



ANALYSIS

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|---------------------------------------|---|
| 1. Short Title | 9. Act to bind the Crown |
| 2. Interpretation | 10. Rules of procedure and regulations as to fees |
| 3. Exercise of admiralty jurisdiction | 11. Transfer of proceedings from or to admiralty jurisdiction |
| 4. Extent of admiralty jurisdiction | 12. Repeals and consequential amendments |
| 5. Actions in rem | Schedules |
| 6. Restrictions on proceedings | |
| 7. Actions for wages | |
| 8. Functions and powers of Registrar | |

2004, No. 1

An Act to make provision with respect to the jurisdiction in admiralty of the High Court of the Cook Islands

(1 June 2004)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short Title and commencement - This Act may be cited as the Admiralty Act 2004.
2. Interpretation - In this Act, unless the context otherwise requires -
 - “aircraft” has the same meaning as in the Civil Aviation Act 2002;
 - “Collision Regulations” has the same meaning as in section 2 of the Shipping Act 1998;
 - “Court” means the High Court;

“goods” includes baggage;

“mortgage” means all mortgages, charges, rights of retention or hypothecations whether registered or not, whether legal or equitable, fixed or floating, including mortgages and charges created under the laws of any other country;

“maritime lien”, without derogating from the generality of the term, includes a lien in respect of salvage of property, seamen's wages, and damage;

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

“Cook Islands territorial waters” means all waters within the outer limits of the territorial sea of Cook Islands (as defined in section 3 of the Territorial Sea and Exclusive Economic Zone Act 1977); and includes internal waters and the waters of any lake, river, or stream;

“ship” means any vessel used or capable of being used on the sea or internal waters, or any vessel under construction, and includes any hovercraft, powerboat, yacht, fishing boat, submarine vessel, barge, crane barge, floating crane, oil or other floating rig, floating mooring installation or similar floating installation, fish aggregating device, and whether self propelled or not;

“property” means one or more of the following categories against or in respect of which the claim lies –

- (a) the ship, with or without its equipment, furniture, stores or bunkers;
- (b) the whole or any part of the equipment, furniture, stores or bunkers;
- (c) the whole or any part of the cargo;
- (d) the freight;
- (e) any container, if the claim arises out of or relates to the use of that container in or on a ship or the carriage of goods by sea or by water otherwise in that container.

3. Exercise of admiralty jurisdiction - (1) The admiralty jurisdiction established by this Act, being part of the civil jurisdiction of the Court as conferred by Article 47 of the Constitution, may be exercised by the Court in *rem* and in *personam*; irrespective of where the claim arose, the place of registration of the ship concerned or of the residence, domicile or nationality of the owner.

(2) In exercising the jurisdiction conferred by this Act, the Court may exercise at the same time any of its civil jurisdiction, whether statutory or otherwise, and all powers incidental thereto.

(3) Nothing in this Act shall derogate from any common law or equitable jurisdiction of the Court.

4. Extent of admiralty jurisdiction - (1) The Court shall have jurisdiction in respect of any -

- (a) claim to the possession or ownership of a ship or therein;
- (b) question arising in respect of any agreement for the sale of a ship or share in a ship, or any agreement with regard to the ownership, possession, delivery, employment or earnings of a ship;
- (c) claim in respect of a mortgage, hypothecation, right of retention, pledge or other charge on a ship;
- (d) claim for damage caused by or to a ship, whether by collision or otherwise;
- (e) claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or of the wrongful act, neglect, or default of the owners, charterers, or persons in possession or control of a ship or of the master or crew thereof or of any other person for whose wrongful acts, neglects, or defaults the owners, charterers, or persons in possession or control of a ship are responsible, being 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;
- (f) claim for loss of or damage to goods (including the baggage and personal belongings of the master, officers or seamen of a ship); carried or which ought to have been carried in a ship, whether such claim arises by agreement or otherwise;
- (g) claim arising out of any agreement relating to the carriage of goods in a ship;
- (h) claim arising out of a charter party or the use, hire, employment or operation of a ship, whether such claim arises out of any agreement or otherwise;
- (i) container and any agreement relating to such container;
- (j) claim in the nature of salvage, including claims for services rendered in saving life from a ship or an aircraft or in preserving its cargo, apparel, or wreck pursuant to the provisions of Part X of the Shipping Act 1998 or any maritime rules made in relation to salvage;
- (k) claim in the nature of towage or pilotage in respect of a ship;
- (l) claim in respect of goods, materials, or services (including stevedoring and lighterage services) supplied or to be supplied to a ship for its operation or maintenance, protection or preservation;
- (m) claim in respect of the construction, repair, or equipment of a ship or for dock or port or harbour charges or dues;

- (n) claim arising from the employment of any master, officer or seamen of a ship in connection with or in relation to a ship, including the remuneration of such person and contributions of any such person to any pension fund, provident fund, medical aid fund or the like;
- (o) claim by a master, shipper, charterer, or agent in respect of disbursements made on account of a ship, or the owner or charterer of a ship;
- (p) claim relating to the remuneration of, or payments or disbursements made by, an agent, whether as a ship's agent, clearing and forwarding or other kind of agent; or as a broker in respect of any charter, sale or other agreement relating to a ship or the insurance of a ship; or as solicitor or advisor in respect of any of the above;
- (q) claim arising out of an act which is or is claimed to be a general average act;
- (r) claim for the forfeiture or 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 from the design, construction, repair or equipment of any ship;
- (t) claim arising from marine insurance or any policy of marine insurance, including the protection and indemnity by any body of persons or its members in respect of marine matters;
- (u) claim arising from the forfeiture of any ship or any goods carried therein or the restoration of any ship or any such goods forfeited;
- (v) claim arising from the limitation of liability of the owner of a ship or of any other person entitled to any similar limitation of liability;
- (w) claim relating to any maritime lien, whether or not falling under any of the preceding paragraphs;
- (x) claim arising out of pollution of the sea or the sea-shore by oil or any other substance on or emanating from a ship;
- (y) claim arising out of any judgment or arbitration award relating to a maritime claim, whether given or made in the Cook Islands or elsewhere;
- (z) question concerning any contribution, indemnity or damages with regard to or arising out of any claim in respect of any matter mentioned above or any matter ancillary thereto, including the attachment of property to found or confirm jurisdiction, the giving or release of any security, and the payment of interest.

