

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 399.

Overseas Trade (Shipping).

GENERAL ANNOTATION.

ADMINISTRATION.

The administration of this Chapter was not vested specifically in any Minister at the date of its preparation for inclusion. It seems, therefore that under Constitution Section 148(2) the Prime Minister was politically responsible.

The present administration may be ascertained by reference to the most recent Determination of Titles and Responsibilities of Ministers made under Section 148(1) of the Constitution.

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CHAPTER NO. 399.

Overseas Trade (Shipping) Act.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 399.

Overseas Trade (Shipping) Act.

Being an Act relating to the shipping of goods overseas, and providing for—

- (a) the promotion of efficient, economical and competitive outwards cargo shipping services; and
 - (b) the participation, by Papua New Guinean interests, in those services,
- and for related purposes.

PART I.—PRELIMINARY.

1. Interpretation.

In this Act unless the contrary intention appears—

- “agreement” means an agreement to which this Act applies under Section 3;
- “declared shipping line” means a shipping line in respect of which a declaration under Section 10 is in force;
- “disapproved agreement” means an agreement in respect of which a declaration under Section 8 is in force;
- “freight” includes stevedoring costs, but does not include wharfage or shore handling charges;
- “liner conference” means a group comprised of two or more shipping lines providing international liner services for the carriage of cargo on a particular route within specified geographical limits, that has an agreement or arrangement within which the shipping lines operate under uniform or common freight rates or other agreed conditions with regard to the provision of shipping services;
- “outwards cargo shipping” means the carriage of goods by sea on liner services from a place in the country to a place outside the country;
- “shipper” means a person or entity that has entered into or proposes to enter into a contractual or other arrangement with a liner conference for the shipment of goods in which that person or entity has a beneficial interest;
- “shippers’ organization” means a body in respect of which a declaration under Section 2 is in force;
- “shipping line” means a vessel-operating carrier engaged in outwards cargo shipping;
- “this Act” includes the regulations.

2. Shippers’ organization.

Where the Minister is satisfied that an association or similar body—

- (a) represents shippers engaged in outwards cargo shipping; and
 - (b) is concerned with the protection and promotion of those shippers’ interests,
- he may, by notice in the National Gazette, declare that association or body to be a shippers’ organization for the purposes of this Act.

3. Agreement to which this Act applies.

(1) Subject to Subsection (3) an agreement to which this Act applies is an agreement the parties to which are or include two or more shipping lines which, within the framework of the agreement, operate under uniform or common freight rates or under any other agreed conditions.

(2) Without limiting the generality of Subsection (1), the terms and conditions of the agreement may relate to—

- (a) the fixing or regulating of freight rates; or
- (b) the giving to shippers, or the withholding from shippers, of special rates or other privileges or advantages; or
- (c) the pooling, sharing or apportioning of earnings, expenses, losses or traffic; or
- (d) the allocating of ports or the restricting or regulating of the number or character of sailings between ports; or
- (e) the restricting or the regulating of the volume or character of the goods to be carried.

(3) An agreement between shipping lines of the one part and shippers of the other part, that contains provision with respect to terms and conditions that are applicable to contracts for outwards cargo shipping, but does not contain provisions with respect to terms and conditions relating to any of the matters set out in Subsection (2), is not an agreement to which this Act applies.

PART II.—OVERSEAS SHIPPING TRADE.

4. Representation of shipping line.

(1) The Minister may, by written notice addressed to a shipping line, not being a shipping line that has its head office of management located in the country, require that shipping line—

- (a) to appoint, within 14 days of the service of the notice, a person resident in the country, not being a corporation, to be its agent for the purposes of this Act; and
- (b) to supply the Minister with an address in the country for service for the purposes of this Act.

(2) Everything done by an agent appointed under Subsection (1)(a), in his representative capacity shall, for the purposes of this Act, be deemed to have been done by the shipping line appointing him, but not so as to affect any liability of the agent under this Act.

(3) A notice or other document required under or for the purposes of this Act to be served on or given to a shipping line supplying an address under Subsection (1)(b) shall, notwithstanding any other law, be served or given by leaving it at, or posting it to, the address supplied under that subsection.

