

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE MERCHANT SHIPPING LAW
(2005 REVISION) TO UPDATE REFERENCES TO OVERSEAS
TERRITORIES; TO EXTEND THE RANGE OF COUNTRIES IN WHICH
PERSONS MAY BE QUALIFIED TO BE OWNERS OF CAYMAN
ISLANDS SHIPS; TO ALLOW MORE THAN ONE PORT OF
REGISTRY; TO PROVIDE FOR A CERTIFICATE OF REGISTRY TO
BE ISSUED FOR A SPECIFIED PERIOD; TO PROVIDE FOR INTERIM
REGISTRATION FOR CAYMAN ISLANDS SHIPS; TO PROVIDE FOR
THE IMPLEMENTATION OF REVISED LEVELS OF LIABILITY AND
INCREASED LEVELS OF COMPENSATION FOR OIL POLLUTION
DAMAGE; AND FOR INCIDENTAL AND CONNECTED PURPOSES.**

THE MERCHANT SHIPPING (AMENDMENT) BILL, 2007

MEMORANDUM OF OBJECTS AND REASONS

The Bill seeks to amend the Merchant Shipping Law (2005 Revision) (“the principal Law”) by updating and clarifying certain provisions relating to Overseas Territories and Crown Dependencies, extending the range of countries in which persons may be qualified to be owners of Cayman Islands ships, allowing for more than one port of registry for Cayman Islands ships, providing for a certificate of registry to be issued for a specified period, extending interim registration to Cayman Islands ships and by updating and clarifying the provisions relating to the transfers of ship registrations between the Cayman Islands and the Territories and Dependencies.

The Bill would also augment the provisions regarding a seaman’s wages to ensure appropriate protection against unjustifiable forfeiture and amend the provisions regarding a seaman’s civil liability with respect to being absent without leave.

Further, amendments are sought to give effect to changes arising from amendments to International Conventions with respect to the levels of civil liability of ships causing oil pollution and the levels of compensation to the victims of such pollution under the International Oil Pollution Fund. In addition, provision is made that would incorporate the further increases in payouts under that Fund available when a Supplementary Fund under the 2003 Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (Fund 1992) takes effect.

Consequent upon the commencement of the Maritime Authority of the Cayman Islands Law, 2005 (MACI Law, 2005), the provision is made that would amend the principal Law to address some anomalies with respect to payments to be made into the Treasury.

Clause 1 provides the short title as well as the commencement of the provision that would give to the Fund Protocol of 2003 the force of law.

Clause 2 amends section 2 of the principal Law by introducing new expressions and redefining existing ones.

Clause 3 amends the principal Law by substituting the word “seafarer” for the word “seaman” wherever it appears.

Clause 4 repeals and replaces section 4 of the principal Law modifying subsection (1) and introducing in subsection (3) a definition of “approved country”.

Clause 5 repeals and replaces section 20 of the principal Law to provide for additional ports of registry.

Clause 6 repeals section 21 of the principal Law and replaces it with extended provisions to allow a certificate of registry to be issued for a specified period or for an indefinite period. Provision is also made for a time limited certificate of registry to be issued subject to terms and conditions set by the Registrar of Shipping.

Clauses 7 and 8 make consequential amendments to sections 27 and 33 respectively, of the principal Law.

Clause 9 amends section 36 of the principal Law to extend to a Cayman Islands ship the facility of interim registration during the course of transfer of ownership.

Clause 10 makes consequential amendments to the sub-heading preceding section 47 of the principal Law.

Clauses 11 and 12 repeal sections 47 and 48 respectively, of the principal Law and replace them with updated text which reflects modern practice with respect to registration practices in the United Kingdom, the Crown Dependencies and the British Overseas Territories, and these amendments also clarify the procedures and provisions relating to the transfer of registrations.

Clause 13 amends section 93 of the principal Law to make a clear provision to protect a seafarer’s wages from forfeiture other than where such forfeiture is already expressly provided for.

Clause 14 amends section 95 of the principal Law to empower the Governor to make regulations relating to the amount of money that may be deducted from a seafarer’s wages by way of contribution to his repatriation expenses where the seafarer’s repatriation arises through his breach of a crew agreement.

