Administrator;

“mortgagee” means the person or persons in favour of whom a mortgage is made or to whom the benefit of a mortgage has been assigned;

“official log book” means the log book kept in respect of a ship under the Gibraltar Merchant Shipping (Safety, etc.) Act, 1993;

“operator” means, where that person is not the owner, the person having the right to or exercising the powers of operating the ship;

“owner” as applied to an unregistered ship or share therein means the legal owner, and as applied to a registered ship or share therein means the registered owner;

“passenger ship” has the meaning given to it in the Gibraltar Merchant Shipping (Safety, etc.) Act, 1993;

“pleasure yacht” means a ship which is–

- (a) less than 24 metres in length; and
- (b) not a fishing boat; and
- (c) used primarily for sport or recreation:

Provided that regulations may provide that a ship which is of 24 metres or more in length may be registered on the Register of Pleasure Yachts and subject to such requirements and conditions, if any, as are prescribed by such regulations;

“prescribed fee” means the fee prescribed for that purpose in regulations made under section 86;

“proper colours” means the proper colours of Gibraltar as referred to in section 23 and described in Schedule 1;

“Provisional Certificate of Registry” means the certificate of registry issued under section 17 and “provisionally registered” shall be construed accordingly;

“qualified person” means a person so defined by section 7(3);

“recordable instrument” means an instrument which by virtue of this Act or regulations made hereunder may be recorded on a register;

“register” means a register of ships kept under the provisions of this Act, and “registered” and “registered ship” shall be construed accordingly and–

“Register” means the register provided for in section 6(1)(a), and–

- (a) “Register of Ships under Construction” means the register provided for in section 6(1)(b), and
- (b) “Register of Pleasure Yachts” means the register provided for in section 38;

“Register of Foreign Maritime Entities” means the register provided for in Schedule 2;

“registered agent” means a person defined as a registered agent under section 6 and regulations made thereunder;



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“related instrument” has the meaning given to it in section 39(8);

“relevant country” means a country prescribed in accordance with section 25(4);

“representative person” in relation to a qualified person is a person resident in Gibraltar and satisfying the provisions of regulations relating to representative persons;

“responsible individual” means an individual designated by owners in accordance with regulations made under section 6;

“ship” includes every description of vessel used in navigation which is not propelled by oars, and includes every description of lighter, barge or other vessel howsoever or whether or not propelled;

“ship under construction” means a ship that may be registered under section 6(1)(b);

“standard scale” means the standard scale of penalties contained in the Criminal Procedure Act and references to levels on that scale are references to the levels as determined from time to time in accordance with that Act;

“tonnage” has the definition given to it in the International Convention on Tonnage Measurement of Ships 1969 and any amendment thereto or replacement thereof and “gross tonnage”, “net tonnage” and “registered tonnage” shall be similarly construed;

“tonnage instructions” means the instructions made under section 9;

“year”, in relation to the compulsory inspection of a ship, means a period of twelve calendar months from the date of the latest certificate of inspection of a ship, and in relation to all other matters means calendar year.

## **PART II.** **ADMINISTRATION.**

### **Appointment of Maritime Administrator.**

3.(1) The Minister shall appoint and may remove an officer, to be styled the “Maritime Administrator” who shall exercise such functions as are from time to time conferred upon him by this Act and keep such records and perform such other duties as the Minister may direct.

(2) The Minister may appoint and remove officers to perform on behalf of the Maritime Administrator such of his functions as the Minister or the Maritime Administrator may direct.

(3) The Minister may by regulation designate any person to discharge, on behalf of the Maritime Administrator, all of his functions or such of them as may be prescribed in the regulations subject to such conditions and limitations, if any, as may be so prescribed.

(4) The Minister may give to the Maritime Administrator directions of a general nature as to the discharge of any of his functions.

(5) The Maritime Administrator—

(a) may make and issue such administrative instructions, not inconsistent with this Act, as may be required or as may appear to him to be necessary or expedient for the better carrying out of the provisions of this Act, and

(b) shall make and issue administrative instructions where required to do so by the provisions of this Act, or regulations or Ministerial direction made thereunder and shall, in such case, do so in accordance with those provisions,

and where those instructions are issued in fulfilment of a requirement of this Act, or regulations or Ministerial direction made thereunder, they shall be in published form and shall be supplied—

(i) to the registered agent of every registered ship to which they are applicable;

(ii) on demand from the Register in Gibraltar and from every office of the Maritime Administrator.

(6) Where in this Act there is a reference to a specified form or manner—

(a) that form or manner may be specified by the Maritime Administrator in administrative instructions; and

(b) if the administrative instructions so provide, deviation from the specified form or manner not affecting the substance thereof shall not invalidate such form or manner.

(7) In this section “officer” means an employee of the Government.

#### **Inspections of registers.**

- 4.(1) Any person may, on payment of the prescribed fee,—
- (a) inspect any register required to be kept in accordance with Parts III and IV of this Act;
  - (b) require to be furnished with a copy of or extract from the entry in respect of any ship in any such register in legible form;
  - (c) require such copy or extract to be certified as a true copy by or on behalf of the Maritime Administrator.
- (2) The registers referred to in subsection (1)(a) shall be available for inspection at the office of the Maritime Administrator or at the office of the person designated by regulation in accordance with section 3(3) as the person responsible for such register and at every office of that person.
- (3) The location in Gibraltar of the office of the Maritime Administrator or of the designated person shall be specified by notice in the Gazette.

## **Rectification and correction of the register.**

5. The Government may by regulation prescribe the persons by whom and the method by which material errors in a register may be rectified.

## **PART III. REGISTRATION OF SHIPS.**

### **Register of ships.**

- 6.(1) The Maritime Administrator under this Part shall be required to keep—
- (a) a register of ships, other than ships registrable under paragraph (b), registered or provisionally registered under this Part; and
  - (b) a register of ships under construction and so registered under this Part.
- (2) The registers provided for in subsection (1), shall contain such particulars in respect of the ship, the owner or owners, and if there is more than one owner, the percentage interest of each owner in the ship, mortgages, recordable instruments and registered agents and,—
- (a) in the case of the register provided for in section 6(1)(b), the shipbuilder, and

- (b) in the case of a ship registered by virtue of section 7(1)(b), the bareboat charterer,

as are prescribed.

(3) The registers may be kept in legible or non-legible form, but if kept in non-legible form any entry in the register—

- (a) shall be capable of being reproduced in legible form;
- (b) if reproduced in accordance with paragraph (a) and certified by or on behalf of the Maritime Administrator as a true copy of an entry stored in non-legible form, shall be admissible in any court.

(4) The Government may make regulations for the purpose of prescribing matters relating to the registration of ships under this Part and, without prejudice to the generality of the foregoing, such regulations may provide for—

- (a) the qualifications and duties of registered agents;
- (b) the appointment and discharge of registered agents;
- (c) declarations to be made by owners and bareboat charterers;
- (d) forms of registers, documents and certificates;
- (e) the retention of documents;
- (f) the designation of responsible individuals;
- (g) any period for which registration is to remain effective without renewal.

**Registerable ships.**

7.(1) Subject to the provisions of this Act, a ship is registerable if—

- (a) a majority interest in the ship is owned by one or more qualified persons; or
- (b) if it is to be bareboat registered, the ship is operated under a bareboat charter by a person who is a qualified person by virtue

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of subsection (3)(b), whether or not a majority interest in the ship is owned by one or more qualified persons; and

- (c) the ship is not registered under Part IV; and
- (d) where required by this Act, a registered agent is appointed.

(2) For the purposes of this section, one or more persons shall be treated as owning a majority interest in a ship, if there is vested in that person or in those persons, taken together, the legal title to more than one half of the shares or parts into which the property in a ship is divided for the purposes of registration, there being left out of account for this purpose, any share or part which is jointly owned by a person other than a qualified person.

(3) For the purposes of this section—

(a) the following individuals are qualified persons—

- (i) British citizens;
- (ii) British Dependent Territories citizens;
- (iii) British overseas citizens;
- (iv) persons who under the British Nationality Act 1981, are British subjects;
- (v) persons who under the Hong Kong (British Nationality) Order 1986, are British Nationals (Overseas);
- (vi) citizens of the Republic of Ireland and such other relevant countries as may be prescribed;
- (vii) nationals of—
  - (aa) another member State of the European Economic Community, or
  - (bb) after the date on which the Agreement on the European Economic Area comes into effect, a State to which that Agreement applies and thereby enjoying a right of establishment in Gibraltar:

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Provided that where an individual otherwise qualified under this paragraph is not resident in Gibraltar he shall have appointed a representative person;

- (b) the following persons are qualified persons—
  - (i) bodies corporate or legal entities incorporated, established or registered, as the case may be—
    - (aa) under the laws of Gibraltar; or
    - (bb) under the laws of another member State of the European Economic Community or, after the date on which the Agreement on the European Economic Area comes into effect, the laws of a State to which that Agreement applies, and thereby enjoying a right of establishment in Gibraltar,
  - and either—
    - (cc) having a place of business in Gibraltar; or
    - (dd) having appointed a representative person;
  - (ii) a foreign maritime entity.

(4) Nothing in this section shall derogate from or affect the provisions of Parts VII or VIII.

#### **Registration of property in ships.**

8. For the purposes of registration of a ship—

- (a) the interest in a ship may be divided into 64 shares or parts and that number of persons may be registered as owners of a ship or of a share in or a part of the ship;
- (b) any number of persons may be registered as joint owners of a ship or of any share in or any part of the ship, but any such joint owner is not entitled to dispose of that interest in severalty; and
- (c) a body corporate, other legal entity or foreign maritime entity shall be registered as owner by its corporate or legal name.

## Tonnage and description of ships.

9.(1) Where a ship is to be registered–

- (a) a Certifying Authority shall–
  - (i) ascertain a ship’s tonnage in accordance with the tonnage instructions made under this section; and
  - (ii) issue a certificate, in the specified form, specifying the ship’s tonnage and build and such other particulars descriptive of the identity of the ship as may, from time to time, be required by the Maritime Administrator; and
- (b) the owner or, if the ship is to be bareboat registered, the bareboat charterer of the ship, shall cause the certificate granted under subsection (1)(a)(ii) to be delivered to the Maritime Administrator before the ship is registered.

(2) Subsection (1) shall not apply in relation to a ship which is to be registered in the Register provided for in section 6(1)(b).

(3) The Maritime Administrator shall by administrative instructions specify the method of determining tonnage and matters incidental thereto and, without prejudice to the generality of the foregoing, such instructions shall–

- (a) make different provision for different descriptions of ships or for the same description of ships in different circumstances;
- (b) make any provision thereof dependent on compliance with such condition, to be evidenced in such manner, as may be specified in the instructions;
- (c) prohibit or restrict the carriage of goods or stores in spaces not included in the registered tonnage of a ship;
- (d) make provision for assigning to a ship, either instead of or as an alternative to the tonnage ascertained in accordance with the other provisions of the instructions, a lower tonnage applicable where the ship is not loaded to the full depth to which it can be safely loaded, and for indicating on the ship, by such mark as may be specified in the instructions, that such a lower tonnage has been assigned to it and, where it has been assigned to it as an alternative, the depth to which the ship may be loaded for the lower tonnage to be applicable;

- (e) permit the Maritime Administrator, subject to such conditions and restrictions as may be specified or as the Maritime Administrator may determine, such a determination not to be inconsistent with the instructions, to regard a ship registered outside of Gibraltar, without being remeasured under this section, as deemed to be of the tonnage as specified in the certificate of registry of that ship issued by a registry outside of Gibraltar;
- (f) provide for persons or bodies to be designated by the Maritime Administrator as Certifying Authorities;
- (g) provide for the issue of and the cancellation and delivery up of certificates and other documents appertaining to tonnage and survey required by this section or the instructions made hereunder;
- (h) make such other provisions as may be necessary to give effect in respect of ships registered in the Register to the provisions of any relevant International Convention which has been ratified by the United Kingdom and the application of which has been extended to Gibraltar;
- (i) not permit exemptions or practices which would result or be likely to result in a failure by a ship registered in the Register to comply with provisions of the International Convention on Tonnage Measurement of Ships 1969, any amendment thereto or replacement thereof or any Convention falling within paragraph (h);
- (j) in respect of the International Convention on Tonnage Measurement of Ships 1969, any amendment thereto or replacement thereof or any international convention falling within paragraph (h), apply the provisions of that Convention in a manner comparable with the application thereof by the ratifying State.

