

ACT OF 9TH NOVEMBER 1990 TO ESTABLISH A LUXEMBOURG MARITIME REGISTER

(as amended by the Act of 14th April 1992)

(as amended by the Act of 17th June 1994)

Non Official Consolidated Text

We JEAN, by the Grace of God, Grand Duke of Luxembourg, Duke of Nassau;

Our Council of State being accord;

The Chamber of Deputies in first and second readings on 17th July 1990 and 7th November 1990 respectively assenting;

Hereby command:

Introduction

The following conventions appearing in Annex 1 of the Act of 9th November 1990 approving certain international maritime conventions are relevant to this Introduction:

- Convention on the International Maritime Organization:
- Convention on Facilitation of International Maritime Traffic, 1965, as amended.

Chapter 1 - General Principles

Art. 1. A public shipping register of ships flying the Luxembourg flag, hereinafter called "the register", is established.

The register comes under the authority of the member of Government responsible for maritime affairs ("the Minister").

Ships on the register are required to fly the Luxembourg flag as described for inland water transportation and aviation in Article 4 of the Act of 23rd June 1972 on National Emblems. The flag must be made of cloth, its proportions 7 by 5, bearing a red lion rampant facing towards the mast, crowned and embellished in gold and with a forked tail, against a background of ten horizontal silver and blue stripes. Both sides of the flag must be the same.

The certificate of registry shall be evidence, unless proved to the contrary, that the ship complies in all respects with the provisions of this Act and of the regulations adopted under the Act. Every ship must show on its hull its name and the port of registry as "Luxembourg".

The Minister may, in special circumstances, authorise a ship to have a port of registry other than "Luxembourg".

No ship may fly the Luxembourg flag without having on board a certificate of registry. The certificate of registry must be shown on demand to authorized inspectors. So long as a ship is registered in Luxembourg, it is subject to the laws and jurisdiction of the Grand Duchy of Luxembourg.

Chapter 2 - Role of the Commission of Maritime Affairs.

Art. 2. A Commission of Maritime Affairs is hereby established, headed by the Commissioner of Maritime Affairs and under the authority of the Minister.

The Commissioner shall be appointed by the Grand Duke on the recommendation of the Government in Council. The Commissioner will come within the higher sector of the Civil Service, and for the purpose of computing his salary his seniority will be Grade 12. His duties will be:

to process requests for registration and where he considers that the person seeking registration has complied with the requisite regulations, to issue the necessary certificates;

to ascertain that the persons responsible for the management of the company requesting registration possess the professional integrity and experience necessary for the exercise of their respective functions;

to satisfy himself that this Act and the regulations under the Act are complied with, without prejudice to the responsibilities of other administrations;

to ensure co-ordination of the application of the Act and the regulations under the Act;

to keep in touch with developments in international law on ship registration, particularly within the European Union and, as appropriate, to propose to the Government amendments to maintain or enhance the appeal of the register;

to study such other questions relating to the register which the Minister may submit or such matters as the Minister may delegate to him;

to rule on appeals made against decisions of the master on disciplinary matters. (as amended by the Act of 14 April 1992);

The Commissioner of Maritime Affairs may refuse to register, or may cancel the registration of ships owned by persons who do not comply with the requirements of the Act or regulations under the Act.

Chapter 3 - Provisions relating to the Administration of the Commission of Maritime Affairs

Art. 3. (...)

Chapter 1 - Regulations applying to ship registration and related matters

(as amended by the Act of 17th June 1994)

Section 1 - Provisions concerning registration

Art. 4. Definitions

Nationality of ships: a ship shall be deemed to have Luxembourg nationality if it has been entered in the Luxembourg shipping register and has been authorized to fly the Luxembourg flag.

Full registration: a ship shall be deemed to have been accorded full registration if the ownership rights in respect of that ship and the rights in rem attaching to it have been entered in the Luxembourg shipping register and it has been authorized to fly the Luxembourg flag.

Bareboat in registration: a ship shall be entered in the Luxembourg shipping register on a bareboat basis if it has obtained authority to fly the Luxembourg flag on the basis of a bareboat charter-party, whilst the ownership rights and the rights in rem attaching to it have been entered in the shipping register of another State and the legislation of that State allows the national flag to be cancelled or suspended in such circumstances.

Bareboat out registration: a ship that has been accorded full registration in Luxembourg shall be deemed to have been chartered out on a bareboat basis if, on the basis of a bareboat charter party, it has been entered in the shipping register of another State whilst at the same time the ownership rights in respect of the ship and the other rights in rem attaching to it continue to be entered in the Luxembourg shipping register.

Ship: for the purposes of the implementation of this Law, all ships with a tonnage of at least twenty-five tonnes which are used, or are intended to be regularly used, for the transport by sea of persons or things, or for fishing, towing or any other gainful seafaring activity, shall be considered to be ships.

Declarant: the declarant shall be the person or legal entity in whose name the ship has been entered in the register.

Operator: the operator shall be deemed to be the person or legal entity which, by virtue of a contract concluded with the owner of the ship, operates the ship on his or its own behalf or on behalf of the owner.

Art. 5. Field of application

Ships which are owned to the extent of more than 50% by residents of the European Union or by commercial companies which have their registered office in a Member State of the European Union, together with ships chartered on a bareboat basis and ships operated by such persons, shall be eligible for entry in the Luxembourg shipping register, provided that all or a significant part of the management of the ship is carried on in Luxembourg.

Art. 6. Applications for registration

For the purpose of requesting the entry of a ship in the Luxembourg shipping register, an application shall be sent to the Minister. The application shall be drawn up on a different type of form for each category of registration. The form and content of the application shall be determined by a ministerial regulation.

An operator may ask for full registration in his own name, provided that he has been expressly authorized to do so by the owner of the ship and provided that he is willing to accept responsibility for the ship and for the persons sailing in it in accordance with the provisions of Luxembourg law and on the same terms and in the same manner as the owner of the ship if it had been registered in the owner's name.

Applications for entry in the register must be submitted by the owner or by the charterer (in the case of bareboat registration) or by the operator of the ship in whose name the ship is to be

entered in the register.

Art. 7. Registration procedure

The application for registration, together with the authorization of the Minister or his delegate, shall be presented to the registrar of mortgages within thirty days of the granting of authorization of the registration of the ship.

The Commissioner of Maritime Affairs shall forward the registration certificate to the registrar of mortgages, who shall issue it to the declarant, in return for a receipt, at the time of formal entry in the register.

The period of validity of the certificate may not exceed two years and the actual duration shall be mentioned in the register. The registrar of mortgages shall forward without delay a copy of the registration certificate to the Commissioner of Maritime Affairs.

A provisional certificate, valid for a maximum of one year, may be issued for a ship that is still under construction, or in cases where it has not proved possible to supply all the information required by the application for registration.

The issue of a registration certificate is evidence that the ship has authority to fly the Luxembourg flag.

Art. 8. Notification of amendments

Any fact requiring an amendment to the information contained in the application and the documents submitted in support of the application, as laid down in Article 6, must be notified by the declarants to the Commissioner of Maritime Affairs within thirty days of its occurrence, so that it may be entered in the register. In the event of the death of the declarant or declarants, this obligation shall devolve on his/their legal heirs, although the period of thirty days shall start to run only with effect from the day on which they become aware of the fact that requires an amendment to the information specified in the above-mentioned Article.

The act of notification must be accompanied by a document, in duplicate, evidencing the fact in question. Should the document in question be an official deed, a duplicate must be submitted accompanied by an authenticated copy. The formal notification approved by the Commissioner of Maritime Affairs will be forwarded, together with the accompanying documents, to the registrar of mortgages so that the relevant entry can be made in the register. A duplicate of the document or of the authenticated copy of the official deed shall be kept at the office of the registrar of mortgages.

Any notification of a change in the ship's tonnage, or in its dimensions or in the nature and power rating of its propulsion system must be accompanied by the registration certificate and the tonnage certificate duly evidencing this change, as well as by a duplicate of this document, which will be kept at the office of the registrar of mortgages. Amendments to the main features of the ship shall be mentioned by the Commissioner of Maritime Affairs, together with the date, on the registration certificate and on duplicates of this certificate.

Art. 9. Invalidity of foreign registration

Registration of a Luxembourg-registered ship under a foreign flag shall be deemed invalid for such time as the entry in the Luxembourg register has not been cancelled, without prejudice however to the provisions concerning bareboat chartering out.

Art. 10. Full registration

1. The declaration submitted in support of an application for full registration shall state:
 - 1.1. the present name of the ship and the name under which it is proposed that it should be registered in Luxembourg;
 - 1.2. the ship's IMO number;
 - 1.3. where appropriate, data concerning the previous registration and/or proof of cancellation from the register issued by the responsible authority in the country in which the ship was previously registered;
 - 1.4. the names and addresses of all persons who have a claim on the ship, stating the nature and the amount of the claim;
 - 1.5. the names and addresses of the ship's operators and the place from which it is operated;
 - 1.6. the name and address of the declarant who is authorized to register the ship
2. This declaration shall be completed by the following documents:
 - 2.1. proof of the nationality of the declarants;
 - 2.2. the deed evidencing or declaring ownership or usufructuary rights, or the deed of conveyance of such rights, if such deed is in the form of a private agreement, or a duplicate if it is in the form of an official deed. A duplicate of the private agreement or an authenticated copy of the deed will be kept at the office of the registrar of mortgages;
 - 2.3. the consent of the owners to the registration of the ship in question in the Luxembourg shipping register, certified by a public deed.

For such time as the proof of cancellation mentioned in 1(c) above has not been supplied, the entry in the Luxembourg shipping register shall state that the effects of entry are subject to the condition that the previous registration shall have been cancelled and that until that condition has been satisfied a provisional certificate can only be issued.

The ministerial regulation referred to in Article 6 may complete the list of documents and information to be supplied.

Art. 11. Registration of a bareboat chartered in ship

1. In addition to the information that must be supplied in support of a full registration, as listed in the previous Article, applications for the entry in the register of a bareboat chartered in ship must state the names and addresses of the charterers of the ship.

The registration declaration shall be accompanied by the following documents:

- 1.1. proof of the nationality of each of the persons, and the articles of association of each of the companies, that have chartered the ship;
- 1.2. a copy, authenticated by a notary, of the bareboat charter party, including all annexes and, where appropriate, any sub-chartering charter parties;
- 1.3. the consent of the mortgage creditors to the entry of the ship in the Luxembourg shipping register, certified by a formal record;

1.4. a certificate issued by the country of the foreign flag evidencing the ownership of the ship and, where appropriate, any financial encumbrances attaching to it;

1.5. where appropriate, authorization by the foreign authorities for the ship to be chartered out on a bareboat basis, and/or a declaration to the effect that such authorization is not required and that the legislation of the State in question permits bareboat chartering out;

1.6. an express undertaking by the charterer to the effect that:

- the ship will fly the Luxembourg flag to the exclusion of any other and will indicate Luxembourg as its port of registry for as long as it is operated under the relevant bareboat chartering agreement;
- the charterer will inform the Commissioner of Maritime Affairs and the registrar of mortgages when the bareboat chartering agreement has been terminated, for whatever reason, or if a third flag State has given authority for the ship to fly its flag;
- all certificates issued by the Luxembourg authorities will be returned within thirty days of the expiration of the bareboat charter party, and/or with effect from the cancellation of the ship's entry in the shipping register of the Grand Duchy of Luxembourg.