5. Shipping line to provide particulars of agreement.

(1) Where a shipping line is, or becomes, a party to an agreement, the shipping line or the agent of the shipping line, as the case may be, shall, within the prescribed time, furnish the Minister with such particulars relating to the agreement as are prescribed.

(2) Where, after particulars of an agreement have been furnished in accordance with Subsection (1), the agreement—

- (a) is varied whether in respect of the parties or in respect of the terms and conditions; or
- (b) is determined otherwise than by effluxion of time,

the particulars of the variations or determination shall be furnished to the Minister, within the prescribed time, by the shipping line that was a party to the agreement immediately before, or is a party immediately after, the variation or determination.

(3) It is an offence—

- (a) to fail to furnish, within the prescribed time, the particulars referred to in Subsection (1) or (2), as the case may be; or
- (b) to intentionally furnish particulars that are false or misleading in a material way.

Penalty: A fine not exceeding K1 000.00.

6. Notice of increase in freight.

A shipping line that is a party to an agreement shall, within the prescribed time, notify the Minister of—

- (a) its intention to effect an increase in the general level of freight rates; and
- (b) the extent of, effective date and reasons for, the proposed increase.

7. Minister may request undertakings.

(1) The Minister may, in accordance with this section, serve a notice on a shipping line that is a party to an agreement.

(2) A notice under Subsection (1) shall require the shipping line to give to the Minister, within the time specified in the notice, a written undertaking to take part, whenever reasonably requested by a shippers' organization or by the Minister, in consultations or negotiations—

- (a) with that shippers' organization; or
- (b) in the case where the request is made by the Minister—with a shipper specified by the Minister in the request,

with regard to outwards cargo shipping to which the agreement referred to in Subsection (1) relates.

(3) In any consultations or negotiations held in pursuance of a request under Subsection (2), the shipping line shall—

- (a) have due regard to matters and considerations raised and representations made by the shippers' organization or by the shipper, as the case may be; and
- (b) provide an officer of the Department designated for that purpose by the Minister, with such information as the officer requires in relation to the consultations or negotiations and—
 - (i) permit him to be present at the consultations or negotiations; and
 - (ii) give due consideration to any suggestions that he may make.

(4) Without limiting the generality of Subsection (3)(a), matters in respect of which consultations or negotiations may be held include—

- (a) changes in general tariff conditions; and

- (b) changes in the general level of tariff rates and rates for major commodities; and
- (c) promotional or special freight rates; and
- (d) imposition of, and related changes in, surcharges; and
- (e) changes in the tariff classification of ports; and
- (f) procedures for the supply of information by shippers in respect of the estimated volume and nature of their cargoes; and
- (g) presentation of cargo for shipment and the requirement for notice of cargo availability; and
- (h) the operation of cargo inspection procedures; and
- (i) changes in the pattern of service; and
- (j) effects of the introduction of new methods in the carriage of cargo and consequent reduction of conventional services or loss of direct service; and
- (k) adequacy and quality of shipping services; and
- (l) any other matter as may be prescribed.

8. Disapproval of agreements.

(1) Where, in relation to an agreement—

- (a) there has been, without reasonable excuse, a failure to comply with a notice under Section 4(1) or 7(1); or
- (b) the Minister is satisfied that—
 - (i) there has been a failure to comply with an undertaking under Section 7(2); or
 - (ii) the agreement, or the manner in which it is being interpreted or applied, or the conduct of, or the provision of facilities by, the parties in relation to outwards cargo shipping, does not have due regard to the need for services to be efficient, economical and adequate; or
 - (iii) the agreement, or the manner in which it is being interpreted or applied, or the conduct of the parties in relation to outwards cargo shipping, is having the effect of preventing or hindering a shipping line declared, for the purposes of this Act, by the Minister, by notice in the National Gazette, to be a national shipping line, from engaging efficiently, to an extent that is reasonable, in outwards cargo shipping,

the Minister may declare the agreement to be a disapproved agreement.