(4) Whenever the tonnage of a ship has been ascertained in accordance with the tonnage instructions and registered, that tonnage shall thenceforth be deemed to be the tonnage of the ship and shall be repeated in every subsequent registration of the ship unless an alteration is made in the form or capacity of the ship or unless it is discovered that the tonnage of the ship has been erroneously computed, and in either of those cases the ship shall be remeasured and its tonnage determined and registered according to the tonnage instructions.



## Ship names.

10.(1) A person shall not describe a registered ship by any name other than that by which the ship is, for the time being, registered.

(2) The owner or bareboat charterer, as the case may be, of a registered ship, shall not change the name of the ship or cause or permit any such change without the prior written permission of the Maritime Administrator, who shall not give such permission unless he is satisfied that all mortgagees whose interests are recorded on the Register have been notified of the proposed change of name and have consented thereto in writing.

(3) Where it is shown to the satisfaction of the Maritime Administrator that the name of the ship has been changed without permission, he shall direct that the name be altered into that which the ship bore before the change, and the name shall be so altered in the Register, in the Certificate of Registry and on the bow and stern.

(4) The Government may make regulations—

- (a) requiring the name by which it is proposed to register a ship to be approved by the Maritime Administrator before the name is marked on the ship or entered in the Register;
- (b) empowering the Maritime Administrator to reserve a name for a ship;
- (c) empowering the Maritime Administrator to refuse to register any ship by the name by which it is proposed to register that ship if the name—
  - (i) is already the name of a registered ship or is reserved, or is in the opinion of the Maritime Administrator so similar to the name of a registered ship or to a name which has been reserved as to be likely to deceive; or
  - (ii) is in the opinion of the Maritime Administrator undesirable for the purposes of registration of a ship in Gibraltar.

(5) If, in the case of any ship which it is proposed to register—

- (a) the Maritime Administrator refuses to approve the ship by the name by which it is proposed to register the ship; or

- (b) any requirements of the regulations are not complied with;

the Maritime Administrator shall not register that ship under the name proposed or until the regulations are complied with, as the case may be.

(6) The Maritime Administrator may, where there is a contravention of or a failure to comply with any requirement or direction under sub-regulation (3) in respect to a ship, suspend the registration of the ship or detain the ship until the contravention ceases or the requirement or direction is complied with, as the case may be.

#### **Marking of the ship.**

11.(1) Every ship, except a ship registered on the register provided for in section 6(1)(b), before it is registered, shall be marked permanently and conspicuously to the satisfaction of the Maritime Administrator and in accordance with the provisions of regulations made under subsection (2).

(2) The Government may make regulations with respect to the marking of ships and regulations made under this section may make provision for offences and related penalties and for the suspension of the registration of the ship or the detention of that ship.

#### **Application for registration.**

12.(1) An application for registration of a ship shall be made in the prescribed form by the person or persons qualified to register the ship, or by his or their representative person and the authority of any such person shall be in writing:

Provided that the Maritime Administrator may at his sole discretion accept an electronically transmitted confirmation of such person's authority if no written authorisation is produced.

(2) A person shall not be entitled to be registered as the owner of a ship or of a share therein until he, or in the case of a body corporate, legal entity or foreign maritime entity, a person authorised on behalf of it, has made and signed a declaration of ownership of the ship as described in the application for registration and containing prescribed particulars and evidenced as prescribed.

(3) A body corporate, legal entity or foreign maritime entity shall not be entitled to be registered as the bareboat charterer of a ship which is to be registered by virtue of section 7(1)(b) until—

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- (a) the person authorised on behalf of it has made and signed a declaration of the matters prescribed for this purpose; and
- (b) the evidence prescribed for this purpose has been produced to the Maritime Administrator to his satisfaction.

## **Evidence on first registration.**

13.(1) On the first registration of a ship and subject to the provisions of subsections (2) and (3) the following evidence shall be produced in addition to the declaration or declarations of ownership—

- (a) in the case of a ship built in Gibraltar, a builder's certificate, being a certificate signed by the builder of the ship, and containing a true account of the ship type and of the tonnage of the ship as estimated by him, and of the date and place where it was built, and of the name of the person (if any) on whose account the ship was built, and, if there has been any sale, the bill of sale under which the ship, or a share therein, has become vested in the applicant for registration;
- (b) in the case of a ship built outside of Gibraltar, the same evidence as in the case of a ship built in Gibraltar, unless the declarant who makes the declaration of ownership declares that the time and place of its building are unknown to him, or that the builder's certificate cannot be produced, in which case there shall be required only the bill of sale under which the ship or share therein became vested in the applicant for registration;
- (c) in the case of a ship previously registered outside of Gibraltar other than a ship to which section 25 or 32 applies a declaration that the ship is free from all maritime liens and encumbrances, except as otherwise provided in section 40;
- (d) such other document as is specified in administrative instructions or which the Maritime Administrator is satisfied is equivalent in effect thereto or adequate to substitute therefor.

(2) In respect of the requirements of paragraph (a), (b) and (c) of subsection (1), the Maritime Administrator may direct that those requirements be waived upon it being shown to his satisfaction that the owner has attempted to obtain such documents as are specified therein but that due to wholly exceptional and abnormal circumstances prevailing in the other country inordinate delay has occurred due to reasons beyond the control of the owner:

Provided that such waiver shall be subject to any direction as to the production of such other like document as the Maritime Administrator may make.

(3) The Maritime Administrator may in cases of civil political or military crisis, temporarily suspend or modify the requirements of this section and of section 16 in respect of permission for transfer or certificates of deletion and similar documents which would otherwise be required from such place or places of registration.

**Refusal of registration and removal from the Register.**

14.(1) The Maritime Administrator shall refuse to register a ship—

- (a) if completion of the first construction of that ship occurred more than twenty years before the commencement of the year in which application for registration is first made under this Act, provided that the Maritime Administrator may register such ship with the consent of the Minister or any person to whom the Minister has delegated his powers under this subsection.
- (b) unless a Certification of Confirmation of Class for an existing ship, or a Certificate of Seaworthiness, or an Interim Certificate of Class for a newly built ship, dated no earlier than ten days before the date of registration, is submitted at the time of registration;
- (c) unless proof of liability insurance satisfactory to the Maritime Administrator is provided—
  - (i) by a Member of the International Group of P & I Clubs, confirming liability insurance coverage, which proof shall be in a form acceptable to the Maritime Administrator; or
  - (ii) by a self-insurer, in the form of a declaration with an attached audited statement setting forth the nature, amount and security of the liability reserve;

and in either case, proof shall also be provided of the ability to cover default of the owner's repatriation obligations as required by any statutory provision applicable to that ship.

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(2) Notwithstanding that any ship in respect of which an application for registration has been made is entitled to be registered, the Maritime Administrator may refuse to register the ship if—

- (a) having regard—
  - (i) to the condition of the ship so far as relevant to its safety or to any risk of pollution;
  - (ii) to the safety, health and welfare of persons employed or engaged in any capacity on board the ship; or
  - (iii) to the interests of Gibraltar or to international merchant shipping,

it would be inappropriate for the ship to be registered; or

- (b) such conditions as are prescribed by regulations or administrative instructions have not been complied with;
- (c) the ship is of a class or description the registration of which is prohibited by regulation;
- (d) the name by which it is proposed to register the ship has not been approved under section 10;
- (e) prescribed fees in relation to registration or annual charges are owed to the Register or to the Register of Ships under Construction.

(3) Without prejudice to the interest of a mortgagee in a ship registered under this Act, the Maritime Administrator—

- (a) may, in his discretion, terminate the registration of any ship registered under this Act if—
  - (i) the ship's owner or operator has intentionally or recklessly failed to comply with the laws of Gibraltar with respect to safety of life at sea;
  - (ii) the ship's owner or operator is in breach of an obligation to the Register in respect of the payment of fees, taxes or other charges due and owing;

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- (iii) the ship has been transferred to a registry outside of Gibraltar, or has been registered therein, without the consent of the Maritime Administrator;
  - (iv) the ship has been lost or scrapped;
  - (v) the ship is taken in war or hostilities as a result of which the owner or bareboat charterer has lost control over it;
  - (vi) a registered agent being required in respect of that ship, no registered agent is appointed in respect of that ship;
  - (vii) the ship is over twenty years old and a change of its operator or ownership occurs unless the Minister authorises the ship to continue on the register;
- (b) shall terminate the registration of any ship if that ship ceases to be eligible for registration because—
- (i) being a ship registered by virtue of section 7(1)(a), a majority interest in the ship ceases to be owned by one or more qualified persons;
  - (ii) being a ship registered by virtue of section 7(1)(b)—
    - (aa) the ship ceases (whether by reason of the termination of the bareboat charter or otherwise) to be operated under a bareboat charter by a person qualified under section 7(3)(b);
    - (bb) the ship or any share in or part of the ship is transferred or transmitted;
    - (cc) the rights of the bareboat charterer under the charter are assigned except by way of security to a bank or financial institution.

(4) The Government may by regulation make provision for the manner in which the person applying for registration or the owner, as the case may be, shall be informed that it is proposed to refuse the application or to terminate the registration, as the case may be, and such regulations may provide that the applicant or the owner, subject to such time limits as may be specified may—

- (a) make representations to the Maritime Administrator;

- (b) appeal to the Minister against a decision of the Maritime Administrator to refuse the application or to terminate the registration,

and may further provide that the registration may be suspended whilst any representations are considered or appeal heard.

(5) The Government may by regulation make provision for matters arising out of the expiration, suspension or termination of registration (including the removal of marks and the cancellation of certificates).

## **Registration of an altered ship.**

15.(1) When a ship registered under this Part has been so altered, changed or reconstructed as not to correspond with the particulars relating to its tonnage or description contained in the Register or where such alteration, change or reconstruction could affect the classification, measurement or load line of the ship, the master or owner of the ship shall notify the Maritime Administrator or a person properly appointed or authorised by him within thirty days after the completion of the alteration, change or reconstruction and such notification shall be accompanied by a certificate from a Certifying Authority stating the particulars of the alteration or alterations, change or reconstruction.

(2) Upon receipt of the notification and certificate provided for in subsection (1) the Maritime Administrator shall—

- (a) enter the new particulars relating to the ship in the Register;
- (b) issue or cause to be issued a new Certificate of Registry to reflect the alteration, alterations, change or reconstruction.

(3) Where notice under subsection (1) is not given within the prescribed time, the obligation to give that notice continues, notwithstanding that the prescribed period has passed, until notice is so given.

(4) In the event of a failure to comply with subsection (1) the Maritime Administrator may suspend the registration of that ship.

## **Duty to secure termination of registration outside of Gibraltar.**

16. Except in respect of a registration of a ship by way of transfer from the registry of a relevant country or made by virtue of section 7(1)(b), where a ship becomes registered at a time when it is already registered under the law of any country outside of Gibraltar, the owner of the ship shall take all

necessary steps to secure the termination of that ship's registration under the law of that country and shall no later than 60 days after the date of the registration provide evidence to the Maritime Administrator to his satisfaction that the termination has taken place.