The ministerial regulation referred to in Article 6 may complete the list of information to be supplied.

2. The provisions of this Act concerning privileges and mortgages shall not apply to ships registered on a bareboat charter in basis.

Art. 12. Validity of the registration certificate

Registration certificates for ships that have been registered on a bareboat charter in basis shall be valid for a maximum of two years and may not exceed the duration of the bareboat charter party.

Such registration certificates shall specify that the ship has been bareboat chartered in and shall state the registration number allocated to it in the foreign shipping register in which it is entered.

The issue of such registration certificate is evidence that the ship has authority to fly the Luxembourg flag.

Art. 13. Registration of a ship that has been bareboat chartered out

1. Ships which have been granted full registration in the Luxembourg shipping register may only be bareboat chartered out to a foreign register provided they have received authorization from the Minister.

Applications for such authorization shall state:

- 1.1. the name of the ship;
- 1.2. the ship's registration number;
- 1.3. the name and address of the declarant;
- 1.4. the name and address of the charterer;

1.5. details of the foreign register in which the ship is to be entered.

2. Applications must be accompanied by the following documents:

2.1. a copy, authenticated by a notary, of the bareboat charter party, including all annexes and any sub-chartering charter parties;

2.2. an extract from the register issued by the registrar of mortgages evidencing the ownership of the ship and any mortgages against it;

2.3. a copy, authenticated by a notary, of the owner's consent and that of any mortgagees to the registration of the ship on a bareboat basis in a foreign flag State;

2.4. an express undertaking by the owner of the vessel to the effect that:

- he will give to the Commissioner of Maritime Affairs within thirty days of the granting of authorization to charter out, and/or the commencement of chartering out, all certificates issued by or on the authority of the Grand Duchy of Luxembourg, as well as an "authenticated" copy of the registration certificate issued by the foreign State;
- he will inform the Commissioner of Maritime Affairs, who shall forward the information to the registrar of mortgages, when the bareboat chartering out charter party has been terminated, for whatever reason, and the owner of the ship has taken possession of it;

2.5. a written agreement between the owner and the charterer, expressly stipulating:

- that the right to fly the Luxembourg flag and to indicate Luxembourg as the ship's port of registry will be cancelled or suspended for as long as the ship is bareboat chartered out;
- that all technical safety standards imposed by Luxembourg maritime legislation or by the international conventions to which Luxembourg is a party will be strictly enforced throughout the period of chartering out, and similarly that Luxembourg social security standards will be observed if the ship is chartered out with its crew;
- the temporary suspension of all endorsements of approval of the ship's certificates, stamped under the authority of the Grand Duchy of Luxembourg;
- that in the event that there should occur, whilst the ship is bareboat chartered out, a major accident, resulting in the loss of the ship or in serious damage to property or to the environment, the owner and the charterer will co-operate fully so as to facilitate the task of the experts appointed by the Commissioner of Maritime Affairs in respect of the conduct of inquiries and any interviews of the ship's master and crew that may prove necessary;
- that any amendments or additions to the original bareboat charter agreement between the contracting parties and any sub-chartering charter party must be notified to the Commissioner of Maritime Affairs stating the effects they will have on the original agreement. Such amendments and/or additions shall also be subject to the consent in writing of any preferred creditors or mortgagees whose interests may be affected.

2.6. a declaration by the relevant foreign authorities stating that, in principle, the ship

may be registered on a bareboat chartering basis, together with a document certifying that there is no reason why the details of the ownership of the ship and any in rem rights associated with it should not continue to be entered in the Luxembourg shipping register.

The ministerial regulation referred to in Article 6 may complete the list of items of information to be supplied.

3. In the case of a ship registered in the Luxembourg register as bareboat chartered out, the details of ownership and other in rem rights associated with the ship shall continue to be governed by Luxembourg law.

Without prejudice to the other provisions concerning entry in the Luxembourg shipping register, ships which are engaged in the procedure of bareboat chartering out to a foreign register may continue to fly the Luxembourg flag for such time as that register has not granted authorization to fly its own flag.

Art. 14. Bareboat chartering out certificates

Applications for authorizations of bareboat chartering out which have been duly approved by the Minister or his delegate will be notified to the declarant by registered mail. Within thirty days of the issue of the authorization, the declarant may apply to the registrar of mortgages for a registration certificate. This certificate shall bear the following remark:

"The certificate within grants no right to fly the Luxembourg flag while the vessel is subject to the demise charter filed on ... with the registrar of maritime mortgages".

"Le présent certificat ne concède aucun droit de battre pavillon du Luxembourg pendant que le navire se trouve engagé par frètement coque nue, en vertu de la charte-partie déposée en date du ... auprès du conservateur des hypothèques maritimes".

Art. 15. Incidents that will result in loss of nationality

A ship shall lose its Luxembourg nationality:

- in the event of its being broken up or lost through shipwreck;
- in the event that the registration certificate should not be renewed on expiration;
- in the event of the withdrawal of the authorization of the Minister provided for in Article 7;
- when the conditions set out in Article 5 are no longer being satisfied.

Art. 16. Effects of loss of nationality

Loss of Luxembourg nationality shall result in the cancellation of the registration of the ship in question. The cancellation of the registration shall not however affect the registration of the rights in rem associated with the ship whilst it was subject to full registration and shall not prevent the subsequent removal, reduction or renewal of these entries.

No removal of an entry relating to the rights in rem attaching to a ship that had been granted full registration may be carried out until thirty days have elapsed since the date on which all creditors registered at the office of the registrar of mortgages and all third parties who have had a maritime lien recorded at the said office were notified by the registrar of mortgages. Notification must be by registered mail, which may be sent to the addresses of the persons concerned.

Loss of nationality shall result in the loss of the right to fly the Luxembourg flag. This provision shall take effect simultaneously with the act of notification specified in paragraphs 1 or 2 of Article 17.

Art.17. Procedure of removal from the register

In the event that a ship should lose Luxembourg nationality under circumstances, other than by reason of the withdrawal of ministerial authorization or the non-renewal of the registration certificate, one of the persons in whose name the ship is registered shall notify the Commissioner of Maritime Affairs of the loss within thirty days of the date on which it occurred.

Notification shall be accompanied by a document, in duplicate, evidencing the loss of nationality. However, should this latter document be an official deed, a duplicate thereof together with an authenticated copy, must be submitted. Once it has been approved by the Commissioner of Maritime Affairs, the notification, together with the associated documents, shall be forwarded to the registrar of mortgages for entry in the register. The duplicate document or the authenticated copy of the official deed and any copies will be kept at the office of the registrar of mortgages for cancellation, in return for a receipt.

Without prejudice to the provisions of paragraph 2 of Article 16, the registrar of mortgages shall issue the certificate of removal from the register.

In the event that loss of Luxembourg nationality results from the withdrawal of ministerial authorization, the Minister shall automatically forward an authenticated copy of his decision to the registrar of mortgages.

The registration certificate, cut diagonally in two, and the international certificates must be returned to the office of the Commissioner of Maritime Affairs by registered mail within thirty days of the notification provided for in the preceding paragraphs.

Section 2 - Provisions concerning ships

Art. 18. Legal status of ships

Ships belong to the category of movable assets. However, they are not subject to the rule according to which possession of a movable asset is equivalent to valid title.

Art. 19. Derogations

By derogation from the tonnage limit laid down in Article 4, paragraph 5, passenger ships may be entered in the Luxembourg shipping register provided that they satisfy the provisions of the 1974 international convention on the safety of life at sea, as subsequently amended.

The Minister shall be authorized to derogate from the age limit laid down in Article 61 provided that the ship in question has undergone significant design changes and on condition that it conforms to the standards applicable to new ships laid down in the international conventions to which Luxembourg is a party.

Art. 20. Command of ships

The command of a ship flying the Luxembourg flag shall be entrusted to a person whose nationality is that of one of the Member States of the European Union and who is the holder of a diploma awarded by a school of navigation that is recognized in Luxembourg. Derogations from this nationality requirement may be granted by virtue of a specific authorization by the Minister in special cases, and in particular where the needs of commerce or of seafaring justify such a

derogation, or else in the light of the origin of the ships which are applying for registration.

Art. 21. Crewmen's qualifications

All seamen's diplomas and certificates recognized in a Member State of the European Union shall be likewise recognized in Luxembourg, provided that they are in accordance with the standards laid down in the 1978 convention on standards of training, certification and watchkeeping for seafarers (STCW).

A Grand-Ducal Regulation may clarify the conditions of application of this Article.

Art. 22. Composition of the crew

A certificate of safe manning, annexed to the registration certificate, shall be issued by the Commissioner of Maritime Affairs.

In order to determine the size of the crew, the Commissioner of Maritime Affairs will take account of the characteristics of the ship, its degree of automation, the area of navigation and all other significant factors.

The Master or the officer on duty shall enter the names and addresses and ranks of the members of the crew in the ship's log. A ministerial regulation may clarify the entries that are to be made.

Chapter 2 - Registration and mortgage fees

Organization and running of the office for the registration of mortgages

Art. 23. Registration and mortgage fees (as amended by the Act of 17th June 1994)

All acts of conveyance or transfer inter vivos of a ship, or a ship under construction, whether in return for a consideration or otherwise, shall be exempt from all prorata transfer and registration fees.

The recording of maritime mortgages shall be exempt from all fees, saving only the salary of the registrar of mortgages.

Art. 24. The law on property mortgages shall apply except where this Act determines otherwise.

The conditions of application of this Act shall be determined by Grand-Ducal Regulation, setting out :

- the organization and operation of the office of maritime mortgages;
- how the registers are to be kept;
- the fees to be charged for examining a declaration or request for registering a ship under the Luxembourg flag, or the preparation and issue of documents, for maintaining, renewing or cancelling the registration or any entry, and for consulting such documents or providing information.

The fees for registration or renewal of registration shall comprise an annual tax of not less than 1000 and not more than 3000 ECU, and an initial registration tax or annual tax of not less than 0.25 and not more than 1.25 ECU per ton.

Chapter 3 - Publication of Rights in rem granted on Ships

Art. 25. The acts and judgements evidencing a conveyance or transfer, or revoking a right in rem

other than a lien on a ship, whether existing or under construction, shall be registered at the office of maritime mortgages. They cannot be considered binding on third parties prior to registration.

Art. 26. Requests to terminate, revoke or cancel an agreement such as referred to in Article 25, or to evidence the existence of rights in rem other than a lien on a ship already existing or under construction, and decisions regarding those requests, shall also be registered at the office of maritime mortgages.

Such requests must be made in writing. Any exception requires an application to a judge and may be challenged at any stage.

The clerk of the court may not issue any execution copy of a judgment until the judgment has been both handed down and registered. If he does so he will be liable to pay damages.

Art. 27. Registered private contracts and original notarized deeds are admissible for registration.