Clause 15 amends section 133 of the principal Law to increase the level of a seafarer’s liability where penalties are incurred through his being absent without leave.

Clause 16 amends the principal Law by repealing section 342 and replacing it with updated provisions that would implement the 2000 amendments to the 1992 Protocol to the International Convention on Civil Liability for Oil Pollution Damage, 1969. Provision is also made for future changes in the civil liability limits to be given effect by Order.

Clause 17 amends section 360 of the principal Law by giving effect to the 2000 amendments to the 1992 Fund Protocol. These amendments, which entered into force in November 2003, increase the limits payable under the 1992 Fund. Provision is also made for future changes in level of the Fund's liability to be given effect to by Order.

Clause 18, which amends section 365 of the principal Law, gives effect to the provisions of the Protocol of 2003 to Fund 1992 which, in essence, modifies the 1992 Protocol by establishing a "Supplementary Fund" to augment the ever spiralling cost of compensation for oil pollution damage. This Protocol entered into force generally in March 2005. The Governor is also empowered to make Regulations with respect to the application of the 2003 Protocol.

Clause 19 provides for the repeal of section 454, the contents of which are reflected in the MACI Law, 2005.

Clauses 20 and 21 amend sections 460 and 463 respectively, of the principal Law by updating the provisions relating to the fees and fines that are payable into the Treasury bringing them into alignment with corresponding provisions in the MACI Law, 2005 and the Merchant Shipping (Registration Fees) Regulations 2006.

THE MERCHANT SHIPPING (AMENDMENT) BILL, 2007

ARRANGEMENT OF CLAUSES

1. Short title.
2. Amendment of section 2 - definitions.
3. Amendment of the principal Law – substitution of “seafarer” for “seaman”.
4. Repeal and substitution of section 4 – qualifications for owning a Cayman Islands ship.
5. Repeal and substitution of section 20 – port of registry.
6. Repeal and substitution of section 21 – certificate of registry.
7. Amendment of section 27 - provisional certificate for ship becoming entitled to be registered while abroad.
8. Amendment of section 33 - dispensation for ships chartered by demise and registered outside the Islands.
9. Amendment of section 36 – registration during the transfer of ownership.
10. Amendment of sub-heading preceding section 47.
11. Repeal and substitution of section 47 – transfer of registration from George Town.
12. Repeal and substitution of section 48 – transfer of registration to George Town.
13. Amendment of section 93 - payment of seamen’s wages.
14. Amendment of section 95 - regulations relating to wages and accounts.
15. Amendment of section 133 - civil liability for absence without leave.
16. Repeal and substitution of section 342 – limitation of liability under section 338.
17. Amendment of section 360 – limitation of Fund’s Liability under

section 359.

18. Amendment of section 365 – meaning of the “Liability Convention”, the “Fund Convention” and related expressions.
19. Repeal of section 454.
20. Amendment of section 460 – fees and fines.
21. Amendment of section 463 – payments to be made into Treasury.

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ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Merchant Shipping (Amendment) Law, 2007. Short title and commencement
- (2) Section 17(d) shall come into force on such date as may be appointed by order made by the Governor.
2. The Merchant Shipping Law (2005 Revision) in this Law referred to as the “principal Law” is amended in section 2- Amendment of section 2 - definitions
 - (a) in the definition of “proper officer”, by deleting the words “relevant British possession” and substituting “Crown Dependency or British Overseas Territory”;

- (b) by repealing the definition for “relevant British possession”;
- (c) by inserting in alphabetical sequence the following definitions-
 - ““British Overseas Territory” means any of the following territories-
 - (i) Anguilla;
 - (ii) British Antarctic Territory;
 - (iii) Bermuda;
 - (iv) British Indian Ocean Territory;
 - (v) British Virgin Islands;
 - (vi) Cayman Islands;
 - (vii) Falkland Islands;
 - (viii) Gibraltar;
 - (ix) Montserrat;
 - (x) Pitcairn Islands (including Henderson, Oeno and Ducie Islands);
 - (xi) Saint Helena and Dependencies (Ascension Island and Tristan de Cunha);
 - (xii) Turks and Caicos Islands;
 - (xiii) South Georgia and South Sandwich Islands; and
 - (xiv) Sovereign Base Areas on Cyprus; and
- “Crown Dependency” means any of the Channel Islands or the Isle of Man.”;
- (d) by deleting the definition of “seaman” and substituting it as the definition of “seafarer”; and
- (e) by repealing the definition of “wages” and substituting the following definition-
 - ““wages” includes overtime pay, leave pay due in respect of leave earned and any other emoluments.”.

