

FIJI ISLANDS

SEA PORTS MANAGEMENT ACT 2005

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ACT NO. 8 OF 2005

I assent.

[L.S.]

J. I. ULUIVUDA
President

[29th June 2005]

AN ACT

TO REPEAL THE MARITIME AND PORTS AUTHORITY OF THE FIJI ISLANDS ACT AND TO MAKE PROVISION FOR THE ADMINISTRATION OF SEA PORTS, AND FOR RELATED MATTERS

ENACTED by the Parliament of the Fiji Islands -

PART I - PRELIMINARY

Short title and commencement

1.-(1) This Act may be cited as the Sea Ports Management Act 2005.

(2) This Act comes into force on a date appointed by the Minister by notice in the *Gazette*.

Interpretation

2. In this Act, unless the context otherwise requires -

"approaches to a port" means any area or place declared or deemed to be an approach to a port for the purposes of this Act under section 5;

"Board of Directors" means the Board of Directors of a port management company;

"Chief Executive Officer" means the Chief Executive Officer of a port management company;

"Commerce Commission" means the Commerce Commission constituted under Part 2 of the Commerce Act 1998;

"dock" includes dry-docks and the entrances to a dry-dock, graving docks, gridirons, slips, keel blocks, inclined planes, and all machinery, works, fixtures and things whatsoever attached to or pertaining to these things;

"dues" means any of the dues payable to a port management company under Part 6;

"Fiji Islands Maritime Safety Administration" means the Fiji Islands Maritime and Safety Administration responsible for the administration of the Marine Act;

"goods" includes animals, carcasses, baggage and other movable personal property of any kind;

"owner" when used -

(a) in relation to goods, includes any person being or holding himself out to be the owner, importer, exporter, consignor, consignee, shipper, agent or person possessed of, or beneficially or potentially interested in or having any control of or power of disposition over goods; and

(b) in relation to a vessel, includes -

(i) every person acting as agent for the owner of the vessel;

(ii) any person entitled to receive freight charges or other charges payable in respect of the vessel;

(iii) any part-owner of the vessel;

(iv) any charterer, operator, consignee and a mortgagee in possession of the vessel, and any agent of these persons;

"port" means any port declared or deemed to be a port for the purposes of this Act under section 5;

"Port Master" means any Port Master authorised by the Fiji Islands Maritime Safety Administration to be a Port Master for any port, and includes any Deputy Port Master or public officer acting in the capacity of Port Master or lawfully performing the functions of that office;

"port management company" means -

(a) where the reference is to the port management company referred to in section 6(1), the Fiji Ports Corporation Limited, or any other port management company replacing the Fiji Ports Corporation Limited in accordance with section 6(2); and

(b) where the reference is to any other port management company established under section 6(2), that other port management company;

"rates" means any of the rates chargeable by a port management company as provided by Part 6;

"Reorganisation Charter" means the Reorganisation Charter of the Maritime and Ports Authority of The Fiji Islands and the Ports Terminal Limited leading to the incorporation of a Government Commercial Company known as Fiji Ports Corporation Limited and the privatisation of Ports Terminal Limited (a Government Commercial Company), approved by virtue of the Public Enterprise Act 1996;

"repealed Act" means the Maritime and Ports Authority of the Fiji Islands Act (Cap. 181);

"vessel" includes a floating rig or platform used in any form of operation at sea;

"warehouse" includes any warehouse or other building belonging to or under the control of a port management company, in which goods may be lawfully placed;

"wharf" includes a quay, pier, jetty, landing place or similar place at or from which passengers or goods may be taken on board or landed from a vessel.

Inconsistency with the Public Enterprise Act

3. If there is any inconsistency between this Act and the Public Enterprise Act 1996, the Public Enterprise Act 1996 prevails to the extent of inconsistency.

Objectives of this Act

4. The objectives of this Act are -

(a) to make provision for the effective management of sea ports;

(b) to give effect to the reorganisation of the management of sea ports under the Public Enterprise Act 1996;

(c) to create or enhance opportunities for competition in the provision of port services;

(d) to clarify the operational and regulatory responsibilities to be vested in a port

management company and the Fiji Islands Maritime Safety Administration; and

(e) to facilitate the privatisation of Ports Terminal Limited in accordance with the Reorganisation Charter.

PART 2 - PORTS AND PORT APPROACHES

Declared ports and approaches to ports

5.-(1) The ports and approaches to ports declared under section 3 of the Maritime and Ports Authority of The Fiji Islands Act (Cap. 181) and current as at the commencement of this Act shall be deemed to be ports and approaches to ports for the purposes of this Act.

(2) The Minister may, after consultation with the Director of the Fiji Islands Maritime Safety Administration, the Native Fisheries Commission and the Chief Executive Officer of a relevant port management company and any other person he considers necessary, and by notification in the *Gazette* -

(a) declare any place and any navigable river or channel leading into such place to be a port for the purposes of this Act;

(b) declare any area or navigable river or channel adjacent to a port to be the approaches to such a port for the purposes of this Act; and

(c) vary or revoke any declaration under this subsection, or any aspect of a declaration referred to in subsection (1).