**Provisional Certificate of Registry.**

17.(1) Where the owner or owners of a ship intend to apply to have the ship registered on the Register, the Maritime Administrator or a person properly appointed for the purpose may grant a provisional Certificate of Registry stating—

- (a) the name of the ship;
- (b) the time and place of the purchase of the ship and the names of its new owners;
- (c) the particulars respecting the tonnage, build and description of the ship;
- (d) such other matters as are required by regulations made under this section.

(2) A provisional Certificate of Registry under this section shall have the effect of a Certificate of Registry until the expiration of the prescribed period from the date of its issue or until issue of the Certificate of Registry, whichever shall be the sooner and thereupon shall cease to have effect.

(3) A provisional Certificate of Registry shall entitle the ship to all the privileges of a registered ship.

(4) The Government may by regulation make provision for matters necessary or incidental to provisional registration.

**Particulars to be entered.**

18. As soon as the requirements of this Act preliminary to registration have been complied with, there shall be entered into the Register the prescribed particulars.

**Registration while a ship is at sea.**

19. Notwithstanding any provision in this Act, a ship may be registered while at sea, and a provisional Certificate of Registry issued in such circumstances shall be valid as from the date of its issue.



## **Certificate of Registry.**

20. On the completion of the registration of a ship, and upon payment of the prescribed fees, the Maritime Administrator shall grant a Certificate of Registry comprising the particulars in respect of that ship entered in the Register.

## **Documents to be retained.**

21. On completion of the registration of a ship, the Maritime Administrator shall retain a copy of the documents prescribed for this purpose.

## **Unregistered ship not recognised.**

22. A ship, which is not registered on a register provided for in section 6, unless it is registered under other provisions of this Act, shall not be recognised in Gibraltar for the purpose of this Act as a registered ship or as being entitled to the rights and privileges accorded to registered ships, unless otherwise permitted by law.

## **Proper colours.**

23.(1) The proper colours of a ship registered under the provisions of this Act shall be the flag or flags specified in Schedule 1 flown in the manner specified in that Schedule and such ship shall fly no other colours.

(2) A registered ship shall hoist the proper colours—

- (a) on entering or leaving any port;
- (b) on signal being made to the ship by any ship in the service of the Government.

(3) No registered ship except one to which section 33 applies shall fly any other colours than the proper colours.

(4) No registered ship shall fly any colours purporting to be or closely resembling the proper colours which are not the proper colours.

## **Port of Registry.**

24. The port of registry of every registered ship shall be Gibraltar.

## **Transfer of registration.**

25.(1) The Government may make regulations for the transfer of registration to or from Gibraltar from or to a port in a relevant country on the application to the Maritime Administrator by all the persons appearing on the register to be interested in the ship whether as owners or mortgagees.

(2) Without prejudice to the generality of subsection (1), regulations may include provisions—

- (a) specifying circumstances in which a transfer under this section may or may not be made;
- (b) specifying conditions subject to which any such transfer may be made;
- (c) requiring the consent of specified persons before such a transfer may be made;
- (d) modifying this Part (except this section and sections 6, 7, 8 and 12) in its application to such transfers.

(3) The transfer of registration under this section shall not in any way affect the rights of any person having an interest in the ship, and those rights shall in all respect continue in the same manner as if no such transfer had been effected.

(4) For the purposes of this section and sections 13 and 16, “relevant country” means a country so prescribed by notice in the Gazette.

#### **Use of certificate.**

26.(1) A Certificate of Registry, a provisional Certificate of Registry or a Certificate of Bareboat Registry 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.

(2) Any person, whether interested in the ship or not, shall not without reasonable excuse, refuse on request to deliver up a Certificate of Registry, a provisional Certificate of Registry or a Certificate of Bareboat Registry when it is in his possession or under his control to—

- (a) the person entitled to custody of the certificate for the purposes of the lawful navigation of the ship;
- (b) the Maritime Administrator or any person authorised by the Maritime Administrator;

(c) any other person entitled by law to require such delivery.

(3) If the person so refusing is not in Gibraltar, or if he persists in not delivering up the certificate, section 29 shall apply as if the certificate had been lost.

### **Use of improper certificate.**

27. No person shall use or attempt to use, or cause or permit to be used for navigation, a Certificate of Registry, a provisional Certificate of Registry, or a Certificate of Bareboat Registry not legally granted and in force in respect of a registered ship.

### **Power to grant new certificate.**

28. The Maritime Administrator, on the delivery to him of a Certificate of Registry, a provisional Certificate of Registry or a Certificate of Bareboat Registry, may issue a new certificate.

### **Loss of certificate.**

29. Where a Certificate of Registry, a provisional Certificate of Registry or a Certificate of Bareboat Registry of a ship is mislaid, lost or destroyed, the Maritime Administrator shall issue a new certificate in place of that certificate and, pending the issue of the new certificate, the Maritime Administrator, upon receiving a declaration from the master of the ship or some other person having knowledge of the facts of the case, stating such facts and names and descriptions of the registered owners of the ship to the best of the declarant's knowledge and belief, may grant a provisional Certificate of Registry or a Certificate of Bareboat Registry containing a statement of the circumstances under which it was granted, which certificate shall be valid for a period of sixty days from the date of issue and shall be delivered up to the Maritime Administrator either—

- (a) on the issue of the new certificate, or
- (b) the expiry of sixty days,

whichever is the sooner.

### **Change of ownership.**

30.(1) Subject to section 31, whenever a change occurs in the registered ownership of a ship, the change of ownership shall be endorsed on the

Certificate of Registry, or a new certificate shall be issued by the Maritime Administrator, as soon as the change of ownership has occurred.

(2) The owner or master shall, for the purpose of such endorsement, deliver the Certificate of Registry to the Maritime Administrator or a person properly appointed or authorised by him.

**Closure of registration.**

31.(1) In the event of a registered ship being either actually or constructively lost, taken by the enemy, burnt or broken up, or the ship or share therein being transferred to a person not being a qualified person, or there occurs a change in the status of a qualified owner or bareboat charterer, as the case may be, such that the requirements of section 7(1) are not met, every owner of the ship or of any share in the ship shall, immediately on obtaining knowledge of the event, give notice thereof to the Maritime Administrator, and the Maritime Administrator shall make an entry thereof in the Register, and the registration of the ship shall be considered as closed except so far as it relates to any unsatisfied mortgages or existing mortgages entered therein.

(2) In any such case as is provided for in subsection (1), except where the ship's Certificate of Registry, provisional Certificate of Registry or Certificate of Bareboat Registry is lost or destroyed, the master of the ship shall, as soon as practicable after the event occurs, deliver the certificate to the Maritime Administrator.

(3) When a registered ship is to be transferred to a registry outside of Gibraltar, providing that—

- (a) any mortgage or other instrument recorded in respect of that ship on the Register has been discharged in accordance with section 43 or the consent of every registered mortgagee has been obtained; and
- (b) there are no claims outstanding in favour of the Government,

the following shall be submitted to the Maritime Administrator or a person properly appointed or authorised by him—

- (i) a written application specifying the name of the ship;
- (ii) the reason for the proposed transfer;
- (iii) the name and nationality of the proposed new owner;

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- (iv) the name of the country to whose registry transfer is desired; and
- (v) the written consent of every registered mortgagee or the confirmation by every person whose interest as a mortgagee was registered that the mortgage has been discharged, as the case may be,

and the Maritime Administrator shall, on transfer of the ship, close the registration in respect of that ship.

## **Bareboat registration into the Register.**

32.(1) A person—

- (a) possessing a ship by reason of being the charterer under a bareboat charter; and
- (b) satisfying section 7(1)(b); and
- (c) having appointed, if required to do so, a registered agent; and
- (d) having given in the required form the undertaking required by virtue of subsection (2)(a),

may register that ship in accordance with the provisions of this Act and regulations as they apply in respect of bareboat charters, and—

- (e) such provisions having been satisfied; and
- (f) all relevant and annual fees having been paid,

the Maritime Administrator shall issue or cause to be issued a Certificate of Bareboat Registry valid for a period not exceeding two years which may on application before the expiry of that period be reissued for a further period not exceeding two years:

Provided that no such Certificate of Bareboat Registry shall be issued or reissued having as its termination date a date falling after the date of expiration of the charter of that ship in respect of which the registration is made.

(2) A person registering a ship in accordance with the provisions of subsection (1) shall—

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- (a) execute under oath or affirmation, attested to the satisfaction of the Maritime Administrator, an undertaking that, while that ship is permitted by virtue of such registration to fly the proper colours, the ship shall not—
    - (i) fly the flag of any other registry other than that of Gibraltar;
    - (ii) show as home port any port other than Gibraltar; and
  - (b) without delay, inform the Maritime Administrator if any registry other than that of Gibraltar shall afford the ship the right to fly the flag of that registry.
- (3) If—
- (a) a person breaches the undertaking given under subsection (2)(a); or
  - (b) a ship while registered by virtue of section 7(1)(b) and under the provisions of this section is found flying or pretending entitlement to fly the flag of another registry other than that of Gibraltar,

the person referred to in paragraph (a) shall be liable to pay an administrative penalty not exceeding six times the amount which is the amount at level 5 on the standard scale and which shall, until paid, constitute a maritime lien upon the ship, and such penalty may be imposed without regard to any other penalties which may be by a court imposed in respect of the matters provided for in this section.

(4) The grant to a ship registered under this section by another registry other than that of Gibraltar of the right to fly the flag of that registry shall, from the time of such grant, be deemed to terminate the bareboat registration of the ship in Gibraltar.

#### **Bareboat registration out of the Register.**

33.(1) Notwithstanding any other provisions of this Act, a ship registered under this Part may bareboat charter to a registry other than that of Gibraltar:

Provided that—

- (a) the owner of that ship shall have applied to the Maritime Administrator in the prescribed form;

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- (b) in the event that the ship is the subject of one or more mortgages recorded on the Register, the written consent of each mortgagee to that bareboat charter has been lodged with the Maritime Administrator;
- (c) any other documents prescribed for the purpose of this section have been lodged with the Maritime Administrator; and
- (d) the Maritime Administrator having satisfied himself as to compliance with the requirements of paragraphs (a), (b) and (c) has issued a Certificate of Permission.

(2) The Certificate of Registry or the provisional Certificate of Registry of a ship in respect of which a Certificate of Permission has been issued and all other documents and certificates issued by the Register to or in respect of that ship shall be surrendered to the Maritime Administrator who shall—

- (a) prepare a new certificate recording the nature of the registration and endorsed to show that—
  - (i) the right to fly the proper colours has been withdrawn from the ship;
  - (ii) a Certificate of Permission has been issued in respect of that ship;
  - (iii) the ship is permitted to fly the flag of a registry, other than that of the Register, as specified in the Certificate of Permission;
- (b) retain the new certificate and all other documents which may be required to be surrendered.

(3) Where a registered ship to which a Certificate of Permission has been issued is registered in a registry other than that of Gibraltar—

- (a) that ship shall not—
  - (i) fly the proper colours;
  - (ii) claim Gibraltar as her home port;
- (b) the registry other than that of Gibraltar shall be the competent authority exercising exclusive control and jurisdiction over that ship in the application of international conventions and agreements,

for the period specified in the Certificate of Permission or any reissue thereof.

(4) A Certificate of Permission issued by the Maritime Administrator in exercise of his powers under subsection (1)(d) shall be valid for a period not exceeding two years and may on application before the expiry of that period be reissued for a further period not exceeding two years:

Provided that no such Certificate of Permission shall be issued or reissued having as its termination date a date falling after the date of expiration of the charter of that ship in respect of which the certificate is issued.

- (5) The Government may by regulation provide for—
- (a) the application of this Act to a ship in respect of which a Certificate of Permission has been issued;
  - (b) the information to be provided to the Maritime Administrator by the person to whom a Certificate of Permission has been issued;
  - (c) the obligations to the Register of the person to whom the Certificate of Permission has been issued while the ship in respect of which the certificate has been issued is registered in a registry other than that of Gibraltar;
  - (d) offences and related penalties in respect of matters dealt with by those regulations;
  - (e) the effect on the registration of infringements of the provisions of the Act or the regulations.

