

No. 2 of 1987.

***Admiralty Act 1987.***

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



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**SCHEDULE 1**

INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

*Admiralty Act 1987,*

Being an Act to make provisions with respect to –

- (a) the Admiralty jurisdiction of the Court; and
- (b) the exercise of that jurisdiction in relation and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice published in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

**PART 1. – PRELIMINARY.**

**1. INTERPRETATION.**

In this Act, unless the contrary intention appears –

“**aircraft**” includes any machine that can derive support in the atmosphere from the reactions of the air;

“**air cushioned vehicle**” means a vehicle which is designed to be supported when in motion wholly or partly by air expelled from the vehicle to form a cushion of which the boundaries include the ground, water or other surface beneath the vehicle;

“**the Collisions Convention**” means the Convention on the International Regulations for Preventing Collisions at Sea 1972, entered into force on 15 July 1977 and given the force of law by Section 58 of the *Merchant Shipping Act 1975*, as affected by any amendment than an amendment not accepted by the State;

“**the Court**” means a court upon which Admiralty jurisdiction is conferred;

“**the Fund**” means the International Fund for Compensation for Oil Pollution Damage established by the International Convention on the Establishment of an International Fund for Compensation for Oil

Pollution Damage 1971, entered into force on 16 October 1978 and given the force of law by Section 31 of the *Prevention of Pollution of the Sea Act 1979*, as affected by any amendment other than an amendment not accepted by the State;

“**goods**” includes baggage;

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

“**master**” in relation to a ship, means the person having lawful command or control of the ship but does not include a pilot;

“**Papua New Guinea aircraft**” means an aircraft registered in Papua New Guinea in accordance with the *Civil Aviation Act 2000*;

“**Papua New Guinea ship**” means a ship that is –

- (a) registered under the *Merchant Shipping Act 1975*; or
- (b) not registered in any other country and is owned by a qualified person;

“**Papua New Guinea waters**” means all navigable waters within the outer limits of the territorial sea of Papua New Guinea and includes the waters of any lake, river or stream;

“**qualified person**” means –

- (a) citizen; or
- (b) a corporation –
  - (i) that is established under, and is subject to, the laws of Papua New Guinea; and
  - (ii) that has its principal place of business in Papua New Guinea,
    - being a corporation that is –
    - (iii) registered by the National Investment and Development Authority to carry on business as a shipowner in Papua New Guinea; or
    - (iv) a local enterprise within the meaning of Section 2 of the National Investment and Development Act (Chapter 120);

“**ship**” includes –

- (a) in relation to the ownership of a ship, a share in the ship and any interest in the ship and share; and
- (b) an air cushioned vehicle; and

- (c) every description of vessel used, or capable of being used, in navigation by water, but does not include a vessel ordinary propelled by oars;

**“towage and pilotage”** in relation to an aircraft means towage or pilotage whilst the aircraft is water-borne.

## 2. APPLICATION.

(1) Subject to Section 278 of the *Merchant Shipping Act 1975* and to Subsection (2), this Act binds the State.

(2) The provisions of this Act do not extend to proceedings in connexion with –

- (a) a ship or an aircraft that belongs to the Defence Force or to any of the armed forces of another country; or
- (b) property –
  - (i) that belongs to the Defence Force or to any of the armed forces of another country; and
  - (ii) that is, or is intended to be, used in the exercise of the functions and duties of –
    - (A) the Defence Force; or
    - (B) any of the armed forces of another country; and
  - (iii) that is on any ship or on any aircraft.

**PART 2. – ADMIRALTY JURISDICTION OF THE COURT.****3. EXTENT OF ADMIRALTY JURISDICTION OF THE COURT.**

(1) The Admiralty jurisdiction of the Court is as follows: –

- (a) jurisdiction to hear and determine any of the questions and claims mentioned in Subsection (2); and
- (b) jurisdiction in relation to any of the proceedings mentioned in Subsection (3); and
- (c) any jurisdiction connected with ships or aircraft which is vested in the Court under any other Act; and
- (d) any other admiralty jurisdiction which, before the commencement of this Act, the Court had.

