

GOVERNMENT OF FIJI

SHIP REGISTRATION DECREE 2013 (DECREE NO. 19 OF 2013)

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IN exercise of the powers vested in me as the President of the Republic of Fiji and the Commander in Chief of the Republic of Fiji Military Forces by virtue of the Executive Authority of Fiji Decree 2009, I hereby make the following Decree—

TO PROVIDE FOR THE REGISTRATION OF SHIPS IN FIJI AND RELATED MATTERS

PART 1—PRELIMINARY

Short title and commencement

1.—(1) This Decree may be cited as the Ship Registration Decree 2013, and shall come into force on a date or dates appointed by the Minister by notice in the *Gazette*.

(2) The Minister may appoint different dates for the coming into force of different sections or parts of this Decree.

Interpretation

2. In this Decree, unless the context otherwise requires—

"barge" means any barge, lighter, or other like vessel that does not have any means of self-propulsion;

"beneficial interests" includes interests arising under contract and other equitable interests;

"certificate of clearance" means a certificate of clearance issued under the Customs Act 1986;

"certificate of registration" means a certificate of registration granted for ships under Part B of the Register under section 26 (2);

"certificate of registry" means a certificate of registry granted for ships under Part A of the Register under section 26 (1);

"Chief Executive Officer" means the person appointed as the Chief Executive Officer under section 31 of the Maritime Safety Authority of Fiji Decree 2009;

"coastal waters" means—

- (a) all waters within the exclusive economic zone of Fiji;
- (b) the archipelagic waters;
- (c) the territorial sea of Fiji; and
- (d) the internal waters of Fiji;

"court" means the High Court of Fiji;

"customs officer" has the meaning given to "officer" under section 2 of the Customs Act 1986;

"demise charter", in relation to a ship, means the demise, hire, letting, or delivery of the ship to the charterer, by virtue of which the charterer has possession and control of the ship, including the right to appoint its master and crew;

"Deputy Registrar" means a Deputy Registrar appointed under section 70;

"enemy" means any country, armed force, authority or government controlling any such force with which Fiji, or any force acting in co-operation with any part of the Republic of Fiji Military Forces, is at war or is engaged in armed combat operations, and includes—

- (a) any member of any such armed force or any member of that authority or government;
- (b) any person materially assisting that country, force, authority or government in its war effort or armed combat operations;
- (c) any ally of that country, force, authority or government;
- (d) all pirates;
- (e) all armed persons who are engaged in any mutiny, rebellion, or riot against Fiji or against any service of the Republic of Fiji Military Forces or against any ally of Fiji;

"Fiji flag" means the flag of the Republic of Fiji that is presently in use as was officially adopted on 10 October 1970;

"Fiji Government ship" means a ship that belongs to the Government of Fiji but does not include a ship that is set aside for or used by the Republic of Fiji Military Forces;

"Fiji national" means a—

- (a) Fiji citizen; or
- (b) body corporate established by or under the laws of Fiji;

"Fiji national colours" means the dark blue ensign for Fiji government ships and red ensign for merchant ships, with both having the Union Flag in the canton and the shield of Fiji in the fly;

"Fiji-owned ship" means a ship as defined under section 12 (1);

"Fiji ship" means a ship that is registered under this Decree;

"Fiji waters" means—

- (a) the territorial sea of Fiji;
- (b) the archipelagic waters of Fiji;
- (c) the internal waters of Fiji; and
- (d) all rivers and other inland waters of Fiji;

"foreign country" means a country other than Fiji;

"foreign port" means a port outside Fiji;

"gross tonnage", in relation to a ship, means the gross tonnage of that ship determined or recognised in accordance with the provisions of this Decree or any maritime regulations; or where a ship has been assigned alternative gross tonnages, the higher of those gross tonnages;

"illegal fishing" means any fishing activity—

- (a) conducted by national or foreign ships in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;
- (b) conducted by ships flying the flag of States that are parties to a relevant regional fisheries management organisation but operate in contravention of the conservation and management measures adopted by that organisation and by which the States are bound, or relevant provisions of the applicable international law; or
- (c) in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organisation;

"Minister" means the Minister for Transport;

"National Flag" means—

- (a) in respect of a Republic of Fiji Military Forces ship, the flag illustrated in Part 1 of the Schedule;
- (b) in respect of a Government ship, the flag illustrated in Part 2 of the Schedule;
- (c) in respect of any other Fiji ship, the flag illustrated in Part 3 of the Schedule; and
- (d) in relation to section 65, all or any of the flags referred to in paragraphs (a), (b) or (c);

"net tonnage", in relation to any ship, means—

- (a) the net tonnage of that ship determined or recognised in accordance with the provisions of this Decree; or
- (b) where a ship has been assigned alternative net tonnages, the higher of those net tonnages;

"office copy" in relation to any document, means a copy of the document that appears to have been certified by the person who made or issued the documents or by a person who appears to have power to make or issue the document;

"overall length", in relation to a ship, means the length of the ship measured from the foreside of the head of the stern to the aftermost part of the transom or stern of the ship;

"owner" means—

(a) in relation to a ship registered under this Decree or under the laws of a foreign country, the registered owner;

(b) in relation to any other ship, the person or persons having the right to manage the ship;

(c) in the case of more than one owner of a ship, each of those owners;

"pleasure craft" means a ship that is used exclusively for the owner's pleasure or as the owner's residence, and is not offered or used for hire or reward;

"port of registry", in relation to a ship, means the port that is for the time being entered in the Register as the port of registry of that ship;

"prescribed form" means a form prescribed by the Chief Executive Officer under section 89;

"proper officer", in relation to a port in a foreign country, means the person who is—

(a) recognised by the government of Fiji as a consular officer of that country;

(b) by the laws of that country authorised or required to do or perform the act or duty to which reference is made in the provisions of this Decree in which the expression occurs;

(c) by the laws of that country, authorised or required to do or perform, in relation to any ship registered in or belonging to that country, any act or duty of the same nature as the act or duty to which reference is made in the provisions of this Decree in which the expression occurs; or

(d) appointed or recognised under section 90 as a proper officer for the purposes of this Decree;

"provisional certificate" means a provisional certificate granted under section 31;

"qualifying route" means a route designated to be a qualifying route by the Minister in accordance with section 37;

"qualifying shipping service" means a service designated to be a qualifying service by the Minister in accordance with section 37;

"Register" means the Fiji Register of Ships established under section 11;

"register length", in relation to any ship, means the length of the ship measured from the foreside of the head of the stern to the aft side of the head of the stern post, or in the case of a ship not having a stern post, to the foreside of the rudder stock, provided that in the case of a ship not having a stern post or rudder stock, the after terminal point shall be taken to be the aftermost part of the transom or stern of the ship;

"registered" means registered under this Decree;

"Registrar" means the Registrar of Ships appointed under section 69;

"replacement certificate of registration" means a replacement certificate of registration granted under section 29;

"replacement certificate of registry" means a replacement certificate of registry granted under section 29;

"ship" means every description of boat or craft used in navigation, whether or not it has any means of propulsion and includes a—

(a) barge, lighter, or other like vessel;

(b) hovercraft or other thing deriving full or partial support in the atmosphere from the reaction of air against the surface of the water over which it operates;

(c) submarine or other submersible;

"ship's agent" means an agent appointed under section 15;

"shipping service" includes the—

(a) transport by water of goods, for fee or reward or for sale, resale or exchange;

(b) transport by water of passengers for fee or reward; and

(c) conduct of commercial marine operations including salvaging, towing, barging, dredging, drilling, surveying, constructing, lifting and exploring for, or exploiting, the resources of the seabed;

"surveyor" means persons from the Authority or organisations that offer the services of surveying or inspecting ships and who are recognised as such by the Chief Executive Officer in accordance with the provisions of the Maritime Transport Decree 2013;

"tonnage regulations" means any Regulations in force under the Maritime Transport Decree 2013 in relation to tonnage;

"unregulated fishing" means any fishing activity—

(a) in the area of application of a relevant regional fisheries management organisation that are conducted by ships without nationality, or by those flying the flag of a State not party to that organisation, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organisation; or

(b) in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law;

"unreported fishing" means any fishing activity—

(a) which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or

(b) undertaken in the area of competence of a relevant regional fisheries management organisation which have not been reported or have been misreported, in contravention of the reporting procedures of that organisation.

Application of this Decree

3.—(1) This Decree shall bind the State.

(2) Notwithstanding subsection (1), this Decree shall not apply to any ship which is owned, operated or in any way used by the Republic of Fiji Military Forces or any other State.

PART 2—REGISTRATION OF SHIPS

Ships to be registered

4.—(1) Subject to subsection (2), a person who owns a ship shall not operate his or her ship unless it is registered as provided by this Part.

(2) A ship shall not be registered or remain on the Register under this Decree unless it is—

(a) a Fiji-owned ship; and

(b) not registered in any other country; or

(c) exempted by the Chief Executive Officer.

(3) Notwithstanding subsection (2), a ship that is not a Fiji-owned ship, may be registered if it is a ship that—

(a) calls at ports or places in Fiji; or

(b) is normally engaged on a qualifying route; and

(c) the operations of which are managed by the appointed ship's agent on behalf of its owners, from a place of business in Fiji.

Application for registration

5.—(1) An application for registration shall be made in the prescribed form to the Registrar.

(2) An application in subsection (1) shall include—

(a) a Statutory Declaration in accordance with section 6;

(b) a Builder's Certificate in accordance with section 7;

(c) a Tonnage Certificate issued under section 8;

(d) any documents, including bills of sale relating to changes in ownership of the ship that have occurred since it was last registered in Fiji or in any other country, or if it has not been registered in any country, any alterations to the ship which have occurred since it was built;

(e) a copy of any demise charter party in respect of the ship; and

(f) any other such particulars, documents, and information as may be required under this Decree or any Regulations made under this Decree.