(2) In addition to the jurisdiction specified in subsection (1), the Court shall continue to have any other admiralty jurisdiction which was vested in it immediately before the commencement of this Act, and when exercising its admiralty jurisdiction shall also have any other jurisdiction connected with ships or which is vested in the Court under any other Act.

(3) The jurisdiction of the Court under subsection (1)(b) includes power to settle any account outstanding and unsettled between the parties in relation to the ship, and to direct that the ship, or any share thereof, shall be sold, and to make such other order as the Court thinks fit.

5. 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, the admiralty jurisdiction of the Court may be invoked by an action in rem against the 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(1) of this Act:

Provided that -

- (a) in questions and claims specified in paragraphs (a), (b) and (c) of section 4(1) of this Act 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 questions and claims specified in paragraphs (d) to (z) of section 4(1) of this Act arising in connection with a ship where the person who would be liable on the claim in an action in personam was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship, the jurisdiction of the Court may (whether the claim gives rise to a maritime lien on the ship or not) be invoked by an action in rem against—
 - (i) that ship if, at the time when the action is brought, it is beneficially owned as respects all the shares therein by, or is on charter by demise to, that person; or
 - (ii) any other ship which, at the time when the action is brought, is beneficially owned or on charter by demise as aforesaid.

(3) Where in the exercise of its admiralty jurisdiction 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.

6. Restrictions on proceedings - (1) No claim *in personam* in respect of damage, loss of life, or personal injury arising out of -

- (a) a collision between ships; or
- (b) a manoeuvre or omission to carry out a manoeuvre by any ship to avoid a collision; or
- (c) non-compliance with the Collision Regulations,—

shall lie unless -

- (d) the defendant ordinarily resides in Cook Islands or has a place of business within the Cook Islands; or
- (e) the cause of action arose within the Cook Islands territorial waters or the Cook Islands' Exclusive Economic Zone; or
- (f) an action arising out of the same incident or series of incidents is proceeding in or has been heard and determined in the Court.

(2) No action in *personam* shall be brought in the Court in the Cook Islands until any proceedings previously brought by the plaintiff against the defendant in any Court outside the Cook Islands 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 submits or has agreed to submit to the jurisdiction of the Court.

7. Actions 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 Cook Islands ship.

8. Functions and powers of Registrar - (1) Every Registrar and Deputy Registrar of the Court shall have and may exercise such functions and powers as are necessary for the purpose of this Act and any rules made hereunder.

(2) The Registrar shall execute, by himself or by his appointed Deputy Registrars or agents, all instruments issued from the Court which are addressed to him, and shall make returns thereof.

9. Act to bind the Crown - Subject to section 28 of the Crown Proceedings Act 1950, relating to the exclusion of actions in rem against the Crown, this Act shall bind the Crown.

10. Rules of procedure and regulations as to fees - (1) Rules for the practice and procedure of the Court in its admiralty jurisdiction may be made in the same manner as is provided in section 102(2) of the Judicature Act 1980-81 for the making of rules for practice and procedure in the Court.

(2) Without derogating from the provisions of subsection (1), rules may be made pursuant to that subsection for consolidation of actions, the appointment of Court experts, or the giving of bail or other security to prevent the arrest of a ship or other res, or to obtain the release of the same after arrest.

(3) The Queen's Representative may from time to time, by Order in Executive Council, prescribe fees payable under this Act.

11. Transfer of proceedings from or to admiralty jurisdiction - The Court may, of its own motion or upon application, at any stage order that any proceedings be transferred from or to the Court in its admiralty jurisdiction.

12. Repeals and consequential amendments - (1) The Acts of the Parliament of England or of the United Kingdom specified in the First Schedule to this Act shall cease to have effect as part of the law of Cook Islands.

(2) The provisions of sections 20 and 21 of the Acts Interpretation Act 1924 shall apply with respect to the Acts specified in the First Schedule to this Act as if they were Acts of the Parliament of the Cook Islands that had been repealed by this Act.

(3) The enactment set out in the Second Schedule to this Act is amended in the manner set out in that Schedule.

This Act is administered by the Ministry of Justice

Section 12(1)**FIRST SCHEDULE****Enactments of the Parliament of England or of the United Kingdom ceasing to have effect as part of the law of Cook Islands**

13 Ric 2, stat 1, c 5	Admiralty jurisdiction.
15 Ric 2, c 3	Admiralty jurisdiction.
8 Geo 1, c 24	The Piracy Act 1721.
9 Geo 4, c 83	The Australian Courts Act 1828.
3 & 4 Vict, c 65	The Admiralty Court Act 1840.
13 & 14 Vict, c 26	The Piracy Act 1850: Sections 2 and 3.
24 & 25 Vict, c 10	The Admiralty Court Act 1861.
39 & 40 Vict, c 59	The Appellate Jurisdiction Act 1876: Section 23.
53 & 54 Vict, c 27	The Colonial Courts of Admiralty Act 1890.

Section 12(2)**SECOND SCHEDULE****Consequential Amendments**

The Shipping Act 1998 is amended by repealing sections 199 to 207.