Art. 28. No deed will be admissible for registration if the ship to which it relates has not been registered.

Art. 29. The registration referred to in Article 25 shall be entered in the official register on presentation to the registrar of mortgages of the deed to be published in the case of a private agreement, and of a duplicate of the deed in the case of a notarized deed.

In the case of a private deed, two originals must be presented, one of which is exempt from stamp duty. In the case of a notarized deed, a certified copy, which will be exempt from stamp duty, must be produced, along with the duplicate.

Art. 30. The registrar of mortgages will indicate on the official register:

- the date of the deed;
- the nature of the deed, and in the case of a notarized deed, the name of the public official or the court which authorized it;
- the given names, surnames, occupations and addresses of the parties;
- the nature of the agreement and its principal features.

Art. 31. Upon registration, the registrar will return to the applicant a duplicate of the document in the case of a notarized deed, and one of the originals in the case of a private agreement. At the foot of the deed he will certify that the registration has been entered and will indicate the date and number. The certified copy of the notarized deed, or in the case of a private agreement the original exempt from stamp duty, will be kept at the office.

Art. 32. If the deed submitted for registration has been provided by the master during a voyage, the formalities may be completed by telegram, telex or telefax, containing the details listed in Article 30.

This procedure shall have full legal effect provided that within three months of the date of registration of the telegram, telex or telefax, the deed is presented to the registrar of mortgages for registration.

Art. 33. The registration requested in Article 26 shall be entered in the register upon presentation to the registrar of the following:

- in the case of a legal action, two copies stating the given names, surnames, occupations and addresses of the parties to such action, the rights to which such writs, requests for annulment, requests for setting aside, or cancellation of contracts relate and the court in which action is being brought:
- in the case of a judgment, two copies delivered by the officer of the court, stating the given names, surnames, occupations and addresses of the parties, the outcome of the decision and the tribunal or court which handed down the decision.

The registrar will return to the applicant one of the copies on which he will certify that the registration has been entered.

If the ship to which the request for annulment, setting aside or cancellation refers has not yet been registered, then the registrar shall enter such copies into a register of deposit and the entry shall be made in the register at a later date.

Art. 34. If several published deeds are presented to the registrar on the same date, they will be taken numerically in the order in which the titles are listed in the register of deposit.

Art. 35. The omission of one or more of the formalities prescribed by the articles of this chapter will not render the registration null and void unless it prejudices the interests of a third party.

Chapter 4 - Maritime Liens and Mortgages

Art. 36. Maritime liens and mortgages create preferential rights among a ship's creditors. The order of the liens, which always rank in priority to mortgages, depends upon their priority.

Art. 37. Creditors having a lien or a mortgage on a ship retain it when the ship changes hands and settlement will be made according to the order of the claims on entries.

Art. 38. If a subsequent owner does not pay debts arising from a lien or mortgage in accordance with the terms and time limit granted to the debtor, or does not comply with the formalities hereinafter established in order to clear his ownership, each creditor has the right to sell the ship.

Art. 39. Change of nationality does not prejudice existing rights on the ship. The extent of these rights is determined by the law of the flag legally flown by the ship at the time when it changed its nationality.

Section I - Maritime Liens

Art. 40.

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

1.1. Legal costs due to the State, and expenses incurred in the common interest of the creditors in order to preserve the ship or to procure its sale and the distribution of the proceeds of sale; tonnage dues, light or harbour dues, and other public taxes and charges of the same character; pilotage dues, the cost of watching and preservation from the time of the entry of the ship into the last port;

1.2. Claims arising out of the contract of engagement of the master, crew, and other persons hired on board;

1.3. Remuneration for assistance and salvage, and the contribution of the ship in general

average;

1.4. Indemnities for collisions or other accident of navigation, as also for damage caused to works forming part of harbours, docks, and navigable ways; indemnities for personal injury to passengers or crew; indemnities for loss of or damage to cargo or baggage;

1.5. Claims resulting from contracts entered into or acts done by the master, acting within the scope of his authority, away from the ship's home port, where such contracts or acts are necessary for the preservation of the ship or continuation of its voyage, whether the master is or is not at the same time owner of the ship, and whether the claim is his own or that of shipchandlers, repairers, lenders, or other contractual creditors.

2. The accessories of the ship and the freight mentioned in paragraph 1 mean:

2.1. Compensation due to the owner for material damage sustained by the ship and not repaired, or for loss of freight;

2.2. General average contributions due to the owner, in respect of material damage sustained by the ship and not repaired, or in respect of loss of freight;

2.3. Remuneration due to the owner for assistance and salvage services rendered at any time before the end of the voyage, any sums allocated to the master or other persons in the service of the ship being deducted.

The provision as to freight applies also to passage money.

Payments made or due to the owner on policies of insurance, as well as bounties, subventions, and other national subsidies are not deemed to be accessories of the ship or of the freight.

Notwithstanding anything in the opening words of point a), the lien in favour of persons in the service of the ship, extends, to the total amount of freight due for all voyages made during the subsistence of the same contract of engagement.

Art. 41.

Claims secured by a lien and relating to the same voyage rank, in the order in which they are set out in Article 40 paragraph 1. Claims included under any one heading share concurrently and rateably in the event of the fund available being insufficient to pay the claims in full.

The claims mentioned under point c) and e) of Article 40, in each of the categories, are reimbursed in the inverse order of the dates on which they came into existence.

Claims arising from one and the same occurrence are deemed to have come into existence at the same time.

Claims secured by a lien and attaching to the last voyage have priority over those attaching to previous voyages. Provided that the claims, arising on one and the same contract of engagement extending over several voyages, all rank with claims attaching to the last voyage.

As regards the distribution of the sum resulting from the sale of the property subject to a lien, the creditors whose claims are secured by a lien have the right to put forward their claims in full, without any deduction on account of the rules relating to limitation of liability; provided, however that the sum apportioned to them may not exceed the sum due having regard to the said rules.

A lien on freight may be enforced so long as the freight is still due or the amount of the freight is

still in the hands of the master or the agent of the owner. The same principle applies to a lien on accessories.

The provisions of Article 40 and of this Article apply to ships under the management of a person who operates them or to the principal charterer, except in cases where the owner has been dispossessed by an illegal act or where the claimant is not a bona fide claimant.

Section II - Maritime Mortgages

Art. 42. A ship may be mortgaged by agreement.

Articles 2124, 2125 and 2126 of the Civil Code apply to maritime mortgages.

Art. 43. A maritime mortgage will only be valid if it relates to a specific ship and is for a predetermined sum. A mortgage may be raised against a ship under construction. Article 2131 of the Civil Code shall apply.

Art. 44. Unless stated to the contrary, a maritime mortgage will extend to the rigging, gear, machinery and other accessories, as well as to the freight.

Art. 45. The mortgage carries a guarantee of three years of interest, ranking equally with the capital.

Art. 46. The mortgage may be registered as long as it exists.

In the case of the death of the mortgagor, the entry must be made within three months of the proving of the will.

The entry may not be obtained either after the entry of an act of conveyance of property or after the bankruptcy of the mortgagor.

When a ship loses its Luxembourg nationality, no mortgage may be entered after deletion from the register.

Art. 47. The title deed of the mortgage mentions the nominated address of the creditor (mortgagee) which is the place of residence of the registrar of mortgages.

The following shall be entered on the register by the registrar of mortgages in addition to the details required under Article 30 :

- the rate of interest and the maturity date for the repayment of the capital together with the dates on which interest is payable;
- if need be, the "stipulation de voie parée": the nominated address of the mortgage.

If no residence has been nominated, all notifications relevant to the registration will be made to the Public Prosecutor.

Article 2152 of the Civil Code shall apply.

Art. 48. Mortgagees shall be ranked in date order. If the date is the same, they shall be ranked by the numerical order of the entry in the register

Art. 49. The mortgage remains valid for 10 years from its date of creation. It ceases to be valid if it has not been renewed by the end of that term.

The entry will be renewed upon presentation to the registrar of mortgages of a request in

duplicate, specifying the precise terms on which entry is to be renewed. Otherwise, it will be considered as a new entry.

Art. 50. When a deed transferring a mortgage is in the form of a private agreement, the deed creating the mortgage, relating the reference to the registration, must be presented to the registrar. The registrar will enter such transfer in the register.

The same procedure applies if the deed is a notarized deed, if it has been executed by a private agreement or if it has been effected abroad in accordance with the procedures under the law of a foreign country.

Art. 51. In case of loss (or innavigability) of a ship, the rights of the mortgagee shall be exercised on the items salvaged or on the proceeds thereof, even if the debt is not yet due for payment.

In the case of adjustment of claims relating to a ship, the mortgagee may intervene to protect his rights. He may only exercise those rights if the compensation paid is not being used, in whole or in part, for the repair of the ship.

Art. 52. Registrations shall be deleted or reduced with the consent of the interested parties entitled to do so, or as a consequence of a judgment of last resort or without appeal, or as a consequence of an enforceable judgment; notwithstanding opposition or appeal.

Deletion or reduction of the mortgage shall be carried out by the registrar, either on deposit of a duplicate of the notarial deed of consent, or on deposit of the original contract delivered by a notary, together with a certified copy, or on deposit of the private agreement or on deposit of a writ of judgment.

A literal extract of the contract made before a notary will suffice, provided that it contains a declaration, by the notary who delivered it, that the contract contains neither conditions nor reservations.

Where the deed is a private agreement, two originals shall be issued, of which one is exempt from stamp duty, and total or partial deletion is made only on the mortgage deed, annotated with details relating to its registration. The registrar will note on it the total or partial deletion from the register.

The original deed is also required if the act was notarized and has been executed by private agreement or effected abroad in accordance with the procedures under the law of a foreign country.

Art. 53. Requests for deletion or reduction shall be governed by Articles 2159 and 2160 of the Civil Code.

Section III - Extinction of Liens and Mortgages

Art. 54. Rights of lien and mortgage shall be extinguished:

- by the extinction of the principal obligation;
- if waived by the creditor;
- by the forced sale of the ship in question;
- by the voluntary sale of the ship in question, followed by completion of the formalities

and conditions hereinafter prescribed.

In addition, rights of lien shall be extinguished after a period of one year, except in the case of claims in respect of supplies referred to in paragraph 1) e) of Article 40, where the period is six months.

In the case of rights of lien protecting payment for assistance and salvage, the period runs from the day on which operations are terminated; in the case of rights of lien protecting compensation for collision and other accidents and for physical damage, from the day on which the damage was caused; in the case of rights of lien protecting loss or damage to cargo or baggage, from the day of delivery of the cargo or baggage, or the day on which they should have been delivered; in the case of repairs and supplies and other situations referred to in paragraph 1) e) of Article 40, from the day on which the debt was contracted. In all other cases the period runs from the day on which the debt becomes payable.

The right to request advances or payment by instalments shall not apply to sums owed to employees on board, as referred to in Article 40.

If the ship in question cannot be seized in the territorial waters of the state where the claimant is resident or has his principal place of business, the fixed period may be extended, up to a maximum of three years from the day on which the debt was contracted.