(3) The Minister may, by notice in the *Gazette*, approve the publication of any map or description of the area of any port or the approaches to any port, and judicial notice shall be taken of any such publication.

PART 3 - MANAGEMENT OF SEA PORTS

Port Management Companies

6.-(1) Responsibility for the management of the ports of Suva, Lautoka, Malau, Levuka and any other port, and the approaches to those ports, are vested in Fiji Ports Corporation Limited.

(2) Nothing in this section prevents the further reorganisation of the management of sea ports in accordance with the Public Enterprise Act by -

(a) the formation of any other port management company in accordance with the Public Enterprise Act 1996; and

(b) the vesting in such a port management company of responsibility for the management of -

(i) any of the ports managed by Fiji Ports Corporation Limited under subsection (1); or

(ii) any other port declared under section 5(2).

(3) A port management company shall be managed and operated in accordance with -

(a) its Memorandum and Articles of Association;

(b) the applicable provisions of the Companies Act (Cap. 247);

(c) the provisions of the Public Enterprise Act 1996;

(d) the requirements and objectives stated in the Reorganisation Charter;

(e) any policy directions given by the Minister or the Minister for Public Enterprise which are not inconsistent with the provisions of the above documents and laws.

Chief Executive Officers

7.-(1) The Board of Directors has the power to appoint the Chief Executive Officer of its port management company, who shall -

(a) be responsible for the day today management of the port management company; and

(b) be accountable to the Board of Directors in accordance with the Public Enterprise Act 1996.

(2) The Chief Executive Officer -

(a) shall be responsible to the Board of Directors for the execution of its policies and directions;

(b) may exercise any power consistent with this Act, the Public Enterprise Act 1996 and any other law which vests any powers, responsibilities or functions in the Chief Executive Officer;

(c) is authorised to do all things necessary or convenient to be done in connection with the management of the port management company;

(d) without limiting the generality of the powers vested in paragraph (c), is empowered to-

(i) enter into contracts on behalf of the port management company;

(ii) in any case of emergency, to direct the execution of any work or the doing of any act which the port management company is empowered to execute and do, and which is necessary for the operation of port services or the safety of persons or vessels.

(3) The exercise by the Chief Executive Officer of a power under this section is subject to the provisions of this Act, the Public Enterprise Act 1996 and any other applicable law, and to any resolution passed or direction given by the Board of Directors.

(4) It shall be the responsibility of the Chief Executive Officer to ensure that the management of the port management company is in accordance with section 6(3).

(5) If the Chief Executive Officer is prevented by illness, absence or other similar cause from performing the duties prescribed in this section, or if the office becomes vacant, the Board of Directors may appoint one of the officers of the port management company to perform those duties for the required period.

(6) The Chief Executive Officer may delegate in writing all or any of the powers prescribed by this section to another officer of the port management company, and any such delegation -

(a) may be made subject to such conditions, exceptions or qualifications as are specified in the written notice of delegation;

(b) is revocable at will; and

(c) does not affect the exercise of a power or the performance of a function by the Chief Executive Officer.

Powers of Port Management Companies

8. A port management company has the power -

(a) to do any act or thing and to undertake any enterprise consistent with its memorandum and articles of association;

(b) to take any action necessary to implement the Reorganisation Charter;

(c) to perform any function, exercise any power and do any act or thing authorised by this Act or any other law;

(d) to do anything in relation to the provision of services within a port and the approaches to a port, including the services for which rates may be charged under section 18;

(e) to do any thing and take any action in relation to the ownership of Ports Terminal Limited and any other subsidiary, and to ensure the effective management and efficient operations of its subsidiaries.

No State liability

9. In accordance with section 60 of the Public Enterprise Act 1996, the State shall not be liable for any act or omission of a port management company.

PART 4 - TRANSFER OF ASSETS AND LIABILITIES

Ownership and operation of Ports Terminal Limited

10.-(1) Ports Terminal Limited shall be a wholly owned subsidiary of Fiji Ports Corporation Limited, and notwithstanding any provision of the Companies Act to the contrary, the shares of Ports Terminal Limited shall be owned by Fiji Ports Corporation Limited until such time as they are transferred in accordance with the approved privatisation of Ports Terminal Limited in accordance with Part 13.

(2) Fiji Ports Corporation Limited shall manage and operate Ports Terminal Limited in accordance with the Reorganisation Charter and any lawful direction given by the Minister for Public Enterprise.

(3) In the management and operation of Ports Terminal Limited it shall be the responsibility of Fiji Ports Corporation Limited to safeguard and maintain the assets of Ports Terminal Limited and to promote its operations and management so as to maximise its potential for privatisation and its value when privatised in accordance with Part 13.

Limitations on share dealings

11.-(1) Notwithstanding any provision of any Act to the contrary, no allotment, allocation or transfer of shares in Fiji Ports Corporation Limited or any port management company may be effected unless authorised by Cabinet.

(2) Any allotment, allocation or transfer of shares without Cabinet approval as required by subsection (1) shall be void and of no effect.