(3) An application for registration of a ship shall be attested in accordance with the following provisions—

(a) where the majority interest in the ship is owned by an individual, the application shall be signed by that person;

(b) where the majority interest in the ship is owned by a body corporate, the common seal of the body corporate shall be affixed to the application in the presence of an officer of the body corporate authorised for the purpose;

(c) where the application is made in respect of a ship on demise charter, attestation shall be effected as if it were a Fiji-owned ship; or

(d) where the majority interest in the ship is owned by 2 or more individuals or body corporate, at least 2 of those persons or bodies shall attest the application in accordance with paragraph (a) or (b), as the case may require.

(4) Any person who makes any statement or provides any information in an application for registration of a ship knowing that the statement or the information is false, commits an offence and shall be liable upon conviction to a fine not exceeding \$2,000.

Statutory Declaration

6.—(1) For the purposes of an application for registration of a ship in Part A of the Register, the Statutory Declaration shall contain—

(a) the declarant's full name, address and nationality;

(b) the grounds on which that nationality is claimed;

(c) the extent of the declarant's interest in the ship;

(d) a statement identifying the owner or owners of the ship;

(e) in the case of a ship not on demise charter, a statement that, to the best of the knowledge of the person making the statement, the ship is and will remain a Fiji ship.

(2) In the case of a ship on demise charter, the declaration shall also state whether a Fiji national is or Fiji nationals are in a position to exercise the rights and powers of the charterer.

(3) For the purposes of subsection (1) (a), a body corporate shall state its address according to the following—

(a) if the corporation has a registered office in Fiji, the address of that office;

(b) if the corporation is not incorporated in Fiji but has a principal place of business in Fiji, the address of that principal place of business; or

(c) if the corporation has neither a registered office nor a principal place of business in Fiji, the address of its principal place of business outside Fiji.

Builder's Certificate

7.—(1) Every ship owner must obtain a Builder's Certificate.

(2) Any person in Fiji who constructs a ship or any part of such a ship that is required to be registered in the Register, shall within 21 days after the date on which the construction of the ship has been completed, deliver a certificate specifying the particulars in subsection (3) to the person for whom it has been constructed or any agent of that person.

(3) A Builder's Certificate must include the following information—

(a) the name of the ship or the name or description by which it was known by the builder;

(b) the name and address of the builder;

(c) the year in which that builder's work on the ship was completed;

(d) the name and address of the person for whom the ship was built;

(e) the place or places at which the ship was built;

(f) the type of ship, its overall length, breadth and depth, the principal material used in the construction of the hull, and the type of engine fitted; and

(g) such other information which the Registrar may require.

(4) Where an applicant is for any reason unable to provide a Builder's Certificate, it shall be sufficient compliance if the applicant provides to the Registrar's satisfaction, the requested information in the form of a Statutory Declaration and those documents that are available.

(5) Any person who constructs in Fiji a ship or any part of such a ship that is required to be registered under this Decree, and—

(a) fails to comply with the requirements of subsection (3); or

(b) makes any false statement in a certificate required under subsection (3), knowing that the statement is false,

commits an offence and shall be liable upon conviction to a fine not exceeding \$2,000.

Application for Tonnage Certificate

8.—(1) A person who intends to register his or her ship shall apply for a Tonnage Certificate from the Chief Executive Officer.

(2) An application for a Tonnage Certificate must be made in the prescribed form.

Chief Executive Officer to issue Tonnage Certificate

9.—(1) The Chief Executive Officer shall, upon receiving an application under section 8, and subject to subsection (2), issue a Tonnage Certificate.

(2) The Chief Executive Officer shall, before issuing a Tonnage Certificate, survey the ship.

(3) The Tonnage Certificate shall include the following details—

(a) in the case of a ship that is 15 metres and less in registrable length, the ship's register length and descriptive particulars; or

(b) in any other case, the ship's gross and net tonnages in accordance with the tonnage regulations and particulars prescribed under the Regulations.

(4) The Registrar may accept a Tonnage Certificate issued in accordance with the laws of a foreign country, if the Tonnage Certificate has been signed by a surveyor of ships employed by—

(a) the Government of that country;

(b) an organisation recognised for such purposes under the laws of that country; or

(c) an organisation approved for the purposes of this section by the Chief Executive Officer.

(5) Where the particulars required under subsection (3) (a), to be specified in a Tonnage Certificate have not changed since the ship was previously registered, the Registrar may accept in the place of the Tonnage Certificate, a Statutory Declaration to that effect made by the owner or any owner of a share in the ship, where the owner is unable to provide such certificate.

(6) The survey to be undertaken by the Chief Executive Officer under this section shall be in the manner prescribed by Regulations, pursuant to the provisions of the Maritime Transport Decree 2013.

Registrar to register ships

10. The Registrar may, subject to section 19, upon receipt of an application for registration made under section 5, and having satisfied himself or herself that the application complies with the requirements of this Decree, register the ship.

Fiji Register of Ships

11.—(1) This section establishes a Register to be known as the Fiji Register of Ships.

(2) The Registrar shall divide the Register into two parts to be known as Part A and Part B.

(3) All Fiji-owned ships more than 15 meters in register length shall be registered in Part A of the Register, including the following—

(a) pleasure crafts;

(b) ships engaged solely in inland waters of Fiji; and

(c) barges that do not proceed on voyages beyond coastal waters.

(4) All Fiji-owned ships 15 meters and less in register length shall be registered in Part B of the Register including those that proceed on overseas voyage.

(5) Subject to section 4, ships on demise charter to Fiji-based operators shall be registered in Part A of the Register.

(6) The Register must be kept available for investigation by any person during ordinary office hours at such place or places as the Minister may from time to time appoint by notice in the *Gazette*.

(7) On payment of the prescribed fee, if any, any person may—

(a) inspect the Register or any official copy of the Register at any reasonable time during the hours when the office in which the Register or copy is held is open for business; and

(b) at any such time, inspect any document lodged in association with any entry in the Register.

(8) For the purposes of this Decree, the Minister may from time to time, by notice in the *Gazette*, designate any port as a port of registry.

Fiji-owned ships

12.—(1) For the purposes of registration in Part A or Part B of the Register, a ship is deemed to be Fiji-owned if—

(a) it is owned by a Fiji national or Fiji nationals;

(b) it is owned by 3 or more persons as joint owners, otherwise than as described in paragraph (c), and the majority of those persons are Fiji nationals; or

(c) it is owned by 2 or more persons as owners in common, and more than half of the shares in the ship are owned by 1 or more Fiji nationals.

(2) For the purposes of subsection (1) (c) where 2 or more persons are joint owners of any number of shares in the ship, the following provisions shall apply—

(a) in the case of 2 or more particular shares that are owned by the same persons, the interest of each owner in those shares shall be ascertained by dividing the number of shares by the number of owners of the shares;

(b) in the case of a share to which paragraph (a) does not apply, the interest of each owner in the share shall be ascertained by dividing the number 1 by the number of owners of the share;

(c) a person shall not be entitled to be registered as owner of a fractional part of a share in a ship; and

(d) not more than 5 persons may be registered as joint owners of a share or shares in a ship.

(3) Joint owners shall—

(a) be considered as constituting one person only for the purposes of registration; and

(b) not be entitled to dispose severally of an interest in a ship in respect of which they are jointly registered.

Ships on demise charter to Fiji-based operators

13. A reference in this Decree to a ship on demise charter to a Fiji-based operator shall be read as a reference to a ship on demise charter to a—

(a) Fiji national or Fiji nationals ordinarily resident or carrying on business in Fiji, and no other person;

(b) Fiji national or Fiji nationals ordinarily resident in Fiji together with any other person or persons, where the Fiji national is or Fiji nationals are in a position to control the exercise of the rights and powers of the charterers under the charter party.

Fiji-owned ships under demise charter to foreign residents

14. Where a Fiji-owned ship is operated by a foreign resident under a demise charter and the ship is required to be registered under this Decree, the Chief Executive Officer may, by written notice to the owner exempt the ship during the term of the charter from the requirement to be registered where the Chief Executive Officer is satisfied that the ship is—

(a) registered under the laws of a foreign country; and

(b) entitled to fly the flag of that country.

Ship's agent

15.—(1) The owner of every ship required under section 11 to be registered in Part A of the Register shall appoint a ship's agent in relation to the ship if the owner does not—

(a) reside in Fiji; or

(b) have a registered office in Fiji.

(2) Where a ship's agent is required by subsection (1) to be appointed in relation to a ship, the owner of the ship shall—

(a) before applying for the ship to be registered, appoint a qualified person satisfying the requirements of this section to be the ship's agent in relation to the ship; and

(b) ensure that, as long as the ship remains registered, a qualified person satisfying those requirements is so appointed.

(3) Any person who fails to comply with subsection (2) commits an offence and shall be liable upon conviction to a fine not exceeding \$2,000.

(4) A qualified person shall—

(a) be a citizen of Fiji; or

(b) be a corporation established by or under the laws of Fiji whose principal place of business is in Fiji; and

(c) comply with such other requirements as may be prescribed by Regulations made under this Decree.

(5) The owner shall—

(a) on applying for the ship to be registered, notify the Registrar in the prescribed form of the name and address of the ship's agent; and

(b) notify the Registrar in the prescribed form of any change in the identity or in the address of the ship's agent within 14 days after the change occurs.

(6) Any person who fails to comply with subsection (5) commits an offence and shall be liable to a fine not exceeding \$2,000 and to a further fine of \$50 for each day that the offence continues.