Art. 55. Rights of lien shall be extinguished by voluntary transfer on the following conditions :

- that the act of transfer is registered in accordance with Article 25;
- that the transfer is published in the "Mémorial" and twice in the maritime press, the second entry one week after the first;
- that no opposition has been notified by the creditor to the previous or the current owner within one month of registration or last publication.

The creditor's lien shall however attach to the sale price as long as it has not been paid or distributed.

Art. 56. Mortgages shall be extinguished by voluntary transfer on condition that, within six months of registration of title or, in the case of legal proceedings, during those six months, within two weeks of notification of the order, the new owner provides all registered creditors, at the addresses indicated in the register, with the following :

- a copy of his title as owner specifying the date and the nature of the deed, the designation of the parties, the name, type and tonnage of the ship, the expenses and charges included in the price, and the valuation of the item if it was given or transferred by any contract other than that of sale;
- details of the date of entry of his deed of ownership;
- a table in three columns listing, respectively, the date of entry, the names of the creditors and the amount of the debts entered.

Art. 57. The new owner shall declare in the deed of notification that he will settle the debts and mortgage charges to the value of a sum not exceeding the value, or the declared value, of the ship, without any deduction in favour of the seller or any other party.

Unless otherwise agreed to the contrary in the documents evidencing the debt, the new owner

shall be subject to the terms and conditions which applied to the original debtor and shall observe any stipulations made against the original debtor.

Debts which are not yet due and only partially ranking in eligible order shall be immediately due, up to the said value, from the new owner, whilst the whole amount shall be due from the original debtor.

Art.58. If the registered creditors include a creditor with cancelling rights who wishes to exercise those rights, he must declare it to the officer of the court from which the order is to be sought.

The declaration must be made within two weeks of the notification and followed within ten days by the demand for cancellation.

From the day on which the creditor decides to exercise his cancelling rights, redemption shall be suspended and cannot be resumed until the creditor has renounced his cancelling rights or the action has been rejected.

Art. 59. During the two week period following the date on which the notification was made at the request of the new owner, all registered creditors may request that the ship be put up for auction by offering to increase the price by ten per cent and giving a guarantee of payment of the price and charges.

The auction will take place at the request of the creditor or the buyer using the correct procedures for sale subsequent to attachment.

PART 2 - SAFETY CONDITIONS

The following conventions listed in Annex 3 of the Law of 9th November 1990 approving certain international maritime conventions are relevant to this part:

- International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS 1974), the Protocol of 1978 relating to it (SOLAS PROT 1978) and the Protocol of 1988 relating to it (SOLAS PROT 1988).
- Convention on the International Regulations for Preventing Collisions at Sea, 1972, as amended (COLREG 1972).
- Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, as amended (MARPOL PROT 1978).
- International Convention on Load Lines 1966, as amended (LL 1966) and Protocol of 1988 relating to the International Convention on Load Lines 1966 (LL PROT 1988).
- International Convention on Tonnage Measurement of Ships, 1969 (TONNAGE 1969).
- International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC 1969) and Protocols related to it of 1976 (CLC PROT 1976) and 1984 (CLC PROT 1984).
- International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW 1978).
- International Convention on Maritime Search and Rescue, 1979 (SAR 1979).
- Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other

Matter, 1972, as amended (LDC 1972).

Art. 60. Without prejudice to the provisions of Article 63, no ship shall be allowed to sail under the Luxembourg flag unless provided with the certificate of registry described in the Part 1 of this Act and valid international certificates as required by those international conventions in force that have been ratified by Luxembourg.

No Luxembourg ship may put to sea or set sail from a river or sea port if it does not comply with the safety provisions referred to in the international conventions in force that have been ratified by Luxembourg or required by this Act and the implementing regulations under this Act.

Art. 61. Every ship applying for registration under the Luxembourg flag must have been subject to inspection by the maritime administration of a Member State of the EU or by a classification society approved by the Commissioner of Maritime Affairs in accordance with Article 65. The registration certificate may only be obtained after the results of the inspection have been communicated to the Commissioner of Maritime Affairs.

No ship exceeding 15 years of age from the date when the keel was laid may be registered for the first time under the Luxembourg flag.

For ships registered in Luxembourg, retaining such registration after the ship reaches 15 years of age shall be conditional upon the ship remaining fully in class in accordance with the criteria established by the international classification societies.

Art. 62. Every person or legal entity must be in possession of civil liability insurance (Protection and Indemnity Insurance) issued by an insurance company with proper professional experience of the requisite kind and having its registered office in a Member State of the EU. This insurance must provide cover for all damage which may be caused by the ship for which registration is requested, or by her cargo.

All ships carrying more than 2000 tons of oil in bulk as cargo must take out insurance or some other financial guarantee, such as a bank guarantee or a certificate issued by an international compensation fund, for a fixed sum in accordance with the limitation of liability specified in the International Convention on Civil Liability for Oil Pollution Damage of 29th November 1969.

A certificate attesting that the insurance or financial guarantee is legally valid will be issued by the Commissioner of Maritime Affairs. The certificate will be in accordance with the specimen used in the Civil Liability Convention. The conditions of issue and validity of the certificate shall be established as necessary by Grand-Ducal Regulation. The certificate must be annexed to the ship's log.

Art. 63. The following are subject to special rules which will be determined by Grand-Ducal Regulation :

- ships navigating exclusively in a restricted coastal zone within estuary limits: reference to such navigational restrictions will be made on the registration certificate issued to such ships;
- ships, other than pleasure boats, undertaking a special voyage.

Art. 64. Where international conventions relating to ship safety currently in force and ratified by Luxembourg do not so provide, one or more Grand-Ducal Regulations will determine the standards of ship safety applicable to the use to which the ship is intended to be put and the form of navigation, with particular reference to:

- the construction and the condition of the hull;
- life-saving equipment;
- rigging, gear and equipment, including fire-fighting equipment and spare parts;
- nautical instruments, propulsive system, and electrical equipment, lights and marks, radiotelegraphy and telephones;
- the physical aptitude, licenses and other similar certificates which may be required of the master and crew, as well as manning levels;
- the number of passengers, by category, which can be carried;
- accommodation conditions, health and hygiene;
- draught and loadline;
- stability, stowage and ballasting;
- cargo-handling gear.

The Commissioner of Maritime Affairs may, in exceptional cases, grant exemption from one or more of these provisions, taking into account the international conventions ratified by Luxembourg.

Art. 65. For the purpose of approving applications for registration in accordance with Article 2, the Commissioner of Maritime Affairs may accept certificates issued by foreign maritime authorities or by classification societies approved by the Minister.

For the purpose of issuing the certificates required by this Act and the implementing regulations under the Act, the Commissioner may:

- obtain the co-operation of foreign maritime or port authorities on the basis of agreements to be concluded with these authorities;
- appoint the classification societies approved by the Minister to undertake certain tasks within his responsibilities.

Art. 66. If a ship flying the Luxembourg flag finds itself abroad and unable to renew an expired certificate, the Commissioner of Maritime Affairs must be advised without delay and he will indicate the procedure to be followed to obtain a provisional certificate, which may only be issued for the purpose of completing the voyage and in no case may exceed five months.

In cases where a ship flying the Luxembourg flag has suffered a serious accident or undergone significant structural modification, the certificate of registry shall automatically be suspended. It can only be revalidated by the Commissioner of Maritime Affairs, in accordance with the conditions specified in Article 65.

In cases other than those referred to in the previous paragraph, where a ship flying the Luxembourg flag enters a port after an accident, or where there is a risk of an incident following a technical or other accident, the voyage may not be continued until the master has informed the Commissioner of Maritime Affairs or the port authorities of the circumstances.

The Commissioner of Maritime Affairs may require an expert's report and request copies of the

log book.

Art. 67. In the discharge of his duties as defined in Article 2, the Commissioner of Maritime Affairs shall carry out his control functions in co-operation with foreign maritime authorities in accordance with the international conventions governing such matters.

Where necessary he may appoint certain of the classification societies referred to in Article 65 to achieve certain objectives in accordance with such procedures as he may determine.

Art. 68. In the discharge of his duties as defined in Article 2, the Commissioner of Maritime Affairs may appoint a person or legal entity with recognized experience in the maritime field to carry out specific controls, inspections or surveys of ships flying the Luxembourg flag.

Art. 69. The Commissioner of Maritime Affairs or the duly authorized agents referred to in Articles 65 and 68 shall have the right to board any ship referred to in this Act and the implementing regulations under the Act at any time of the day or night.

Any master or owner of a ship flying the Luxembourg flag is required to give the persons referred to in the previous paragraph any information and assistance that they consider necessary for the accomplishment of their task.

Art. 70.

1. The Commissioner of Maritime Affairs or the duly authorized agents referred to in Article 65 shall have the right to detain any ship which does not comply with the conditions established by this Act.

They shall also have the right to detain any ship not flying the Luxembourg flag if there are serious grounds for believing that its safety or that of its crew or passengers, could be endangered.

In accordance with the Conventions of the International Maritime Organization, the Commissioner of Maritime Affairs shall only exercise the right to which this paragraph refers against foreign ships after having informed the Consul of the country whose flag it flies. He will specify the steps to be taken and the reasons for his action. In urgent cases, this information will be given without delay, after the steps have been taken.

The ship in question may leave as soon as the required conditions have been fulfilled and after clearance by an inspector of an approved Classification Society.

Notification of the decisions taken shall be given to the port authorities of the place where the ship is lying.

2. The Commissioner of Maritime Affairs or the duly authorized agents referred to in Article 65 shall have the right to prevent the departure of a ship flying the Luxembourg flag:

2.1. if the ship is not carrying valid copies of the required certificates;

2.2. if, as in the case referred to in Article 67, the inspection reveals that the ship does not comply with the requisite laws or regulations;

2.3. if there are reasonable grounds for believing that the non-observance of the conditions referred to in Article 64 might endanger the safety of the crew or passengers. The ban on sailing will be lifted when the legal conditions and regulations have been satisfied.

Art. 71. The crew may at all times submit a formal petition, stating the grounds therefor, to the Commissioner of Maritime Affairs, if they consider that the ship does not fulfil all the required guarantees of safety. The Commissioner of Maritime Affairs will arrange for the crew to be heard before taking such measures as the circumstances may require.

