I assent.

(L.S.)

CENSU TABONE
President

14th December, 1990

ACT No. XXXVII of 1990

AN ACT to amend the Merchant Shipping Act, Cap. 234

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in the present Parliament assembled and by the authority of the same, as follows:

Short title and commencement Cap. 234

1. (1) This Act may be cited as the Merchant Shipping (Amendment) Act, 1990 and shall be read and construed as one with the Merchant Shipping Act, hereinafter referred to as "the principal Act".

(2) This Act shall come into force on such date as the Minister responsible for shipping may, by notice in the Gazette, appoint, and different dates may be so appointed for different provisions and different purposes thereof.

Amendment to section 7 of the principal Act.

2. Section 7 of the principal Act shall be amended as follows:

(a) immediately after subsection (1) thereof there shall be added the following:

"Provided that if the registrar is requested to give a service in respect of a ship prior to such ship being registered under this Act, the registrar may grant such service on payment of an amount equivalent to ten per cent of the initial registration fee payable in terms of section 6 of the Act:

Provided further that if the ship is registered within one year from such service being given, such an amount paid shall be deducted from the fee due on initial registration."; and

(b) subsection (3) thereof shall be deleted and substituted as follows:

"(3) Notwithstanding that the ship remains on the register under this Act, no registry fees shall be payable unless and until a certificate of registry or a deletion certificate, as the case may be, is issued under this Act:

Provided that in no case may a certificate of registry be issued as of a date later than the date of expiry of the last valid certificate of registry, and should the certificate of registry be delivered at a later date, the fees due shall still accrue from the date of expiry of the last valid certificate of registry.".

Amendment to section 11 of the principal Act.

3. Section 11 of the principal Act shall be amended as follows:

(a) paragraph (c) thereof shall be deleted; and

(b) paragraphs (d), (e) and (f) thereof shall be renumbered as paragraphs (c), (d), and (e) respectively.

Amendment to section 13 of the principal Act.

4. Subsection (2) of section 13 of the principal Act shall be amended as follows:

(a) in paragraph (c) thereof the words "surveyor of ships;" shall be deleted and substituted by the words "surveyor of ships or proof that such valid certificates have been issued to the ship;"; and

(b) paragraph (d) thereof shall be deleted and substituted by the following new paragraph:

"(d) a certificate of survey issued in terms of section 14 of this Act and a copy of the tonnage measurement certificate; and"; and

(c) in paragraph (e) thereof the words "this Act." shall be deleted and substituted by the words "this Act or evidence satisfactory to the registrar that the vessel has been marked in accordance with section 15 of this Act.".

Amendment to section 16 of the principal Act.

5. Subsection (5) of section 16 of the principal Act shall be deleted and substituted by the following new subsection:

"(5) The registrar may refuse to register provisionally a ship more than three times in succession even in the name of different owners, and shall refuse to consecutively register provisionally a ship more than two times in the name of the same owner.".

Amendment to section 19 of the principal Act.

6. Subsection (3) of section 19 of the principal Act shall be amended as follows:

(a) in the proviso to paragraph (b) thereof the words "such period;" shall be deleted and substituted by the words "such period."; and

(b) the words "as may be determined by the owner upon payment of fees for the ship." shall be deleted.

Amendment to section 25 of the principal Act.

7. In subsection (1) of section 25 of the principal Act the words "shall be endorsed" shall be substituted by the words "shall, saving any other provision of this Act, be endorsed".

Amendment to section 34 of the principal Act.

8. In subsection (1) of section 34 of the principal Act the words "and the registrar shall" shall be substituted by the words "and the registrar shall, saving any other provision of this Act,".

Amendment to section 35 of the principal Act.

9. In paragraph (d) of subsection (3) of section 35 of the principal Act the words "shall cease to be a Maltese ship and the registrar shall proceed as provided in subsection (2) of section 26 of this Act." shall be deleted and substituted by the words "shall cease to be a Maltese ship.".

Amendment to section 37D of the principal Act.

10. Subsection (3) of section 37D of the principal Act shall be amended as follows:

(a) the words "For the purposes of this section a vessel is deemed to have made a voyage:" shall be deleted; and

(b) paragraphs (a), (b), and (c) thereof shall be deleted.