(7) Where this Decree requires the owner to lodge with or provide to the Registrar any document or other information, it shall be sufficient compliance with that requirement if the ship's agent appointed by the owner lodges with or provides to the Registrar the document or other information.

(8) Any document required or authorised by or under any written law to be served on the owner of a registered ship for any purpose relating to proceedings for any offence shall be deemed to have been duly served if it is—

(a) delivered to the ship's agent for the time being appointed in relation to the ship; or

(b) sent to the agent by post at the address notified or last notified to the Registrar under subsection (5).

Entry of particulars in Part A of the Register

16.—(1) The Registrar shall register a ship required to be registered in Part A of the Register by entering in that Part the following particulars—

(a) the name of the ship and its official number;

(b) the port of registry;

(c) any international call sign assigned in respect of the ship;

(d) the details comprised in the certificate issued or accepted under section 9 in respect of the ship;

(e) the following details from the declarations of ownership and nationality provided in respect of the ship—

(i) the name, address, and nationality of each owner of a share in the ship; and

(ii) the extent of each declarant's interest in the ship;

(f) the name and address of any representative person appointed in respect of the ship;

(g) the date of the entry in the Register, including the Registrar's designation and signature.

(2) For the purpose of this section, a ship's official number—

(a) in the case of a ship previously registered in Part A of the Register, shall be the official number assigned to the ship when last registered in Part A; or

(b) in any other case, shall be the number assigned by the Registrar.

(3) When the registration of a ship has been completed under this section, the Registrar shall retain the following documents—

(a) original of the application for registration;

(b) original of any document in relation to the ship's tonnage;

- (c) copy of any Builder's Certificate in relation to the construction of the ship;
- (d) original of all declarations of ownership and nationality;
- (e) original of any documents in relation to the change in ownership of the ship;
- (f) original of any appointment of a ship's agent;
- (g) a copy of any demise charter party; and
- (h) any other document accepted by the Registrar under this Decree for the purposes of registration.

(4) Subject to subsection (5), the registration of a ship in Part A of the Register shall have effect unless the Registry in relation to that ship is closed.

(5) Subject to subsection (6), the registration of any ship in Part A of the Register shall have no effect unless the ship is either required or entitled under this Decree to be registered in that Part.

(6) Nothing in this section shall prejudice any rights of a mortgagee that exists apart from this section.

Entry of particulars in Part B of the Register

17.—(1) The Registrar shall register a ship requiring to be registered in Part B of the Register by entering in that Part the following particulars—

- (a) the registration number of the ship;
- (b) the name of the ship;
- (c) a description of the ship;
- (d) the ship's overall length;
- (e) the full name and address of each owner of a share in the ship;
- (f) the date of registration; and
- (g) the date on which the registration expires.

(2) For the purpose of this section, a ship's registration number—

- (a) in the case of the renewal of registration or the re-registration of a ship within 6 months of the expiration of its previous registration, shall be the registration number assigned to the ship when last registered in Part B of the Register; or
- (b) in any other case, shall be the number assigned by the Registrar.

(3) When the registration of a ship has been completed under this section, the Registrar shall retain the following documents—

- (a) the application for registration; and
- (b) any document or other evidence obtained by the Registrar in relation to the application.

(4) Subject to subsection (5), the registration of a ship in Part B of the Register—

(a) shall have effect for a period of 5 years commencing on the date of registration unless sooner terminated by paragraph (c);

(b) may from time to time be renewed by the Registrar if—

(i) an application is made in accordance with section 5 within the 6 months period ending with the expiration of the ship's current period of registration;

(ii) the ship is still required or entitled to be registered in Part B of the Register; and

(iii) any change in the particulars of the ship's registration has been notified to the Registrar in accordance with this Decree;

(c) shall be deemed to be terminated—

(i) by any alteration to the ship or in its ownership that materially affects the particulars entered on the ship's certificate of registration; or

(ii) if the ship is no longer required or entitled to be registered in Part B of the Register.

(5) For the purposes of subsection (1) (e), where the owner of a ship is a body corporate, it must provide its address as follows—

(a) if the corporation has a registered office in Fiji, it must state the address of the registered office;

(b) if the corporation is not incorporated in Fiji but has a principal place of business in Fiji, it must state the address of its principal place of business; or

(c) if the corporation has neither a registered office nor a principal place of business in Fiji, it must state the address of its principal place of business outside Fiji.

Application for change in name and other particulars under Part A

18.—(1) An application for a change in the name of a registered ship or of the port of registry of a ship registered in Part A of the Register shall be made in the prescribed form.

(2) The Registrar shall refuse any proposed change of name if—

(a) it is a name that could be refused under section 19; and

(b) directed by the Minister under section 21.

(3) Where the Registrar allows a change of name of a registered ship or there is a change in the port of registry of a ship, the—

(a) Registrar shall cause the change to be entered in the Register and endorsed on the ship's certificate of registry; and

(b) owner of the ship shall alter the ship's markings so that it is marked with its new name or port of registry, as if it were being marked for registration under this Decree.

(4) Any person who fails to comply with subsection (3) (b) commits an offence and shall be liable upon conviction to a fine not exceeding \$2,000.

(5) Any person who describes a registered ship by any name other than the name by which the ship is for the time being registered and if the name is likely to mislead or deceive any person who has official business in relation to the ship under the provisions of this Decree or any other written law, commits an offence and shall be liable to a fine not exceeding \$2,000.

(6) Nothing in subsection (1) applies to the name under which any ship is deemed by section 93 (2) (b) to be registered.

Names not to be registered

19.—(1) The Registrar shall not register any ship if the name proposed to be registered in respect of a ship—

(a) is a name already registered in respect of any other ship in that Part of the Register;

(b) is likely to be confused with a name described in paragraph (a);

(c) is likely to be offensive to members of the public;

(d) contains any prefix that the Registrar considers to be unnecessary or undesirable;

(e) is the name "Fiji" without a prefix or suffix, unless the name is proposed to be used by the State;

(f) falsely suggests connection with—

(i) the State, or Government of a foreign country or of any legal subdivision of a foreign country;

(ii) the Republic of Fiji Military Forces or an arm or part of the Republic of Fiji Military Forces;

(iii) the United Nations; or

(iv) the Commonwealth of Nations;

(g) is a name whose use is prohibited by or under any other written law;

(h) is likely to prejudice the international relations of Fiji.

Refusal to register

20. If the Registrar refuses to register a ship for any reason, including a reason specified in section 19, the Registrar shall immediately notify the applicant, in writing, of its decision, including the reason for the refusal.

Minister may give directions

21.—(1) The Minister may, in his or her discretion, give directions to the Registrar to deregister a name from the Register if he or she has reasons to believe that a ship has been registered in contradiction to section 19.

(2) If the Registrar receives directions from the Minister under subsection (1), he or she shall immediately remove the name from the Register.

(3) The Registrar shall deregister a ship that is engaged in illegal, unreported or unregulated fishing.

Appeals from decisions under section 20

22.—(1) Any person aggrieved by the decision of the Registrar under section 20 may appeal to the High Court within 21 days after being notified of that decision, or within such further time as the court may allow.

(2) On hearing the appeal, the court may, confirm the decision or give such directions or make such other determinations as the court thinks fit.

PART 3—PROCEDURES AND RELATED MATTERS

Application for reservation of name

23.—(1) The Registrar may, upon receipt of an application in the prescribed form, reserve the name proposed to be registered in respect of a ship.

(2) The Registrar shall advise the applicant by notice in writing—

(a) of the reservation of the name; and

(b) that the name is available for registration for 12 months after the date stated in the notice.

(3) The Registrar shall not reserve a name—

(a) if the Registrar considers it undesirable; or

(b) if the use of the name would contravene any written law that prohibits the use of particular words or names.

Ship to be marked before registration

24.—(1) Except as provided in subsection (2), no ship shall be registered in Part A of the Register until it has been marked permanently and conspicuously in the prescribed manner.

(2) Any person who conceals, removes, alters, defaces or obliterates any marking that is on a registered ship in the prescribed manner commits an offence.

(3) Any owner or master of a ship who fails to maintain any marking that is on a registered ship in the prescribed manner commits an offence.

(4) Any person who commits an offence under subsection (2) or subsection (3) shall be liable—

(a) in the case of an individual, to a fine not exceeding \$2,000; or

(b) in the case of a body corporate, to a fine not exceeding \$5,000.

(5) It shall be a defence to a charge in respect of an offence under subsection (2) or subsection (3) that the act or omission charged for, was done or omitted to be done for the purpose of escaping capture by any enemy.

Registration of property in ships

25.—(1) For the purposes of registering property in a ship, the following provisions shall apply—

- (a) the property in the ship shall be divided into 64 shares;
- (b) subject to subsection (2), the number of shares registered as owners shall not at any time exceed 64;
- (c) any number of persons not exceeding 5 may be registered as joint owners of the ship or of any number of shares in the ship;
- (d) no joint owner of the ship or of any number of shares in the ship is entitled to dispose of that interest severally;
- (e) no person shall be registered as the owner of a fractional part of a share in the ship; and
- (f) a body corporate shall be registered as the owner in its corporate name.

(2) Where a share in a ship is jointly owned or where 2 or more shares are jointly owned by the same persons, the joint owners of the relevant share or shares shall, for the purposes of subsection (1) (b), be construed as 1 person.

(3) Nothing in subsection (1) affects the beneficial interests of any person or of any body corporate represented by or claiming under or through a registered owner, including a registered joint owner.

Grant of certificate of registry and certificate of registration

26.—(1) Upon registration of a ship in Part A of the Register, the Registrar shall grant a certificate of registry in respect of the ship.

(2) Upon registration of a ship in Part B of the Register, the Registrar shall grant a certificate of registration in respect of the ship.

(3) Certificates of registry and certificates of registration shall be in the prescribed form.