PART 3 - SEAMEN'S EMPLOYMENT RIGHTS

The following conventions listed in Annex 4 of the Law of 9th November 1990 approving certain international maritime conventions are relevant to this Part :

- Convention No 53 Concerning the Minimum Requirement of Professional Capacity for Masters and Officers on Board Merchant Ships, adopted by the ILO Conference of 24th October 1936, known as the Officers' Competency Certificates Convention, 1936.
- Convention No 58 Fixing the Minimum Age for the Admission of Children to Employment at Sea (Revised 1936), known as the Minimum Age (Sea) Convention (Revised), 1936.
- Convention No 68 Concerning Food and Catering for Crews on Board Ship, adopted by the ILO Conference of 27th June 1946, known as the Convention on Food and Catering (Ships' Crews), Convention 1946.
- Convention No 69 Concerning Certification of Ships' Cooks, adopted by the ILO Conference of 27th June 1946, known as the Certification of Ships' Cooks Convention, 1946.
- Convention No 73 Concerning the Medical Examination of Seafarers, adopted by the ILO Conference of 29th June 1946, known as the Medical Examination (Seafarers) Convention, 1946.
- Convention No 74 Concerning the Certification of Able Seamen, adopted by the ILO Conference of 29th June 1946, known as the Certification of Able Seamen Convention, 1946.
- Convention No 92 Concerning Crew Accommodation on Board Ship (Revised 1949), adopted by the ILO Conference of 18th June 1949, known as the Accommodation of Crew Convention (Revised), 1949.
- Convention No 108 Concerning Seafarers' National Identity Documents, adopted by the ILO Conference of 13th May 1958, known as the Seafarers' Identity Documents Convention, 1958.
- Convention No 146 Concerning Annual Leave with Pay for Seafarers, adopted by ILO Conference of 29th October 1976, known as the Seafarers' Annual Leave with Pay Convention, 1976.
- Convention No 147 Concerning Minimum Standards in Merchant Ships, adopted by the ILO Conference of 29th October 1976, known as the Merchant Shipping (Minimum Standards) Convention, 1976.
- Convention No 166 Concerning the Repatriation of Seafarers (Revised), adopted by the ILO Conference of 24th September 1987, known as the Repatriation of Seafarers

(Revised) Convention, 1987.

Chapter 1 - The Contract of Maritime Employment

Art. 72. Any contract of employment agreed between a shipowner or his representative and a sailor covering intended or current service on board a ship flying the Luxembourg flag shall be a contract of maritime employment subject to the provisions of this Act.

Art. 73. Without prejudice to the regulations governing the free movement of labour within the EU, this contract of maritime employment shall confer no right of entry, residence or employment in the territory of Luxembourg.

Art. 74. No one under the age of 18 years may hold a contract of maritime employment, except in the case of a period of in-service training.

A Grand-Ducal Regulation will determine the nature of maritime training.

Art. 75. The recruitment of a worker wishing to enter into a contract of maritime employment may take place by direct hiring or through the intermediary of a joint marine employment bureau.

Art. 76. The recruitment of a sailor by contract of maritime employment shall be subject to the presentation of a medical certificate attesting that the seaman meets the physical condition required for service at sea and affirming that the signing on of the seaman presents no danger to his own health or to that of the crew.

The certificate must confirm:

- that the hearing and sight of the holder and, if he is to be employed on deck, his perception of colours, are satisfactory;
- that the holder has no condition which is likely to be aggravated by service at sea, or which would render him unfit for such service, or which would endanger the health of other persons on board.

The medical certificate shall be issued at the expense of the shipowner by a doctor approved by the Commissioner of Maritime Affairs.

The certificate shall remain valid for a period of one year from its date of issue, unless service at sea is interrupted for a period of more than three weeks because of accident or sickness, in which case it must be renewed. If the certificate expires during the voyage, it will remain valid until the end of the voyage.

In an emergency, the seamen may be provisionally employed under a contract of maritime employment without having satisfied the provisions of this article. In this case, they must undergo a medical examination at the ship's first port of call where such an examination is possible.

The shipowner may at any time require any seamen to undergo a new medical examination.

The nature of the application of the present article may be established by Grand-Ducal Regulation.

Art. 77.

1. The contract of maritime employment must be drawn up in writing for every seaman, not later

than when he takes up his duties. The contract must be issued in duplicate, the first copy being given to the shipowner or his representative, and the second to the seaman.

The contract must be drawn up in such a way as to allow the seaman to be aware of the respective rights and obligations of the parties to the contract.

The contract of maritime employment must contain the following information:

- the name of the shipowner and of his representative (where applicable);
- the surname and forenames of the crew member, together with the following particulars:
 - date and place of birth;
 - permanent address;
 - nationality;
 - licences and qualification certificates;
 - heirs or beneficiaries;
 - passport number and expiry date;
 - seaman's book number.
- the work for which he is employed;
- place and date of taking up duties and name of the ship;
- the voyage or voyages which will be undertaken;
- rate of pay;
- the social security system to be applied;
- duration of the contract;
- place and date of engagement.

2. The contract of maritime employment must state whether the engagement is for a specific duration, an indefinite duration or for one or more voyages.

If the engagement is for an indefinite duration, the contract must specify the minimum notice period to be observed in case of termination by one of the parties. This notice period may not be less than that referred to in paragraph 3 of Article 79 of the present Act.

If the engagement is for a specific duration, the contract must state this duration.

If the engagement is for one voyage, the contract must indicate by name the port where the voyage will end and state the stage in the commercial and marine activities carried out in that port when the voyage shall be deemed to have ended.

In cases where the port designated is such that an approximate duration for the voyage cannot be stated, the contract must fix a maximum period after which the seaman may request disembarkation at the first European port of call, even if the voyage for which he was contracted has not ended.

The following are considered as European ports: ports situated in the member states of the EU, Norway, Sweden, Finland and Iceland.

Art. 78.

1. A contract of maritime employment signed for a specific period shall end on the expiry of the period for which it was concluded.

A contract of maritime employment signed for the duration of one voyage shall end with the termination of a voyage and by voluntary or enforced cessation of the voyage.

Refusal by the employer to renew a contract for a specific period after at least two successive extensions may be considered as equivalent to dismissal.

2. Except in the case referred to in Article 82, a contract of maritime employment for a fixed duration may not be cancelled before the term has expired.

Breach of the provisions of the previous paragraph by the employer gives the employee the right to compensation equal to the pay, excluding overtime, which he would have received up to the end of the contract.

Breach of the provisions of the first paragraph by the seaman gives the employer the right to compensation equal to the actual loss suffered, provided that this compensation does not exceed the pay due for the unexpired term of the contract.

Art. 79.

1. A contract of maritime employment for an indefinite period shall end in a port of loading or discharge after notification of termination of the contract by the master or by the seaman, on condition that the minimum notice period has been observed.

2. The contract of maritime employment may be terminated by the master or by the seaman in a port of loading or discharge by giving notice in writing against a receipt signed by the master or the seaman, or by a verbal declaration recorded in the logbook, made in the presence of two witnesses who shall sign the logbook or, if necessary, by registered letter.

Dismissal of the master must be notified by the shipowner or his properly authorized representative.

Termination of the contract of maritime employment shall be registered in the ship's logbook.

3. In cases where the master or seaman give notice of termination the contract of maritime employment shall end:

- on expiry of a period of notice of one week, if the seaman has had a continuous period of service of less than three months with the same owner;
- on expiry of a period of notice of two weeks, if the seaman has had a continuous period of service of between three months and three years with the same owner;
- on expiry of a period of notice of six weeks, if the seaman has had a continuous period of service exceeding three years with the same owner.

The winding-up of the firm or company, other than for reasons of force majeure, shall not release the owner from his obligation to respect the notice period.

4. The party who terminates a contract of indefinite duration without being authorized under Article 82 or without respecting the period of notice referred to in this article must pay to the other party compensation equal to the remuneration due for the period of notice or part thereof remaining.

Art. 80.

1. In the event of termination of a contract of maritime employment for an indefinite duration, the seaman may, within two weeks of the notification of dismissal in accordance with the provisions of Article 79, request that the master of the ship records in the logbook the cause or causes of dismissal where they are related to the seaman's abilities or conduct or result from the company's operating requirements. In this case the master must record in the logbook without delay the cause or causes of dismissal, and within a week give the seaman a signed copy of the entry.

2. If a contract of maritime employment is terminated unlawfully, there shall be a right to compensation.

Dismissal which is contrary to the law and/or which is not justified is an abuse and shall be regarded as socially and economically irregular.

Legal action against unfair termination of a contract of maritime employment must be taken to a labour tribunal within three months of the notification of dismissal or of its justification, under pain of otherwise being ruled out of time.

This period shall be validly set aside in the case of a written appeal to the employer from the seaman, his appointed representative or his trade union.

3. In disputed cases, the burden of proving that the case is justified shall fall on the employer.

The employer may produce details during the legal proceedings to support his case.

The refusal by the seaman to work because of a seamen's strike, called under lawful conditions, shall not constitute a serious offence within the meaning of Article 82, or a justifiable cause within the meaning of paragraph 1 of this article.

Art. 81. A seaman who has been dismissed shall have the right, except in the case of immediate dismissal for a serious offence, to compensation equal to:

- one month's pay after continuous service of at least 5 years with the same owner;
- two months' pay after continuous service of at least 10 years with the same owner;
- three months' pay after continuous service of at least 15 years with the same owner.

Art. 82.

1. A crewmember's contract of maritime employment of a crewmember may be terminated without notice or before expiry of the term in any of the following circumstances :

- if it appears that the crewmember is unsuitable for the tasks for which he was taken on, for reasons which existed before he was engaged, unless those reasons were known to or could reasonably have been known to the shipowner;
- if the crewmember is suffering from an infectious disease which may be dangerous to other persons on board or if he fails to declare that he is a carrier of typhoid fever or

paratyphoid fever;

- if he is guilty of repeated faults in his work of a particularly serious nature;
- if he is guilty of an offence requiring disciplinary or penal sanctions and making his presence on board undesirable;
- if he commits an act which makes him unable to work.

The master must promptly record in the logbook any immediate termination of a contract of maritime employment with precise details concerning the act or acts of which the seaman is accused and the circumstances which render them of a serious nature. He must hand the crewmember a signed copy of this entry.

2. Any crewmember may terminate his contract of employment without notice in any of the following circumstances:

- if the shipowner or master is guilty of a serious failure to fulfil his duties towards the crewmember;
- if the master seriously insults him, subjects him to ill treatment, or tolerates such treatment by a third party;
- if the ship changes its flag;
- if he is refused annual leave;
- if the ship has to enter a port affected by an epidemic or does not immediately leave a port where an epidemic has been declared, in such a way that the health of the crewmember is in serious danger;
- if the ship is directed to enter a zone where it will be exposed to particular dangers for reasons of armed conflict or if the ship does not leave such a zone without delay;
- in the event of unseaworthiness of the ship, unhealthy accommodation, lack of food or drink, substandard provisions or inadequate manning. In this case the crewmember has the right to terminate his contract without notice only if he makes a complaint which is not remedied within a reasonable period.

A crewmember shall not be authorized to terminate his contract of maritime employment under points 5 and 6 above if he was aware of the circumstances before commencement of the voyage.

3. A fault ceases of itself to confer the right of termination for a serious cause one month after the date on which the party exercising such right had knowledge of the fault, unless the case is already being pursued through the courts.

Art. 83. Whatever form it takes, a contract of maritime employment shall end:

- on the death of the seaman;
- on the loss or officially declared unseaworthiness or seizure or capture of the ship;
- on the imprisonment of the seaman for having committed or having been an accomplice to a criminal offence;
- on cancellation following by a judgement in accordance with the provisions of Article

1184 of the Civil Code;

- on the legitimate disembarkation of the seaman for reasons of sickness or injury;
- by mutual consent of the parties;
- on the laying-up of the ship or its extended stay in a shipyard for a period of more than ten days;
- on the bankruptcy of the shipowner.