(2) The questions and claims referred to in Subsection (1)(a) are –

- (a) any claim to the possession or ownership of a ship or to the ownership of any share therein; and
- (b) any question arising between the co –owners of a ship as to possession, employment or earnings of that ship; and
- (c) any claim in respect of a mortgage of or charge on a ship or any share therein; and
- (d) any claim for damage received by a ship; and
- (e) any claim for damage done by a ship; and
- (f) any 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 person 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; and

- (g) any claim for loss of or damage to goods carried in a ship; and
- (h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship; and
- (i) any claim in the nature of salvage; and
- (j) any claim in the nature of towage in respect of a ship or an aircraft; and



- (k) any claim in the nature of pilotage in respect of a ship or an aircraft; and
- (l) any claim in respect of goods or materials supplied to a ship for her operation or maintenance; and
- (m) any claim in respect of the construction, repair or equipment of a ship or in respect of dock, port or harbour charges or dues; and
- (n) any claim in respect of work done in connexion with the loading or discharge of cargo or fuel on or from ship; and
- (o) any claim by a master or member of the crew of a ship for wages (including any sum allotted out of wages or adjudged by a Shipping Officer appointed under the *Merchant Shipping Act 1975* to be due by way of wages); and
- (p) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship; and
- (q) any claim arising out of an act which is or is claimed to be general average act; and
- (r) any claim arising out of bottomry; and
- (s) any claim for the forfeiture or condemnation of a ship 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.

(3) The proceedings referred to in Subsection (1)(b) are –

- (a) any application to the Court under the *Merchant Shipping Act 1975*;
- (b) any action to enforce a claim for damage, loss of life or personal injury arising out of –
  - (i) a collision between ships; or
  - (ii) the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships; or
  - (iii) non-compliance, on the part of one or more of two or more ships, with the Collisions Convention; and
- (c) any action by shipowners and other persons under Part X of the *Merchant Shipping Act 1975* for the limitation of their liability in connexion with a ship or other property.

(4) Without limiting the jurisdiction of the Court under Section 4(7), the jurisdiction of the Court under Subsection (2)(b) includes power to settle any account outstanding and unsettled between the parties in relation to a ship.

(5) Subsection (2)(e) extends to –

- (a) any claim in respect of a liability incurred under Section 20; and

(b) any claim in respect of a liability falling on the Fund under Part III of the *Prevention of Pollution of the Sea Act 1979*.

(6) The reference in Subsection (2)(i) to claims in the nature of salvage includes a reference to such claims for services rendered –

(a) in saving life from a ship or an aircraft; and

(b) in preserving apparel, cargo, baggage or wreck of an aircraft; and

(c) in preserving cargo, apparel or wreck of a ship in accordance with Part XIA of the *Merchant Shipping Act 1975*).

(7) Subject to Subsection (8) the provisions of this section apply –

(a) in relation to –

(i) all Papua New Guinea ships; and

(ii) all Papua New Guinea aircraft; and

(iii) all other ships and aircraft –

(A) whether or not such ships or aircraft are registered in Papua New Guinea; and

(B) whatever may be the nationality, and wherever may be the place of residence or of domicile, of the owner of such ships or aircraft; and

(b) in relation to all claims, wherever arising (including, in the case of cargo or wreck, salvage claims in respect of cargo or wreck found on land); and

(c) so far as they relate to mortgages and charges, whether registered or not and whether legal or equitable, including mortgages and charges created under foreign law.

(8) Nothing in Subsection (7) shall be construed as extending the case in which money or property is recoverable under any of the provisions of the *Merchant Shipping Act 1975*.

#### 4. EXERCISE OF ADMIRALTY JURISDICTION BY NATIONAL COURT.

(1) Subject to Section 5, an action in personam may be brought in the National Court in all cases referred to in Section 3.

(2) In the case of any such claim as is mentioned in Section 3(2)(a) or (s) or any such question as is mentioned in Section 3(2)(b), an action in *rem* may be brought in the National Court against the ship or property in connexion with which the claim or question arises.