Particulars of master to be endorsed on certificate of registry of ship leaving Fiji

27.—(1) The owner of a ship registered in Part A of the Register shall not depart from a Fiji port to a foreign port unless there is endorsed on the ship's certificate of registry the—

- (a) name and address of each person who is, for the time being, authorised to be the master of the ship; and
- (b) serial numbers of the maritime document held in compliance with the Maritime Transport Decree 2013 and any Regulations made under that Decree, by each master in relation to the competence of that master.

(2) An endorsement under subsection (1) shall be made or cancelled, as the case may be, upon lodgement with the Registrar of—

- (a) the certificate of registry; and
- (b) a request in writing signed by the owner or the ship's agent.

Custody of certificates

28.—(1) The certificate of registry or certificate of registration and a provisional certificate of registry or provisional certificate of registration shall—

(a) at all times, be carried with the ship unless otherwise provided under this Decree;

(b) not be used except for the lawful navigation of the ship; and

(c) not be subject to detention for any reason, including a claim by the owner, mortgagee, charterer, operator, or any other person to any title in, lien or charge on, or interest in the ship.

(2) Every person having control or possession of a certificate of registry or certificate of registration or a provisional certificate of registry or provisional certificate of registration shall deliver the certificate on demand to the—

(a) person entitled to have custody of it for the purposes of the navigation of the ship; or

(b) Registrar, a Deputy Registrar, a customs officer, a police officer, a proper officer or any other person authorised by law.

(3) Any person who—

(a) fails to comply with subsection (2); or

(b) with intent to deceive, uses or lends to another person or allows to be used by another person an invalid certificate of registry or certificate of registration or an invalid provisional certificate of registry or provisional certificate of registration,

commits an offence and shall be liable to a fine not exceeding \$5,000.

Replacement certificates

29. Where a certificate of registry or certificate of registration or a provisional certificate of registry or provisional certificate of registration is misplaced, lost or destroyed, the Registrar shall, upon application made in writing by the owner or the master of the ship and accompanied by such documents and information as the Registrar may require, grant a new certificate in place of that certificate.

Grant of replacement certificate of registry or replacement certificate of registration

30.—(1) Where a certificate of registry or certificate of registration in respect of a ship is misplaced or lost or destroyed while the ship is at—

(a) a foreign port; or

(b) sea and subsequently, but before arriving at a Fiji port, the ship arrives at a foreign port,

the Registrar and the proper officer at that port who is authorised under subsection (6) to do so shall, upon receipt of an application made in the prescribed form and subject to this section, grant a replacement certificate of registry or replacement certificate of registration, in the prescribed form in respect of the ship.

(2) Subject to subsection (3), where a ship is required under this Decree to be registered in either Part A or Part B of the Register while the ship is at—

(a) a foreign port; or

(b) sea and subsequently, but before arriving at a Fiji port, the ship arrives at a foreign port,

the Registrar and the proper officer at that port who is authorised under subsection (6) to do so may, upon receipt of an application made in the prescribed form and subject to this section, grant a replacement certificate of registry or replacement certificate of registration, as the case may require, in the prescribed form in respect of the ship.

(3) A replacement certificate of registry or replacement certificate of registration shall be granted under subsection (2), only if at the time of granting the certificate, the Registrar or proper officer is satisfied that—

(a) an application for the registration of the ship has been lodged with the Registrar under section 5; and

(b) no certificate of registry or certificate of registration has been granted in respect of that application.

(4) The owner or master of a ship shall produce to the Registrar or proper officer such information as the Registrar or proper officer may reasonably require for the purposes of this section.

(5) A proper officer who grants a replacement certificate of registry or replacement certificate of registration under this section shall forward a copy of the certificate to the Registrar.

(6) For the purposes of subsections (1) and (2), the Registrar may authorise any proper officer to grant replacement certificates of registry and replacement certificates of registration.

Provisional certificate of registry or provisional certificate of registration

31.—(1) Where the Registrar is satisfied that, by reason of special circumstances, permission should be granted for an unregistered ship to travel from a—

(a) Fiji port to a foreign port; or

(b) foreign port to another foreign port or to a Fiji port,

the Registrar may grant a provisional certificate of registry or provisional certificate of registration in respect of that ship.

(2) A provisional certificate of registry or provisional certificate of registration shall be in the prescribed form and specify—

(a) the voyage that the ship is authorised to make;

(b) any conditions subject to which the voyage is to be made; and

(c) the period for which or a date until which the pass is current.

(3) The owner of a ship in respect of which a provisional certificate of registry or provisional certificate of registration is granted shall, as soon as practicable after the provisional certificate of registry or provisional certificate of registration expires, lodge the expired certificate or cause it to be lodged with the Registrar.

(4) Any owner who, without reasonable excuse, fails to comply with subsection (4) commits an offence and shall be liable to a fine not exceeding \$2,000.

Duration of provisional certificate of registry or provisional certificate of registration

32.—(1) A provisional certificate of registry and provisional certificate of registration shall be valid until the—

(a) ship arrives at a Fiji port; or

(b) expiration of a period of 3 months commencing on the date on which the certificate was granted,

whichever occurs first.

(2) The owner of a ship in respect of which a provisional certificate of registry or provisional certificate of registration is granted shall, as soon as practicable, lodge the certificate or cause it to be lodged with the Registrar.

(3) Any owner who, without reasonable excuse, fails to comply with subsection (2) commits an offence and shall be liable to a fine not exceeding \$2,000.

(4) During the period of its validity, a provisional certificate of registry shall have the same effect as a certificate of registry and a provisional certificate of registration shall have the same effect as a certificate of registration, and for the purposes of this Decree, the ship is deemed to be registered during that period.

Alterations to ships

33.—(1) If a ship registered in Part A of the Register is altered in respect of any of the following particulars, the owner shall immediately after the alteration, notify the Registrar of the alteration—

(a) gross tonnage;

(b) Net tonnage; or

(c) Register length.

(2) Upon receipt of the notification in subsection (1), the Registrar shall, subject to subsection (3), either enter the alteration on the ship's certificate of registry or issue a new certificate of registry in respect of the ship of a—

(a) surveyor's Tonnage Certificate in respect of the alteration; and

(b) certificate by a surveyor of ships certifying that any necessary alterations to the markings of the ship have been completed and conform to the requirements of section 9.

(3) If the ship is at a foreign port, the—

(a) Registrar shall authorise a proper officer to enter the alteration on the ship's certificate of registry or issue a provisional certificate of registry describing the ship as altered; and

(b) proper officer shall send the ship's certificate of registry to the Registrar to enable a new certificate of registry to be issued.

(4) Any owner or agent of a ship who fails to comply with this section, commits an offence and shall be liable to a fine not exceeding \$5,000.

Change of name or address or nationality of owner, agent, charterer or mortgagee

34.—(1) If there is any change in the following particulars entered in the Register, the owner, ship's agent, charterer or mortgagee shall notify the Registrar within 30 days of the change—

(a) in the case of an owner, ship's agent or a charterer, the full name, address, and nationality of the owner, ship's agent or charterer; and

(b) in the case of a mortgagee, the full name and address of the mortgagee.

(2) In addition to submitting the notification of change in subsection (1), the owner, ship's agent, charterer or mortgagee shall submit—

(a) evidence relating to the change; and

(b) the ship's certificate of registry.

(3) Upon receipt of the notification of change in subsection (1) and having satisfied himself or herself of the reasons and evidence for change, the Registrar shall—

(a) make such entries in the Register and on the certificate of registry as may be necessary to give effect to the change, and return the certificate of registry to the person by whom it was lodged; or

(b) authorise a proper officer to endorse the certificate of registry to give effect to the change in the manner specified by the Registrar.

(4) Any owner, ship's agent, charterer or mortgagee who fails to comply with this section commits an offence and shall be liable to a fine not exceeding \$2,000.

Closure of registration

35.—(1) Where a registered ship has—

(a) been lost, taken by an enemy, burnt, wrecked or broken up; or

(b) ceased to be required to be registered under this Decree,

the owner of the ship shall, immediately after obtaining knowledge of the event, give notice in writing with such evidence, as may be necessary, of the event to the Registrar.

(2) Where the Registrar receives a notice under subsection (1), the Registrar shall make an entry in the Register of the event to which the notice relates.

(3) Where the Registrar makes an entry in the Register under subsection (2) in respect of any ship, the registration of that ship shall be deemed to be closed except as so far as it relates to any unsatisfied mortgage of the ship or any share in the ship.

(4) If the Registrar is satisfied that subsection (1) applies to a ship but the owner has not notified the Registrar as required by that subsection—

(a) the Registrar may close the registration of the ship by making an appropriate entry in the Register; and

(b) upon closing the registration of the ship under paragraph (a), the Registrar shall notify the owner of the closure by sending a notification to the last known address of the registered owner.

(5) For the purposes of this section, an entry made under subsection 4 (a) has the same effect as an entry made under subsection (2).

(6) Any owner of a registered ship who fails to comply with this section commits an offence and shall be liable to a fine not exceeding \$5,000.

Rights of mortgagees where ship ceases to be registrable

36.—(1) If the Registrar receives a notice under section 35 in relation to a registered ship, and there is any unsatisfied mortgage of the ship or any share in the ship entered in the Register, the Registrar shall give the mortgagee, by registered post, notice in writing of the fact that the Registrar has been given such a notice.

(2) Where the Registrar gives a mortgagee such notice in writing, the registration of the ship shall, so far as it relates to the mortgage held by that mortgagee and subject to any order of the High Court under subsection (3), be deemed to be closed at the expiration of the period of 60 days after the date on which that notice was issued by the Registrar.

