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DEPARTMENT OF THE PRIME MINISTER

DEPARTEMENT VAN DIE EERSTE MINISTER

No. 982.

3 June 1977.

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 70 of 1977: Merchant Shipping Amendment Act, 1977.

No. 982.

3 Junie 1977.

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 70 van 1977: Wysigingswet op Handelskeepvaart, 1977.

ACT

To amend the Merchant Shipping Act, 1951, so as to prohibit the transfer of South African ships subject to certain registered rights without the written consent of the mortgagees; to create a lien where damage is caused by a South African ship; and to accord priority to certain liens over mortgages; and to provide for incidental matters.

(Afrikaans text signed by the State President.)
(Assented to 25 May 1977.)

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

Amendment of section 29 of Act 57 of 1951, as amended by section 34 of Act 69 of 1962.

1. Section 29 of the Merchant Shipping Act, 1951 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) (a) In the event of a South African ship being either actually or constructively lost, taken by the enemy, burnt or broken up, or ceasing to be a South African ship by reason of transfer to a person not qualified to own a South African ship or for any other cause, the registered owner of the ship or of any share in the ship shall immediately on obtaining knowledge of the event report the particulars thereof to the proper officer at the port of registry of the ship, who shall record such particulars in the register and, subject to the provisions of paragraph (c), close the registry of the ship in that register.

(b) The registered owner of a South African ship or of any share in such ship subject to any unsatisfied mortgage or existing certificate of mortgage entered in the register shall not in any manner transfer such ship or share to any other person without the written consent of all the mortgagees.

(c) Where a South African ship or share referred to in paragraph (b) is transferred without the written consent contemplated in that paragraph, the proper officer concerned shall not close the registry of such ship in the relevant register without the written consent of all the mortgagees.”;

(b) by the substitution for subsection (2) of the following subsection:

“(2) Where any of the events referred to in subsection (1) (a) occurs, except where the ship's certificate of

WET

Tot wysiging van die Handelskeepvaartwet, 1951, ten einde die oordrag te belet van Suid-Afrikaanse skeep onderworpe aan sekere geregistreerde regte sonder die skriftelike toestemming van die verbandhouders; 'n retensiereg te skeep waar skade deur 'n Suid-Afrikaanse skip veroorsaak word; en aan sekere retensieregte voorrang bo verbande te verleen; en om vir bykomstige aangeleenthede voorsiening te maak.

*(Afrikaanse teks deur die Staatspresident geteken.)
(Goedgekeur op 25 Mei 1977.)*

DAAR WORD BEPAAL deur die Staatspresident, die Senaat en die Volksraad van die Republiek van Suid-Afrika, soos volg:—

1. Artikel 29 van die Handelskeepvaartwet, 1951 (hieronder die Hoofwet genoem), word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

„(1) (a) Ingeval 'n Suid-Afrikaanse skip of werklik of konstruktief verlore gaan, deur die vyand gekaap word, verbrand of opgebreek word, of ophou om 'n Suid-Afrikaanse skip te wees as gevolg van oordrag aan 'n persoon wat onbevoeg is om eienaar te wees van 'n Suid-Afrikaanse skip of weens enige ander oorsaak, rapporteer die geregistreerde eienaar van die skip of van 'n aandeel in die skip die besonderhede daarvan onmiddellik na kennisname van die gebeurtenis aan die bevoegde beampte by die skip se registrasiehawe, en die beampte teken die besonderhede in die register aan en, behoudens die bepalinge van paragraaf (c), beëindig die registrasie van die skip in daardie register.

(b) Die geregistreerde eienaar van 'n Suid-Afrikaanse skip of van 'n aandeel in sodanige skip onderworpe aan 'n onafgeloste verband of bestaande verbandsertifikaat wat in die register aangeteken is, dra nie op enige wyse daardie skip of aandeel oor aan enigiemand sonder die skriftelike toestemming van al die verbandhouders nie.

(c) Waar 'n Suid-Afrikaanse skip of aandeel bedoel in paragraaf (b) sonder die skriftelike toestemming beoog in daardie paragraaf oorgedra word, beëindig die betrokke bevoegde beampte nie die registrasie van sodanige skip in die bedoelde register sonder die skriftelike toestemming van al die verbandhouders nie.”;

(b) deur subartikel (2) deur die volgende subartikel te vervang:

„(2) Waar enigeen van die gebeurtenisse bedoel in subartikel (1) (a) plaasvind, behalwe waar die skip se

Wysiging van artikel 29 van Wet 57 van 1951, soos gewysig deur artikel 34 van Wet 69 van 1962.