Art. 84. If a change occurs in the legal situation of the shipowner, for example by succession, sale, merger, transfer of business or incorporation, all contracts of maritime employment current on the day of change shall continue between the new owner and the seaman.

Art. 85. All seamen sailing under the Luxembourg flag must carry a seaman's book produced and issued by the Commissioner of Maritime Affairs.

The document must not contain any evaluation of the way in which the seaman performs his duties.

The form, content and conditions of issue of the document will be determined by Grand-Ducal Regulation.

Chapter 2 - Seamen's Rights and Obligations

Art. 86. Seamen must report on board the ship for the service for which they were engaged on the day and at the time advised by the shipowner, his representative or the master.

Art. 87. Any unjustified lateness by a seaman in taking up his duties on board on the fixed day and hour will be considered as legitimate cause for the shipowner to terminate the contract.

If a seaman is absent from the ship accidentally or for reasons of force majeure two hours before sailing he may be replaced without having the right to compensation of any kind.

During the voyage, absence from the ship at the time of sailing without the authorization of the master shall constitute a legitimate cause for termination, even when abroad.

Art. 88. A seaman will be expected to perform his duties under the conditions determined by the contract according to law or to the regulations in force.

Art. 89. A seaman is required to obey the orders of his superiors concerning the operation of the ship and to take care of the ship and its cargo.

Art. 90. The master will decide the conditions on which a seaman may take shore leave.

Art. 91.

All seamen are entitled to be fed throughout the term of the contract.

The food which they are given must be wholesome, of good quality, sufficient in quantity and of a nature appropriate to the voyage.

Any rationing of the provisions distributed shall give the seamen the right to compensation equivalent to the value of the amount rationed. The rationing must be recorded in the logbook.

The shipowner must provide the seamen with proper accommodation on board appropriate to the

number of occupants and exclusively for their personal use.

Chapter 3 - Conditions of Work and Remuneration

Art. 92.

1. The work of personnel covered by a contract of maritime employment shall be based on an 8 hour day and a 40 hour week.

Time during which personnel are instructed to be at the disposal of the master and away from their quarters shall be considered to be time actually worked.

Time during which personnel are permitted to remain in their quarters shall be considered to be rest time.

2. At the request of the owner, and subject to the conditions of the collective bargaining agreement, the agreement or the Minister himself may determine the working arrangement and working hours for the week or some other period, taking account of the continuous nature of shipboard activity, port constraints and the safety of persons and goods both at sea and in port.

The working arrangements and work periods of seafarers may, as necessary, be determined by Grand-Ducal Regulations.

3. The maximum daily working period may be exceeded without extra pay for any of the following tasks:

3.1. tasks which the master considers necessary and urgent to protect the safety of the ship, cargo or persons on board;

3.2. tasks required by the master to assist other ships or other persons in distress;

3.3. musters, fire drills, embarkation drills and other similar exercises;

3.4. supplementary tasks required by customs inspections, quarantine or other health formalities;

3.5. normal and necessary tasks which the officers must undertake to fix the position of the ship and for meteorological observations;

3.6. the extra time needed for the change of watch.

4. All tasks, other than those referred to in paragraph 3, which are carried outside the normal working period shall be considered overtime and shall be paid as such in accordance with the rates fixed by the contract.

The overtime rate must be not less than 25%.

Art. 93. In principle, seamen should not be required to work on Sundays other than in cases of force majeure and as required for the safety and smooth running of the ship and the service of persons on board or for reasons concerning the cargo.

The provisions of Article 7 of the Act of 1st August 1988 concerning weekly rest periods of employees and workers shall apply to seamen on board ships flying the Luxembourg flag.

Art. 94. Persons serving on board a ship shall be entitled to paid leave at the shipowner's expense calculated at 3 days for every month on board.

Art. 95.

1. The pay of employees on board a ship shall be fixed at a monthly rate.
2. A crewmember will be paid for the time taken to report to the place where he will take up his duties.
3. Earnings shall be payable upon expiry of the contract of maritime employment or after signing off.

However, a crewmember shall have the right to an advance of pay when the ship is at anchor in port or in harbour waters. It is forbidden to pay out seamen's wages in licensed premises.

4. If a crewmember so requests, the owner will pay a part of his earnings to a designated third party, provided that this payment does not exceed 65% of the net pay calculated over a period of one month.

If a crewmember so requests, the owner or his representative will give the seaman a certificate of assignment of salary to a third party.

5. The master shall be required to hand to the seaman at the end of each month a detailed account of hours worked, showing hours worked as overtime and the rates of overtime payment.

Art. 96. Crewmembers' pay must not be less than the social minimum wage fixed by the Act of 12th March 1973 revising the social minimum wage.

With respect to his obligations to provide board and accommodation, the shipowner shall be authorized to deduct a lump sum, as determined by Grand- Ducal Regulation.

Chapter 4 - Collective Bargaining Agreements

Art. 97. In accordance with the Act of 12th June 1965 on collective bargaining agreements, shipowners may, in the common interest of persons on board their ships flying the Luxembourg flag, conclude a collective bargaining agreement with nationally representative trade unions which can fairly claim to be representative of the crewmembers, either by direct affiliation or by a structural or contractual link with a trade union representing seamen.

Chapter 5 - Repatriation

Art. 98. Seamen shall have the right to repatriation in the following cases:

- when a contract of maritime employment for a specific period or for a specific voyage expires in a country other than his country of residence;
- at the end of the legal or contractual notice period, notified in accordance with the provisions of this Act;
- in case of sickness or accident or for any other medical reason requiring repatriation of the seaman if he is medically fit for travel;
- in case of shipwreck;
- when the shipowner is no longer able to fulfil his legal or contractual obligations towards the seaman for reasons of bankruptcy, sale of the vessel, change of flag or for any similar reason;

- when the ship sails towards a war zone, as defined by the collective bargaining agreement, to which the seaman is not prepared to go;
- in the event of the cessation or suspension of the seaman's employment in accordance with the collective bargaining agreement or in case of cessation of employment for any similar reason.

Art. 99. The seaman must be repatriated to his port of embarkation or to any other place agreed by the parties at the time of engagement.

Art. 100.

The shipowner shall be responsible for organizing repatriation by appropriate and rapid means; air shall be the normal mode of transport.

The cost of repatriation be borne by the shipowner. The Commissioner of Maritime Affairs may require the shipowner to lodge a guarantee in order to cover part or all of the repatriation expenses.

In cases where repatriation takes place because the seaman has been found guilty by the courts of a serious dereliction of duty, the shipowner may demand total or partial repayment of the repatriation costs from the seaman.

The expenses borne by the shipowner shall include:

- travel to the destination chosen for repatriation;
- the seaman's board and lodging expenses from the moment he leaves the ship until he reaches the place of repatriation;
- the pay and allowances due to the seaman from the moment he leaves the ship until his arrival at the place of repatriation, if so provided for in the collective bargaining agreement;
- the transport of 30 kilos of the seaman's personal effects to the place of repatriation;
- medical treatment, if necessary, to ensure that the seaman is fit enough to travel to the place of repatriation.

Chapter 6 - Sickness and Injuries to Seamen

Art. 101.

The seaman shall be paid his salary and treated at the expense of the ship if he is injured while on duty on board or falls sick during the voyage after the ship has left the port where he signed on.

The right to treatment ceases when the seaman is cured, when the injury is healed, or when he is repatriated to the port where he signed on or to the port closest to his usual place of residence.

The seaman will be put ashore if the doctor on board or any other doctor declares that his condition requires disembarkation and, if necessary, hospital treatment.

The provisions of this article shall not be applicable if the illness or injury is attributable to a serious fault on the part of the seaman.

The seaman shall continue to be paid throughout the time that he requires treatment.

Chapter 7 - Special Provisions Applicable to the Master

Art. 102.

1. The provisions of Part 3 of this Act shall apply to the master, except as determined by Grand-Ducal Regulation. The same regulation otherwise may determine, as appropriate, the particular rules applicable to the master.
2. The owner may dismiss the master, subject to payment of compensation in cases of unfair dismissal in accordance with the provisions of Article 80.
3. A master engaged for a voyage is required to complete it; otherwise compensation will be payable to the owner.

Chapter 8 - Disputes between Shipowners and Seamen

Art. 103. Any dispute which arises between a shipowner or his representatives and employees bound by a contract of maritime employment shall be brought before the labour courts.

Chapter 9 - Derogations

Art. 104. The following provisions shall not apply to employees bound by a contract of maritime employment:

- la loi du 24 mai 1989 sur le contrat de travail (Contracts of Employment);
- la loi du 7 juin 1937 ayant pour objet la réforme de la loi du 13 octobre 1919 portant règlement légal du louage de service des employés Privés (Engagement of Private Employees);
- la loi du 9 décembre 1970 portant réduction et réglementation de la durée du travail des ouvriers occupés dans les secteurs public ou privé de l'économie (Hours of Work);
- la loi modifiée du 22 avril 1966 portant réglementation uniforme du congé annuel payé des salariés du secteur privé (Annual Paid Leave in the Private Sector);
- la loi modifiée du 3 juillet 1975 concernant la protection de la maternité de la femme au travail (Maternity Protection for Working Women); la modification de l'article 13 du code des assurances sociales (Social Security);
- la loi du 12 mai 1975 portant généralisation de l'échelle mobile des salaires et traitements (Indexation of Salaries and Wages);
- l'article 4 in fine de la loi du 12 juin 1965 concernant les conventions collectives de travail (Collective Bargaining Agreements);
- l'article 19 de la loi modifiée du 24 décembre 1977 autorisant le gouvernement à prendre les mesures destinées à stimuler la croissance économique et à maintenir le plein emploi (Measures to Stimulate Economic Growth and Maintain Full Employment);
- la loi du 12 juillet 1895 concernant le paiement des salaires des ouvriers (Payment of Wages of Manual Workers);
- la loi du 1^{er} août 1988 concernant le repos hebdomadaire des employés et ouvriers à l'exception de son article 7 (Weekly Rest Periods for Employment and Manual Workers, except Article 7);

- la loi du 2 mars 1982 concernant les licenciements collectifs (Collective Dismissal);
- la loi modifiée du 18 mai 1979 portant réforme des délégations du personnel (Employee Representatives);
- la loi modifiée du 6 mai 1974 instituant des comités mixtes dans les entreprises du secteur privé et organisant la représentation des salariés dans les sociétés anonymes (Works Councils in Private Companies and Employee Representation in Limited Companies);
- la loi du 28 mars 1987 sur la préretraite (Early Retirement);
- la loi du 26 juillet 1975 autorisant le Gouvernement à prendre des mesures destinées à prévenir des licenciements pour des causes conjoncturelles et à assurer le maintien de l'emploi (Measures to Prevent Dismissal for Reasons of Market Fluctuations and to Maintain Employment);
- la loi du 10 avril 1976 portant réforme de la réglementation des jours fériés légaux (Public Holidays).