**Transfers of ships or shares by Bill of Sale.**

34.(1) A registered ship or a share therein shall be transferred by bill of sale.

(2) The bill of sale shall contain such description of the ship as is contained in its Certificate of Registry or some other description sufficient to identify the ship to the satisfaction of the Maritime Administrator, and shall be executed by the transferor in the presence of, and be attested by, a witness.

- (3) The bill of sale shall be in the specified form.



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(4) A transferee shall not be entitled to be registered as owner of a ship or of a share in a ship unless a declaration of ownership provided for in section 12(2) has been lodged with the Maritime Administrator.

(5) Every bill of sale for the transfer of a registered ship, or of a share therein, when duly executed shall forthwith be produced to the Maritime Administrator, and the Maritime Administrator shall thereupon enter in the Register the name of the transferee as owner of the ship or share, and shall endorse on the bill of sale the fact of that entry having been made with the day and hour thereof.

(6) The recording of bills of sale and the amending of details of ownership on the Register shall be in accordance with the provisions, mutatis mutandis, of subsections (3), (4), (5), (6) and (8) of section 39.

(7) This section does not apply to a ship registered by virtue of section 7(1)(b).

## **Transmission on death or bankruptcy, etc..**

35.(1) Where the property in a registered ship or share therein is transmitted to another qualified person on the death or bankruptcy of any registered owner, or by any lawful means not provided for elsewhere in this Act—

- (a) the transferee shall authenticate the transmission by making and signing a declaration (in this section called a “declaration of transmission”) identifying the ship and giving a statement of the manner in which, and the person to whom, the property has been transmitted;
- (b) if the transmission is consequent on bankruptcy, the declaration of transmission shall be accompanied by such evidence as is receivable in a court of law as proof of the title of persons claiming under a bankruptcy;
- (c) if the transmission is consequent on death, the declaration of transmission shall be accompanied by the instrument of representation or an official extract therefrom.

(2) The Maritime Administrator or a person properly appointed or authorised by him, on receipt of—

- (a) the declaration of transmission;
- (b) any document required by paragraphs (b) or (c) of subsection (1);

- (c) a declaration of ownership provided for in section 12(2) in respect of the transferee,

shall enter in the Register the name of the person entitled under the transmission to be registered as owner of the ship or share therein, the property in which has been transmitted, and, where there is more than one such person, the names of all those persons, but those persons, however numerous, shall be considered, for the purpose of the provisions of this Act which relate to the number of persons entitled to be registered as owners, as one person.

(3) Where the property in a registered ship or share therein is transmitted to another person, not being a qualified person, on the death or bankruptcy of any registered owner, or by any lawful means not provided for elsewhere in this Act, then the Supreme Court may, on application by or on behalf of the unqualified person, order a sale of the property so transmitted and direct that the proceeds of the sale, after deducting the expenses thereof, be paid to the person entitled under such transmission or otherwise as the Court directs.

(4) Where an application is made under subsection (3), the Court may require any evidence in support of the application it thinks requisite, and may make the order on any terms and conditions it thinks just or may refuse to make an order and generally may act in the case as the justice of the case requires.

(5) Every application under subsection (3) shall be made within four weeks after the occurrence or the event as a result of which the transmission has taken place, or within such further time (not exceeding in the whole one year from the date of the occurrence) as the Court shall allow.

(6) If an application which may be made under subsection (3) is not made within the time prescribed in subsection (5), or if the Court shall refuse an order for sale, the ship or shares transmitted shall thereupon be subject to forfeiture under this Act.

(7) This section does not apply to a ship registered by virtue of section 7(1)(b).

**Transfer of ship or share by order of court.**

36. Where any court of law, whether under section 35 or otherwise, orders the sale of any registered ship or share therein, the order of the court shall contain a declaration vesting the right to transfer that ship or share in some person named by the court, and that person shall thereupon be entitled to

transfer the ship or share in the same manner and to the same extent as if he were the registered owner thereof, and the Maritime Administrator shall obey the requisition of the person so named in respect of any such transfer to the same extent as if such person were the registered owner.

## **Power of Court to prohibit transfer.**

37. The Supreme Court may, if it thinks fit (without prejudice to the exercise of any other power of the Court) on the application of any interested person, make an order prohibiting for a time specified any dealing with a ship or any share therein, and the Court may make the order on any terms or conditions the Court thinks just, or may refuse to make the order, or may discharge the order when made, with or without costs, and generally may act in the case as the justice of the case requires, and the Maritime Administrator without having to have been made a party to the proceedings shall, on being served with an order or an official copy thereof, obey or cause to be obeyed the same.

## **PART IV.**

### **REGISTRATION OF PLEASURE YACHTS.**

#### **Register of Pleasure Yachts.**

38.(1) The Government may by regulation make provision for—

- (a) the establishment and maintenance of a Register of Pleasure Yachts;
- (b) the registration in that register of pleasure yachts which are owned by persons who in accordance with section 7(3), as modified and applied by regulations made under this section, are qualified persons:

Provided that regulations made under this paragraph shall not have the effect of extending the categories of qualified persons.

(2) Subject to the exemptions mentioned in subsection (3), references, however phrased, in any statutory provision to ships registered under Part III or to registered owners of such ships include a reference to pleasure yachts registered under this section, or, as the case may be, to owners registered under this section of such pleasure yachts and connected phrases shall be interpreted accordingly.

(3) The exceptions referred to in subsection (2) are—

- (a) references in Part III and this Part;

- (b) references in any statutory provision prescribed by regulations made under this section.
- (4) Where an application for the registration under this section of a ship registered under Part III is granted—
- (a) the Maritime Administrator may, if the requirements of regulations under this section as to the closure of registration under that Part are met, close the registration of the ship under that Part by entering the closure in the Register; and
  - (b) the registration under this section shall not take effect unless the registration under that Part is closed under paragraph (a) and, if it is so closed, shall take effect at the time of closure.
- (5) Regulations under this section may provide for the payment of fees in connection with the closure under this section of a registration under Part III.
- (6) The registration of a pleasure yacht under this section shall, if that pleasure yacht is subsequently registered under Part III, terminate by virtue of the subsequent registration.
- (7) The regulations made under subsection (1) may provide for all matters necessary or incidental to the operation of the Register of Pleasure Yachts, and without prejudice to the generality of the foregoing may make provision—
- (a) for the persons by whom and the manner in which applications in connection with registration are to be made (including provision limiting the persons who may apply for registration, whether by reference to residence or place of business or otherwise);
  - (b) for the information and evidence to be provided in connection with such applications and for such supplementary information or evidence as may be required by the Maritime Administrator to be so provided;
  - (c) for the issue of certificates of registration, their production and surrender;
  - (d) for the marking of registered pleasure yachts;

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- (e) for the period for which any registration is to remain effective without renewal;
- (f) for the refusal of registration where the name of the pleasure yacht proposed to be registered appears to the Maritime Administrator to be the same as, or so similar to, the name of a pleasure yacht already registered as likely to mislead or to be offensive or undesirable;
- (g) for the refusal, suspension or termination of registration in specified circumstances (including failure to comply with requirements imposed by or under regulations and circumstances in which any of the requirements applicable to new registrations imposed by or under this section are no longer met);
- (h) for matters arising out of the expiration, suspension or termination of registration (including the removal of marks and the cancellation of certificates);
- (i) for the survey and inspection of pleasure yachts registered or to be registered;
- (j) for the discharge of functions under the regulations by persons appointed by such organisations as may be authorised in that behalf by the Maritime Administrator;
- (k) excluding from registration specified classes or descriptions of pleasure yachts;
- (l) for modification of statutory provisions, not prescribed by regulations made under this section, as they are applied to pleasure yachts;
- (m) for different provisions for different classes or descriptions of pleasure yachts and for different circumstances;
- (n) for any other matters relating to or incidental to the maintenance of a register of pleasure yachts (including its inspection); and
- (o) for the creation of offences in respect of matters falling within the regulations and their punishment on summary conviction by a fine not exceeding level 5 on the standard scale.

## PART V.

## MORTGAGES AND RELATED INSTRUMENTS.

**Recording of mortgages and related instruments.**

39.(1) A registered ship or a share therein may be made a security for a loan, debt or other obligation, and the mortgage creating the security or other recordable document falling within this section shall be in a form prescribed, or in a form as near thereto as circumstances permit, and on the production of such instrument in proper form, the Maritime Administrator shall record it as provided for under this Act.

(2) Mortgages and other related instruments shall be recorded in that part of the relevant register referred to as the index, and, in respect of the ship which is the subject of the mortgage or related instrument, shall form part of the entry in that register to which the provisions of section 4 apply.

(3) The Maritime Administrator shall—

(a) record, in the relevant register, in accordance with subsection (5), mortgages and related instruments in the order of time in which they are produced to him whether they are produced to him for that purpose—

(i) in Gibraltar; or

(ii) at an office out of Gibraltar appointed by the Maritime Administrator for that purpose and transmitted to him in Gibraltar by that office by electronic means;

(b) inscribe on each mortgage or related instrument that it has been recorded by him, stating the date and time at which the entry was made in the register.

(4) Inscription of the date and time of recording of a mortgage or related instrument together with relevant particulars thereof in the index kept for that purpose, and in accordance with this section, shall constitute complete, full and formal recording of such instrument under the provisions of this Act and, except in the case of—

(a) ships to which Part VIII applies; and

(b) mortgages, related instruments and other such instruments recorded under the provisions of section 42,

and notwithstanding the provisions of any other Act, no other recording of a mortgage or related instrument shall be required:

Provided that if a mortgage or related instrument is recorded in an office other than the office in Gibraltar of the Maritime Administrator, that mortgage or related instrument shall not be deemed to be recorded until the date and time that the memorandum of particulars referred to in subsection (6)(b) has been received and recorded in Gibraltar in the index of the relevant register.

(5) A person properly appointed or authorised by the Maritime Administrator shall, at any office appointed by the Maritime Administrator for this purpose, record a mortgage or related instrument—

- (a) in the index kept for that purpose;
- (b) in a form specified by the Maritime Administrator;
- (c) in the order of time in which mortgages or related instruments are produced to him for that purpose, and shall inscribe on each such mortgage or related instrument—
  - (i) that it has been so recorded by him;
  - (ii) the date and time in Gibraltar and, if the mortgage or related instrument was recorded at an office outside of Gibraltar, the local date and time at which it was so recorded;
  - (iii) the index and page number of the record.

(6) Where a mortgage or related instrument is recorded under the provisions of subsection (5), the person responsible for making the entry in the index shall—

- (a) prepare a Memorandum of Particulars which shall contain—
  - (i) the relevant particulars;
  - (ii) the date and time in Gibraltar and, if the mortgage or related instrument is recorded at an office outside of Gibraltar, the local date and time of entry in the index;
- (b) cause a true copy of the Memorandum of Particulars to be transmitted by electronic means to—
  - (i) the Maritime Administrator if the recording took place at an office outside of Gibraltar;

- (ii) every office appointed by the Maritime Administrator for the purpose of recording mortgages and related instruments;
- (c) transmit the original mortgage or related instruments to the Maritime Administrator;
- (d) at the time the mortgage or related instruments is recorded under subsection (5), provide upon request to the mortgagee a certified copy of the entry in the index relating to that mortgage or related instrument,

and the Memorandum of Particulars provided for in paragraph (a) shall be available for public inspection on payment of the prescribed fee at the office of the Maritime Administrator in Gibraltar and at the office at which it was prepared, and each office specified in paragraph (b)(ii), upon request and during normal business hours.