Transfer of lands and property to Fiji Ports Corporation Limited

12.-(1) Notwithstanding the provisions of the Land Transfer Act, and in a manner consistent with the provisions of the Public Enterprise Act 1996 -

(a) all land vested in the Maritime and Ports Authority of The Fiji Islands shall be transferred and vest, by virtue of this section and without formal conveyance; and

(b) all other property of every description vested in the Maritime and Ports Authority of The Fiji Islands shall, by virtue of this section, vest, without assurance,

in Fiji Ports Corporation Limited upon the commencement of this Act, or as otherwise

determined in accordance with the provisions of the *Public Enterprise Act 1996*.

(2) The Board of Directors of Fiji Ports Corporation Limited may, with the approval of the Minister for Public Enterprise, determine that any property vested in the company under subsection (1) shall be transferred to Ports Terminal Limited if that property relates to its commercial operations.

(3) A port management company may acquire any land or property in accordance with any requirements imposed by its Board of Directors, and all such land and property shall be vested in the port management company.

Transfer of other state lands

13.-(1) In accordance with section 36 of the Public Enterprise Act 1996, the Minister for Public Enterprise may, with the approval of the Minister for Lands, prescribe by regulations any lands vested in or belonging to the State be transferred without formal conveyance, to a port management company to enable it to perform its functions under this Act.

(2) A transfer of land made under subsection (1) shall be given effect to notwithstanding the provisions of the Land Transfer Act.

(3) Upon a transfer of land under this section all debts, liabilities and obligations in connection with or appertaining to the land and property shall be transferred to the port management company and shall be deemed to have been incurred by it.

PART 5 - FINANCES OF A PORT MANAGEMENT COMPANY

Borrowing powers

14. Subject to the approval of its Board of Directors, and subject to any provision of an applicable law, a port management company may borrow money for any purpose associated with its functions.

Powers of investment

15.-(1) All investments by a port management company shall be subject to approval by its Board of Directors and shall comply with the provisions of any applicable law.

(2) All enterprises undertaken and investments made by a port management company shall be in accordance with its memorandum and articles of association.

(3) Surplus funds of a port management company shall be invested so as to maximise the profitability of the company.

Other financial, reporting, accounting and planning requirements

16.-(1) A port management company established in accordance with a Reorganisation Charter shall comply with the following requirements prescribed by the Public Enterprise Act 1996 -

(a) the provisions of Part 5 relating to -

- (i) corporate plans;
- (ii) statements on corporate intent;
- (iii) audit of accounts;
- (iv) half-yearly reports;
- (v) annual reports;
- (vi) unaudited and audited accounts; and
- (vii) information to be laid before Parliament;

(b) the adoption of an Employment and Industrial Relations Plan in accordance with section 51;

(c) the payment of dividends in accordance with section 52; and

(d) the payment of interim dividends if required under section 53.

(2) The Board of Directors and the Chief Executive Officer of a port management company shall be responsible for ensuring that the company is in full compliance with the requirements of subsection (1) at all times.

(3) Other aspects of the financial management of a port management company, including matters relating to lending monies, hedging and the giving of guarantees shall be subject to approval by its Board of Directors and to the provisions of any applicable law.

PART 6 - DUES AND RATES

Dues payable to port management companies

17.-(1) The following dues shall be payable to port management companies -

(a) dockage dues for every vessel berthed at a wharf;

(b) port dues for every vessel being in a port, whether trading, plying for hire or otherwise;

(c) wharfage dues for goods landed or discharged within a port or the approaches to a

port;

(d) light dues to be paid in relation to navigational aids, which may be collected by a port management company on behalf of the Fiji Islands Maritime Safety Administration in accordance with the Marine Act; and

(e) any other dues prescribed by Regulations made under this Act.

(2) The amount of dues imposed under subsection (1) shall, by order in the Gazette, be set by the port management company taking into account the return to the company on its assets and other commercial considerations, and shall be subject to review by the Commerce Commission.

Rates and charges for services

18.-(1) A port management company may, by order in the Gazette, levy rates and charges applying to the use of any land, works, equipment or appliances belonging to it, and for services, goods and facilities provided by it, including services relating to -

(a) the landing, shipping, wharfage, crantage, storage or carriage of goods and cargo;

(b) the deposit of goods or cargo with it, or the placing of goods or cargo in its custody;

(c) the provision of pilotage services;

(d) the use by any vessel, vehicle or person of any land, works, equipment or appliances, wharf or dock under its control;

(e) the use of any gear, tackle, instruments, tools, utensils, staging or materials supplied by it for the use by any vessel or person;

(f) the use of any vessel or engine belonging to or maintained by the port management company for the purpose of fighting fires;

(g) the anchorage of vessels within ports and approaches to ports;

(h) the towing of any vessel, or the rendering of any other assistance;

(i) the provision of services by tugs and line boats;

(j) the laying of moorings, cables or pipes;

(k) dredging;

(l) the laying, lifting and servicing of buoys not owned by the port management company;

- (m) the provision of berthing arrangements;
- (n) the ferrying of persons or goods;
- (o) the provision of emergency responses to marine pollution incidents;
- (p) the provision of incineration, fumigation, steam cleaning and container cleaning services;
- (q) the supply of water, telephone services, fuel, electricity and other forms of energy;
- (r) the parking and safekeeping of vehicles;
- (s) the provision of security services and the application of international obligations concerning the security of vessels and ports; and
- (t) the provision of any other service approved by the Chief Executive Officer.