Amendment to section 39 of the principal Act.

11. Immediately after subsection (3) of section 39 of the principal Act, there shall be inserted the following new section:

"(4) When it is stated in the mortgage instrument that it is prohibited to effect the transfer of the ship which is being mortgaged, or of a share therein, without the previous written consent of the mortgagee, the registrar shall make a note in the register to such effect, and the registrar, notwithstanding any other provision of this Act, shall not record any transfer of such ship or of a share therein unless the consent in writing of such mortgage is produced to him, saving where the transfer is made pursuant to a court order in a sale by auction of such a ship or pursuant to any other court order, and any transfer registered in violation of this provision shall be null and void.".

Amendment to titles in the principal Act.

12. The words "*Default of registration of transfers and mortgages*" immediately before section 47 of the principal Act, and the words "*Certificates of mortgage and sale*" immediately after the said section, shall be deleted.".

Amendment to sections 64, 65, 68 and 70 of the principal Act.

13. In sections 64, 65, 68 and 70 of the principal Act, for the words "this Part of this Act" wherever they occur, there shall be substituted the words "Part II and Part IIA of this Act".

14. Immediately after Part II of the principal Act there shall be added the following new Part:

Addition of new Part IIA to the principal Act.

"PART IIA

BAREBOAT CHARTER REGISTRATION

Interpretation.

84A. (1) For the purposes of this Part of this Act, unless the context otherwise requires —

"bareboat charter" means the contract for the lease or sub-lease of a ship, hereinafter referred to as charter, for a stipulated period of time, by virtue of which the charterer shall acquire full control and complete possession of the ship, including the right to appoint her master and crew for the duration of the charter but excluding the right to sell or mortgage the ship;

"bareboat charter registration" means the registration of a ship in a bareboat charter registry under the name of the charterer;

"bareboat charter registry" means the registry of the State whose flag the ship is entitled to fly during the period in which the charterer is registered as the bareboat charterer;

"compatible registry" means a ship registry of a foreign State declared by the Minister to be a compatible registry in terms of section 84B of this Act;

"day" means calendar day;

"underlying registry" means the registry of the State in which the owners of a ship are registered as owners and to which jurisdiction and control will revert upon termination of the bareboat charter registration, and "underlying register" and "underlying registration" shall be construed accordingly.

(2) Section 76 of this Act shall be construed for the purpose of this Part of this Act, as if for the words "If the master or owner" there were substituted the words "If the master or charterer or owner".

Compatible registries.

84B. Whenever it appears to the Minister that the provisions of the law of a State with regards to bareboat charter registration are compatible with the provisions of this Act, he may declare the ship registry of that State to be a compatible registry for the purposes of this Part of this Act.

Eligibility and conditions for bareboat charter registration.

84C. (1) Notwithstanding anything contained in section 4 of this Act, a ship not eligible in terms of the said section to be registered as a Maltese ship shall be eligible to be registered as a Maltese ship under this Part of this Act provided that —

(a) the ship is bareboat chartered to a citizen of Malta, or to bodies corporate qualified to own a Maltese ship in terms of section 4 of this Act;

(b) the ship is not a Maltese ship, and is registered in a comptible registry;

(c) is not registered in another bareboat charter registry; and

(d) the following certified documents are submitted to the registrar to his satisfaction:

(i) an application for registry under this Part of this Act made by the charterer or his authorised agent containing such information as may be required by the registrar;

(ii) a declaration of bareboat charter made by the charterer accompanied by a copy of the charter agreement, which charter agreement shall not be available for public inspection;

(iii) a transcript or an extract of the underlying registration of the ship which shall include a description of the ship, the owners and, where applicable, all registered mortgages and encumbrances of the ship, and such document shall be available for public inspection; and

(iv) the consent in writing for the ship to be bareboat charter registered in Malta of:

(a) the appropriate authorities of the underlying registry who may be further required by the registrar to declare that during the period of bareboat charter registration the ship will not be entitled to fly their flag;

(b) the owners of the ship; and

(c) all registered mortgagees.

(2) Any amendments or modifications to the bareboat charter shall within thirty days be produced to the registrar by the charterer.