(7) The Maritime Administrator shall, on receipt of the prescribed fee, endorse one or more true counterparts of a recorded mortgage or related instrument, with the information provided for in subsection (5)(c) in respect of that mortgage or related instrument and shall return that counterpart or counterparts to the party requesting them.

(8) In this Part—

“local date and time” means the official date and time in the jurisdiction in which is the authorised office at which the mortgage or related instrument is recorded under subsection (5);

“related instruments” shall include but are not limited to—

- (a) amendments to and assignments, satisfactions and discharges of mortgages;
- (b) assumption agreements;
- (c) co-ordination agreements;
- (d) subordination agreements;

“relevant particulars” means—

- (a) the amount or the amounts of the mortgage or if the mortgage is for all monies, that fact;



- (b) the date of maturity, if any;
- (c) the names of the parties;
- (d) the name of the ship;
- (e) the registered number of the ship;
- (f) the date and time in Gibraltar;
- (g) the local date and time; and
- (h) the index and page number of the entry;

“relevant register” means the Register of Ships, the Register of Ships under Construction or the Register of Pleasure Yachts, as the case may be:

Provided that, except in so far as section 42 makes provision, this Part shall not apply to a ship registered by virtue of sections 7(1)(b) and 32.

## **Recording of foreign instruments.**

40.(1) Notwithstanding any other provisions of this Act, if–

- (a) a ship has previously been registered in a relevant country; and
- (b) mortgages or related instruments were registered in respect of that ship; and
- (c) at the time of application for registration, in addition to the other documents required to be produced on first registration, there is produced to the Maritime Administrator the written consent of every mortgagee and holder of any related instruments,

then on the production of those mortgages and related instruments they may be recorded in the order of rank, priority and precedence in which they were recorded in the register of that relevant country.

(2) Where the Maritime Administrator has exercised his powers under section 13(3), the provisions of subsection (1) shall apply as if–

- (a) the references to registration in a relevant country were to registration in the country in respect of which the Maritime Administrator has exercised his powers;

- (b) the requirements as to mortgages and related instruments are satisfied by the production of a photocopy or other facsimile of the instrument certified by the mortgagee or mortgagees and holders of related instruments as true and complete:

Provided that where the mortgage or related instrument was not in the English language the photocopy or other facsimile shall be accompanied by a translation thereof into the English language, such translation to be certified in like manner as the instrument and to be recorded with the instrument.

**Mortgages and related documents in respect of ships under construction.**

41.(1) Every builder's mortgage recorded on the Register of Ships under construction—

- (a) binds the ship under construction to which it relates during the period from the commencement of the building thereof until launching;
- (b) binds the ship under construction to which it relates at and from the time of the launching of that ship until registration of the ship on the Register; and
- (c) operates in all respects as if it were a mortgage made after the registration on the Register of the ship under construction to which it relates,

and the provisions of this Act with respect to recorded mortgages shall apply, with such modifications as the circumstances require, to a mortgage of a ship under construction.

(2) Without prejudice to his other lawful rights and remedies, a mortgagee of a ship under construction shall have the right to—

- (a) take possession of such ship at any time before its completion, and sell the ship in accordance with the terms and conditions of the mortgage or other recorded instrument;
- (b) obtain an order of an appropriate court or other duly constituted authority to take possession and sell the ship; or
- (c) apply to the appropriate court for an official or judicial sale of the ship under construction.

(3) The provisions of section 39 shall apply in respect of the recording of mortgages and related instruments on the Register of Ships under Construction.

- (4) Where an owner makes an application in respect of a ship—
- (a) registered in the Register of Ships under Construction; and
  - (b) in respect of which there are mortgages or related instruments recorded in that register,

to transfer that ship from that register to the Register, provided that the application is accompanied by the written authorisations to such transfer from each and every mortgagee and holder of related instruments, the Maritime Administrator shall register that ship on the Register and record those mortgages and related charges in that order of rank, priority and precedence as was accorded them on the Register of Ships under Construction and such registration shall serve to close the registration of that ship on the Register of Ships under Construction.

- (5) Subject to subsection (4), where an owner makes an application in respect of a ship—
- (a) registered in the Register of Ships under Construction; and
  - (b) in respect of which there are mortgages or related instruments recorded in that register;

to close that registration, the provisions of section 31(3) shall apply and the Maritime Administrator shall not close the registration unless he is satisfied that any and all mortgages or related charges have been satisfied and that the ship is rendered free and clear of all recorded liens and encumbrances.

## **Recognition and recording of a notice of overseas mortgage.**

42.(1) Without alteration of or prejudice to the continuing legal status and controlling law of a mortgage, hypothecation or similar charge made and registered in accordance with the laws of a jurisdiction outside of Gibraltar, when a ship is registered in Gibraltar by virtue of sections 7(1)(b) and 32, a notice in the prescribed form shall be recorded in the relevant register of all mortgages or other charges existing in respect of a ship:

Provided that no notice in respect of a mortgage, hypothecation or similar charge, or any other instrument related thereto, to which this subsection applies shall be accepted for recording under this section unless it has first

been duly and validly executed and registered in the registry outside of Gibraltar in which the ship to which it relates is registered.

(2) Where there is more than one mortgage, hypothecation or similar charge to which subsection (1) applies, notices in respect of all such instruments shall be recorded under the provisions of this section in the same order as they are registered in the registry outside of Gibraltar.

(3) If notice with respect to a mortgage, hypothecation or similar charge has been recorded under the provisions of subsection (1), a notice with respect to any subsequent mortgage, hypothecation or similar charge and any other instrument related thereto which is subsequently registered in respect of the ship in the registry outside of Gibraltar in which that ship is registered may also be recorded in accordance with the provisions of this Act in respect to the recording of mortgages and related instruments.

#### **Discharge of mortgage.**

43. Where a registered mortgage of a ship is discharged, the Maritime Administrator shall, on the production to him of the mortgage instrument and either—

- (a) a release of mortgage and receipt for the mortgage money; or
- (b) other release to his satisfaction,

duly signed and attested to the satisfaction of the Maritime Administrator, make an entry in the register to the effect that the mortgage has been discharged, and on that entry being made, the estate, if any, that passed to the mortgagee shall vest in the person in whom (having regard to intervening acts and circumstances, if any) it would have vested if the mortgage had not been made.

#### **Priority of mortgages.**

44. Where there are more mortgages than one registered in respect of the same ship or share, the mortgagees shall notwithstanding any express, implied or constructive notice, be entitled in priority between each other according to the date and time at which each mortgage is recorded in the register and not according to the dates and times of the mortgages.

#### **Mortgagee not treated as owner.**

45. Except as far as may be necessary for making a mortgaged ship or share available as a security for the mortgage debt, the mortgagee shall not by

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reason of the recorded mortgage be deemed the owner of the ship or share, nor shall the mortgagor be deemed to have ceased to be owner thereof.

## **Mortgagee has power of sale.**

46. Every mortgagee whose interest has been recorded in the relevant register shall have power absolutely to dispose of the ship or share in respect of which his interest has been so recorded, and to give effectual receipts for the purchase money:

Provided that where there are more persons than one recorded as mortgagees of the same ship or share, a subsequent mortgagee shall not, except pursuant to an order of a court of competent jurisdiction, sell the ship or share without the concurrence of each and every prior mortgagee.

## **Mortgagee may take title.**

47. No provision contained in this Act shall prevent or prohibit a mortgagee whose interest is recorded in accordance with the provisions of this Act, with the concurrence of all other such mortgagees whose interest has been recorded prior to the interest of that mortgagee, and subject to all claims which would have prevailed against the mortgagor at the date and time of the transfer and in respect of that ship, from taking valid title to a ship in which that mortgagee has a recorded interest, either alone or with others, or from conveying title to a trustee on his behalf, either with or without leave of a court of competent jurisdiction, nor shall any provision in this Act impair the right of such a mortgagee at public auction to bid upon, and to acquire title to, a ship in which he has an interest.

## **Mortgage not affected by bankruptcy.**

48. A mortgage recorded under the provisions of this Act of a ship or share shall not be affected by any act of bankruptcy committed by the mortgagor after the date of the recording of the mortgage, notwithstanding that the mortgagor at the commencement of his bankruptcy had the ship or share in his possession or order or at his disposition or was the reputed owner thereof, and, subject to the provisions of section 53, the mortgage shall be preferred to any right, claim or interest of other creditors of the bankrupt, or any trustee or assignee on their behalf as against that ship.

## **Transfer of mortgage.**

49. A mortgage recorded under the provisions of this Act of a ship or share may be transferred to any person, and on the production of an instrument of transfer in the specified form the Maritime Administrator or a person

properly appointed or authorised by him shall record that instrument in accordance with the provisions of section 39.

**Transmission of interest of mortgagee on death or bankruptcy.**

50.(1) Where the interest of a mortgagee in a ship or share is transmitted on death or bankruptcy of the mortgagee, or by any lawful means other than by a transfer provided for in this Act, the transmission shall be authenticated by a declaration of the person to whom the interest is transmitted, and shall be accompanied by the like evidence as is required in the case of a transmission of an interest in a ship or share therein under section 35.

(2) The Maritime Administrator or a person properly appointed or authorised by him, on receipt of the declaration and production of the prescribed evidence, shall record the name of the person entitled under the transmission as mortgagee of the ship or share in respect of which the transmission has taken place.

**Mortgagee's right to dispose of ship.**

51. If within thirty days of the date of expiration of a provisional Certificate of Registry the ship has not fulfilled the requirements of registration, the mortgagee shall have power absolutely to dispose of the ship or share in respect of which his interest is recorded in the register, notwithstanding that the mortgagor has complied fully with any other requirements of the mortgage instrument.

**PART VI.**  
**MARITIME LIENS.**

**Maritime liens.**

52.(1) Without prejudice to such other claims or types of claim which may have been or may be recognised by the Supreme Court as entitled to be secured by a maritime lien, the following claims against the owner shall constitute a maritime lien on a registered ship—

- (a) wages, repatriation costs and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship;
- (b) sums due in respect to damage to dock works, pollution clean-up and prevention costs, wreck removal costs resulting from the operation of the ship and other sums due or owing to the Government including taxes, charges, unpaid tonnage taxes and

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fees and any other fees, taxes or penalties, payable under this Act in respect of the ship, and outstanding;

- (c) port, canal, pilotage and other waterway dues;
- (d) fees of the Admiralty Marshal, together with expenses in respect of arrest, detention, appraisalment and sale of the ship;
- (e) costs and expenses incurred in conservation and realisation of the fund with respect to a ship in *custodia legis*, up to the date of the order of appraisalment and sale;
- (f) mortgages recorded in accordance with the provisions of Part V;
- (g) claims for salvage, wreck removal, and contribution in general average;
- (h) claims against the ship, the owner or operator in respect of life and property salvage, or for personal injury or loss of life, whether on land or on water, resulting directly from the operation of the ship.
- (i) claims based on tort and not capable of being based on contract, in respect of loss of or damage to property (including pollution) whether on land or on water, resulting directly from the operation of the ship.

(2) In this section “owner” shall be deemed to include the bareboat or other charterer, manager or operator of the registered ship.

(3) Nothing in this Part shall be taken to apply to any ship which is not a registered ship, and in the event of such ship being subject to the jurisdiction of the Admiralty Marshal in Gibraltar, the law of Gibraltar in respect of such ship and in relation to what shall constitute a maritime lien, priority of such liens and all other matters provided for in this Part shall be the law in effect in Gibraltar prior to the commencement date and thereafter established by commentary or statute other than this Act in the interpretation and application thereof.