(3) A mortgagee who has received a notice under subsection (2) may apply to the High Court within the period of 60 days after the date of issue of the notice, or within such extended time as the court, on application made before or after the expiration of that period allows, and the court may do all or any of the following—

(a) order that the ship and its equipment be sold;

(b) make such orders for and in relation to the distribution of the proceeds of the sale as the court thinks fit;

(c) make such orders and give such directions with respect to the closure of the registry of the ship as the court thinks fit, including in the case of an application for an extension of time, an order that the registry shall not be deemed to be closed for such period as the court determines.

(4) The notice of an application under this section, including an application for extension of time, shall be served on the Registrar.

Ship's agent and qualifying services and routes

37. Where the Minister is satisfied that—

(a) a ship is owned by a person who is not a citizen of Fiji or not a body corporate established by or under the laws of Fiji whose principal place of business is in Fiji, having—

(i) a place of business in Fiji from which the operations of the ship are managed and controlled; or

(ii) a ship's agent in Fiji who manages the ship;

(b) the ship referred to in paragraph (a) is being regularly operated by that person in respect of a shipping service; and

(c) it would be in the public interest to do so,

the Minister may by notice to the Registrar, designate the service referred to in paragraph (b) to be a qualifying shipping service, or a route to be a qualifying route, for the purposes of registering ships under this Decree.

Foreign-registered ships not registrable under this Decree

38.—(1) The Registrar shall not register any ship under this Decree which is registered under the laws of a foreign country.

(2) Where an application is made for registration of a ship under this Decree that has at any time been registered under the laws of a foreign country, the application shall be accompanied by such evidence as the Registrar

requires to establish that—

(a) the ship is no longer registered under the laws of that country; or

(b) steps have been taken, or are proposed to be taken, to close the registration of the ship under the laws of that country on or before the registration of the ship under this Decree.

(3) For the purposes of this section, any ship whose registration under the laws of a foreign country is suspended shall be treated as if it were an unregistered ship under the laws of that country.

Liabilities of ships not registered

39.—(1) Any ship that is required to be registered and is not registered under the provisions of this Decree shall not be—

(a) recognised as a Fiji ship; and

(b) entitled to any benefits, privileges, advantages or protection usually enjoyed by a registered ship.

(2) Notwithstanding subsection (1), any ship to which that subsection applies shall be subject to those laws of Fiji that provide for—

(a) the payment of any fee or other charge;

(b) any liability to a fine or forfeiture; or

(c) the punishment of offences committed on board a ship, or by any person belonging to a ship,

and shall be dealt with in the same manner in all respects as if the ship were registered.

Certain unregistered ships not to leave Fiji

40.—(1) A ship that is required by section 5 to be registered, but is not registered, shall not depart from a Fiji port on a voyage to any place outside Fiji, except pursuant to a provisional certificate that is issued under section 31.

(2) A customs officer shall not grant a certificate of clearance in respect of a ship which is in contravention of subsection (1), and is about to depart from a Fiji port to any place outside Fiji.

(3) The owner or master of any ship who acts in contravention of subsection (1) commits an offence and shall be liable—

(a) in the case of an individual, to a fine not exceeding \$5,000; or

(b) in the case of a body corporate, to a fine not exceeding \$10,000.

PART 4—TRANSFERS, TRANSMISSIONS AND MORTGAGES OF SHIPS

Application of this part

41. This part applies only in relation to ships registered in Part A of the Register.

Transfer of ships and shares in ships

42.—(1) Subject to section 43, a ship or any share in a ship, shall be transferred by a bill of sale made in the prescribed form.

(2) Where a ship or share in a ship is transferred in accordance with subsection (1), the Registrar shall, as soon as practicable after the lodgement of the bill of sale and a declaration of transfer made by the transferee in accordance with section 44—

(a) register the bill of sale by entering in the Register the name of the transferee as owner of the ship or share; and

(b) endorse on the bill of sale that the entry has been made, including the date and time of the making of the entry.

(3) The transferee of any bill of sale made under this section shall lodge the bill of sale with the Registrar within 3 months after the date on which the transfer takes effect, and bills of sale lodged under this section shall be registered in the order of their lodgement.

(4) Any transferee who fails to lodge a bill of sale in accordance with subsection (3) commits an offence and shall be liable to a fine not exceeding \$2,000.

Transmission of ship or share in ship by operation of law

43. Subject to section 87, where a ship or a share in a ship, passes by transmission to a person by any lawful means other than by a transfer under section 42, the Registrar shall, as soon as practicable after the lodgement of—

(a) a declaration of transmission by that person in accordance with section 44; and

(b) such evidence of the transmission as the Registrar may require,

enter in the Register the name of that person as owner of the ship or share.

Declarations of transfer and transmission

44.—(1) Every declaration of transfer or declaration of transmission shall be made in the prescribed form and in accordance with section 6 and, where the transferee or person entitled under the transmission is not the Government of Fiji, shall include the following particulars—

(a) a statement specifying the full name, address and nationality of the transferee or person entitled under the transmission;

(b) the grounds on which nationality is claimed;

(c) the extent of that person's interest in the ship; and

(d) a statement that, to the best of the knowledge of the person making the statement, the ship will continue to be a Fiji-owned ship or will be controlled by a Fiji national or Fiji nationals.

Certificate of registry to be endorsed where change in ownership

45.—(1) Where there is a change in the ownership of a ship, the transferee shall, as soon as practicable, lodge with the Registrar or a proper officer the certificate of registry and the documents required by sections 42 and 43.

(2) Upon receipt by the Registrar of the documents referred to in subsection (1), the Registrar shall—

(a) enter the new particulars in the Register;

(b) endorse the certificate of registry to show the change in ownership; and

(c) return the certificate of registry to the transferee.

(3) Where a proper officer receives the documents referred to in subsection (1), the Registrar may authorise the proper officer to give effect to the change in the manner specified by the Registrar.

Mortgage of ship or share in ship

46.—(1) A ship or any share in a ship may be given as security for a mortgage under this Decree.

(2) The mortgage instrument shall be made in the prescribed form.

(3) Where the mortgage instrument so made has been lodged, the Registrar shall—

(a) register the mortgage by entering in the Register particulars of the mortgage; and

(b) endorse on such instrument that the entry has been made, including the date and the time of the making of the entry.

(4) Mortgage instruments lodged under this section shall be registered in the order of their lodgement.

Priority of mortgages

47. Where 2 or more mortgages are registered in respect of the same ship or share in a ship, the priority among the mortgagees shall be in accordance with the order of registration of the mortgages, irrespective of the dates upon which they were made or executed and notwithstanding any express, implied or constructive notice.

Alteration of terms of mortgage by endorsement

48.—(1) Subject to subsection (2), the parties to a mortgage registered under this Decree may, by a memorandum in the prescribed form, do all or any of the following—

(a) increase or reduce the amount secured by the mortgagee;

(b) increase or reduce the rate of interest;

(c) shorten, extend or renew the term of currency of the mortgage; and

(d) vary, negative or add to the covenants, conditions and powers contained in the mortgage.

(2) It shall not be necessary for a mortgagor to execute a memorandum of reduction, or for a mortgagee to execute a memorandum of increase, of the mortgage debt or of the rate of interest payable under a mortgage.

(3) The memorandum may be registered in the same manner as the original mortgage is registered under section 46 (3).

(4) A memorandum varying the terms or conditions of any mortgage of a ship subject to a subsequent mortgage shall not be binding on any mortgagee unless the mortgagee has consented in writing on that memorandum.

(5) Any consent under subsection (4) shall render the memorandum binding on the mortgagee so consenting, and shall be deemed to be a notice to and shall be binding on every person who may subsequently derive from the mortgagee any interest in the mortgaged property.

Variation of priority of mortgages

49.—(1) Notwithstanding section 47, the parties to mortgages registered under this Decree may, from time to time, by a memorandum of priority in the prescribed form and registered under this Decree, vary the priority of such mortgages between themselves.

(2) The memorandum of priority shall be executed by the mortgagor and also by the mortgagee under every mortgage that, by the memorandum, is postponed to any mortgage over which it previously had priority.

(3) Where any mortgage so postponed is subject to a sub-mortgage, the memorandum of priority shall not be effective unless the sub-mortgagee has consented thereto in writing on the memorandum.

(4) Upon the registration of a memorandum of priority, the Registrar shall record the memorandum on the Register and on any relevant instrument of title.

Transfer of mortgage

50.—(1) A mortgage of a ship or of a share in a ship may be transferred by an instrument of transfer made in the prescribed form.

(2) Where a mortgage is so transferred, the Registrar shall, as soon as practicable after the lodgement of the instrument of transfer and the mortgage instrument to which it relates—

(a) enter in the Register the name of the transferee as the mortgagee of the ship or share that is the subject of the mortgage; and

(b) endorse on the mortgage instrument that the entry has been made, including the date and time of the making of the entry.

Transmission of mortgage by operation of law

51. Subject to section 87, where the interest of a mortgagee in the mortgage of a ship or of a share in a ship passes by transmission to a person by any lawful means other than by a transfer under section 50, the Registrar shall, as soon as practicable after the lodgement of—

(a) a declaration of transmission by that person in the prescribed form; and

(b) such evidence of the transmission as the Registrar may require,

enter in the Register the name of that person as mortgagee of the ship or share concerned.

Discharge, waiver or extinction of mortgage

52.—(1) Where a mortgage is discharged, waived or extinguished by operation of law, including forfeiture, the Registrar must make an entry in the Register, to the effect specified in subsection (2), as soon as practicable after the—

(a) lodgement of the mortgage instrument endorsed with a receipt for the mortgage money, duly signed

and attested;

(b) lodgement of the mortgage instrument endorsed with an appropriate waiver or discharge, duly signed and attested;

(c) receipt of an order of a court directing that the ship be forfeited or an office copy of the order; or

(d) receipt of such particulars as the Registrar may reasonably require for the purposes of this section.