(2) The amount which may be imposed as rates and charges under subsection (1) shall, by order in the Gazette, be set by the port management company taking into account the return to the company on its assets and other commercial considerations, and shall be subject to review by the Commerce Commission.

Powers in relation to the imposition and collection of monies

19.-(1) A port management company may exercise the following powers in relation to the imposition and collection of moneys payable to it under this Part -

- (a) an officer authorised by the Chief Executive Officer may enter on to and inspect any vessel within a port or the approaches to a port in order to ascertain the amount of dues, rates or charges payable in relation to it;
- (b) an officer authorised by the Chief Executive Officer may detain any vessel until a receipt confirming payment of any dues, rates or charges applying to the vessel is produced, or other satisfactory proof of payment is provided;
- (c) a vessel may be detained on the order of the Chief Executive Officer until dockage dues have been paid, or satisfactory security for their payment has been provided; and
- (d) the Chief Executive Officer may give written notice to any public officer having authority to grant clearance of any vessel that dues, rates or charges payable under this Act are unpaid, and upon receipt of such notice the grant of clearance shall be withheld until full payment is made.

(2) In accordance with any procedures or conditions determined by the Board of Directors, the Chief Executive Officer may -

(a) exempt any vessel, goods or classes of vessels or goods from the payment of any dues; and

(b) reduce, refund or waive, in whole or in part, any dues, rates of charges that may be imposed under this Act.

(3) A port management company shall have a lien over any goods in relation to any dues, rates or charges payable in relation to them and it may seize and detain them until full payment of outstanding moneys is made.

(4) In addition to any lien arising under subsection (3), a port management company shall have a lien over the vessel on which the goods were carried or are loaded and may take proceedings to seize and detain the vessel in any court of competent jurisdiction.

(5) Any lien applying to goods or vessels in accordance with this section shall have priority over any other lien applying to those goods or the vessel.

Powers to sell or dispose of goods

20.-(1) Subject to the provisions of this section, if any goods which have been placed in or on any premises of a port management company are not removed within a period of 21 days from the time they were placed there, the port management company may, at the expiration of that period, sell the goods by public auction or otherwise dispose of the goods in a manner determined by the Chief Executive Officer.

(2) The power of sale or disposal of goods under subsection (1) may only be exercised after 42 days of the goods being placed on the premises if the goods are covered by a through bill of lading which has been produced to an officer of the port management company.

(3) If the goods placed on the premises of the port management company are of a perishable nature, the Chief Executive Officer may direct their removal within such shorter period than that otherwise prescribed by this section, being not less than 21 hours after their placement, and those goods may be removed, sold or otherwise disposed of as determined by the Chief Executive Officer.

(4) Any sale conducted under this section shall not be rendered invalid by reason only that it takes place in a location to which the public is not admitted as of right.

(5) At least 3 days notice of any sale conducted under this section shall be given by advertisement in a local newspaper circulating in the Fiji Islands, unless the goods to be sold are of a perishable nature rendering an immediate sale necessary or advisable in the opinion of the Chief Executive Officer.

(6) Notwithstanding the provision of any Act to the contrary, the proceeds of any sale under this section shall be applied by the port management company in the following order -

- (a) first, in the payment of the expenses of sale;
- (b) secondly, in payment of any duty, fee or charge owing to the Government;
- (c) thirdly, in payment of all charges and expenses due to the port management company; and
- (d) fourthly, in payment of freight or other claims or liens of which notice has been given under the provisions of any law.

(7) The surplus of the proceeds of sale, if any, shall be paid to the person entitled thereto on demand, but if not such demand is made within one year from the date of sale of the goods, the surplus may be retained by the port management company and all other rights to it shall be then extinguished.

Offence to evade dues, etc

21.-(1) Any -

- (a) master or owner of a vessel; or
- (b) owner, consignee or consignor of goods,

who by any means whatsoever, evades or attempts to evade any dues, rates or charges payable under this Act commits an offence and is liable upon conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 3 years, or both.

(2) A person guilty of offence under subsection (1) is not absolved from paying to the port management company the amount of dues, rates or charges owing (including the prescribed interest and the prescribed late payment penalties).

Collection of dues on an agency basis

22. A port management company may enter into any agreement with the Fiji Islands Maritime Safety Administration or any other agency, entity or person for the collection by the port management company of dues and fees as its agent.

PART 7 - LICENSING OF PORT USERS

Power to license port users

23.-(1) A port management company may grant licences to any person for the purpose of accessing a port or conducting commercial operations within a port or the approaches to a port.

(2) A licence under subsection (1) shall be issued on the authority of the Board and shall be

subject to such conditions as are determined by the Board.

(3) Where a condition relates to a matter affecting safety or security the condition may be imposed by the Chief Executive Officer during the currency of the licence.

(4) A licence granted under subsection (1) shall be valid for such term as the Board determines, and where no term is fixed at the time of grant it shall be valid for a period of 12 months, and may be renewed.

(5) A licence granted under subsection (1) maybe suspended or terminated by the Chief Executive Officer on the grounds of a breach of a condition of the licence, or for any reason necessary to ensure safety and security in the port area or the approaches to a port.