(3) Whenever any amendments or modifications are effected to the underlying registration the charterer shall —

(a) within seven days from such amendments being effected communicate to the registrar any such amendments or modifications; and

(b) within thirty days of such amendments or modifications having been entered in the underlying register produce to the registrar a transcript or an extract of the underlying registration showing such amendments or modifications.

Ascertainment of tonnage.

84D. The tonnage of a ship to be registered under this Part of this Act shall be ascertained in accordance with the tonnage regulations made under this Act:

Provided that at the request of the charterer the registrar may accept the tonnage of such ship to be that registered in the underlying registry if he is satisfied that the provisions of the International Convention on Tonnage Measurement of Ships signed in London on 23 June, 1969, if applicable to such ship and unless such ship has been exempted from them, have been adhered to, and, the certificate of survey provided for in section 14 of this Act shall be that issued by the underlying registry.

Name of ship bareboat chartered registered in Malta.

84E. (1) Subject to the provisions of subsection (2) of this section a ship shall be registered under this Part of this Act by the name under which it is registered in the underlying registry, provided that such name is not already the name of a registered Maltese ship or a name so similar as to be calculated to deceive.

(2) The name of a ship to be registered or of a ship already registered under this Part of this Act, may be changed prior or subsequent to registration under this Part of this Act as the case may be, provided the appropriate authorities of

the underlying registry, the owners, and the registered mortgagees, if any, have consented thereto and provided also that such change is made in accordance with the provisions of section 56 of this Act.

Bareboat charter registration.

84F. (1) The registrar, if satisfied that all conditions for registration specified in this Part and in other Parts of this Act, where applicable, have been complied with, and on payment of the prescribed fee shall —

(a) enter in the register of Maltese ships provided for in section 365 of this Act, all particulars of the ship and its underlying registration, owners and charterers, stating that it is a bareboat charter registration, the expiry date of such registration, and that the register does not contain an official record of any mortgages affecting the ship;

(b) inform the appropriate authorities of the underlying registry of the registration under this Part; and

(c) issue a certificate of bareboat charter registration, which shall include the name and particulars of the ship, the name of the home port Valletta and the expiry date of the registration.

(2) Upon the issue of a certificate of bareboat charter registration all documents issued to the ship by the underlying registry, shall be surrendered to the appropriate authorities of that registry and, within thirty days of the issue of the certificate as aforesaid, the charterer shall make and deliver to the registrar a declaration to that effect.

Duration of bareboat charter registration.

84G. Subject to the provisions of section 84H of this Act the duration of such registration shall be for a period not exceeding the duration of the bareboat charter or the expiry date of the underlying registration, whichever is the shorter period, but in no case for a period exceeding two years.

Extension of bareboat charter registration.

84H. (1) At the request of the charterer or his authorised agent the registrar may extend and further extend the registration for the remaining period of the charter or until the expiry date of the underlying registry, whichever is the shorter period, but in no case for periods exceeding two years at a time, provided that he has not received any objections to this extension from the appropriate authorities of the underlying registry, the owners and the registered mortgagees, if any, within seven days from the registrar having informed them of such request for extension.

(2) Upon the grant of an extension in terms of subsection (1) of this section, the registrar shall —

(a) enter the new date of expiry in the register of the ship;

(b) issue a certificate of extension of bareboat charter registration which shall include the date of expiry thereof: and

(c) inform the appropriate authorities of the underlying registry.

International convention certificates of ship bareboat charter registered in Malta.

84I. A ship bareboat charter registered under this Part required to be issued with international convention certificates in terms of an international convention to which Malta is a party shall be issued with such certificates under the authority of the Government of Malta:

Provided that where Malta is not a party to such convention a certificate required under that convention may be issued, with the permission of the registrar, under the authority of the government of the underlying registry.

Jurisdiction over a ship registered under this Part of this Act.

84J. (1) A ship registered under this Part of this Act shall be deemed to be a Maltese ship and except where otherwise provided shall be under the jurisdiction and control of Malta and shall comply with all the laws applicable to Maltese ships.

(2) A ship registered under this Part of this Act shall only hoist the Malta flag as provided for in this Act.