(2) The entry in the Register shall be to the effect that the mortgage has been discharged, waived or extinguished.

(3) On an entry being made under this section, any interest of the mortgagee under the mortgage vests in the person in whom, having regard to any relevant statutory provisions or intervening acts and circumstances, it would have been vested if the mortgage had not been made.

Powers of disposal by owner

53. The owner of a ship or a share in a ship shall, subject to this Decree and to any rights and powers appearing from the Register to be vested in any other person, have power absolutely to dispose of the ship or share in the ship and to give effectual receipts in respect of the disposal.

Mortgage not to change ownership

54. A mortgage of a ship or of a share in a ship shall not have the effect of the mortgagee becoming, or the mortgagor ceasing to be, the owner of the ship or share in the ship, except to the extent necessary to make the ship or share in the ship available as security under the mortgage.

Mortgagee to have power of disposal

55.—(1) Subject to subsection (2), a mortgagee of a ship, or of a share in a ship shall have the power to dispose of the ship or share and to give effectual receipts in respect of the disposal.

(2) Where there are 2 or more mortgages of the same ship or share, a subsequent mortgagee shall not, except under the order of the High Court, dispose of the ship or share without the consent of every prior mortgagee.

Trusts not recognised

56.—(1) The notice of a trust, whether expressed, implied or constructive, shall not be entered in the Register or be receivable by the Registrar.

(2) Nothing in subsection (1) prevents the registration of a ship that is—

(a) owned by a body corporate incorporated under the Charitable Trusts Act (Cap. 67); or

(b) subject to a mortgage under which such a body corporate is a mortgagee.

Equities included

57. Subject to sections 53, 55 and 56, nothing in this Decree shall affect any power to enforce any beneficial interest in a ship or in a share in a ship, in the same manner as in respect of any other personal property.

Caveat forbidding registration of certain instruments

58.—(1) A person claiming an interest in a ship or in a share in a ship under any unregistered instrument, or by operation of law, may lodge with the Registrar a caveat in the prescribed form forbidding the entry in the Register of any instrument relating to any dealing with that ship or share until after notice of the intended dealing is given to the caveator.

(2) Every caveat shall—

(a) state the name and address of the caveator;

(b) contain a description sufficient to identify the ship or the share in the ship in which the caveator claims an interest and to identify the interest claimed by the caveator; and

(c) be signed by the caveator or by the caveator's solicitor or agent.

(3) A caveat shall not be entered in the Register by the Registrar unless there is specified in the caveat an address in Fiji at which notices relating to the caveat or to proceedings in respect of the caveat may be served.

(4) Where a person entitled to withdraw a caveat notifies the Registrar, by lodging a notice in the prescribed form, that the name of the caveator or the address for service of notices on the caveator has been changed from the name or address specified in the caveat, the Registrar shall record on the caveat and in the Register the name or address so notified and that name or address shall thereupon be the name of, or the address for service of notices on, the caveator.

(5) Every notice relating to a caveat or to any proceeding in respect of a caveat shall be deemed to be duly served—

(a) either—

(i) at the address stated in the caveat in accordance with subsection (3); or

(ii) if an address has been notified under subsection (4), at the address, or the last address, so notified; or

(b) if the caveat was signed by a solicitor or agent, at the office of that solicitor or address of that agent.

(6) A caveat may be withdrawn by—

(a) the caveator or by the caveator's solicitor or agent;

(b) the executor of the will or administrator of the estate of the deceased caveator;

(c) a trustee or official receiver or other person in whom the interest claimed by the caveator is vested pursuant to the Bankruptcy Act (Cap. 48); or

(d) any person in whom by an order of the High Court there is entrusted, by reason of the mental incapacity of the caveator, the management and care or the interest claimed by the caveator.

Notice of caveat

59. Upon entry in the Register of a caveat, the Registrar shall notify particulars of the caveat by registered post to the person or each person entered in the Register as an owner or part-owner or mortgagee, of the ship or share, as the case may be.

Procedure for removal of caveat

60.—(1) Any person notified or required to be notified under section 59 may apply to the High Court for an order that the caveat be removed.

(2) On an application for the removal of a caveat, the caveator has the onus of establishing that the caveat should not be removed.

(3) The court may, upon proof that notice of the application has been served on the caveator or the caveator's solicitor or agent, make such order, either *ex parte* or otherwise, as the court thinks fit.

When caveat to lapse

61.—(1) A caveat entered in the Register in respect of a ship or a share in a ship shall, unless an order to the contrary is made by the High Court and served on the Registrar, be deemed to have lapsed upon the expiration of 28 days after the notice is given by the Registrar to the Caveator.

(2) The notice under subsection (1) must be by registered post to the caveator stating that—

(a) the person or each person entered in the Register as an owner or part-owner of the ship or share in a ship; or

(b) a person having a right to register a dealing with the ship or share in the ship,

has applied for the registration of any dealing with the ship or share.

No deal to be registered while caveat in force

62.—(1) Subject to this section, for the period during which a caveat remains in force in respect of a ship or a share in a ship, the Registrar shall not, except with consent in writing of a person entitled to withdraw the caveat, enter in the Register particulars of any dealing with that ship or share.

(2) Subsection (1) shall not prevent the entry in the Register of a dealing with a ship or share in a ship which was lodged with the Registrar in a form satisfactory for entry in the Register, before the caveat had been lodged with the Registrar.

(3) Except to the extent that it otherwise specifies, a caveat shall not prevent the Registrar from entering in the Register—

(a) the transmission of a ship or of a share in a ship to a person where that person becomes entitled by operation of law; or

(b) a dealing by a person as the mortgagee under a mortgage of a ship or a share in a ship, being a mortgage to the entry of which the caveator has consented or in respect of which the caveat has lapsed.

Compensation for lodging caveat without reasonable cause

63.—(1) A person who lodges or maintains a caveat with the Registrar without reasonable cause shall be liable to pay such compensation as is just to a person who has sustained damage.

(2) The compensation in subsection (1) is recoverable in an action in a court of competent jurisdiction by the person who has sustained damage from the person who lodged the caveat.

PART 5—NATIONALITY AND NATIONAL COLOURS

Certain ships to have Fiji nationality

64.—(1) The following ships shall, for all purposes, be treated as being Fiji ships and having Fiji nationality—

- (a) ships that are registered under this Decree; and
- (b) ships entitled under section 4 (3) to be registered.

(2) Nothing in subsection (1) alters the character of a ship as an article of personal property.

National Flag and other flags

65.—(1) Subject to subsection (2), every Fiji ship required or entitled to fly the National Flag shall do so in the following circumstances—

- (a) when signalled to do so by any ship set aside for or being used by the Republic of Fiji Military Forces;
- (b) while berthed or at anchor, during daylight hours, or entering, or leaving, or underway in any port in a foreign country; and
- (c) while berthed or at anchor, during daylight hours, or entering or leaving or underway in any port in Fiji.

(2) Subsection (1) (c) applies only to ships registered under section 4.

(3) The master of any Fiji ship required to fly the National Flag whose ship—

- (a) fails to comply with any provision of subsection (1); or
- (b) flies national colours other than those specified in respect of the ship by this Decree,

commits an offence and shall be liable upon conviction to a fine not exceeding \$5,000.

Flags authorised under prerogative

66.—(1) Notwithstanding section 65 or any other written law, the powers of the State include the power to—

- (a) establish a new flag which may be flown by a particular Fiji ship or any class of Fiji ship authorised for the purpose by the State; or
- (b) designate an existing flag as a flag which may be flown by a particular Fiji ship or any class of Fiji ship authorised for the purpose by the State.

(2) Where a Fiji ship is entitled to fly a flag authorised under prerogative pursuant to subsection (1), that flag shall be deemed to be the appropriate flag and subsections (2) and (3) of section 65 shall apply with any necessary modifications.

Declaration of ship's nationality before customs clearance

67.—(1) A customs officer shall not grant a certificate of clearance in respect of a ship about to leave a Fiji port for a place outside Fiji until the master of the ship has declared the nationality of the ship.

(2) A declaration made under subsection (1) shall be recorded on the certificate of clearance.

(3) Any ship that attempts to proceed to sea without a certificate of clearance until the declaration of nationality is made may be detained.

Improperly assuming or concealing Fiji nationality

68.—(1) Any owner or master of a ship who does anything or causes or permits anything to be done for the purpose of causing a ship that is not a Fiji ship to appear to be a Fiji ship, commits an offence.

(2) Any owner or master of a ship, required by section 65 to fly the Fiji national colours (within the meaning of that section), who does anything, or causes anything to be done, for the purposes of—

(a) concealing the nationality of the ship from any person having a duty or power under the laws of Fiji to inquire into the nationality of the ship;

(b) deceiving any such person; or

(c) causing the ship to not appear to be a Fiji ship,

commits an offence.

(3) Any owner or master of a ship who commits an offence under subsection (1) or subsection (2) shall be liable to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$10,000, and the ship in respect of which the offence has been committed shall be liable to forfeiture under this Decree.

(4) In any prosecution for an offence under subsection (1) or subsection (2), it is a defence if the defendant proves that the purposes of the conduct specified in the charge was to escape capture by an enemy.

PART 6—ADMINISTRATION

Registrar of Ships

69.—(1) The Minister shall appoint the Chief Executive Officer as the Registrar of Ships.

(2) The Registrar shall maintain the Register and shall have such powers, functions, responsibilities and duties as are conferred on the Registrar by this Decree or any other written law.

Deputy Registrars of ships

70.—(1) The Minister shall also, from time to time, appoint suitable persons to be Deputy Registrars of ships.