(6) The fees for a licence granted under this section, and for any services provided by a port management company to a licensee, shall be -

(a) as prescribed by Regulation; or

(b) where no fee is prescribed, as is determined by the Board of Directors.

Rights of agencies under statutes

24.-(1) Section 23 does not affect the right of access to and operation in a port or the approaches to a port by an agency or person authorised by any law to undertake any function or to exercise any power in relation to -

(a) the collection of Government revenues;

(b) border control and the movement of people into and out of the Fiji Islands;

(c) any matter concerning quarantine and the prevention of the introduction or spread of any disease; and

(d) any other area of government responsibility under law.

(2) Notwithstanding the provision of any other law to the contrary, where an agency referred to in subsection (1) is provided with office space or any other service by a port management company, the agency shall be responsible for paying an agreed rent or fee for service, and where no agreement is reached between the agency and the port management company, the rent or fee shall be fixed by the Minister for Public Enterprise after consulting with the Minister for Finance.

(3) For the purpose of discussing issues relating to the management of the ports and to resolve issues of concern to port users, the Chief Executive Officer shall convene and chair meetings of a Committee of Port Users comprising representatives of -

- (a) the Fiji Islands Maritime Safety Administration;
- (b) the Fiji Islands Revenue and Customs Authority;
- (c) the Department of Immigration;
- (d) the Ministry responsible for quarantine;
- (e) Ports Terminal Limited; and
- (f) any other port users.

(4) The Committee established under subsection (3) shall meet at such times and places as are determined by the Chief Executive Officer, who shall convene a meeting as soon as possible after receiving a request from a committee member to do so.

(5) The business of the Committee shall include any issue or matter relevant to the management of the port, including -

- (a) the use of port facilities and the utilisation of areas and facilities required by agencies to fulfil their statutory obligations;
- (b) the rationalisation of charges and fees imposed under various laws relating to services, inspections and regulatory functions undertaken at ports;
- (c) the implementation of international standards applying to any aspect of port operations;
- (d) the consideration of port rules, and the need to make any appropriate rule or amendment to a rule; and
- (e) any other relevant operational issue relating to the management and operations of a port.

PART 8 - OTHER PORT MANAGEMENT FUNCTIONS AND ACTIVITIES

Assistance to Port Masters and other officers

25. A port management company shall ensure that Port Master, Port State control officers and shipping inspectors are provided with such assistance as is necessary for the performance of their functions and powers.

Powers in relation to the berthing and movement of vessels

26.-(1) With the authority of the Chief Executive Officer, employees of a port management company may -

(a) give directions in relation to the berthing, mooring or anchoring, and the method of anchoring, of any vessels in a port or the approaches to a port;

(b) direct the removal of any vessel from any berth, station or anchorage to another berth, station or anchorage;

(c) regulate the movement of vessels generally.

(2) Any direction given under subsection (1) shall be in accordance with any requirement as to safety and security imposed by a Port Master.

(3) A Port Master may, with or without conditions, delegate to or otherwise authorise a fit and proper person employed by a port management company the responsibility -

(a) to board any vessel with in a port or the approaches to a port to ascertain whether an offence against this Act or any other Act has been committed;

(b) to deal with any dangerous goods or hazardous cargoes in any lawful manner; and

(c) to discharge any lawful power or duty.

(4) Any officer delegated a power under subsection (3) or otherwise authorised to act under that subsection shall have the powers and authority of a Port Master in relation to acts authorised to be done.

(5) Officers of a port management company may be authorised by the Chief Executive Officer to board a vessel on which a fire has broken out and to act in any manner so as to facilitate the exercise of any power for or on behalf of a Port Master, including the power to -

(a) give orders concerning the movement of the vessel;

(b) order the scuttling of the vessel; or

(c) order the taking of any other measures necessary for the protection of life or property.

(6) Any action taken under subsection (5) by an officer of a port management company in the presence of a Port Master, shall be subject to the direction of the Port Master.

(7) The port management company shall not be liable for any action taken by its officers in accordance with this section, or for any omission or default.

Power to order the removal of derelict and dangerous vessels

27.-(1) With the approval of the Board of Directors, the Chief Executive Officer may order the removal of any derelict or dangerous vessel from a port or the approaches to a port.

(2) An order made under subsection (1) shall be in writing and shall -

- (a) state a time by which the vessel shall be removed;
- (b) state any restrictions as to places where the vessel may be re-located;
- (c) be delivered to the owner or master of the vessel, if their identity and whereabouts are known; and
- (d) be attached to the vessel in a conspicuous place.

(3) If no action is taken in relation to a vessel in respect of which notice has been given under subsection (2) within the time stated in the notice, the Chief Executive Officer may arrange for the removal of the vessel and for its sale by auction or its destruction, as he or she sees fit.

(4) The cost of removing a vessel and of its destruction shall be a debt payable to the port management company by the owner of the vessel.

(5) Any owner or master of any vessel who refuses or fails to comply with the order given under this section commits an offence and is liable upon conviction to a fine not exceeding \$250,000 or a term of imprisonment not exceeding 3 years or both.

