



I assent,

GEORGE TUPOU V,

13th February, 2009.

AN ACT

TO MAKE PROVISIONS WITH RESPECT TO THE JURISDICTION IN ADMIRALTY OF THE SUPREME COURT OF THE KINGDOM OF TONGA

BE IT ENACTED by the King and the Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

1. Short Title and Commencement

- (1) This Act may be cited as the Admiralty Act 2008.
- (2) This Act Shall come into force on a date to be proclaimed by His Majesty in Council.

2. Interpretation

In this Act, unless the context otherwise requires -

"Collision Regulations" has the same meaning as in the Shipping Act (Cap 136);

"Court" means the Supreme Court;

"goods" include baggage;

"hovercraft" means a form of transport which is designed to be supported when in motion wholly or partly by air expelled from it to form a cushion of which the boundaries include the ground, water, or any other surface beneath it;

"maritime lien" means claims within the meaning of Article 2 of the International Convention for the Unification of Certain Rules of Law Relating to Maritime Liens (Brussels, April 1926), which is set forth in the Schedule annexed to this Act;

"master" in relation to any ship, means any person (except a pilot) having command or charge of the ship;

"Tongan water" means—

- (a) the internal waters of Tonga;
- (b) the territorial sea of Tonga;
- (c) the contiguous waters of Tonga;
- (d) the waters of the Exclusive Economic Zone of Tonga; or, if Tonga has not established such a zone, the area Tonga would be entitled to establish as its Exclusive Economic Zone;

"ship" includes any description of vessel used in navigation; and includes an hovercraft and any aircraft while afloat; and

"Supreme Court" means the Supreme Court of Tonga and any Court hearing an appeal from the Supreme Court.

3. Admiralty Jurisdiction of the Supreme Court

- (1) The Supreme Court shall have exclusive admiralty jurisdiction.
- (2) In exercising the jurisdiction conferred by this Act, the Court may exercise at the same time any of its other civil jurisdictions, whether statutory or otherwise, and all powers incidental thereto, except to the extent inconsistent with admiralty law and practice.

4. Extent of admiralty jurisdiction

- (1) For the purposes of subsection (3)(f) the term "wrongful act, neglect or defect" means an act, neglect or default in the navigation or management of the ship; in the loading, carriage or discharge of goods on, in, or from the ship; or in the embarkation, carriage or disembarkation of persons on, in or from the ship.
- (2) The Admiralty jurisdiction of the Supreme Court shall be as follows, namely –
 - (a) jurisdiction to hear and determine any of the questions and claims mentioned in subsection (3);
 - (b) jurisdiction in relation to any of the proceedings mentioned in subsection (3); and
 - (c) any jurisdiction connected with ships which is vested in the Supreme Court apart from this section.

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- (3) The questions and claims referred to in subsection (2)(a) are any –
- (a) claims to the possession or ownership of a ship or to the ownership of any share therein;
 - (b) question arising between the co-owners of a ship as to possession, employment, or earnings of that ship;
 - (c) claim in respect of a mortgage of or charge on a ship or any share therein;
 - (d) claim for damage done by a ship;
 - (e) claim for damage received by a ship;
 - (f) claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or in consequence of the wrongful act, neglect or default of –
 - (i) the owners, charterers or persons in possession or control of a ship; or
 - (ii) the master or crew of a ship or any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible;
 - (g) claim for loss of or damage to goods carried in a ship;
 - (h) claim arising out of any agreement relating to the carriage of goods in a ship or to the charter, use or hire of a ship;
 - (i) claim in the nature of salvage;
 - (j) claim in the nature of towage in respect of a ship;
 - (k) claim in the nature of pilotage in respect of a ship;
 - (l) claim in respect of goods, materials, or services (including stevedoring and lighterage services) supplied to or to be supplied to a ship for her operation or maintenance;
 - (m) claim in respect of the construction, repair, or equipment of a ship or in respect of dock or port or harbour charges or dues;
 - (n) claim by a master or member of the crew of a ship for wages, (including any sum allotted out of wages or adjudged to be due by way of wages);
 - (o) claim by a master, shipper, charterer, or agent in respect of disbursements made on account of a ship;
 - (p) claim arising out of bottomry or respondentia;

- (q) claim arising out of an act which is or is claimed to be a general average act;
 - (r) claim for the forfeiture of condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of Admiralty;
 - (s) claim arising out of the sale or purchase of a ship.
- (4) In addition to the jurisdiction specified in subsection (3), the Court shall continue to have any other admiralty jurisdiction which was vested in it immediately before the commencement of this Act, whether at Common Law or under Statute.
- (5) The jurisdiction of the Court under subsection (3)(b) includes powers to -
- (a) settle any account outstanding and unsettled between the parties in relation to the ship;
 - (b) direct that the ship, or any share thereof, shall be sold;
 - (c) make such other order as the Court thinks fit.
- (6) The preceding provisions of this section apply –
- (a) in relation to all ships, whether Tongan ships or not, and whether registered or not, and wherever the nationality or residence or domicile of their owners may be;
 - (b) in relation to all claims, wheresoever arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land):
 - (c) so far as they relate to mortgages and charges, to all mortgages or charges, whether registered or not, and whether legal or equitable, and whether fixed or floating, including mortgages and charges created under foreign law:
- Provided that nothing in this subsection shall be construed as extending the cases in which money or property is recoverable under any of the provisions of the Shipping Act.