(2) Unless the Registrar otherwise directs in the case of any Deputy Registrar, every Deputy Registrar shall have and may exercise all the functions, duties and powers of the Registrar.

(3) A Deputy Registrar performing or exercising any of the Registrar's functions, duties or powers shall be presumed to be acting within the terms of his or her authority, in the absence of proof to the contrary.

Seal of Registrar

71.—(1) The Registrar shall have and use a seal of office in the prescribed form.

(2) Every document bearing the imprint of the seal and signed or issued by the Registrar or a Deputy Registrar

shall be admissible in evidence, and shall be deemed to be signed or issued by or under the direction of the Registrar without further proof, unless the contrary is proved.

Indemnity of State, Registrar and Deputy Registrar

72.—(1) Nothing in this Decree renders the State liable to be prosecuted for any offence under this Decree.

(2) Neither the Registrar nor any Deputy Registrar shall be personally liable for any action, suit, proceeding, dispute or challenge in respect of any act or omission done in good faith in the exercise or non-exercise of the powers conferred by or duties prescribed under the provisions of this Decree or any other written law, in that person's capacity as the Registrar or Deputy Registrar.

Correction of clerical errors

73. The Registrar must, as soon as practicable, correct or cause to be corrected any clerical error or entry in the Register that is not or has ceased to be correct.

Power to give directions in respect of obsolete or incorrect entries

74.—(1) Where, in relation to a particular ship—

(a) the Registrar has reason to believe that the ship is not entitled to be registered under this Decree or is registered in the wrong Part of the Register; or

(b) no entry or amendment of an entry has been made in the Register for a period of 5 years and the Registrar has reason to suspect that—

(i) any notice, information or document in respect of which an entry in the Register is required by this Decree has not been lodged with the Registrar within that period of 5 years;

(ii) any particulars entered in the Register, other than particulars relating to a mortgage are incorrect;

(iii) the ship has been actually lost, taken by an enemy, burnt, wrecked or broken up; or

(iv) the ship is derelict or is incapable of being used in navigation,

the Registrar may, by notice in writing served on the ship's agent or the owner of the ship, require that person to provide to the Registrar within a specified period, being not less than 30 days after the date of the service of the notice, such information and documents relating to the ship as are specified in the notice.

(2) Where—

(a) the person on whom the notice is served under subsection (1) fails to provide the Registrar, within the specified period in the notice or such longer period as the Registrar may allow, with any information or document specified in the notice; or

(b) upon providing any information or document pursuant to such a notice, the Registrar is of the opinion that the circumstances justify the closure of the registry of that ship or the alteration of any entry made in the Register,

the Registrar may give such directions in writing as he or she thinks fit with respect to the closure of the registry relating to the ship, or any entry made or to be made relating to the ship.

(3) Where the Registrar directs the closure of the registry relating to a ship—

(a) the Registrar shall, if he or she is of the opinion that the ship is lost, taken by an enemy, burnt or broken up, or that the ship is derelict and incapable of being used in navigation, make an entry in the Register to that effect, and the registration of the ship shall then be deemed to be closed, except so far as it relates to any unsatisfied mortgage of the ship; or

(b) in any other case, sections 35 and 36 shall apply as if the ship had ceased to be entitled to be registered and the direction were a notice under section 36 (1) stating that fact.

High Court may direct rectification of Register

75.—(1) Where—

(a) any particular matter is required or permitted by or under this Decree to be registered is not entered in the Register;

(b) an entry is omitted or removed from the Register;

(c) an entry is made in the Register without sufficient cause;

(d) an entry incorrectly exists in the Register; or

(e) there is an error or defect, other than a clerical error or obvious mistake in an entry in the Register,

a person aggrieved or the Registrar may apply to the High Court for rectification of the Register.

(2) The notice of an application under subsection (1) by a person aggrieved shall be served on—

(a) the Registrar;

(b) every mortgagee whose name is recorded in the Register as the mortgagee of the ship concerned or a share in the ship; and

(c) every other person whose name is recorded in the Register as the holder of an interest in the ship as a person affected by the registration of the ship.

(3) The court may, in proceedings under this section,—

(a) decide any question that is necessary or expedient to decide in connection with the rectification of the Register; and

(b) make such order, as it thinks fit, directing the rectification of the Register.

(4) A copy of an order under this section shall be served by the aggrieved party on the Registrar, and the Registrar shall thereupon rectify the Register accordingly.

Verification of particulars in registers kept under previous law

76.—(1) The Registrar may, by notice in writing served on any person owning or having the management of the ship deemed to be registered by section 93, require that person within a specified period being not less than 30 days, after the date of the notice to—

(a) verify in such manner as is specified in the notice, any matter or particular appearing in the Register by virtue of section 93 (2); or

(b) provide such information and documents relating to the ship and its owner as are specified in the notice, being information and documents of a kind required in connection with or in support of an application for registration.

(2) If the—

(a) owner or the person having the management of the ship fails within the specified period to verify a matter or particular, or to provide any information or documents, as required by a notice under subsection (1); and

(b) Registrar is not satisfied that the ship is registrable under this Decree,

the Registrar may close the registration relating to the ship.

PART 7—ENFORCEMENT, PROCEDURES AND DELEGATION AUTHORITY

Priorities of securities or charges in respect of foreign ships

77. Where a question arises in Fiji as to the priority of instruments creating securities or charges in respect of a ship registered under the laws of a foreign country, the instruments creating securities or charges in respect of the ship and duly registered in respect of the ship under the laws of that foreign country shall—

(a) have the same effect as a mortgage registered in respect of a ship under this Decree; and

(b) be accorded the priority that they would have been accorded if they had been registered under this Decree.

Detention of ships

78.—(1) The Chief Executive Officer, any police officer or any customs officer may detain a ship under section 67 (3).

(2) A customs officer shall not grant a certificate of clearance in respect of a ship that is detained under this Decree.

(3) The owner or master of any ship detained under this Decree who causes or permits that ship to go to sea or fails to take reasonable steps to prevent that ship from going to sea, before it is released from detention by a competent authority in subsection (1), commits an offence and shall be liable to a fine not exceeding \$5,000.

(4) The provisions of the Maritime Transport Decree 2013 shall, with any necessary modifications, apply in relation to any ship detained under this section as if it were a ship detained under the provisions of that Decree.

Procedures on forfeiture

79.—(1) Where a ship is liable to forfeiture under section 68 (3)—

(a) an officer specified in section 78 (1) may seize and detain the ship; and

(b) the Chief Executive Officer may apply to the High Court for an order under subsection (2).

(2) Upon application by the Chief Executive Officer under subsection (1) in relation to a ship, the court may order that the ship and its equipment be forfeited to the Authority.

(3) Anything forfeited under this section shall become the property of the Authority and may be sold or otherwise dealt with as the Authority thinks fit.

Protection of officers in respect of seizure or detention

80.—(1) Any officer specified under section 78 (1) shall not be personally liable in respect of any seizure or detention under this Decree if it is shown to the satisfaction of the court determining any proceedings relating to the ship or seizure or detention that there were reasonable grounds for the seizure or detention.

(2) If the court is not satisfied that there were reasonable grounds for the seizure or detention, it may award costs and damages to any party aggrieved and make such other orders as it thinks fit.

False statements

81.—(1) Any person who makes or presents to an officer having duties and functions under this Decree any oral or written statement, knowing that statement to be false or misleading, commits an offence and shall be liable to a fine not exceeding \$5,000.

(2) Any person who, by means of a statement or a document that the person knows to be, or to contain information that is, false or misleading, causes or attempts to cause an officer to do or refrain from doing any act or thing in the performance or exercise of that officer's duties, functions or powers under this Decree, commits an offence and shall be liable to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$10,000.

(3) For the purposes of the application of this section in relation to a body corporate, but without prejudice to the liability of any person other than the body corporate—

(a) a statement made, presented or otherwise used by a person acting on behalf of the body corporate shall be deemed to have been made, presented or otherwise used by the body corporate; and

(b) the knowledge of any person employed by or concerned in the management of the body corporate shall be deemed to be the knowledge of the body corporate.

Making false documents

82.—(1) Any person who—

(a) makes any register book, certificate, bill of sale, mortgage instrument, or other document under this Decree, knowing the same to be false or misleading; or

(b) forges or fraudulently alters any such document, or assists any other person to do so, or procures the forgery or fraudulent alteration of any such document,

commits an offence and shall be liable to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$10,000.

(2) Any person, who prints, sells or uses any document purporting to be a form prescribed in the Regulations knowing that the document is not in fact a form that is for the time being prescribed, commits an offence and shall be liable to a fine not exceeding \$5,000.

Liability of directors and officers of body corporate

83. Where a body corporate is convicted of an offence under this Decree, every director and every person concerned in the management of the body corporate shall be guilty of a like offence if it is proved that the act or omission that constituted the offence took place with that person's authority, permission or consent, or that the person knew or should have known that the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

Proceedings for offences

84. For the purpose of any proceedings for any offence under this Decree, the offence may be treated as having been committed either at the place at which it was actually committed, or at any place at which the offender may be.

Service of documents

85.—(1) Where for the purposes of this Decree any document is to be served on any person, that document may be served—

(a) in any case, by delivering the document personally to the person to be served or by leaving it at that person's last known place of residence;

(b) if the document is to be served on the master of a ship, where there is a master, or on a person belonging to a ship, by leaving the document for the master or other person onboard that ship with the person being or appearing to be in command or charge of the ship, and explaining to that person the purpose of the document; or

(c) if the document is to be served on the master of a ship, where there is no master and the ship is within Fiji waters, by—

(i) leaving the document with the person being or appearing to be in command or charge of the ship;

(ii) serving the document on the ship's agent appointed in respect of the ship under section 15; or

(iii) if the persons specified in sub-paragraph (i) or (ii) cannot be located after taking reasonable steps to locate such a person, affixing the document to the mast of the ship.