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registry is lost or destroyed, the master of the ship shall immediately, if the event occurs in port, or within three days after his arrival in port, if it occurs elsewhere, deliver the certificate to the proper officer, and that officer shall forthwith forward the certificate to the proper officer at the port of registry of the ship.”; and
 (c) by the substitution for subsection (3) of the following subsection:

“(3) Where a South African ship or share in such ship subject to any unsatisfied mortgage or existing certificate of mortgage entered in the register is in any manner transferred to any person without the written consent contemplated in subsection (1) (b) and the ship thereafter comes within the area of jurisdiction of any court in the Republic or in any other treaty country which has jurisdiction to give judgment upon any unsatisfied mortgage entered in the register, including any mortgage made under a certificate of mortgage entered in the register, and to order that the ship be sold in execution of the judgment, or which would have had such jurisdiction if the transfer of the ship had not been made, the court may exercise such jurisdiction notwithstanding the transfer of the ship, without prejudice, in a case in which the ship has been sold under a judgment of a court, to the effect of that judgment.”.

Insertion of section 51A in Act 57 of 1951.

2. The following section is hereby inserted in the principal Act after section 51:

“Lien for damages and priority of certain liens over mortgages.

51A. (1) Any person who has any claim in respect of a South African ship for the recovery of damage done by such ship to any other ship or property, whether within the territorial waters of the Republic or elsewhere, due to some wrongful act of navigation of such ship or to want of skill or negligence on the part of the persons responsible for the navigation of such ship, such persons being at the time of the causing of the said damage the owners or the servants of the owners, or having the possession or control of such ship by the owners' authority, shall have a lien upon that ship for the amount of his claim.

(2) Notwithstanding anything to the contrary in this Act or any other law contained, any person who has a lien upon a South African ship for the recovery of—

- (a) damage, as contemplated in subsection (1);
 - (b) wages, as contemplated in section 134 (1) or 143 (1);
 - (c) disbursement or liabilities properly made or incurred by him on account of such ship in his capacity as master of that ship, as contemplated in section 143 (2);
 - (d) salvage, as contemplated in section 300 (1),
- shall be entitled to payment of his claim out of the proceeds of such ship in priority to a mortgagee under a mortgage entered in the register over that ship or a share in that ship.

(3) The provisions of subsection (2) shall not apply to any unsatisfied mortgage registered before the commencement of the Merchant Shipping Amendment Act, 1977.”.

Amendment of section 55 of Act 57 of 1951, as amended by section 13 of Act 30 of 1959.

3. Section 55 of the principal Act is hereby amended by the substitution for paragraph (j) *quat* of the following paragraph:

“(j) *quat* any proper officer who has retained the certificate of sale and the certificate of registry of any ship in

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registrasiesertifikaat verlore of vernietig is, oorhandig die gesagvoerder van die skip die sertifikaat onmiddellik, as die gebeurtenis in 'n hawe plaasvind, of binne drie dae na sy aankoms in 'n hawe as dit elders plaasvind, aan die bevoegde beampte, en daardie beampte stuur die sertifikaat sonder versuim aan die bevoegde beampte by die registrasiehawe van die skip.”; en

(c) deur subartikel (3) deur die volgende subartikel te vervang:

„(3) Waar 'n Suid-Afrikaanse skip of aandeel in sodanige skip onderworpe aan 'n onafgeloste verband of bestaande verbandsertifikaat wat in die register aange-teken is op enige wyse aan enigiemand oorgedra word sonder die skriftelike toestemming bedoel in subartikel (1) (b), en die skip daarna binne die regsgebied kom van 'n hof in die Republiek of in 'n ander verdragland wat jurisdiksie besit om vonnis uit te spreek ten opsigte van 'n onafgeloste verband wat in die register aangeteken is, met inbegrip van 'n verband aangegaan kragtens 'n in die register aangetekende verbandsertifikaat, en om te beveel dat die skip ter uitvoering van die vonnis verkoop word, of sodanige jurisdiksie sou besit het as die oordrag van die skip nie geskied het nie, kan die hof, ondanks die oordrag van die skip, bedoelde jurisdiksie uitoefen, sonder benadeling, ingeval die skip kragtens uitspraak van 'n hof verkoop is, van die uitwerking van daardie uitspraak.”

2. Die volgende artikel word hierby in die Hoofwet na artikel 51 ingevoeg:

Invoeging van artikel 51A in Wet 57 van 1951.

„Retensiereg vir skade en voorrang van sekere retensieregte bo verbande.