Amendment of principal Law - substitution of “seafarer” for “seaman”

3. The principal Law is amended by deleting the word “seaman” wherever it appears and substituting the word “seafarer”.

4. The principal Law is amended by repealing section 4 and substituting the following: Repeal and substitution of section 4 - qualifications for owning a Cayman Islands ship

“4. (1) For the purposes of this Law, the following are persons qualified to be owners of Cayman Islands ships- Qualifications for owning a Cayman Islands ship

- (a) British citizens;
- (b) British Overseas Territories and Crown Dependencies citizens;
- (c) British Overseas citizens;
- (d) British subjects;
- (e) persons who under the Hong Kong (British Nationality) Order 1986 are British Nationals (Overseas); UK Order in Council
- (f) Cayman Islands citizens;
- (g) persons, other than those referred to in paragraphs (a) to (f), who are nationals or citizens of a Member State of the European Union, European Economic Area or an approved country, including the overseas countries, territories or dependencies of such Member State or country;
- (h) bodies corporate, shipping entities or foreign companies incorporated, established or registered in and having a place of business in-
 - (i) the United Kingdom or any of its Overseas Territories or Crown Dependencies;
 - (ii) a Member State of the European Union or European Economic Area, including any overseas country, territory or dependency of such a Member State; or
 - (iii) an approved country or any overseas country, territory or dependency of such an approved country; and
- (i) foreign companies as defined in section 203 of the Companies Law (2004 Revision) carrying on business within the Islands which comply with all the requirements of foreign companies under that Law. 2004 Revision

(2) A person who is not qualified under subsection (1) to be an owner of a Cayman Islands ship may, nevertheless, be one of the owners of such a ship if-

- (a) a majority interest in the ship, within the meaning of section 5, is owned by persons who are qualified to be owners of Cayman Islands ships; and
 - (b) the ship is registered in accordance with that section.
- (3) In this section-

2006 Revision

“approved country” means a country included in the Third Schedule to the Money Laundering Regulations (2006 Revision) as may be amended from time to time;

“place of business” means the place where meetings of the directors of the body corporate are regularly held; and

“shipping entity” includes-

- (a) a “partnership” and a “limited partnership” as defined in the Partnership Law (2002 Revision), and an “exempted limited partnership” as defined in the Exempted Limited Partnership Law (2003 Revision); and
- (b) any other entity similar to those referred to in paragraph (a),

without any regard to where such entity is established, and whether or not the instrument of its creation and existence, expressly or by operation of law, confers or recognises its capacity under the law to sue and be sued in its own name or in the name of its lawful fiduciary or legal representative.”.

Repeal and substitution of section 20-port of registry

5. The principal Law is amended by repealing section 20 and substituting the following:

“Ports of registry of 20. The port of registry of a ship registered under this Law and the port to which it belongs shall be one of the following ports:

- (a) George Town
- (b) The Creek; or
- (c) Bloody Bay.”.

Repeal and substitution of section 21- certificate of registry

6. The principal Law is amended by repealing section 21 and substituting the following:

“Certificate of registry 21. (1) On completion of the registration of a ship, the Registrar of Shipping shall grant a certificate of registry.

(2) A certificate of registry may be issued for an indefinite period or for a specified period at the discretion of the Registrar of Shipping and where a certificate is issued for a specified period it may be extended or re-issued at the end of such period for a further specified period, or replaced with a certificate of registry valid for an indefinite period, in the Registrar’s discretion.

(3) A certificate of registry issued for a specified period or extended or re-issued for a further specified period may be

issued on such terms and conditions as the Registrar of Shipping may specify.