(2) Any person who obstructs any service of any document under this Decree commits an offence and shall be liable to a fine not exceeding \$5,000.

(3) Any owner or master of the ship who is a party to the obstruction commits an offence and shall be liable to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$10,000.

Admissibility of documents in evidence

86.—(1) A document declared by any provision of this Decree to be admissible in evidence, on mere production, is admissible in evidence in any proceedings as *prima facie* evidence of—

(a) any matter stated in the document in pursuance of this Decree; and

(b) the fact that the document was signed by the person by whom it purports to be signed.

(2) The person having custody of any document referred to in subsection (1) shall, upon payment of the prescribed fee (if any) by the applicant, supply to the applicant a copy of or an extract from the document, certified in writing and signed by that person.

(3) The Registrar or a Deputy Registrar may, subject to this Decree—

(a) supply copies of or extracts from any entry in the Register or any document forming part of or associated with the Register; and

(b) certify any such copy or extract, in writing and signed by the Registrar or Deputy Registrar and sealed with the seal of the Registrar.

(4) A document purporting to be a copy or an extract supplied under subsection (2) or subsection (3) may be admissible in evidence.

Evidence relating to transmissions

87. Where the Registrar requires any person to provide evidence of the transmission of any ship, or share in a ship, or any mortgage on a ship or share in a ship, under either section 43 or section 51, it is sufficient compliance with such requirement—

(a) in the case of the death of a joint owner or joint mortgagee, to provide the Registrar with—

(i) a certificate of the death or burial of the deceased, probate or letters of administration of the estate of the deceased, or an office copy of any such document; and

(ii) a declaration made by a person well acquainted with the deceased, to the effect that the deceased is named in the Register as a joint owner or joint mortgagee;

(b) in the case of the death of the sole owner, owner in common, or sole mortgagee, to provide the Registrar with an instrument constituting any person as the legal personal representative or constituting persons as the legal personal representatives of the deceased, or an office copy of such document;

(c) in the case of a transmission upon an order of a court, to furnish the Registrar with the order or an office copy of the order;

(d) in the case of forfeiture of a ship, to furnish the Registrar with the order of a court directing that the ship be forfeited or an office copy of the order, or such particulars as the Registrar may reasonably require for the purposes of this section.

Power of Registrar to exempt with declarations and other evidence

88.—(1) When, under this Decree, any person is required or permitted to make a declaration on behalf of himself or herself or of any body corporate or produce any evidence to the Registrar or do any act, and it is shown to the satisfaction of the Registrar that from any reasonable cause that person is unable to make the declaration or produce the evidence or do the act, the Registrar, may subject to any conditions, grant an exemption.

(2) Any such declaration may be made or evidence produced or other act done by an agent approved for the purpose by the Registrar or by order of the High Court.

Power to prescribe or approve forms

89.—(1) For the purposes of this Decree, the Minister may, from time to time,—

(a) prescribe forms;

(b) approve the use of any form in place of a prescribed form.

(2) Where a form is required by this Decree to be in the prescribed form—

(a) the form shall not be admissible in evidence in any civil proceedings on the part of the owner or master of the ship to which it relates unless—

(i) it is in the prescribed form; or

(ii) it is in an approved form;

(b) it shall be sufficient compliance with any such requirement if an approved form is used in place of the prescribed form.

Power to appoint or recognise persons as proper officers

90. For the purposes of this Decree, the Chief Executive Officer may from time to time by notice in the *Gazette*, appoint or recognise any person as a proper officer in relation to a port in a foreign country.

Proportion of crew to be Fiji nationals

91.—(1) Neither the owner nor the master of a Fiji ship shall permit the ship to go to sea knowing the ship to have a crew containing less Fiji nationals than prescribed.

(2) Any owner or master of a ship who permits the ship to go to sea knowing that the ship does not have a crew containing the prescribed proportion of Fiji nationals commits an offence and shall be liable to a fine not exceeding \$5,000.

Regulations

92. The Minister may make Regulations for the following purposes—

(a) prescribing or providing for the determination of fees payable in respect of any matter under this Decree;

(b) specifying the persons by whom any such fees are payable;

(c) prescribing specific fees for specific work or services;

(d) prescribing a scale of fees or a rate based on the time involved in carrying out the work or services;

(e) prescribing additional charges for reimbursement of travelling time, accommodation, and other expenses;

(f) providing for the refund or waiver of any fee, in whole or in part, in any specified case or class of cases;

(g) providing for such other matters as are necessary for giving full effect to the provisions of this Decree and for its due administration.

PART 8—MISCELLANEOUS

Transitional provisions

93.—(1) Every ship that—

(a) is required or entitled to be registered under this Decree; and

(b) was, immediately before the commencement of this Decree, registered under the Marine Act 1986,

shall be deemed to be registered under this Decree.

(2) The Registrar shall, as soon as practicable, issue a certificate of registry or certificate of registration in respect of each ship that is so deemed to be registered, and for this purpose the Registrar may require the production of the certificate of registry or certificate of registration issued before the commencement of this Decree in respect of any such ship.

(3) Each register book kept by the port of registry is deemed to be part of the Register established under this Decree.

(4) All applications for registration of a ship under the Marine Act 1986 that had not been finalised at the commencement of this Decree shall be deemed to be an application under this Decree and the Registrar shall complete the registration of the ship accordingly.

References in other laws

94. Any reference in any other written law to a registered Fiji ship shall be construed as if it were a reference to a ship registered or deemed to be registered under this Decree.

GIVEN under my hand this 2nd day of July 2013.

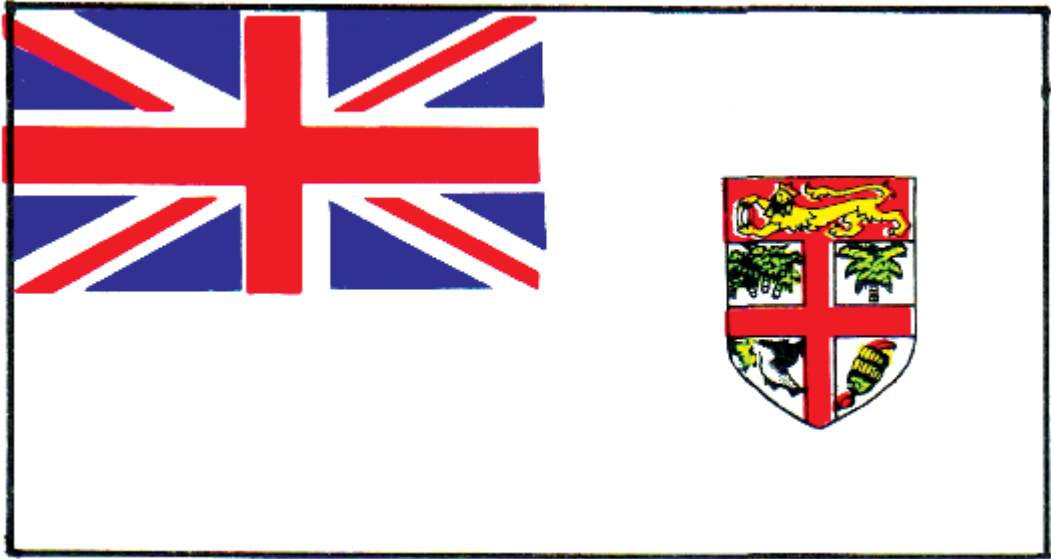
EPELI NAILATIKAU
President of the Republic of Fiji

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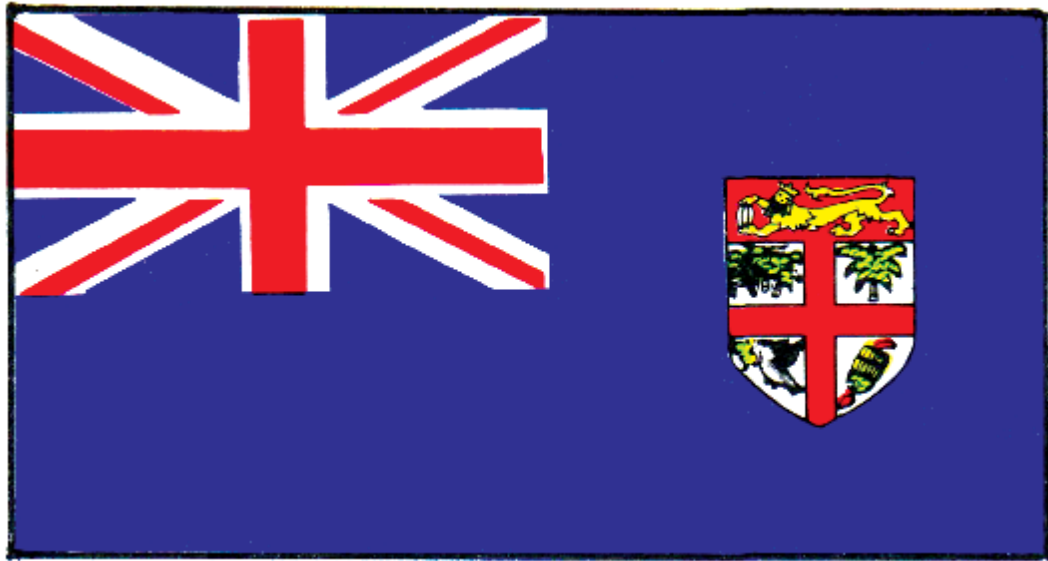
(Section 2)

PART 1

REPUBLIC OF FIJI MILITARY FORCES SHIP



PART 2
GOVERNMENT SHIP



PART 3
FIJI SHIP