## **Priority of maritime liens in general.**

53.(1) Subject to—

- (a) preference in respect of date; and

- (b) sections 54 and 55; and
- (c) the equity and merits of a case as determined by the Supreme Court,

the order of ranking of maritime liens (as defined in section 52(1) with respect to a registered ship shall be—

- (i) rights in favour of the Government and specifically created by statute, ranking *pari passu*, including those for unpaid tonnage taxes, wreck removal costs and damage to docks, harbours, piers and other property of the Government;
- (ii) the Admiralty Marshal's fees and expenses in respect of the arrest, detention, appraisal and sale of the ship;
- (iii) costs and expenses incurred by other persons in exercising a right of sale of a ship, including the costs of arrest and of rendering a fund available, and including costs incurred by such other persons in conserving the ship while the ship is in *custodia legis*, up to the date of the order of appraisal and sale;
- (iv) possessory liens, including but not limited to those of a ship repairer and a salvor;
- (v) liens in respect of salvage, including life salvage;
- (vi) liens other than those falling under paragraph (a) in respect of damage to property;
- (vii) liens in respect of crew's wages and other emoluments, master's wages and other emoluments and master's disbursements;
- (viii) mortgages recorded in accordance with the provisions of Part V, which shall take priority amongst themselves as provided for in Part V;
- (ix) other statutory rights *in rem*, including but not limited to those for necessities, repairs, towage, general average, pilotage, cargo damage and breach of charter party.

(2) Claims for contribution in general average shall be deemed to have accrued on the date on which the general average act was performed.



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(3) Claims for salvage shall be deemed to have accrued on the date on which the salvage operation was terminated.

## **Possesory liens.**

54. Any lien exercisable by a ship-builder or repairer over a ship or the appurtenances thereof in his possession shall take priority over all claims arising after such possession was taken but shall be postponed to those claims which were created before the time of taking possession.

## **Claims to proceeds of sale of ship.**

55. Notwithstanding any other provision of this or any other Act, any sum awarded by a court as costs arising out of any proceedings in respect of the arrest of a registered ship or the subsequent sale thereof, including such charges or expenses incurred in effecting the arrest or sale shall have priority over all claims in payment out of the proceeds of the sale or of any moneys paid into court for the release of the ship from that arrest and, subject to such payment, the court shall determine the order of priority of all other claims, taking into account the provisions of this Part.

## **PART VII.**

### **GOVERNMENT SHIPS.**

#### **Registrability of Government ships.**

56.(1) Subject to this Part, a Government ship, that is, a ship owned by the Government is registrable.

(2) Subject to this Part, a registered Government ship ceases to be registrable if—

- (a) it ceases to be a Government ship;
- (b) the ship is taken in war or hostilities, as a result of which the Government has lost control over the operation of the ship;
- (c) the ship is broken up, or is an actual or constructive total loss such that it is no longer capable of being used in navigation;
- (d) the ship at the time of registration remains registered in a place outside of Gibraltar; or
- (e) the ship subsequently becomes registered in a place outside of Gibraltar.

**Application for registration of Government ship.**

57. An application for registration of a Government ship shall be made to the Maritime Administrator, in the specified form, by the Administrative Secretary, and shall be accompanied by–

- (a) the certificate of survey;
- (b) the certificate or declaration of marking of the ship;
- (c) evidence, to the satisfaction of the Maritime Administrator of deletion of the ship from the registry of the place outside of Gibraltar where the ship was last registered (if any) or, if the ship was last registered concurrently in more than one such place, from the registry of each such place;
- (d) such evidence of title as is specified in administrative instructions; and
- (e) such other documents or information as may be specified in administrative instructions or as the Maritime Administrator may reasonably require.

**Entry of particulars of Government ship in the Register.**

58. When the requirements of this Part preliminary to registration have been complied with in relation to a Government ship, the Maritime Administrator shall enter in the Register the following particulars relating to the ship–

- (a) the name of the ship;
- (b) such of the details specified in the certificate of survey as the Maritime Administrator considers essential for the purposes of registration;
- (c) the particulars of the ship's origin as stated in the application for registration; and
- (d) the Government as owner of the ship.

**Certificate of registry of Government ship.**

59. Upon the registration of a Government ship under section 58, the Maritime Administrator shall grant a Certificate of Registry, in the specified form.

## **Retention of documents relating to Government ship.**

60. Upon the registration of a Government ship under section 58, the Maritime Administrator shall retain in his possession the following documents in respect of the ship—

- (a) the application for registration;
- (b) the certificate of survey;
- (c) the certificate or declaration of marking of the ship; and
- (d) such evidence of title and other documents as are specified in administrative instructions.

## **Transfer of registered Government ship.**

61.(1) For the purposes of registration under this Act, the transfer of a registered Government ship shall be effected by a bill of sale.

- (2) The bill of sale shall—
  - (a) be in the specified form;
  - (b) show the Government as a transferor; and
  - (c) be signed on behalf of the transferor by the Chief Secretary.

## **Application of Act to Government ships.**

62.(1) In addition to the provisions of this Part, the provisions of this Act shall apply to a Government ship to the prescribed extent.

(2) Except as provided by subsection (1), this Act shall not apply to Government ships.

(3) Nothing in this Act shall make the Government liable to prosecution for an offence in relation to a Government ship.

## **PART VIII.**

### **SHIP REGISTRATION TRANSITIONAL PROVISIONS.**

## **Interpretation of Part VIII.**

63. In this Part—

“Acts” means the Acts of Parliament which may be cited as the Merchant Shipping Acts 1894-1988 and any Acts repealing or amending the same as applied in or extended to Gibraltar immediately before the commencement date;

“Merchant Shipping Act” means the Merchant Shipping Act in effect immediately before the commencement date.

**Ships registered before the commencement date.**

64.(1) Every ship that was, immediately before the commencement date, registered in Gibraltar under the Acts or the Merchant Shipping Act or both, shall be deemed on and from that date to be registered under this Act.

(2) Where no entry has been made or deemed to have been made on the Register of Pleasure Yachts in exercise of the provisions of subsection (3), any entry or record that, immediately before the commencement date, appeared in the Register kept in Gibraltar under the Acts or the Merchant Shipping Act or both in relation to a ship referred to in subsection (1), shall be deemed to be an entry or record in the Register kept under section 6(1)(a) in relation to that ship and to have been made on the date on which, and at the time when, it was made under the Acts and the Merchant Shipping Act.

(3) An entry or record that, immediately before the commencement date, appeared in the register kept in Gibraltar under the Acts and the Merchant Shipping Act in relation to a ship referred to in subsection (1), may if—

- (a) the ship complies with the provisions of this Act in respect of pleasure yachts; and
- (b) the owner of that ship shall so request;

be deemed to be an entry or record in the Register of Pleasure Yachts kept under section 38 in relation to that ship and to have been made on the date on which, and at the time when, it was made under the Acts or the Merchant Shipping Act or both.

(4) Any—

- (a) mortgage or other instrument relating to a ship referred to in subsection (1) made and recorded in accordance with the Acts or the Merchant Shipping Act or both and in force immediately before the commencement date; and
- (b) endorsement, memorandum or other note made in accordance with the Acts and the Merchant Shipping Act on any such

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mortgage or other instrument and in force immediately before the commencement date,

has effect on and after that date as if it had been made in accordance with the corresponding provision (if any) of this Act.

## **Ships not yet registered under the Acts and Merchant Shipping Act.**

65.(1) Where in relation to a ship—

- (a) an application for registration of the ship in Gibraltar under the Acts and Merchant Shipping Act was made before the commencement date and, immediately before that date was not yet determined; and
- (b) the requirement of the Acts and Merchant Shipping Act preliminary to such registration have been complied with,

then—

- (i) the application shall be deemed to be an application for registration of the ship under this Act;
- (ii) the ship shall be deemed to be registrable; and
- (iii) the requirement of this Act preliminary to registration shall be deemed to have been complied with,

and the ship may be registered on the Register or Register of Pleasure Yachts as the owner shall determine and as the provisions of this Act permit.

(2) Nothing in subsection (1) shall affect any liability to pay any fee or charge pursuant to regulations made under section 38 or 86.

## **Entry of particulars in respect of ships in this Part.**

66.(1) The Maritime Administrator shall enter in the Register or in the Register of Pleasure Yachts, as the case may be, the following particulars relating to a ship deemed to be registered under section 64—

- (a) the name of the ship;
- (b) such of the details of the ship recorded in the register kept under the Acts and the Merchant Shipping Act as the Maritime Administrator considers essential for the purposes of registration;

- (c) the particulars of the ship's origin as recorded in the register kept under the Acts and Merchant Shipping Act; and
- (d) the name, address and description of each owner and a statement of the number of shares in the ship owned by each.

(2) The Maritime Administrator shall enter in the Register or in the Register of Pleasure Yachts, as the case may be, the following particulars relating to a ship to which section 65 applies–

- (a) the name of the ship;
- (b) such of the details specified in the surveyor's certificate issued under the Acts and Merchant Shipping Act as the Maritime Administrator considers essential for the purposes of registration;
- (c) the particulars of the ship's origin as stated in the declaration of ownership made under the Acts and Merchant Shipping Act; and
- (d) the name, address and description of each owner and a statement of the number of shares in the ship owned by each.

**Certificate of registry for ships in this Part.**

67.(1) Upon the entry in the register of particulars of a ship under section 66, the Maritime Administrator shall grant a Certificate of Registry or Certificate of Registry of Pleasure Yachts, as the case may be, in the specified form, containing those particulars.

(2) Until such time as a Certificate of Registry or Certificate of Registry of Pleasure Yachts is granted under this section in respect of a ship to which section 64 applies, the Certificate of Registry granted under the Acts and Merchant Shipping Act in respect of the ship shall for the purposes of this Act be treated as a Certificate of Registry or Certificate of Registry of Pleasure Yachts, as the case may be, granted under this section.

**Retention of documents for ships in this Part.**

68. Upon the entry in the Register or Register of Pleasure Yachts, as the case may be, of particulars of a ship under section 66, the Maritime Administrator shall retain in his possession in respect of the ship–

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- (a) the surveyor's certificate granted under the Acts and Merchant Shipping Act;
- (b) the builder's certificate, bill of sale in favour of the owner or court order vesting title to the ship in the owner, as the case may be; and
- (c) all declarations of ownership made under the Acts and Merchant Shipping Act.

## **Return of certificates issued under the Acts or Merchant Shipping Act.**

69. Upon grant of a Certificate of Registry or Certificate of Registry for Pleasure Yachts, as the case may be, under section 67 in respect of a ship referred to in section 64(1), the owner or master of the ship shall deliver the certificate of registry issued under the Acts and Merchant Shipping Act in respect of the ship, or cause such certificate to be delivered, to the Maritime Administrator—

- (a) immediately if the ship is in Gibraltar; or
- (b) if the ship is not in Gibraltar, as soon as practicable and in any case within a period of 30 days after the grant of the Certificate of Registry or Certificate of Registry for Pleasure Yachts, as the case may be, under section 67.

## **Application of Act to ships in this Part.**

70. In addition to the provisions of this Part, and except as prescribed, the provisions of this Act shall apply to a ship or to a pleasure yacht, as the case may be, registered or deemed to be registered under this Part as if the ship or pleasure yacht had been registered under Part III or Part IV, as the case may be.

## **PART IX.** DECLARATIONS, PROVISION OF INFORMATION, FEES, ETC.

### **Power of Maritime Administrator to dispense with evidence.**

71. When under this Act any person is required to make a declaration on behalf of himself or any corporation or other legal entity, or any evidence is required to be produced to the Maritime Administrator or person properly appointed by him and it is shown to the satisfaction of the Maritime Administrator or that person that for any reasonable cause the declaration cannot be made, or that the evidence cannot be produced, the Maritime

Administrator or other appointed or authorised person, on the production of such other evidence and subject to such terms as he may see fit, may dispense with the declaration or evidence.