(4) A certificate of registry issued for a specified period, or extended or renewed for a further specified period, shall become invalid at the end of such period unless further extended or renewed and upon the certificate of registry becoming invalid the registration of the ship shall be deemed to be terminated.

(5) In the event that the registration of a ship is terminated in accordance with this section, section 8(3)(a) shall apply with respect to any registered mortgages relating to the ship.”.

7. The principal Law is amended in section 27(3)(b) by repealing the words “at the port of George Town” and substituting “at a port in the Islands”.
- Amendment of section 27-provisional certificate for ship becoming entitled to be registered while abroad
8. The principal Law is amended in section 33(5) by-
- (a) repealing the words “George Town” where they first appear and substituting “registry in the Cayman Islands”; and
- (b) repealing the words “George Town” where they next appear and substituting “of such port”.
- Amendment of section 33-dispensation for ships chartered by demise and registered outside the Islands
9. The principal Law is amended in section 36-
- (a) in subsection (4)(b)(iii) by deleting the words “and that the ship is not registered in the Islands”;
- (b) by deleting the word “and” at the end of subsection (4)(b);
- (c) by deleting the full-stop at the end of subsection (4)(c) and substituting “; and”;
- (d) by inserting after subsection (4)(c) the following paragraph:
“(d) in the case of a Cayman Islands ship, the existing certificate of registry is delivered to the Registrar of Shipping upon the issue of the certificate of registry under this section.”;
and
- (e) by deleting the marginal note and substituting the words “Registration during the transfer of ownership”.
- Amendment of section 36-registration during transfer of ownership
10. The principal Law is amended by deleting the words “Relevant British Possession” appearing in the sub-heading preceding section 47 and substituting “Crown Dependency or British Overseas Territory”.
- Amendment of sub-heading preceding section 47

Repeal and substitution of section 47-transfer of registration from George Town

11. The principal Law is amended by repealing section 47 and substituting the following:

“Transfer of registration from the Cayman Islands to the United Kingdom, a Crown Dependency or a British Overseas Territory

47. (1) Subject to subsection (2), the registration of a ship under this Part may be transferred from the Cayman Islands to the United Kingdom, a Crown Dependency or a British Overseas Territory, as the case may be (hereafter referred to in this section as the intended country of registration), on application being made by declaration in writing to the Registrar of Shipping by all persons appearing in the Cayman Islands register to be interested in the ship as owners or mortgagees, but such a transfer shall not in any way affect the rights of those persons or any of them, and those rights shall, in all respects, continue in the same manner as if no such transfer had been effected.

(2) On any such application the Registrar of Shipping shall notify the registrar in the intended country of registration and shall send to that registrar a copy of all particulars relating to the ship, and the names of all persons appearing in the register to be interested in the ship as owners or mortgagees.

(3) The ship’s certificate of registry shall be surrendered to the registrar in the intended country of registration, either direct or through the Registrar of Shipping.

(4) Where an application is made under this section-

- (a) the Registrar of Shipping shall not proceed to deal with the application unless he is satisfied that laws in force in the intended country of registration do not preclude such transfer of registration; and
- (b) a certificate issued by the registrar in the intended country of registration and stating that any such registration of the ship is not precluded by any such provision shall be conclusive evidence

for the purposes of this subsection of the matters stated in such certificate.

(5) Where the registrar in the intended country of registration grants a new certificate of registry in pursuance of any such application as is mentioned in subsection (2), the ship in question shall thenceforth be considered as registered in that country, and the name of the Cayman port of registry shall be removed from the ship's stern.

(6) The Registrar of Shipping shall, on being notified by the registrar of the intended country of registration of the grant of the new certificate of registry, terminate the registration of the ship in the register.”.

12. The principal Law is amended by repealing section 48 and substituting the following:

Repeal and substitution of section 48-transfer of registration to George Town

“Transfer of registration from the United Kingdom, a Crown Dependency or a British Overseas Territory, to the Cayman Islands

48. (1) Where a ship is registered in the United Kingdom, a Crown Dependency or a British Overseas Territory, as the case may be, (hereafter referred to in this section as the existing country of registration), the registration of that ship may, subject to subsections (5) and (7), be transferred to the Cayman Islands, if-

- (a) an application to the registrar of the existing country of registration has been made for the purpose by a declaration in writing by all the persons appearing on his register to be interested in the ship as owners or mortgagees; and
- (b) the documents mentioned in subsection (2) have been transmitted to the Registrar of Shipping.