5. Actions in Personam

Subject to section 7, an action in personam may be brought in the Supreme Court in all cases within the Admiralty jurisdiction of that Court.

6. Actions in Rem

- (1) In any case in which there is a maritime lien or other charge on any ship or other property for the amount claimed, an action in rem may be brought in the Supreme Court against that ship or property.
- (2) In addition to the rights conferred by subsection (1) the admiralty jurisdiction of the Court may be invoked by an action in rem in respect of all questions and claims specified in section 4(3),

Provided that –

- (a) in the case of any such claim as is specified in paragraphs (a), (b), (c), (q) and (s) of section 4(2), the admiralty jurisdiction in rem may be invoked against only the particular ship or property in respect of which the questions or claims arose:
- (b) in the case of any such claim as in specified in paragraphs (d) to (p) and (r) of section 4 (2) where –
 - (i) the claim arises in connection with a ship; and
 - (ii) the person who would be liable in an action in personam (“the relevant person”) was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship,
- (c) an action in rem may be brought in the Court against –
 - (i) that ship if, at the time when the action is brought, it is beneficially owned in respect of all the shares therein by, or is on charter by demise to, the relevant person; or
 - (ii) any other ship which, at the time when the action is brought, it is beneficially owned in respect of all the shares of that ship, or is on charter by demise to, the relevant person.
- (3) Where in the exercise of its admiralty jurisdiction (whether in rem or in personam) the Court orders any ship or other property to be sold, the Court shall have jurisdiction to hear and determine any question arising as to the title to the proceeds of sale and the ranking of claims to such proceeds.

7. Restrictions on proceedings

- (1) No claim in personam shall lie unless-
 - (i) the defendant ordinarily resides in Tonga or has a place of business within Tonga;
 - (ii) the cause of action arose within Tongan waters; or
 - (iii) an action arising out of the same incident or series of incidents is proceeding in the Court or has been heard and determined in the Court,in respect of damage, loss of life, or personal injury arising out of-
 - (a) a collision between ships;
 - (b) the carrying out of, or omission to carry out, a manoeuvre in the case of one or more of two or more ships;
 - (c) non-compliance on the part of one or more ships with the Collision Regulations.

- (2) No action in personam shall be brought in the Court until any proceedings previously brought by the plaintiff against the defendant in any Court outside Tonga in respect of the same incident or series of incidents have been discontinued or otherwise come to an end.
- (3) This section shall not apply where the defendant in writing submits or has agreed to submit to the jurisdiction of the Court.

8. Action for wages

Nothing in this Act shall be construed as limiting the jurisdiction of the Court to refuse to entertain an action for wages by the master or a member of the crew of a ship, not being a Tongan ship.

9. Act to bind the Crown

This Act shall bind the Crown.

10. Rules of procedure and regulations as to fees

- (1) Subject to the provisions of Order 42 Rule 2 of the Supreme Court Rules, its admiralty jurisdiction may be made in the same manner as is provided in the Constitution for the making of rules for practice and procedure in the Court.
- (2) Any ship arrested or detained in Tongan waters shall not be released from arrest or detention until there has been provided, in a form acceptable to the Court, a Guarantee for the full amount of the claim (plus an additional amount in respect of interest, costs and disbursements) from either a financial institution licensed to engage in banking business in Tonga or the Ship's Protection and Indemnity Club.
- (3) All fees payable under this Act may be prescribed under the Court Fees Act.

11. Transfer of proceedings from or to admiralty jurisdiction

Without prejudice to Section 3(1) the Court may, of its own volition or upon application, at any stage order that any proceedings be transferred from or to the Court in its admiralty jurisdiction.

12. Appeals

The rules relating to appeals to the Court of Appeal against a decision of the Court shall apply with respect to a decision of the Court in its admiralty jurisdiction.

Passed by the Legislative Assembly this 9th day of October, 2008.

SCHEDULE

(Section 2)

Article 2 of the 1926 Brussels Convention

“Article 2

The following give rise to maritime liens on a vessel, on the freight for the voyage during which the claim giving rise to the lien arises, and on the accessories of the vessel and freight accrued since the commencement of the voyage:

- (1) Law costs due to the State, and expenses incurred in the common interest of the creditors in order to preserve the vessel or to procure its sale and the distribution of the proceeds of sale; tonnage dues, light or harbour dues, and other public taxes and charges of the same character; pilotage dues; the cost of watching and preservation from the time of the entry of the vessel into the last port;
- (2) Claims arising out of the contract of engagement of the master, crew, and other persons hired on board;
- (3) Remuneration for assistance and salvage, and the contribution of the vessel in general average;
- (4) Indemnities for collision or other accident of navigation, as also for damage caused to works forming part of harbours, docks, and navigable ways; indemnities for personal injury to passenger or crew; indemnities for loss of or damage to cargo or baggage;
- (5) Claims resulting from contracts entered into or acts done by the master, acting within the scope of his authority, away from the vessel’s home port, where such contracts or acts are necessary for the preservation of the vessel or the continuation of its voyage, whether the master is or is not at the same time owner of the vessel, and whether the claim is his own or that of ship-chandlers, repairers, lenders, or other contractual creditors.”