**Furnishing information.**

72.(1) The Maritime Administrator may accept a document being a true facsimile of any property executed document or instrument required by this Act or any regulation to be recorded outside of Gibraltar by a person properly appointed or authorised for this purpose including but not limited to bills of sale, mortgages and related instruments, and when in proper form, such a facsimile document or instrument may be accepted for the purpose of registration or recording, in the same manner as an executed original document or instrument, and such registration or recording shall be valid in accordance with the provisions of this Act where the original of the electronically transmitted facsimile to be registered or recorded—

- (a) is duly acknowledged in proper form; and
- (b) is submitted to the Maritime Administrator in original form, with the required number of counterparts, within sixty days of the date of the registration or recording.

(2) Any person who for the purposes of securing registration of a ship knowingly or recklessly furnishes information which is false in a material particular shall be guilty of an offence and liable on summary conviction to a fine at level 5 on the standard scale.

**Proof of attestation not required.**

73. When any document is required by this Act to be executed in the presence of or to be attested by any witness or witnesses, that document may be proved by calling the evidence of any person who is able to bear witness to the requisite fact without calling the attesting witness or the attesting witnesses or any of them.

**Admissibility of documents and evidence.**

74.(1) Where a document is by this Act declared to be admissible in evidence, such document shall, on its production from the proper custody, be admissible in evidence in any court or before any person having by law or consent of parties authority to receive evidence, and subject to all just exceptions, shall be evidence of the matter stated therein.

(2) A copy of any such document or extracts therefrom shall also be so admissible in evidence if proved to be an examined copy or extract or if it



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purports to be signed and certified as a true copy or extract by the person to whose custody the original document was entrusted.

## **Service of documents.**

75. Where for the purpose of this Act any document is to be served on any person that document may be served—

- (a) in any case by delivering a copy thereof personally to the person to be served, or by leaving the same at his place of abode or at the registered office of a body corporate or legal entity;
- (b) if the document to be served on the master of the ship, where there is one, or on a person belonging to a ship, by leaving the same for him on board such ship with a person being or appearing to be in command or charge of the ship;
- (c) if the document is to be served on the master of the ship, where there is no master, or registered agent of the ship, or where no such agent can be found, by affixing a copy thereof to the mast of the ship;
- (d) in the case of any notice authorised or required to be given to the Maritime Administrator, a person properly appointed or authorised by him, a surveyor or an inspector, by delivering it to that person or by leaving it at, or by sending it by post to, the office of that person.

## **Consular authentication not required.**

76.(1) The Maritime Administrator shall not require that any document submitted in connection with the registration of a ship, or the registration or recording of or filing of any document, or the formation of a body corporate or legal entity owning a registered ship, be presented to, authenticated or legalised by a Consular Official, at a locality or port outside of Gibraltar.

(2) No log book, manifest, crew articles or other document used or issued in connection with the internal economy, operation or management of a registered ship shall be subject to presentation, review or authentication by a Consular Official.

(3) No impost, charge, fee or tax imposed against a registered ship, or its master, owner or registered agent by a Consul or other official of the Government, in Gibraltar or in a locality or port outside of Gibraltar, shall be lawful unless specifically authorised by the laws and regulations of

Gibraltar, and if such charge is found to be unauthorised, the said official may without limitation be subject to surcharge in the amount thereof.

**Enforcing detention of the ship.**

77.(1) Where under this Act a ship is to be or may be detained, the Maritime Administrator or person properly appointed or authorised by him may detain the ship, and if the ship after detention or after service on the master of any notice of or order for detention proceeds to sea before it is released by the Maritime Administrator, the master of the ship and the owner, and any person who sends the ship to sea, if that owner or person is party or privy to the offence, shall be liable on conviction on indictment to a fine and on summary conviction to a fine not exceeding ten times the amount at level 5 on the standard scale.

(2) Where a ship so proceeding to sea takes to sea when on board thereof in the execution of his duty any person authorised to detain the ship, or any surveyor or officer of the Maritime Administrator, the master and owner of the ship shall be liable to pay all expenses of and incidental to the officer or surveyor being taken to sea and also on conviction on indictment to a fine, or on summary conviction to a fine not exceeding level 5 on the standard scale.

**Suspension of registration.**

78.(1) Where under any of the provisions of this Act the registration of a ship is suspended, the person by whom the suspension is made shall give to, or cause to be served on, the master of the ship a written notice of the suspension, and thereupon the ship shall not proceed to sea and the master shall forthwith deliver up the certificate of registry to the person by whom it was suspended or, if such person be not immediately available, to a person properly appointed or authorised for this purpose by the Maritime Administrator.

(2) In the case of any contravention of this section the master of the ship shall be liable on summary conviction to a fine at level 5 on the standard scale.

**Limitation on time for proceedings.**

79.(1) Neither a conviction for an offence nor an order for payment of money shall be made under this Act in any summary proceedings instituted in Gibraltar, unless that proceeding is commenced within twelve months beginning with the commission of the offence or beginning with the date on which the cause of complaint arises, whichever is the earlier, or, if both or either of the parties to the proceedings happen during that time to be out of

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Gibraltar, unless the same is commenced, in the case of summary conviction within two months, and in the case of the summary order within six months, beginning with the date they both first happen to arrive, or to be at one time, within Gibraltar and, in the case of summary conviction, before the expiration of three years beginning with the date on which the offence was committed.

(2) Neither a conviction for an offence nor an order for payment of money shall be made under this Act in any summary proceedings instituted elsewhere, unless that proceeding is commenced within six months after the commission of the offence or after the cause of complaint arises, as the case may be, or, if both or either of the parties to the proceeding happen during that time not to be within the jurisdiction of any court capable of dealing with the case, unless the same is commenced in the case of the summary conviction within two months, and in the case of the summary order within six months after they both first happen to arrive, and be at one time, within that jurisdiction.

(3) No law for the time being in force under any Act or otherwise, which limits the time within which summary proceedings may be instituted shall affect any summary proceedings under this Act.

## **Provision as to jurisdiction in case of offences.**

80.(1) For the purpose of giving jurisdiction under this Act, every offence shall be deemed to have been committed and every cause of complaint to have arisen in Gibraltar.

(2) Where in any proceedings under this Act a question arises whether any ship or person is or is not governed by the provisions of this Act, that ship or person shall be deemed to be within those provisions unless the contrary is proved.

## **Immunity from civil liability.**

81. Neither the Maritime Administrator nor any person who is, or is acting as, an officer or agent of the Maritime Administrator nor a person appointed or designated in accordance with section 3, shall be liable to damages or otherwise for any loss occurring to any person by reason of any acts done or omitted by him in his character of Maritime Administrator, unless it is shown that the act or omission was in bad faith.

## **Form of documents.**

82.(1) The Maritime Administrator shall not be required to receive and enter in the register any bill of sale, mortgage or other instrument which is

made in any form other than that for the time being specified under the provisions of this Act.

(2) Where the Maritime Administrator intends to alter any specified form, he shall, before so altering the forms give such notice thereof as may be necessary in order to prevent inconvenience.

(3) The Maritime Administrator shall cause specified forms to be readily available to persons requiring to use the same.

#### **Forfeiture of ships.**

83. Where any ship has either wholly or to any share therein become subject to forfeiture under this Act, the Maritime Administrator or a person properly appointed or authorised by him, may seize and detain the ship, and bring that ship for adjudication before the Supreme Court, and the Court may thereupon adjudge the ship with her tackle, apparel and apparatus to be forfeited to the Government, and make such order in the case as to the Court seems just, and may award to the Maritime Administrator such portion of the proceeds of the sale of the ship, or any share therein as the court thinks fit.

#### **Recovery of fines.**

84. All fines and forfeitures under the provisions of this Act shall be sued for by the Maritime Administrator, a person properly appointed or authorised by him or by the Attorney General.

#### **Responsibility of owner.**

85. In the absence of any agreement to the contrary, the owner or the bareboat charterer, as the case may be, of the ship shall be the person ultimately responsible as between himself and the other persons by this Act made liable in respect of any default in complying with any requirement thereof.

#### **Regulations.**

86. The Government may from time to time make regulations for all or any of the following purposes—

- (a) prescribing fees and tonnage taxes and charges that shall be payable under this Act and to whom they shall be payable and providing penalties for non-payment or late payment of fees;

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- (b) to give effect in Gibraltar to the law of the European Community or to any provision of a relevant International Agreement or Convention ratified by the United Kingdom and the application of which has been extended to Gibraltar, relating to any of the matters contained in or dealt with under this Act and regulations made under this paragraph may make provision for the repeal or variation of any provision of the Act where such provision is—
  - (i) in conflict with;
  - (ii) made unclear by;
  - (iii) rendered unnecessary by,  
  
a regulation made hereunder, and this power shall include the power to provide for the provision to come into force although the law, Agreement or Convention, as the case may be, has not yet come into force;
- (c) providing that any contravention of a regulation made under this section shall be an offence and providing for a maximum penalty not exceeding imprisonment for three months or a fine at level 5 on the standard scale, or both, on summary conviction for any such offence;
- (d) precluding notice of any trust being entered in a register or being receivable by the Maritime Administrator except in respect of prescribed classes or descriptions of ships or in specified circumstances;
- (e) the extension of any provisions to places outside Gibraltar;
- (f) prescribing anything which under the Act may be prescribed;
- (g) amending, varying or adding to the Schedules;
- (h) providing for such other matters as are reasonably necessary for or incidental to the due administration of this Act.

## **Offences and penalties.**

87.(1) A failure to comply with—

- (a) instructions made under section 9;

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- (b) the requirements of subsection (1), (2) or (3) of section 10 or of regulations made under subsection (4) of that section;
- (c) the requirements of section 26(2);
- (d) the requirements of section 30(2);
- (e) in the case of a master or an owner, the requirements of section 69,

shall be an offence punishable on summary conviction by a fine not exceeding level 4 on the standard scale.

(2) In the event of a failure to comply with section 15(1) the owner or bareboat charterer, as the case may be, shall be guilty of an offence punishable on summary conviction by a fine at level 4 on the standard scale and shall be liable to a daily penalty of one quarter of the amount at level 4 of the standard scale in respect of each day which the notice required to be given by that section is late.

(3) If any person uses or permits another person to use the proper colours of Gibraltar on board a ship not registered in Gibraltar for the purpose of making that ship appear to be a ship of Gibraltar, he shall be guilty of an offence and liable on summary conviction to a fine at level 5 on the standard scale, and in any proceedings under this subsection, the burden of proving the right to use the proper colours and assume the character of a ship of Gibraltar shall be on the person using and assuming the same.

(4) Where an offence under this Act or under regulations or instructions made under any of its provisions, which has been committed by a body corporate is shown to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a director, manager, secretary or other similar officer of the body corporate or any person who is purporting to act in such capacity, he as well as the body corporate, shall be guilty of that offence and liable to be proceeded against accordingly.

(5) Where the affairs of a body corporate are managed by its members, subsection (4) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(6) The Maritime Administrator may in his discretion stay or compound any proceedings for an offence under this Act.

#### **Repeals and revocations.**

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88.(1) Sections 204A to 204I inclusive, 222A and Table A, Part I, Table C, insofar as it deals with documents relating to registration, and Tables D, E, F and N of Schedule 1 of the Merchant Shipping Act are repealed.

(2) Where any matters dealt with by this Act and, in the absence of a provision in the Merchant Shipping Act dealing with such matters, are subject to the provisions of the Merchant Shipping Acts 1894 to 1988, those provisions are repealed.

(3) The Merchant Shipping (Excluded Registration) Order 1987 is revoked.

(4) The Merchant Shipping (Tonnage) Overseas Territories Order 1971 shall cease to have effect in respect of ships registered under this Act.

(5) The provisions of subordinate legislation made under the Merchant Shipping Acts 1894 to 1988 shall, so far as they contain provisions relating to the registration of ships, cease to have effect in respect of ships registered under this Act.