PART 4 - SOCIAL PROTECTION FOR SEAMEN

The following conventions appearing in Annex 5 of the Act of 9th November 1990 approving certain international maritime conventions are relevant to this Part:

- Convention No 55 concerning the Liability of the Shipowner in case of Sickness, Injury or Death of Seamen, adopted by the ILO Conference of 24th October 1936, known as the Shipowners' Liability (Sick and Injured Seamen) Convention, 1936.
- Convention No 56 concerning Sickness Insurance for Seamen, adopted by the ILO Conference of 24th October 1936, known as the Sickness Insurance (Sea) Convention, 1936.

Art. 105. The Social Security Code shall be amended as follows:

Article 1 sub-paragraph 1) shall be completed as follows: "and Luxembourg seamen or nationals of a country with which Luxembourg has a bilateral or multilateral social security treaty, or Luxembourg residents employed on a ship which flies the Luxembourg flag".

After paragraph 9 of Article 8, a new paragraph 10 shall be inserted as follows:

"The right of seamen as referred to in Article 1 to allowances in kind is suspended insofar as the shipowner is required to take on the burden of payment in accordance with Article 101 of the Act of 9th November 1990 concerning the creation of a Luxembourg maritime register".

Paragraphs 10 to 13 become paragraphs 11 to 14.

Paragraph 1 of Article 93 shall be amended as follows:

"Article 93 - Manual workers, assistants, craftsmen, apprentices, domestic servants, office workers, business executives, foremen, technical staff and Luxembourg seamen or nationals of a country with which Luxembourg has a bilateral or multilateral social security treaty or Luxembourg residents employed on a ship flying the Luxembourg flag are insured against

occupational injury or death, if employed in one of the companies or practising one of the professions or activities referred to in Article 85, for a sum of four times the minimum social wage for unskilled workers of more than 18 years of age".

After paragraph 4 of Article 97, a new paragraph 5 shall be inserted as follows:

"The right of seamen as referred to in Article 93 to allowances in kind is suspended insofar as the shipowner is required to take on the burden of payment in accordance with Article 101 of the Act of 9th November 1990 concerning the creation of a Luxembourg shipping register".

Paragraph 5 to 11 become Paragraphs 6 to 12.

A new paragraph 2 shall be added to Article 170 as follows:

"Employment as a seaman on a ship flying the Luxembourg flag by Luxembourg nationals or nationals of a country with which Luxembourg has a bilateral or multilateral social security treaty or by Luxembourg residents shall be regarded as an employment in the Grand Duchy of Luxembourg".

Paragraph 2 of Article 335 shall be replaced by the following:

"When a person engages personnel subject to social security he may be required by the management committee of the office either to lodge a deposit or to present a guarantee in respect of his legal and statutory obligations. The guarantee to be provided will be the greater of the estimated total of six months' social security payments or 100,000 Luxembourg francs. The sum may be adjusted every six months. The placing of a deposit will be subject to the conditions of the Act of 12th February 1872 and of the Grand-Ducal Regulations of 9th July 1945 concerning deposits.

A bank guarantee payable on first demand by the office must be provided by a bank registered in the Grand Duchy of Luxembourg.

The deposited sums or the bank guarantee may be enforceably called in, if the management committee of the office so decides, when the employer ceases his activities, particularly in cases of liquidation for reasons of bankruptcy or receivership of a company. The deposit and the interest therefrom shall accrue to the office up to the level of the debt".

A new article shall be added, as follows:

"Art. 340. - A Grand-Ducal regulation may establish special provisions for seamen with respect to administrative procedures concerning affiliation, the collection of social security payments and allowances".

A new paragraph 4 shall be added to Article 1 of the Act of 29th August 1951 concerning health insurance of civil servants and employees, as follows:

"Seamen engaged on a ship flying the Luxembourg flag in a supervisory and management role, with technical and economic responsibility for the work of others, and with no predominant involvement in manual work, are likewise considered to be private sector employees in accordance with point 9 of paragraph 1 of the present Article".

Art. 106. Without prejudice to the provisions of Article 105, the owner of a ship flying the Luxembourg flag must arrange with an insurance company licensed by the Government in compliance with conditions which may be laid down by Grand-Ducal Regulations an insurance policy which guarantees protection to personnel employed on such a ship in accordance with the

following rules:

1. In case of sickness,

1.1. health care, including medical and dental treatment, drugs and medical supplies and hospital treatment, as may be required throughout the period of sickness: the insurance must cover at least 80% of the costs of such care;

1.2. sickness benefits equivalent to at least 60% of previous earnings, to be paid throughout the period of incapacitation from work up to a maximum of 52 weeks;

Entitlement to the benefits referred to above may not be subject to a minimum service requirement of more than one month.

2. In case of unemployment, payments equivalent to at least 45% of the previous earnings for not less than 13 weeks in a twelve-month period.

Entitlement to the payments referred to above may not be subject to a minimum service requirement of more than three months.

3. In case of retirement, payments equivalent to at least 1.5% of earnings for every year of insurance. The age at which such sums become payable may not exceed 65.

Entitlement to the payments referred to above may not be subject to a minimum service requirement of more than one year.

4. In the case of disability, payments as for retirement but increased by 1.5% of the average of the insured earnings prior to disability for every year between disablement and reaching the age of 55.

Anyone who, as a consequence of sickness or infirmity, cannot return to his previous employment must be considered to be disabled, unless he is able to carry out another activity appropriate to his strength and capabilities, in which case the insurance must guarantee appropriate retraining.

Entitlement to the payments referred to above may not be subject to a minimum service requirement of more than three months. Payments shall continue for as long as the person concerned is incapacitated and unable to earn his living.

5. In the case of the death of the insured, benefits equivalent to 60% of the retirement pension or disability allowance to which the deceased was entitled shall be payable to the surviving spouse, and 20% to each dependent child under 18, the total allowance not exceeding the sum which the insured person would have received.

Entitlement to the benefits referred to above may not be subject to a minimum service requirement of more than three months.

6. In the case of work-related accident or sickness, the payments must include health care as provided for in paragraph 1 (a), as well as a life annuity corresponding, in the case of total incapacitation, to at least 50% of previous earnings. In the case of partial incapacitation, the annuity shall represent that percentage of the annuity payable in the case of total incapacitation which reflects the reduction in working capacity.

In the case of the death of the insured following a work-related accident or sickness, benefits equivalent to 60% of the annuity payable in the case of total incapacitation shall be payable to

the surviving spouse, and 20% to each dependent child under 18, the total allowance not exceeding the sum which the insured person would have received. There shall be no other qualifying condition of service, nor may any contribution towards health costs be required from the insured person.

7. In the case of maternity,

7.1. benefits in kind must include pre-natal care, treatment during delivery and post-natal care from a doctor or a qualified midwife, as well as medical supplies and hospital treatment. Such benefits shall be non-contributory;

7.2. financial payments, calculated on the same basis as in paragraph 1 (b), throughout maternity leave, which shall not be less than eight weeks before delivery and eight weeks after delivery. Post-natal leave shall be extended by four weeks in the case of breast feeding or premature or multiple birth.

Entitlement to such payments may not be subject to a minimum service requirement of more than six months in the year preceding delivery.

The benefits referred to in paragraphs 1 (a) and 7 (a) are also payable to the spouse of the insured person and his children under 18, unless these persons are entitled to such benefits from another source.

The Government may waive the owner's obligations referred to in the present article if the seamen employed on a ship flying the Luxembourg flag are linked to a social security system in their country of residence in accordance with the legislation of that country and have the right to benefits at least equivalent to those referred to in the present article.

PART 5 - FISCAL AND FINANCIAL PROVISIONS

(as amended by the Act of 17th June 1994)

Art. 107. For the purposes of the implementation of the provisions of Article 152 (a) of the Law of 4 December 1967 concerning income tax, the condition of physical implementation within the territory of the Grand Duchy of Luxembourg laid down in the first paragraph of Article 1 need not to be satisfied by accredited shipping companies, as defined in Article 129, in respect of ships used in international maritime traffic.

Art. 107a. The last sentence of paragraph 9 of Article 152(a) of the Law of 4 December 1967 concerning income tax shall be amended as follows:

"Similarly, there shall be no entitlement to income tax refunds in respect of ships engaged in international maritime traffic"

Art. 108. The provisions of the Law of 1 December 1936 concerning the local business tax, as subsequently amended, shall not apply to income earned from the operating and chartering of ships used in international maritime traffic, nor to the operating capital that such ships represent.

Art. 109.

1. On the conditions set out below and by derogation from the provisions of Article 157, paragraphs 3 to 6, of the Law of 4 December 1967 concerning income tax, a Grand-Ducal Regulation may provide for a flat-rate taxation of income earned from salaried employment with

an accredited shipping company by non-resident taxpayers on board a ship that is operated in international maritime traffic.

2. The rate of flat-rate taxation, which may vary according to the level of the income, may not be less than 8% or more than 10%.

3. The Grand-Ducal Regulation mentioned in 1. above may also lay down

3.1. that the rates of taxation provided for in paragraph 2. shall apply, by derogation from the provisions laying down the amounts of taxable income, the tax rate and the class of tax, to the gross amount of remuneration less, where appropriate, a tax-free sum which may vary according to the level of the income;

3.2. that the deduction of tax, where not regularized in accordance with Article 145 of the Law of 4 December 1967 on income tax, shall be equivalent to definitive taxation and that income subject to flat-rate taxation may not be subject to graduated rates of taxation;

3.3. that deductions of flat-rate taxation may be applied, where appropriate, by derogation from the provisions of Articles 136 and 137 of the Law of 4 December 1967 concerning income tax and the implementing provisions for these same articles.

Art. 110. In the event of the sale by an accredited shipping company of a fixed asset consisting of a ship operated in international maritime traffic and invested in a national company, Article 54 of the Law of 4 December 1967 shall be applicable to any capital gains, arising on such sale.

PART 6 - MARITIME TRADE

The following conventions appearing in Annex 6 of the Act of 9th November 1990 approving certain international maritime conventions, together with the provisions relating the general average, are relevant to this Part:

- International Convention for the Unification of Certain Rules of Law with respect to Collision between Vessels, Brussels, 23rd September 1910.
- Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea, Brussels, 23rd September 1910.
- International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, Brussels, 25th August 1924 and Protocol of Signature (Hague Rules).
- Protocol to amend the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, Brussels, 23rd February 1968 (Visby Rules).
- Protocol amending the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (25th August 1924, as amended by the Protocol of 23rd February 1968), Brussels, 21st December 1979.
- International Convention for the Unification of Certain Rules concerning the Immunity of State-owned Ships, Brussels, 10th April 1926 and Additional Protocol (Brussels, 24th May 1934).
- International Convention on certain Rules concerning Civil Jurisdiction in Matters of Collision, Brussels, 10th May 1952.

- International Convention for the Unification of Certain Rules relating to Arrest of Seagoing Ships, Brussels, 10th May 1952.
- International Convention relating to the Limitation of the Liability of Owners of Seagoing Ships, Brussels, 10th October 1957, and Protocol of Signature.
- Protocol amending the International Convention relating to the Limitation of the Liability of Owners of Seagoing Ships (Brussels, 10th October 1957), Brussels, 21st December 1979.
- Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, Athens, 13th December 1974 (PAL 1974) and Protocol modifying the Convention, London, 19th November 1976 (PAL Prot 1976).

