

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



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GOVERNMENT GAZETTE

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DEPARTMENT OF THE PRIME MINISTER

DEPARTEMENT VAN DIE EERSTE MINISTER

No. 982.

3 June 1977.

No. 982.

3 Junie 1977.

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

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

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

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

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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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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.