(2) The documents referred to in subsection (1) are-

- (a) a notice of the application for transfer made to the registrar of the existing country of registration;
- (b) a copy transmitted by the registrar of the existing country of registration of all the registered particulars of the ship and the

names of all the persons appearing on his register to be interested in the ship as owners or mortgagees; and

(c) the ship's certificate of registry.

(3) On receipt of those documents, the Registrar of Shipping shall, subject to subsection (5)-

(a) enter in the appropriate part of the register all the particulars and names so transmitted; and

(b) grant a new certificate of registry,

and thenceforth the ship in question shall be considered as registered in the Cayman Islands and the name of the port of registry to which the ship belongs in accordance with section 20 shall be substituted for the name of the former port of registry on the ship's stern.

(4) The Registrar of Shipping shall notify the registrar of the existing country of registration of the grant of a new certificate of registry.

(5) Where the entitlement of a ship to be registered is, under section 5, subject to any condition specified in that section being satisfied, the registration of the ship shall not be transferred to the Cayman Islands under this section unless it appears to the Registrar of Shipping that the condition is satisfied.

(6) A transfer of registration under this section shall not in any way affect the rights of any of the persons mentioned in subsection (1)(a), and those rights shall in all respects continue in the same manner as if no such transfer had been effected.

(7) Section 7 shall apply, with any necessary changes, to this section."

Amendment of section
93-payment of seamen's
wages

13. The principal Law is amended in section 93 by inserting, after subsection (10), the following subsection-

“(11) Subject to subsection (3) and to sections 95, 99, 100, 101, 133, 134, 135, 136, 138 and 139 a seafarer’s wages shall not be subject to forfeiture by the owner or the master or by the employer of the seafarer.”.

14. The principal Law is amended in section 95 by renumbering paragraphs (d) and (e) as paragraphs (e) and (f) and inserting, after paragraph (c), the following paragraph-

Amendment of section 95-regulations relating to wages and accounts

“(d) prescribing the maximum amount which may be deducted from a seafarer’s wages as a contribution to the seafarer’s repatriation expenses where the seafarer has been dismissed for breaches of a crew agreement made under section 88 or breaches of a code of conduct referred to in section 123.”.

15. The principal Law is amended in section 133(3)-

Amendment of section 133-civil liability for absence without leave

- (a) in paragraph (a) by deleting the word “twenty” and substituting “three hundred”; and
- (b) in paragraph (b) by deleting the words “two hundred” and substituting “five hundred”.

16. The principal Law is amended by repealing section 342 and substituting the following:

Repeal and substitution of section 342 - limitation of liability under section 338

“Limitation of liability under section 338

342. (1) Where, as a result of any occurrence, the owner of a ship incurs liability under section 338 by reason of a discharge or escape or by reason of any relevant threat of contamination, then, subject to subsection (4)-

- (a) he may limit that liability in accordance with this Chapter; and
- (b) if he does so, his liability (being the aggregate of his liabilities under section 338 resulting from the occurrence) shall not exceed the relevant amount.

(2) In subsection (1) “relevant amount” means-

- (a) in relation to a ship not exceeding 5000 tons, 4,510,000 special drawing rights;
- (b) in relation to a ship exceeding 5000 tons but not exceeding 140,000 tons, 4,510,000 special drawing rights plus an additional 631 special drawing rights for each ton exceeding 5000 tons; or

(c) in relation to a ship exceeding 140,000 tons, 89,770,000 special drawing rights.

(3) The Governor may, by Order, make such amendments to this section as may be appropriate for the purpose of implementing any protocol or amendment in force in respect of the Liability Convention including the implementation of any such amendments relating to the limits of liability, as laid down in subsection (2), in force in the Islands.

(4) Subsection (1) shall not apply in a case where it is proved that the discharge or escape, or the relevant threat of contamination, resulted from anything done or omitted to be done by the owner either with intent to cause any such damage or cost as is mentioned in section 338 or recklessly and in the knowledge that any such damage or cost would probably result.