PART 9 - PORT RULES

Power to make rules

28.-(1) A port management company may, with the approval of the Minister, make rules regulating the use and operation of ports and approaches to ports, and the conduct of persons within ports and approaches to ports.

(2) Without limiting the generality of subsection (1), the rules made by a port management company may relate to -

- (a) controlling access to a port by any person;
- (b) controlling access to any place within a port;
- (c) the mooring, berthing and movement of vessels within a port or the approaches to a port;
- (d) the enforcement of any obligation under an international convention applying within the Fiji Islands and relating to any aspect of port management, including safety and security within a port or on vessels; and
- (e) the obligations of persons licensed by the port management company in accordance

with this Act.

(3) Any person who breaches a rule made under this section commits an offence and is liable upon conviction to a fine not exceeding \$25,000 or to a term of imprisonment not exceeding 6 months, or both.

(4) All port rules shall be consistent with the provisions of this Act, any regulation made under this Act and any other applicable law.

(5) Section 48 does not prevent the making of a port rule in relation to a matter for which regulations may be made under this Act.

Prosecutions by authorised persons

29. Any person authorised by the Chief Executive Officer may conduct a prosecution in the Magistrates' Courts or other subordinate courts or tribunal on behalf of a port management company for an offence against a rule made under section 28.

PART 10 - LIABILITY OF PORT MANAGEMENT COMPANIES

Loss or damage to goods

30. A port management company shall not be liable for any loss arising from the short delivery of or damage to any goods in its custody or under its control, unless the nature and value of the goods has been declared in accordance with section 31.

Transshipment and declared goods

31.-(1) Subject to subsections (2) and (3), a port management company shall only be liable for the loss of or damage to any transshipment goods or other goods if the nature and value of the goods has been declared in writing before the goods were placed in the custody or under the control of the port management company.

(2) The liability of a port management company under subsection (1) shall be limited to a maximum amount of \$2,000, and shall in the case of transshipment goods, cease when the goods have been delivered alongside the on-carrying vessel for loading.

(3) A port management company shall not be liable for the loss of or damage to any goods to which this section applies arising from -

(a) fire or flood, unless caused by the company's negligence;

(b) an act of God;

(c) an act of war;

- (d) seizure of the goods under legal process;
- (e) quarantine requirements;
- (f) any negligence of the owner or carrier of the goods;
- (g) strikes, lockouts or stoppages of labour, from whatever cause;
- (h) riot or civil commotion;
- (i) the saving or the attempt to save life or property;
- (j) insufficient or improper packing of the goods or defective or insufficient markings or leakages from drums, containers or packages containing the goods;
- (k) any inherent susceptibility of the goods to wastage in bulk or weight, latent or inherent defect or natural deterioration;
- (l) any deficiency in the contents of unbroken packages of the goods; or
- (m) the dangerous nature of the goods.

(4) For the purposes of this section, "transshipment goods" means any goods landed from a vessel and placed in the custody of a port management company for the purposes of shipment on another vessel on a through bill of lading dated at the port of loading of the goods and showing that the destination is through the Fiji Islands, with the ultimate port of destination marked on each package or unit containing the goods and declared on a transshipment manifest lodged with the port management company prior to or at the time the goods are placed in its custody.

Limitation of liability

32.-(1) The liability of a port management company for damages, where any loss or damage is caused to any vessel or to any goods on a vessel, shall not exceed an aggregate amount of \$50,000.

(2) The limitation of liability under this section shall relate to the aggregate of any loss and damages sustained upon any one distinct occasion, even though such loss or damages are sustained by more than one person, and shall apply whether the liability arises at common law or under the provisions of any written law and notwithstanding anything contained in such written law.

Cargo subject to general or particular average

33.-(1) The owner or master of any vessel discharging or intending to discharge in a port or the approaches to a port any cargo which is the subject or likely to be the subject of a declaration of general or particular average shall inform the port management company prior to the

commencement of such discharge of the existence or likelihood of such a declaration and of the particulars of the cargo affected or likely to be affected thereby.

(2) The port management company shall not be liable in respect of any loss, damage or destruction during the discharge, reception, storage or removal of any cargo referred to in subsection (1).

Company not liable for acts of employees on vessels

34.-(1) Subject to this Part, any person employed or engaged by a port management company shall, whilst performing work in or on any vessel, be deemed to be the employee of the owner or master of that vessel, and the port management company shall not be liable for any loss or damage caused by any means by such person's act, omission or default to or on that vessel or any other vessel, or to any other person or thing.

(2) Subsection (1) does not affect any liability that the port management company may have under any law relating to compensation for employees.

Non-application of this Part

35. This Part does not apply to any goods accepted by a port management company for storage in a warehouse as a service provided by it in relation to warehousing or storing goods.

PART 11 -OFFENCES

False returns

36. Any person who makes, either knowingly or recklessly, any statement which is false in any material particular in any return, claim or other document which is required or authorised to be made by a port management company, commits an offence and is liable upon conviction to a fine not exceeding \$25,000 or a term of imprisonment not exceeding 6 months or both.