(3) The home port of a ship registered under this Part of this Act shall be Valletta and shall be shown on the certificate of bareboat charter registration and shall be marked on the stern in accordance with the provisions of the Act.

Ownership of ship registered under this Part of this Act.

84K. (1) This Act shall not assert any owership rights over a ship registered under this Part of this Act and it shall have no effect with regards to title and transfer and transmission of such ship or shares therein.

(2) Any transfer of ownership of a ship registered under this Part of this Act shall be notified by the charterers to the registrar, and the registration of the ship under this Part of this Act shall be closed unless the new owners, within seven days, have informed the registrar that they have no objection to the registration of the ship under this Part of this Act, and, within thirty days of having made such declaration, delivered to the registrar their consent in writing to such registration.

Payment of fees.

84L. A ship registered under this Part of this Act shall be subject to the payment of the initial and annual registration fees and of any other fees set out in this Act, or in any regulations made thereunder.

Mortgages and encumberances.

84M. Mortgages and encumbrances may not be registered under this Act in respect of a ship registered under this Part of this Act, and the registrar shall refuse to register any such mortgages and encumbrances; such power of registration shall remain vested in the underlying registry.

Closure of bareboat charter registration

84N. (1) The Minister may order that the registration of a ship under this Part of this Act shall be closed —

(a) if any of the provisions of this Act, in as far as the same may be applicable to a ship registered under this Part of this Act, are not complied with; or

(b) for any reason specified in subsection (1) of section 29 of this Act, in as far as the same may be applicable to a ship registered under this Part of this Act.

(2) Where the charterer of a ship, registered under this Part of this Act, desires to close the bareboat charter registration of such ship, he shall make an application to that effect to the registrar giving all such particulars and information as the registrar may require for the purpose, and such application made and substantiated as aforesaid shall be acceded to if all liabilities and obligations in respect of the ship towards the Republic of Malta whether for fees, charges, fines or otherwise have been paid.

(3) The registrar shall close the registration of a ship under this Part of this Act, and shall make an entry to that effect in the register, if —

(a) the Minister has ordered such closure in terms of subsection (1) of this section;

(b) a voluntary closure of registry has been requested and such request has been acceded to by the registrar in terms of subsection (2) of this section;

(c) the appropriate authorities of the underlying registry, or the owners, or any of the mortgagees, if any, have withdrawn their consent to the bareboat charter registration in Malta;

(d) the registration in the underlying registry has for any reason been terminated.

(e) the charter lapses or is terminated by any of the parties to it; or

(f) the period for which the ship has been bareboat charter registered lapses and no extension has been granted in accordance with section 84H of this Act.

(4) Upon the closure of a registration in terms of subsection (3) of this section the ship shall cease to be a Maltese ship and the registrar shall immediately notify the appropriate authorities of the underlying registry, the owners and the mortgagees, if any, of such closure.

(5) The registrar may refuse to issue a deletion certificate or a transcript of registry showing the closure of registry until —

(a) the certificate of bareboat charter registration issued in terms of section 84F of this Act has been surrendered to him; and

(b) all liabilities and obligations in respect of the ship towards the Republic of Malta whether for fees, charges, fines or otherwise have been paid.

Bareboat charter registration in a foreign registry.

84O. Notwithstanding any other provision of this Act a Maltese ship registered under Part II of this Act may be bareboat charter registered in a foreign registry if the Registrar-General gives his consent in writing thereto in terms of section 84P of this Act.

Consent of the Registrar-General.

84P. (1) The Registrar-General may, under such conditions as he may deem fit to impose, give his consent referred to in section 84O of this Act if —

(a) the ship is registered as a Maltese ship under Part II of this Act;

(b) the bareboat charter registry where the ship is to be registered is a comptible registry; and

(c) the following documents are submitted to him:

(i) an application for bareboat charter registration in a foreign registry made by the owners containing such information as may be required by the Registrar-General;

(ii) the consent in writing to such registration of all registered mortgagees, if any;

(iii) a written undertaking by the owners to surrender the certificate of registry issued under this Act within fifteen days from entry into the bareboat charter registry;

(iv) a written undertaking by the charterer that the Maltese Flag shall not be hoisted during the period of bareboat charter registration; and

(v) a copy of the bareboat charter.