(2) A declaration under Subsection (1)(b)(iii) shall not be made of a shipping line unless, the operator of that shipping line normally uses or proposes normally to use for the purposes of outwards cargo shipping a ship or ships registered in Papua New Guinea, and that operator is—

- (a) a citizen; or
- (b) a corporation incorporated by or under a law,

of Papua New Guinea.

9. Effect of disapproval.

(1) Where an agreement is disapproved, the agreement is, on the date on which the declaration of disapproval takes effect, unenforceable as regards observance of the

agreement in so far as it relates to outwards cargo shipping on or after that date but a transaction entered into in pursuance of the agreement before or after a declaration takes effect is not illegal or unenforceable by reason only of the declaration.

(2) A party to a disapproved agreement who—

- (a) does anything in pursuance of, or enforces or purports to enforce, the agreement so far as it relates to outwards cargo shipping; or
- (b) enters into any other agreement that relates in whole or in part to outwards cargo shipping to a place outside the country to which the disapproved agreement relates,

is guilty of an offence.

Penalty: A fine not exceeding K20 000.00

10. Declaration of shipping line by Minister.

Where the Minister is satisfied that the conduct of a liner conference or the provision of facilities by a liner conference—

- (a) does not have due regard to the need for the services to be efficient, economical or adequate; or
- (b) is preventing or hindering a shipping line declared under Section 8(1)(b)(iii) to be a national shipping line, from engaging efficiently, to an extent that is reasonable, in outwards cargo shipping,

he may declare a shipping line which is a party to the liner conference agreement whether or not that conference agreement is an agreement to which this Act applies, to be a declared shipping line in relation to outwards cargo shipping to a port specified in the declaration.

11. Prohibitions applying to declared shipping line.

A declared shipping line must not, in respect of outwards cargo shipping to a port specified in the declaration under Section 10—

- (a) enter into a contract or follow a practice under which a shipper—
 - (i) is subject to restrictions or detriment by reason of availing himself in whole or in part of the services of another shipping line; or
 - (ii) obtains, or may obtain, advantageous freight rates on condition that he avails himself in whole or in part of the services of that declared shipping line or a particular liner conference; or
- (b) pay or allow, or make an agreement to pay or to allow to, a shipper a rebate or portion of any freight payment on condition that the shipper confines his outwards cargo shipping to that declared shipping line or a particular liner conference; or
- (c) with the object of substantially damaging the business of another shipping line or preventing another shipping line from entering into competition with it—engage in cutting freight rates, or use a ship whether alone or in conjunction with any other shipping line, to attract and obtain cargoes; or
- (d) retaliate or threaten to retaliate against a shipper for availing himself of the services of another shipping line—
 - (i) by refusing or threatening to refuse to carry the goods of the shipper otherwise than on terms disadvantageous to that other shipping line; or

(ii) by resorting to other discriminatory measures.

Penalty: A fine not exceeding K20 000.00.

PART III.—MISCELLANEOUS.

12. Secrecy.

(1) Subject to Subsection (2), an officer of the Department who directly or indirectly, discloses or communicates to any other person any information acquired or furnished to him under this Act relating to an agreement or to the affairs of a party to an agreement or to the affairs of a shipping line, is guilty of an offence.

Penalty: A fine not exceeding K1 000.00 or imprisonment for a term not exceeding 12 months.

(2) Subsection (1) does not apply to the production of information to the Minister or to a person acting on behalf of, and with the authority of the Minister in that person's capacity as such.

13. Regulations.

The Head of State, acting on advice, may make regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act and in particular for prescribing penalties of fines not exceeding K500.00 for offences against the regulations.

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CHAPTER NO. 399.

Overseas Trade (Shipping) Act.

APPENDIX.

SOURCE OF THE OVERSEAS TRADE (SHIPPING) ACT.

Part A.—Previous Legislation.

Overseas Trade (Shipping) Act 1982 (No. 28 of 1982).

Part B.—Cross References.

Section etc., in Revised Edition.	Previous References ¹ .
1	1
2	2
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¹Unless otherwise indicated, references are to the Act as set out in Part A.