False information as to draught etc

37. Any master, owner or agent of a vessel entering or leaving or intending to enter or leave a port or to come alongside or depart from a wharf in a port who give false information of the draught, length of beam of the vessel to any employee of a port management company who requires such information, commits an offence and is liable upon conviction to a fine not exceeding \$25,000 or to a term of imprisonment not exceeding 6 months, or both.

Wilful damage to port works and property

38.-(1) Any person who wilfully removes, breaks, destroys or in any other way damages or injures any port works or any property at a port belonging to a port management company, or who hinders or wilfully prevents such port works or property from being used or operated in the manner which it is intended to be used or operated, commits an offence and is liable upon

conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years.

(2) Any person convicted of any offence under subsection (1) may also be ordered by the court to pay compensation to the port management company of a sum determined by the court.

(3) For the purposes of this section, "port works" includes any works constructed or being constructed by or under the authority of the Government or of a port management company for the improvement, protection, management or utilisation of a port, including every basin, graving dock, wharf, light, light-ship, bridge, viaduct, breakwater, embankment, dam, building, reclaimed land, channel excavation and all machinery and equipment used in connection with such port works.

Obstructing a port management company

39. Any person who -

(a) hinders, obstructs, intimidates or molests an employee of a port management company or any of its employees, agents or contractors in the performance and execution of their duties at a port or for the purposes of managing or operating a port; or

(b) removes any mark set up in a port or the approaches to a port for the purposes of indicating any level or direction -

commits an offence and is liable upon conviction to a fine not exceeding \$25,000 or to a term of imprisonment not exceeding 6 months, or both.

Offences in connection with safety of vessels etc.

40. Any person who in any port or the approaches to a port -

(a) wilfully and without lawful excuse or authority loosens or removes from its moorings or fastenings any vessel in or alongside any anchorage, wharf or dock;

(b) without lawful excuse or authority discharges any firearm except for the purpose of making a signal of distress or for other lawful purpose;

(c) moves, damages or interferes in any way with any navigation aid or mark;

(d) prepares or applies any combustible matter on board a vessel at any time or in any manner which is prohibited or contrary to any order given by a Port Master, shipping inspector or an officer of the port management company;

(e) uses a naked light when drawing off spirits, turpentine oil or other inflammable oils or liquids of any kind on board a vessel; or

(f) otherwise creates a fire or risk of fire with the potential to damage a port, wharf,

warehouse or vessel or endanger any person -

commits an offence and is liable upon conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 3 years, or both.

PART 12 - MISCELLANEOUS

Master or owner liable for damage

41.-(1) Whenever damage is done to any property of a port management company by any vessel or by any person employed on a vessel, the cost of making good the damage may be recovered by the port management company from the master, owner or person in charge of the vessel.

(2) A port management company may detain any vessel responsible for any damage to port property until the cost of making good the damage has been paid to the Chief Executive Officer, or other satisfactory security for such payment has been provided.

Bonded warehouses

42. Any warehouse belonging to a port management company which is licensed as a bonded warehouse shall be subject to the provisions of the Customs Act.

Powers to detain

43.-(1) Any employee of a port management company authorised in writing by its Chief Executive Officer may detain any person, within a port or port approaches -

(a) found committing an offence under this Act or a port rule; or

(b) who the authorised employee reasonably suspects as having committed any offence under this Act or a port rule.

(2) A person detained under subsection (1) shall be handed over to the custody of the police within one hour, or if that is not possible, within 6 hours, otherwise the person shall be released immediately.

Evidence of identity

44.-(1) Any employee of a port management company who reasonably believes that a person has committed an offence against this Act or a port rule may require him or her to state their name and address and to provide proof of identity.

(2) Any person who fails to state their name and address or to provide proof of identity when requested to do so under subsection (1), or who gives any false information in this regard, commits an offence and is liable upon conviction to a fine not exceeding \$500 to imprisonment for a term not exceeding 3 months, or both.

Property not subject to distress

45. No property, apparatus or equipment belonging to a port management company may be subject to distress, and shall not be taken or dealt in execution under any process of any court or in any proceedings in bankruptcy.

Exemption of Local Government Act

46. The Minister for Public Enterprise, after consulting with the Minister responsible for local government, may determine by notice in the Gazette, that any provision of the Local Government Act shall have no application within the area of a port or that certain services provided by a local government shall not be provided within a port area.

Act binds the Government

47. This Act binds the Government.

Regulations

48.-(1) The Minister may, after consulting with the Fiji Islands Maritime Safety Administration, make regulations for the maintenance, control and management of ports and the approaches to ports, and for any purpose related to the implementation of this Act.