(2) The owners shall produce to the registrar any amendments or modifications to the bareboat charter within thirty days of such amendments or modifications being effected.

Name of ship bareboat charter registered in a foreign registry.

84Q. (1) Subject to the provisions of subsection (2) of this section a ship registered under Part II of this Act shall be bareboat charter registered in a foreign registry by the name under which it is registered under this Act.

(2) The name of a Maltese registered ship bareboat charter registered in a foreign registry may be changed with the written permission of the Registrar-General in terms of section 56 of his Act only if such change is being effected also in the bareboat charter registry.

Registration in a foreign bareboat charter registry not in terms of this Act.

84R. The registration in a foreign bareboat charter registry of a ship registered under this Act not made in accordance with the provisions of this Part of this Act shall be null and void.

Bareboat charter regisration of a Maltese ship in a foreign registry.

84S. (1) Upon the bareboat charter registration of a Maltese ship in a foreign registry —

(a) the owners shall immediately notify the registrar of such registration, and within thirty days surrender to the registrar the certificate of registry issued to the ship under this Act and deliver to the registrar a transcript or an extract of the foreign bareboat charter registration; and

(b) the registrar, if satisfied that such registration has been effected according to the provisions of this Act, shall make an entry thereof in the register of the said ship.

(2) The owners shall immediately notify the registrar of the closure or lapse of the bareboat charter registration in a foreign registry, and shall whithin thirty days of the closure of such registry, deliver to the registrar a transcript or an extract of the foreign bareboat charter registration showing such closure.

Obligations while ship is a foreign bareboat charter registry.

84T. (1) Unless otherwise provided for in this Part of this Act, the owners of a Maltese ship bareboat charter registered in a foreign registry shall comply with all the

provisions of this Act as if the ship were not so registered in the foreign registry.

(2) During the time a Maltese ship is bareboat charter registered in a foreign registry in terms of the provisions of this Part of this Act —

(a) notwithstanding the provisions of section 73 of this Act, such ship shall not hoist the Maltese flag; and

(b) notwithstanding the provisions of section 5 of this Act, the home port of such ship shall be that of the bareboat charter registry.

(3) The owners shall, within fifteen days from the entry into the foreign bareboat charter registry, make and deliver to the registrar a declaration to the effect that the name of the foreign home port has been marked on the stern of the ship in lieu of the name Valletta.

Payment of fees while ship is in foreign bareboat charter registry.

84U. A Maltese ship bareboat charter registered in a foreign registry shall, notwithstanding such registration, continue to be subject to the payment of all the fees set out in this Act, or in any regulations made thereunder, in respect of Maltese ships.

International convention certificates of ship bareboat charter registered in foreign registry.

84V. A Maltese ship bareboat charter registered in a foreign registry required to be issued with international convention certificates in terms of an international convention to which Malta is a party shall be issued with such certificates under the authority of the Government of the bareboat charter registry:

Provided that where the State of the bareboat charter registry is not a party to such convention the certificate required under such convention may be issued under the authority of the Government of Malta.

Title, mortgages and encumbrances of ship bareboat charter registered in a foreign registry.

84W. (1) Notwithstanding that a Maltese ship may be bareboat charter registered in a foreign registry, all matters with respect to title over the ship, mortgages and encumbrances shall continue to be governed by Maltese law.

(2) Any transaction affecting the title over the ship or relating to the registration, amendment, transfer and transmission and discharge of mortgages shall be made and registered in accordance with the provisions of this Act and only by the persons specified therein.

(3) The registration of any mortgages or encumbrances in the bareboat charter registry shall be null and void.

Termination of bareboat charter registration in foreign registry.

84X. (1) The Registrar-General may withdraw the consent referred to in section 84O of this Act, if any of the applicable provisions of this Act, are not complied with:

Provided that the Registrar General shall withdraw such consent, if—

(a) the Minister, in the national interest or in the interest of Maltese shipping and after giving the owners and the charterers of the ship a reasonable opportunity to make representations, has ordered the Registrar-General to withdraw his consent;

(b) any of the conditions required to be fulfilled in terms of subsection (1) of section 84P of this Act is not so fulfilled; or

(c) the charter terminates or is terminated by any of the parties to it.