**SCHEDULE 1**

Section 23

**PROPER COLOURS**

The proper colours of a registered ship and of a registered pleasure yacht shall be the Red Ensign with the Armorial Bearings of Gibraltar except where a registered pleasure yacht is entitled to fly the Blue Ensign, in which case in respect of such yacht the proper colours shall be the Blue Ensign defaced as required by the Royal Warrant by which that entitlement is authorised.



## SCHEDULE 2

Section 2

### FOREIGN MARITIME ENTITIES

#### 1. Method of registration.

(1) A foreign entity whose indenture or instrument of trust, charter or articles of incorporation, agreement of partnership or other document recognised by the foreign State of its creation as the basis of its existence, directly or by force of law of the State of creation provides the power to own or operate ships, and confers or recognises the capacity under the law of the State of creation to sue and be sued in the name of the entity or its lawful fiduciary or legal representative (the burden of proving which shall be on the applicant for registration), may apply to the Maritime Administrator to be registered as a foreign maritime entity.

(2) The application under sub-paragraph (1) shall be made by a person authorised by the entity, and the authority of that person shall be in writing.

(3) The application under sub-paragraph (1) shall state—

- (a) the name of the entity;
- (b) the legal character or nature of the entity;
- (c) the jurisdiction and date of its creation;
- (d) whether the entity has the power to own or operate a ship;
- (e) whether the entity has the capacity to sue and be sued in its own name or, if not, in the name of its lawful fiduciary or legal representative;
- (f) the address of the principal place of business of the entity and, if such place is not in the jurisdiction of the creation of the entity, either the address of its place of business or the name and address of its lawful fiduciary or legal representative within the jurisdiction of the creation of the entity;
- (g) the name and address within Gibraltar of the representative person; and
- (h) the date of the application.

(4) The Maritime Administrator shall, as a condition to registering the foreign maritime entity, require a copy of the document creating the legal existence of the entity to be registered.

(5) Each application and any other document required or allowed to be registered under this Schedule shall be executed in accordance with the provisions of paragraph 2.

(6) Upon the registration of the application, the Maritime Administrator shall issue a certificate certifying that the foreign maritime entity has been registered on the Register of Foreign Maritime Entities.

(7) A certificate of the registration of a foreign maritime entity issued by the Maritime Administrator is *prima facie* evidence of compliance with all the requirements of this Act in respect of registration of the foreign maritime entity.

(8) The Maritime Administrator shall refuse to register the application for registration of a foreign maritime entity unless he is satisfied that all requirements of this Schedule in respect of registration have been complied with.

## 2. Registration of Instruments.

(1) Where for the purposes of paragraph 1 an instrument is required to be registered, such instrument shall be—

- (a) registered with the Maritime Administrator and the registration shall comply with the provisions of this paragraph;
- (b) in the English language, except that the name may be in another language if written in English letters or characters:

Provided that where an instrument required to be registered is not in the English language it shall be accompanied by a certified translation into the English language and that translation shall be registered;

- (c) signed by an officer of the entity or by a person authorised to sign on behalf of that entity and such signature shall appear over the printed name and title of the signatory:

Provided that any signature on any instrument required or permitted to be registered under this Schedule may be a facsimile.

(2) The original signed instrument shall be delivered to the Maritime Administrator together with prescribed fees.

(3) Wherever under any provision of this Schedule an instrument is required to be executed such requirement shall be satisfied by either—

- (a) the signature, in the form required by sub-paragraph (1)(c), of the officer or person authorised to sign on behalf of the entity together with a declaration, by that person that the instrument is his act and deed or the act and deed of the entity, as the case may be, and that the facts stated in the instrument are true; or
- (b) a declaration, in accordance with sub-paragraph (a) by the person, or by one of the persons, who has signed the instrument, made before and witnessed by a person authorised for that purpose in the jurisdiction in which the declaration is made, or authorised by the Maritime Administrator for that purpose, and the declaration—
  - (i) shall form part of the instrument, and
  - (ii) unless the parties to the instrument shall so require, need not be under seal.

(4) Any error on the face of the instrument or defect in the execution thereof may be remedied by registering an instrument, executed in the manner in which the original instrument was executed, specifying the error or defect to be corrected and, in the case of an error on the face of the instrument, setting forth the relevant part of the instrument in correct form and the correction so registered shall be deemed to have taken effect on the date on which the original instrument was registered.

### **3. Powers granted on registration.**

A registered foreign maritime entity shall have the power—

- (a) to own and operate ships registered under the laws of Gibraltar;
- (b) to do all things necessary for the conduct of the business of ownership and operation of ships so registered and, for that purpose, to have one or more offices in Gibraltar and to hold, purchase, lease, mortgage and convey real and personal property.

### **4. Subsequent change of business address etc.**

(1) The representative person of a foreign maritime entity shall give notice in writing to the Maritime Administrator of any change in any of the matters specified in paragraph 3 and shall provide to the Maritime Administrator details of any change which affects the legal nature, the jurisdiction or creation, the power to own or operate a ship, or the ability to sue and be sued of the foreign maritime entity and such notice shall comply with the provisions of paragraph 2.

(2) The representative person shall at the time of giving notice in accordance with sub-paragraph (1) provide to the Maritime Administrator a certified translation into English of any documents required by that sub-paragraph and which are not in the English language.

(3) When a registered foreign maritime entity is dissolved or its authority or existence is otherwise terminated or cancelled in the jurisdiction of its creation or when such foreign maritime entity is merged into or consolidated with another foreign maritime entity, a copy of the certificate from the competent authority in the jurisdiction of creation of such foreign maritime entity, which certificate attests to the occurrence of any such event, or a copy of an order or decree of a court of such jurisdiction directing the dissolution of such foreign entity, or the termination of its existence shall be delivered to the Maritime Administrator who shall register such document.

(4) Where the Maritime Administrator has received an application under sub-paragraph (1) or a certificate under sub-paragraph (3) in respect of a foreign maritime entity which is the owner of a registered ship, the Maritime Administrator shall give notice of that fact to any mortgagee whose interest in the ship is recorded on the registration of that ship and the Maritime Administrator shall not then for a period of 90 days after the service of the notice on the mortgagee deregister the entity.

(5) Where a record provided for in paragraph 6(2) has been made on the Register of Foreign Maritime Entities in respect of an entity, the provisions of sub-paragraph (4) shall apply in respect of the giving of notice to the mortgagee whose interest has been so recorded, and the entity shall not be deregistered for a period of 90 days from the date on which notice was served on such mortgagee by the Maritime Administrator.

(6) The Maritime Administrator, on receipt of the application to deregister or the certificate provided for in sub-paragraph (3) or, in circumstances where the provisions of sub-paragraph (4) or (5) apply, after the expiry of the 90 day period without the application having been withdrawn, shall deregister the entity and from that date—

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- (a) the registration of the entity as a foreign maritime entity will cease;
- (b) the entity ceases to be a qualified person.

(7) Paragraph 5(3) shall apply to an entity the registration of which as a foreign maritime entity has ceased under this paragraph, with the substitution of deregistration for striking off.

(8) Service of notice of process in any action, suit or proceeding based upon any course of action which arose in Gibraltar during the period the foreign maritime entity was registered may after deregistration be made upon that entity by service on the Maritime Administrator.

## **5. Striking off of registration of Foreign Maritime Entity.**

(1) Where a foreign maritime entity registered under this Schedule has not paid such annual fees as may be due, and a period of 9 months has elapsed from the date on which such fee was due, or the entity no longer has a representative person or no longer satisfies the requirements prescribed for registration of an entity under this Schedule, the Maritime Administrator shall give notice to the entity that the name of the entity will be struck off the Register of Foreign Maritime Entities if the entity fails to remedy the default specified in the notice within the period of 90 days immediately following the date of service of the notice, and that notice together with the date of service shall be recorded in the entry in the Register of Foreign Maritime Entities in respect of that entity.

(2) If an entity on which a notice has been served in accordance with sub-paragraph (1) fails to remedy the defect in the prescribed time, then, subject to the provisions of paragraph 6, the Maritime Administrator may strike the name of the entity off the Register of Foreign Maritime Entities and if the Maritime Administrator strikes the name off, the entity ceases to be a foreign maritime entity for the purposes of the Act.

(3) An entity, the name of which has been struck off the Register of Foreign Maritime Entities in accordance with sub-paragraph (2) remains liable for all claims, debts, liabilities and obligations of the entity and the striking off shall not affect the liability of any of its members, directors, officers, agents or representatives in respect of the activities of the entity.

(4) An entity, the name of which has been struck off the Register of Foreign Maritime Entities, at the date of striking off ceases to be a qualified person.

## **6. Notice to ship mortgagee of striking off.**

(1) Where an entity registered under this Schedule is the owner of a registered ship, the Maritime Administrator shall, where the entity has failed to remedy a defect specified in the notice served on the entity under paragraph 5(1) and the Maritime Administrator proposes to strike the entity off the Register of Foreign Maritime Entities, give notice of that intention to any mortgagees whose interest in the ship is recorded on the registration of that ship, and the Maritime Administrator shall not then for a period of 90 days after the service of such notice on the mortgagee strike the name of the entity off the Register of Foreign Maritime Entities.

(2) Where an entity registered under this Schedule is the owner of a ship registered in a registry outside of Gibraltar, any mortgagee of such ship may, upon the payment of the prescribed fee, cause a record to be made on the entry in the Register of Foreign Maritime Entities in respect of that entity of the mortgagee's interest in the ship, and such record shall include the name of the mortgagee, the name and place of registration of the ship and the name and address of a representative of the mortgagee to whom notice may be given of an intention to strike the entity off the Register of Foreign Maritime Entities.

(3) Where a record provided for in sub-paragraph (2) has been made on the Register of Foreign Maritime Entities in respect of an entity, the provisions of sub-paragraph (1) shall apply in respect of the giving of notice to the mortgagee whose interest has been so recorded and the entity shall not be struck off the Register of Foreign Maritime Entities for a period of 90 days from the date on which notice was served on such mortgagee by the Maritime Administrator.

(4) For the purposes of this paragraph and paragraph 7, notice shall be presumed to have been served on the date on which such notice was sent by post to the address—

- (a) in the case of the mortgagee of a ship registered in Gibraltar, shown as the address of the mortgagee in the record of the mortgage recorded in the entry on the register in respect of that ship;
- (b) in the case of the mortgagee of a ship registered on a registry outside of Gibraltar, shown in the record on the entry in the Register of Foreign Maritime Entities in respect of the entity.

#### **7. Deregistration of Foreign Maritime Entity.**

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(1) A foreign maritime entity registered under this Schedule may deregister by lodging with the Maritime Administrator an application which shall specify–

- (a) the name of the entity and the jurisdiction of its creation;
- (b) the date it was registered as a foreign maritime entity in Gibraltar;
- (c) a declaration that–
  - (i) the entity surrenders the powers of a foreign maritime entity;
  - (ii) the entity will, with effect from the date of deregistration, revoke the authority of its representative person in Gibraltar to accept service of notice of process and consents that such service in any action, suit, or proceeding based upon any cause of action arising in Gibraltar during the period the entity was registered in Gibraltar may thereafter be made on it by service on the Maritime Administrator;
  - (iii) a postal address to which the Maritime Administrator may send by post a copy of any notice of process in respect of the entity that may be served on him.

(2) The application under sub-paragraph (1) shall be made in the prescribed form and shall be executed in accordance with paragraph 2, and if the entity is in the hands of a receiver, liquidator or trustee in bankruptcy, it may be executed on behalf of the entity by such receiver, liquidator or trustee.

## 8. Register and index.

(1) The Maritime Administrator shall keep a register of Foreign Maritime Entities registered under this Schedule and the provisions of section 4 shall apply *mutatis mutandis* to that register.

(2) The Maritime Administrator shall keep in alphabetical form an index of the names of foreign maritime entities registered under this Schedule and such index shall be in addition to the register kept by virtue of sub-paragraph (1).