(3) In any case in which there is a maritime lien or other charge on any ship, aircraft or other property for the amount claimed, an action in *rem* may be brought in the National Court against that ship, aircraft or other property

(4) In the case of any such claim as is mentioned in Section 3(2)(e) to (m) inclusive or Section 3(2)(o) to (r) inclusive where –

- (a) the claim arises in connexion with ship; and
- (b) the person who would be liable on the claim 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, an action in *rem* may (whether or not the claim gives rise to a maritime lien on that ship) be brought in the National Court against –
- (c) that ship, if at the time when the action is brought the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of it under a charter by demise; or
- (d) any other ship of which, at the time when the action is brought, the relevant person is the beneficial owner as respects all the shares in it.

(5) In the case of any such claim as is mentioned in Section 3(2)(n) an action in *rem* shall not be brought against a ship.

(6) In the case of a claim in the nature of towage or pilotage in respect of an aircraft, an action in *rem* may be brought in the National Court against that aircraft if, at the time when the action is brought, it is beneficially owned by the person who would be liable on the claim in an action in *personam*.

(7) In the exercise of its Admiralty jurisdiction, the National Court may –

- (a) order- –
  - (i) any ship or any share therein; or
  - (ii) any aircraft; or
  - (iii) any other property,

to be sold; and
- (b) make such other order as the Court thinks fit; and
- (c) where under Paragraph (a) a sale is ordered, hear and determine any question arising as to the title to the proceeds of such sale.

(8) Subject to Subsection (9), where, as regards any such claim as is mentioned in Section 3(2)(e) to (m) inclusive or Section 3(2)(o) to (r) inclusive, a ship –

- (a) has been served with a writ; or
- (b) has been arrested,

in an action in *rem* brought to enforce that claim, no other ship shall be –

- (c) served with a writ; or
- (d) arrested,

in that or in any other action in *rem* brought to enforce that claim.

(9) In respect of any such claim as is specified in Subsection (8), nothing in that subsection shall be constructed as preventing the issue of –

- (a) a writ naming more than one ship; or

(b) two or more writs each naming a different ship,

and the provisions of that subsection shall be read and construed accordingly.

(10) In determining, for the purposes of Subsections (4) and (6), whether a person would be liable on a claim in an action in personam, it shall be assumed that he has his habitual residence or a place of business in Papua New Guinea.

**5. RESTRICTIONS ON ENTERTAINMENT OF ACTIONS IN PERSONAM IN COLLISION AND OTHER SIMILAR CASES.**

(1) This section applies to any claim for damage, loss of life or personal injury arising out of –

- (a) a collision between ships; or
- (b) the carrying out of, or omission to carry out, a manoeuvre in the case of one or more of two or more ships; or
- (c) non-compliance, on the part of one or more of two or more ships, with the Collisions Convention.

(2) The National Court shall not entertain any action in personam to enforce a claim to which this section applies unless –

- (a) the defendant has his habitual place of residence or a place of business within the country; or
- (b) the cause of action arose within Papua New Guinea waters; or
- (c) 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.

(3) The National Court shall not entertain any action in personam to enforce a claim to which this section applies until any proceedings previously brought by the plaintiff in any court outside the country against the same defendant in respect of the same incident or series of incidents have been discontinued or otherwise come to an end.

(4) Subsections (2) and (3) apply to counterclaims (except counterclaims in proceedings arising out of the same incident or series of incidents) as they apply to actions, the references to the plaintiff and the defendant being for this purpose read as references to the plaintiff on the counterclaim and the defendant to the counterclaim respectively.

(5) Subsections (2) and (3) do not apply to any action or counterclaim if the defendant thereto submits or has agreed to submit to the jurisdiction of the National Court.

(6) Subject to the provisions of Subsections (2) and (3), the National Court has jurisdiction to entertain an action in personam to enforce a claim to which this section applies whenever any of the conditions specified in Subsection (2)(a) to (c) is satisfied, and the Rules of Court relating to the service of process outside the

jurisdiction shall make such provision as may appear to the rule-making authority to be appropriate having regard to the provisions of this subsection.

(7) Nothing in this section shall prevent an action which is brought in accordance with the provisions of this section in the National Court being transferred, in accordance with the enactments in that behalf, to some other Court.

(8) For the avoidance of doubt it is hereby declared that this section applies in relation to the jurisdiction of the National Court not being Admiralty jurisdiction, as well as in relation to its Admiralty jurisdiction.