(2) Upon the withdrawl of the consent of the Registrar-General in terms of subsection (1) of this section —

(a) the registrar shall inform the appropriate authorities of the bareboat charter registry, the owners, the charterers, and the mortgagees, if any, of such withdrawal; and

(b) the bareboat charter registration shall be terminated.

(3) Upon the termination of the bareboat charter registration —

(a) the registrar shall make an entry thereof in the register, and the ship shall thereupon be again subject to all the provisions of Maltese law;

(b) within thirty days from the termination of such registration the owners shall make and deliver a declaration to the registrar that the certificate of bareboat charter registration has been surrendered to the foreign bareboat charter registry, and thereupon the registrar, unless the registry of the ship under Part II of this Act is also being closed, shall again deliver to the owners the certificate of registry which had been surrendered to him in terms of section 84S of this Act; and

(c) within thirty days from the termination of such registration the owners shall deliver to the registrar a transcript or an extract of register showing that the bareboat charter registration has been cancelled.

Certification of documents.

84Y. All documents required by the registrar for the purposes of this Act shall be certified as required by the registrar.".

15. In the definition of "exempted ship" in section 85 of the principal Act the words "Part II" shall be substituted by the words "Part II or Part IIA". Amendment to section 85 of the principal Act.

16. In subsection (5) of section 86 of the principal Act after the words "the Accountancy Profession Act, 1979" there shall be inserted the words "or by a person holding the warrant of advocate in terms of the Code of Organisation and Civil Procedure. Amendment to section 86 of the principal Act.

Cap. 12.

17. In paragraph (a) of section 88 of the principal Act for the words "Part II" there shall be substituted the words "Part II and Part IIA". Amendment to section 88 of the principal Act.

18. Sections 89, 90, 91 and 92 of the principal Act shall be substituted by the following new sections: Substitution of sections 89, 90, 91 and 92 of the principal Act.

"Interpretation. 89. For the purposes of this Part of this Act, unless the context otherwise requires the term "certificate of competency" includes certificate of proficiency and licence.

Manning of Maltese ships. 90. (1) Every Maltese ship when going to sea from any place shall be provided with such number and description of officers and crew as the Minister may by regulations prescribe.

(2) If the requirements of subsection (1) of this section are not complied with, the master or owners of the ship shall for each offence be liable to a fine (*multa*) not exceeding five hundred liri.

Certificates of competency. 91. The Minister may by regulations prescribe:

(a) the grades in respect of which certificates of competency shall be granted to or recognised in accordance with this Act;

(b) the conditions for the issue or recognition of certificates of competency granted or recognised in accordance with this Act;

(c) the conditons for the replacement, suspension, cancellation and alteration of certificates of competency issued in accordance with this Act; and

(d) any other matter affecting certificates of competency granted or recognised in accordance with this Act.".

19. Sections 93, 94, 96, 123 and 124 of the principal Act shall be deleted. Deletion of sections 93, 94, 96, 123 and 124 of the principal Act.

Amendment to section 374 of the principal Act.

20. Section 374 of the principal Act shall be amended as follows:

(a) subsections (2), (3), (4), and (5) thereof shall be renumbered as subsections (3), (4), (5) and (6) respectively; and

(b) immediately after subsection (1) thereof there shall be added the following new subsection:

"(2) Regulations, rules and orders made under the provisions of this Act shall include such requirements, in regard to the matters in respect of which the regulations, rules or orders are made, as appear to the Minister to implement the provisions in regard to those matters of international conventions or protocols ratified or acceded to by the Government of Malta.".

Passed by the House of Representatives at Sitting No. 449 of the 4th December, 1990.

LAWRENCE GONZI
Speaker

P. MUSCAT TERRIBILE
Clerk to the House of Representatives.

Ippubblikat mid-Dipartiment ta' l-Informazzjoni — Kastilja — *Published by the Department of Information — Castille*
Mitbugh fl-Istamperija tal-Gvern — *Printed at the Government Printing Press*

Prezz 10c — *Price 10c*