(5) For the purposes of this section, a ship's tonnage shall be its gross tonnage calculated in accordance with the Tonnage Regulations, 2002."

Amendment of section 360 - limitation of Fund's Liability under section 359

17. The principal Law is amended in section 360-

(a) by repealing subsection (1) and substituting the following subsection:

“(1) The Fund's liability under section 359 shall be in accordance with the provisions of the Fund Convention and subject to the following limits imposed by paragraphs 4 and 5 of Article 4 of the Convention-

- (a) except as otherwise provided in paragraphs (b) and (c), the aggregate amount of compensation payable by the Fund shall, in respect of any one incident, be limited such that the total of the amount actually paid under the 1992 Liability Convention and the amount paid by the Fund shall not exceed 203 million units of account;
- (b) except as otherwise provided in paragraph (c), the aggregate amount of compensation payable by the Fund for pollution damage resulting from a natural phenomenon of an exceptional,

inevitable and irresistible character shall not exceed 203 million units of account;

- (c) the maximum amount of compensation referred to in paragraphs (a) and (b) shall be 300 million and 740 thousand units of account with respect to any one incident occurring during any period when there are three Parties to the Fund Convention in respect of which the combined relevant quantity of contributing oil, as defined in the Fund Convention, received by persons in the territories of such Parties, during the preceding calendar year, exceeded 600 million tons.
 - (d) nothing in this section shall affect the provisions for payment of compensation under the Fund Protocol of 2003 referred to in subsection (7).”
- (b) by repealing subsection (2) and substituting the following subsection:
- “(2) A certificate given by the Director of the Fund stating that subparagraph (c) of paragraph 4 of Article 4 of the Fund Convention is applicable to any claim under section 359 shall be conclusive evidence that paragraph (c) of subsection (1) is applicable for the purposes of this Chapter.”
- (c) by repealing subsection (5) and substituting the following subsection:
- “(5) The Governor may, by Order, make such amendments to this section as may be appropriate for the purpose of implementing any protocol or amendment in force in respect of the Fund Convention, including amendments as to the Fund’s limits of liability, in force in the Islands.”.
- (d) by inserting after subsection (6) the following subsection-
- “(7) The Fund Protocol of 2003 shall have the force of law.”.

- Amendment of section 365 - meaning of the "Liability Convention", the "Fund Convention" and related expressions
18. The principal Law is amended in section 365-
- (a) in subsection (1) by inserting in the appropriate alphabetical sequence, the following definition-

““Fund Protocol of 2003” means the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, adopted by the Organization on 16 May 2003;” and
 - (b) by adding after subsection (2) the following subsection-

“(3) The Governor may make regulations with respect to the Liability Convention, the Fund Convention and the Fund Protocol of 2003 and matters connected thereto in this Part.”.
- Amendment of principal Law – repeal of section 454
19. The principal Law is amended by repealing section 454.
- Amendment of section 460–fees and fines
20. The principal Law is amended in section 460-
- (a) by repealing subsections (2) and (3); and
 - (b) by deleting the marginal note and substituting the words “Fees regulations and scale of fines”.
- Amendment of section 463–payments to be made into Treasury
21. The principal Law is amended in section 463 by repealing subsection (1) and substituting the following:
- “(1) The following sums shall be paid into the Treasury:
- (a) registration fees comprising fees for-
 - (i) the first registration of a ship;
 - (ii) the registration of a Demise Chartered ship transferred in;
 - (iii) the Registration Anew or re-Registration of a ship;
 - (iv) the Interim Registration of a ship;
 - (v) the transfer of Registration of a ship between British Registers;
 - (vi) registration under the issue of a Provisional Certificate of Registry;
 - (vii) the registration of a ship under construction; and
 - (viii) the registration of the Transfer or Transmission of Ownership of a ship;
 - (b) all fines imposed under this Law;

- (c) any fees received by the Receiver of Wreck; and
- (d) any sums received by the Minister under this Law or which are, by any provision of it, required to be paid into the Treasury.”.

Passed by the Legislative Assembly the day of , 2007.

Speaker.

Clerk of the Legislative Assembly.