(2) Without limiting the generality of subsection (1), regulations made under this section may be made in relation to the following matters -

- (a) regulating traffic within ports and approaches to ports;
- (b) removing impediments to navigation and providing for safe navigation within ports and approaches to ports;
- (c) regulating the discharge of goods on to wharves and docks;
- (d) regulating the construction, repair and maintenance of wharves and other port facilities;
- (e) keeping free passages within ports and along and near to the wharves, docks and moorings;
- (f) regulating the anchoring, mooring and fastening of vessels;
- (g) regulating the use of anchorages, wharves and docks and the movement of vessels, persons and vehicles;
- (h) regulating the use by vessels of whistles, sirens and other like instruments;

(i) the prevention of fires and the measures to be taken in the event of fire on vessels or within ports;

(j) regulating any matter so as to avoid collisions by vessels;

(k) the information to be supplied by masters, owners and other persons in relation to vessels and goods;

(l) providing for the licensing, restriction or prohibition of any activity within a port or approaches to a port;

(m) regulating the reception, storage, removal and clearance of goods within and from premises within a port;

(n) the provision and maintenance of buoys, landing-places, moorings and berthing facilities;

(o) the prevention of oil, rubbish or other things being discharged or thrown into the area of a port or the approaches to a port;

(p) regulating towage of vessels and the provision of other assistance to vessels;

(q) regulating the removal of stone, shingle, earth or other material from the bed of any area of a port or the approaches to a port;

(r) regulating the dredging of any area within a port or the approaches to a port; and

(s) the prescription of any offence and the imposition of penalties being fines not exceeding \$100,000 and terms of imprisonment not exceeding 2 years.

(2) Regulations made under this Part may apply to port management companies, and upon conviction for the breach by a port management company of a regulation a fine not exceeding \$200,000 may be imposed on the company.

PART 13 - PRIVATISATION OF PORTS TERMINAL LIMITED

Objectives of the privatisation

49. The privatisation of Ports Terminal Limited shall have the following objects -

(a) the enhancement of opportunities for resource owners within a port and port approaches and employees of Ports Terminal Limited to participate in the ownership and future operations of the company on fair and equitable terms;

(b) the promotion of competition and improved operations and standards in the provision

of stevedoring and related services at the Fiji Islands's ports;

(c) the realisation of a fair return to Government upon the sale or transfer of its assets;
and

(d) the implementation and attainment of any other object stated in the Reorganisation Charter.

Processes to be applied in the privatisation

50. All aspects of the privatisation of Ports Terminal Limited shall be undertaken in accordance with -

(a) the Reorganisation Charter;

(b) the Public Enterprise Act 1996;

(c) any lawful direction given by the Minister for Public Enterprise;

(d) any decision of Cabinet; and

(e) any other applicable law.

PART 14 - REPEAL, TRANSITIONAL AND SAVINGS PROVISIONS

Repeal of the Maritime and Ports Authority of the Fiji Islands Act

51.-(1) The Maritime and Ports Authority of the Fiji Islands Act and the Ports Authority (Validation) Act (Cap. 181A) are repealed.

Savings of certain Regulations

52. The Minister may determine that any Regulations made under the Maritime and Ports Authority of the Fiji Islands Act shall continue in force as if made under this Act.

Savings of contracts, licences, proceedings etc

53.-(1) All contracts entered into by the Maritime and Ports Authority of the Fiji Islands and current as at the commencement of this Act shall be deemed to have been made by Fiji Ports Corporation Limited and shall continue to be of full force and effect.

(2) All licences, permits, approvals and authorisations given by the Maritime and Ports Authority of the Fiji Islands and current as at the commencement of this Act shall be deemed to have been given by Fiji Ports Corporation Limited or the Fiji Islands Maritime Safety Administration, as the case may be, and shall continue to be of full force and effect for the remainder of their term, unless sooner terminated by the port management company or the Fiji Islands Maritime Safety

Administration.

(3) All legal proceedings taken by or against the Maritime and Ports Authority of the Fiji Islands and current as at the commencement of this Act shall be deemed to have been taken by or against Fiji Ports Corporation Limited.

(4) All fees, dues and charges owing to the Maritime and Ports Authority of the Fiji Islands and unpaid as at the commencement of this Act are payable to Fiji Ports Corporation Limited.

(5) The dues, fees and charges payable to Fiji Ports Corporation Limited shall be those chargeable by the Maritime and Ports Authority of the Fiji Islands as at the commencement of this Act, until they are amended in accordance with the provisions of this Act.

Powers of Port Masters and Shipping Inspectors

54.-(1) Port Masters, shipping inspectors and other officers authorised under the repealed Act may continue to exercise the powers vested in them by that Act until, a date to be notified in the *Gazette* by the Minister, that they are exercising powers under the Fiji Islands Maritime Safety Administration.

(2) Subsection (1) does not affect the right of a port management company to give directions, in accordance with this Act, in relation to the berthing, mooring, anchoring and movement of vessels within a port or the approaches to a port.

Winding up of the Authority

55.-(1) All assets and liabilities of the Maritime and Ports Authority of the Fiji Islands are hereby vested in Fiji Ports Corporation Limited in accordance with this Act and the Reorganisation Charter.

(2) The Minister for Public Enterprise may give directions in relation to any matter associated with the transfer of the assets and liabilities under subsection (1), and may make any determinations and exercise any powers necessary to formalise the winding up of the Maritime and Ports Authority of the Fiji Islands.

(3) From the commencement of this Act, all references to the Maritime and Ports Authority of the Fiji Islands in any contract, instrument, register, other public or private document, court proceedings or law shall, unless the context otherwise requires, be read and construed as a reference to Fiji Ports Corporation Limited.

Passed by the House of Representatives this 17th day of May 2005.

Passed by the Senate this 9th day of June 2005.