## **6. EXERCISE OF ADMIRALTY JURISDICTION BY DISTRICT COURT.**

(1) Where a debt, demand or damage or the value of the subject matter claimed does not exceed the maximum amount of a claim or the amount or value of the subject matter of a claim over which the District Court has jurisdiction, the jurisdiction conferred by this Act may be exercised by the District Court in personam.

(2) Subject to the approval of the Judicial and Legal Services Commission, the Chief Magistrate may make rules relating to the practice and procedure of the District Court in the exercise of its jurisdiction under this Act.

## **7. SUPPLEMENTARY PROVISIONS AS TO ADMIRALTY JURISDICTION.**

(1) 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 Papua New Guinea ship.

(2) Nothing in this Act shall affect the provisions of Part XIA of the *Merchant Shipping Act 1975*.

## **8. ARREST OF SHIPS.**

(1) A ship not be arrested more than once in respect of the same maritime claim by the same claimant.

(2) Bail or other security shall not be given more than once in respect of the same maritime claim by the same claimant .

(3) Subject to Subsection (4) where in respect of a maritime claim by a claimant under this Act –

- (a) a ship has been arrested; or
- (b) bail or other security has been given –
  - (i) to avoid a threatened arrest of a ship; or
  - (ii) to release a ship,

a subsequent arrest of that ship or of any other ship in the same ownership as that ship –

- (c) in respect of that maritime claim, and
- (d) by that claimant,

shall be set aside and the Court shall order the release of that ship.

(4) A ship shall not be released under Subsection (3) unless the claimant satisfies the Court –

- (a) that the bail or other security had been finally released before the subsequent arrest; or
- (b) there is other good cause for maintaining the arrest.

(5) Where a ship has been arrested, the Court shall, subject to Subsection (6) permit the release of the ship on sufficient bail or other security being furnished

(6) Subsection (5) does not apply to a claim under Section 3(2)(a) or (b), and in any such claim the Court may –

- (a) permit the person in possession, on his furnishing sufficient bail or other security, to continue trading the ship; or
- (b) deal at the discretion of the Court with the operation of the ship during the period of the arrest.

(7) Where the parties to the claim fail to agree as to the sufficiency of the bail or other security, the Court shall determine its nature and amount.

(8) A request to release a ship against bail or other security shall not be construed –

- (a) as an acknowledgement of liability ; or
- (b) as a waiver of the benefit of the legal limitation of liability of the owner of the ship.

**PART 3. – MISCELLANEOUS.**

**9. FUNCTIONS AND POWERS OF REGISTRAR.**

(1) For the purposes of this Act and the Rules of court, the Registrar of the National Court has and shall exercise the functions and powers of the Admiralty Registrar and the Admiralty Marshal.

(2) The Registrar shall, by himself or by officers or agents appointed for the purpose execute, and make returns of, all instruments issued from the Court and addressed to him.

**10. REGULATIONS.**

The Head of State, acting on advice, may make regulations not inconsistent with this Act prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and in particular for –

- (a) prescribing for the appointment of experts or assessors to assist the Court; and
- (b) prescribing for conditions relating to the giving of bail or other security to prevent the arrest of a ship, aircraft or other property, or to obtain its release after arrest.

**11. NON –APPLICATION OF PRIOR LAWS, ETC.**

(1) On the commencement of this Act, no proceedings in relation to a matter within the jurisdiction conferred by this Act shall be commenced except in accordance with this Act and the Rules of Court.

(2) The Acts specified in the Schedule are hereby repealed in their application to Papua New Guinea.

**12. TRANSITIONAL.**

Where, prior to the commencement of this Act, a right of action existed or proceedings were pending under any law in force or deemed to be in force, that right may be proceeded with or those proceedings continued as if this Act had not come into operation.

**SCHEDULE 1**

Section 12

Repealed Acts

<p><b>Admiralty Court Act 1840 (3 &amp; 4 Vict. C. 65)</b> <b>Admiralty Court Act 1861 (24 &amp; 25 Vict. C.10)</b> <b>Colonial Courts of Admiralty Act 1890 (53 &amp; 54 Vict. C.27)</b> <b>Administration of Justice Act 1927, Section 3(7).</b></p>
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