Chapter 1 - Collision

Art. 111. For the purposes of the application of Article 4 of the International Convention for the Unification of Certain Rules of Law with respect to Collision between Vessels, dated 23rd September 1910, when the responsibility of one of the ships concerned to one or more victims or their heirs has been limited or cancelled by law or by contract, the said victims or their heirs may not claim more than the portion for which the other ship is responsible.

Art. 112. The provisions of the above mentioned Convention also apply to the case referred to in Article 12-2 of the Convention.

Art. 113. For the purposes of the application of the regulations regarding collision, the term "ship" applies to all floating devices except those which are firmly moored. These regulations also apply to ships in public service.

Art. 114. In the context of this Act, the provisions regarding collision shall apply to the repair of damage caused by a ship, whether as a result of manoeuvre or failure to manoeuvre or of failure to observe the regulations, to another ship or to people or objects on board, even if no collision has taken place.

Chapter 2 - Assistance at Sea

Art. 115. In the case referred to in Article 15-2 of the International Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea of 23rd September 1910, the provisions of the Convention apply.

Chapter 3 - Carriage under a Bill of Lading

Art. 116. The handling, consignment and other operations involved in maritime transport which are not provided for by the conventions relating to carriage under a Bill of Lading referred to under Part 6 shall be subject to the law of the port where the enterprise operates.

Art. 117. For the purposes of the application of this Act, the provisions of the international conventions referred to in the preceding Article also apply to deck cargo.

Art. 118. The carriage under a Bill of Lading of livestock shall be subject, unless otherwise provided for, to the risks and perils of the merchandise.

Chapter 4 - General Average

Art. 119. General average shall be governed by the York/Antwerp Rules, even if the contract

does not specifically refer to the Rules. Any legal action involving general average will be time barred after five years from the date on which the voyage ended.

Chapter 5 - Abrogations

Art. 120. Articles 190 to 331 and 397 to 436 of the Commercial Code are abrogated.

PART 7 - DISCIPLINARY PROVISIONS AND PENALTIES

The following conventions appearing in Annex 7 of the Act of 9th November 1990 approving certain international maritime conventions are relevant to this Part.

- International Convention for the Unification of Certain Rules relating to Penal Jurisdiction in Matters of Collision or Other Incidents of Navigation, Brussels, 10th May 1952.
- International Convention relating to Stowaways, Brussels, 10th October 1957.

Art. 121. (as amended by the Act of 14th April 1992)

Petty offences and disciplinary offences committed on board a Luxembourg vessel shall be dealt with in accordance with the provisions of the disciplinary and criminal code for the marine service.

Art. 122. (as amended by the Act of 17th June 1994)

Infringements of Articles 8, 11(f), 13(d) and (e) and 17 of this law shall be punished with a fine of between 2,501 and 100,000 Francs.

Whosoever, whether ship-owner, shipping operator or master, permits a ship to put to sea with an unqualified crew, in contravention of Articles 21 and 22 of this Act, shall be punished with a fine of between 30,000 and 1,000,000 Luxembourg Francs and a term of imprisonment of between 8 days and 2 years, or only one of these penalties.

Art. 123-125 (abrogation by the Act of 14th April 1992)

Art. 126. Any contravention of Articles 92 to 96 and 98 to 101, or of the provisions regarding labour regulations, food or accommodation on board, covered by the conventions referred to in Part 3 and related implementing regulations, is punishable by a fine of from 2.501 to 150.000 Luxembourg Francs. A shipowner who contravenes the above rulings shall be fined similarly. Contravention of the provisions, conventions and implementing regulations relating to safety of navigation and navigational requirements, as referred to in Part 2, is punishable by imprisonment of from 8 days to 2 years or a fine of from 30.000 to 1.000.000 Luxembourg Francs, or both, without prejudice to any harsher penalty provided for by the Penal Code or other specific laws.

The provisions of Book 1 of the Penal Code and of the Act of 18th June 1897 concerning mitigating circumstances, as modified by the Act of 16th May 1904, shall be applicable.

Persons whose ships are registered under the Luxembourg flag may also be fined directly by the Minister not more than 100.000 Luxembourg Francs for every contravention of the provisions of Parts 1 and 2.

PART 8 - BUDGETARY PROVISIONS

Art. 127. (...) remark : no more applicable

PART 9 - ENTRY INTO FORCE

Art. 128. This Act shall enter into force on the first day of the second month following its publication in the "Mémorial".

Whereupon we do hereby command and decree that this Act shall be entered in the "Mémorial" and shall be discharged and observed by all whom it may concern.

Remark: The Act of 9th October 1990 has entered into force 1st January 1991.

PART 10 - ACCREDITATION OF SHIPPING COMPANIES

(Act of 17th June 1994)

Art. 129. Definition of a shipping company

The term "shipping company" within the meaning of this Act must be understood as referring to any person or legal entity, whether of Luxembourg or foreign nationality, which carries on a form of commercial activity of the kind defined in Article 130, paragraph 2.

Art. 130. Accreditation of a shipping company

Any shipping company that establishes an office in Luxembourg must, before commencing its activities be accredited by the Minister.

Accreditation may only be given to companies whose business is the buying and selling, the chartering in and the chartering out, and the management of seagoing ships, as well as the financial and commercial operations that relate directly or indirectly to such activities.

In cases where the company is made up of a natural person, he or she shall be subject to the accreditation conditions set out in Articles 132 and 133.

Any shipping company seeking accreditation must by convention, secure the services of a person or legal entity to fulfil the duties of the company's manager. Before starting to discharge these managerial duties, the manager appointed must have been accredited by the Minister.

The provisions of the preceding indent shall not be applicable if the company in question is in fact an individual person to whom accreditation is granted in his or her own right.

The power of attorney given to the manager should state in unambiguous terms the powers that have been conferred upon him or her.

Art. 131. Application for accreditation of a shipping company

Each application for the accreditation of a shipping company shall be sent to the Minister along with the following documents and items of information:

- the articles of association, where such exist;
- the surnames, forenames, official place of residence, home address and nationality of the directors and other persons responsible for the management of the company;

- the powers conferred on the company's manager;
- the name of the company's auditor if the company is required to have its accounts audited by an external auditor;
- the address at which the company's account books and other documents relating to its business activities are kept.

A Grand-Ducal Regulation may clarify the procedures for the application of this article.

Art. 132. Accreditation of the manager of a shipping company

Any person who wishes to be accredited as the manager of a shipping company must reside in Luxembourg and must be able to provide evidence of his or her personal probity and professional experience.

Personal probity shall be evaluated on the basis of the presence or absence of previous convictions and in the light of all such evidence as may tend to show that the person in question enjoys a stainless reputation and is able to provide every guarantee that the business activities in which he or she has been engaged in the past were carried on in a manner that is beyond reproach. Professional experience shall be evaluated in the light of whether or not the person in question has already performed comparable duties at a high level of responsibility and managerial autonomy.

In cases where the manager is a legal entity, the management bodies of that legal entity shall be required to furnish proof of the personal qualities specified in 1. above in respect of the natural persons who make up those management bodies. In addition, the granting of accreditation of a legal entity that has been appointed manager of a shipping company pursuant to Article 130, paragraph 3, of this Act shall be subject to the condition that the company in question must have established sufficient organizational facilities in Luxembourg to be able to discharge its duties correctly.

One and the same manager of a shipping company may be appointed to manage several companies.

Art. 133. Application for accreditation of the manager of a shipping company

Each application for the accreditation of a manager of a shipping company shall be sent to the Minister along with the relevant supporting documents to show that the conditions set out in the previous article have been met.

The Commissioner of Maritime Affairs shall appraise the applications for accreditation and shall check that the person applying for accreditation can provide satisfactory evidence of personal probity and professional experience. Natural persons who have been put in charge of a shipping company may be subjected to a test of their professional knowledge organized by the Commissioner of Maritime Affairs under the authority of the Minister.

Art. 134. Publicity

A list of shipping companies together with a list of natural persons or legal entities which have been accredited as the managers of such companies shall be published in the Memorial.

Art. 135. Departure of the manager of a shipping company

Whenever a person or legal entity which has received Ministerial accreditation relinquishes the

duties of the manager of a shipping company, the Minister must be informed of the fact and steps must be taken to replace the accredited person or legal entity. The Minister may grant a period, not exceeding six months, within which the shipping company manager in question must be replaced.

Art. 136. Storing of documents

Shipping companies shall ensure that their account books are kept and other documents relating to their business activities are permanently stored in the Grand Duchy of Luxembourg, either at their registered office or at any other address that has been duly notified to the Commissioner of Maritime Affairs.

A Grand-Ducal Regulation shall determine which accounting and other documents must be kept permanently stored and up to date in the Grand Duchy of Luxembourg.

Art. 137. Supervision of shipping companies

The Commissioner of Maritime Affairs shall be responsible for ensuring observance of the obligations devolving on shipping companies under this Act and its implementing regulations.

Any fundamental change in its articles of association, any change of external auditor and any extension or amendment to a shipping company's activities must be notified to the Commissioner of Maritime Affairs.

The annual accounts and the external auditor's report for the companies mentioned in Article 256 of the amended text of the Law of 10 August 1915 concerning commercial companies must be forwarded to the Commissioner of Maritime Affairs.

External auditors shall be required to supply all information or forms of certification that the Commissioner of Maritime Affairs may ask for in respect of points of which such external auditors have, or are presumed to have, become aware during the discharge of their duties.

For the purposes of this provision, external auditors shall be released from their obligation of confidentiality when dealing with the Commissioner of Maritime Affairs. The staff of the Commissariat of Maritime Affairs shall be subject to the professional obligation of confidentiality in respect of all information disclosed to them in the discharge of their duties. This provision shall not apply in cases where members of the staff of the Commissariat of Maritime Affairs are called upon to give evidence in a Court of Law or in cases where the law obliges or authorizes them to disclose certain facts.

Any fundamental change in a shipping company's articles of association and any change of manager and/or of external auditor must be immediately notified to the Commissioner of Maritime Affairs.

Art. 138. Withdrawal of accreditation

In the event of the infringement of Articles 129-132 and 135-137 the Minister may withdraw a shipping company's accreditation.

Any company whose accreditation has been withdrawn shall cease trading in Luxembourg.

Art. 139. Appeals

Ministerial decisions taken on the basis of Article 138, as well as decisions to withdraw accreditation pursuant to Articles 130 and 132 may be referred to the Disputes Committee of the

Council of State. Such referrals must state the grounds for the appeal and must be notified to the shipping company stating the means of obtaining redress.

Appeals must be submitted, on pain of being ruled out of time, within one month of notification of the decision which is being appealed against.

The Council of State's Disputes Committee shall rule as tribunal of last instance and appeal court.

Art. 140. Transitional provisions

Existing companies carrying on activities in the shipping field shall be granted a period of one year from the date on which this Act takes effect within which to comply with the provisions of Articles 129 to 133 of this Act.

Now we command and ordain that this Act be published in the Memorial so that it may be implemented and observed by all those that the matter concerns.