51A. (1) Iemand wat 'n eis ten opsigte van 'n Suid-Afrikaanse skip het vir die verhaal van skade deur die skip veroorsaak aan enige ander skip of eiendom, hetsy in die territoriale waters van die Republiek of elders, wat te wyte is aan die een of ander onregmatige navigasiehandeling van sodanige skip of aan gebrek aan vaardigheid of aan onagsaamheid aan die kant van die persone wat verantwoordelik is vir die navigasie van daardie skip, waar sodanige persone ten tyde van die veroorsaking van die bedoelde skade die eienaars of die werknemers van die eienaars is, of kragtens die magtiging van die eienaars in besit is of beheer het oor die skip, het 'n retensiereg op daardie skip tot die bedrag van sy eis.

(2) Ondanks andersluidende bepalings van hierdie Wet of die een of ander wet is iemand wat 'n retensiereg op 'n Suid-Afrikaanse skip het vir die verhaal van—

- (a) skade, soos bedoel in subartikel (1);
- (b) loon, soos bedoel in artikel 134 (1) of artikel 143 (1);
- (c) uitgaaf of verpligtings behoortlik deur hom gemaak of aangegaan op rekening van die skip in sy hoedanigheid as gesagvoerder van daardie skip, soos bedoel in artikel 143 (2);
- (d) bergloon, soos bedoel in artikel 300 (1), geregtig op betaling van sy eis uit die opbrengs van sodanige skip met voorrang bo 'n verbandhouer van 'n verband wat in die register aangeteken is oor daardie skip of 'n aandeel in daardie skip.

(3) Die bepalings van subartikel (2) is nie van toepassing nie op 'n onafgeloste verband wat voor die inwerkingtreding van die Wysigingswet op Handelskeepvaart, 1977, geregistreer is.”

3. Artikel 55 van die Hoofwet word hierby gewysig deur paragraaf (j)quat deur die volgende paragraaf te vervang:

„(j)quat 'n bevoegde beampte wat die verkopingsertifikaat en die registrasiesertifikaat van 'n skip ingevolge

Wysiging van artikel 55 van Wet 57 van 1951, soos gewysig deur artikel 13 van Wet 30 van 1959.

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terms of paragraph (j)bis and any proper officer to whom such certificates have been forwarded in terms of paragraph (j)ter shall make a memorandum of the sale in his register, and close the registry of the ship in that register except in the case of the transfer of a ship subject to any unsatisfied mortgage or existing certificate of mortgage entered therein in respect of which the written consent contemplated in section 29 (1) (b) has not been given. The provisions of section 29 (1) and (3) shall apply in respect of such mortgage or certificate of mortgage;”

Substitution of section 61 of Act 57 of 1951.

4. The following section is hereby substituted for section 61 of the principal Act:

“Right of registered owner to dispose of ship or share.

61. No record of any interest in a ship or a share in a ship, other than by way of ownership or mortgage, shall be made in the register, and, subject to the provisions of section 29 (1) (b) and to any rights recorded in the register as being vested in any other person under mortgage or under certificate of sale or mortgage, the registered owner of a ship or share therein shall have the right absolutely to dispose of the ship or share.”

Short title.

5. This Act shall be called the Merchant Shipping Amendment Act, 1977.

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paragraaf (j)*bis* behou het en 'n bevoegde beampte aan wie sodanige sertifikate ingevolge paragraaf (j)*ter* gestuur is, moet 'n aantekening van die verkoping in sy register maak, en die registrasie van die skip in daardie register beëindig, behalwe in die geval van die oordrag van 'n skip onderworpe aan 'n onafgeloste verband of bestaande verbandsertifikaat wat daarin aangeteken staan ten opsigte waarvan die skriftelike toestemming beoog in artikel 29 (1) (b) nie verleen is nie. Die bepalings van artikel 29 (1) en (3) geld ten opsigte van bedoelde verband of verbandsertifikaat."

4. Artikel 61 van die Hoofwet word hierby deur die volgende artikel vervang:

Vervanging van artikel 61 van Wet 57 van 1951.

„Reg van geregistreeerde eienaar om skip of aandeel te vervreem.

61. Geen aantekening van enige belang in 'n skip of 'n aandeel in 'n skip behalwe uit hoofde van eiendomsreg of verband word in die register gemaak nie, en met inagneming van die bepalings van artikel 29 (1) (b) en van regte wat volgens aantekening in die register by 'n ander persoon berus kragtens verband of kragtens verkoping of verbandsertifikaat, het die geregistreeerde eienaar van 'n skip of aandeel daarin die reg om onbelemmerd die skip of aandeel te vervreem."

5. Hierdie Wet heet die Wysigingswet op Handelskeepvaart, Kort titel. 1977.