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THE PRESIDENCY

DIE PRESIDENSIE

No. 1358. 13 December 2000

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

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

No 65 of 2000: Sea Transport Documents Act, 2000

No. 65 van 2000: Wet op Seevervoerdokumente, 2000.

GENERAL EXPLANATORY NOTE:

Words underlined with a solid line indicate insertions in existing enactments.

*(English text signed by the President.)
(Assented to .5 December 2000.)*

ACT

To regulate the position of certain documents relating to the carriage of goods by sea; and to provide for incidental matters.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions

1. In this Act, unless the context indicates otherwise—
- “court” means a competent court having jurisdiction in the matter; 5
 - “holder” means a holder referred to in section 3(2);
 - “Minister” means the Minister of Transport;
 - “Republic” includes the Prince Edward Islands referred to in section 1 of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948);
 - “sea transport document” means— 10
 - (a) a bill of lading;
 - (b) a through bill of lading;
 - (c) a combined transport bill of lading;
 - (d) a sea waybill; or
 - (e) any consignment note, combined transport document or other similar 15 document, relating to the carriage of goods either wholly or partly by sea, irrespective of whether it is transferable or negotiable;
 - “this Act” includes any regulation made under section 9.

Application of Act

2. (1) This Act applies— 20
- (a) to any sea transport document issued in the Republic, irrespective of whether it was issued before or is issued after the commencement of this Act;
 - (b) to goods—
 - (i) consigned to a destination in the Republic; or
 - (ii) landed, delivered or discharged in the Republic; and 25
 - (c) to any proceedings instituted in the Republic in any court or before any arbitration tribunal after the commencement of this Act in respect of any sea transport document or goods contemplated in paragraph (a) or (b), irrespective of whether those proceedings relate to a cause of action arising before or after the commencement of this Act. 30
- (2) Sections 3,4,5 and 6 apply only to sea transport documents that are transferable or negotiable, and any reference in those sections to a sea transport document must be construed accordingly.

(3) This Act binds the State and all organs of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).

Transfer of sea transport documents

3. (1) A sea transport document may be transferred by the holder, either—
- (a) by delivery of the document, endorsed as may be necessary; or
 - (b) subject to section 9(1)(a), through the use of a telecommunication system or an electronic or other information technology system.
- (2) A person is the holder of a sea transport document if that person is in possession of the original sea transport document, or possession of that document is held on that person's behalf, and that person is—
- (a) the person to whom the document was issued;
 - (b) the consignee named in the document; or
 - (c) a person to whom the document has been transferred in accordance with subsection (1).
- (3) For the purposes of subsection (2), a person must be regarded as being in possession or as holding possession of an original sea transport document if—
- (a) the original document has been lost or cannot, for any reason, be produced by that person or on behalf of that person; and
 - (b) that person or the agent of that person would be entitled to possession of the document if the original could be produced.

Transfer of rights and obligations

4. (1) The holder of a sea transport document—
- (a) is subject to the same obligations and entitled to the same rights against the person by whom or on whose behalf the document was issued or who is responsible for the performance of the contract of carriage evidenced by or contained in the document as if the holder were a party to a contract with that person on the terms of the document; and
 - (b) must be regarded as the cessionary of all rights of action for loss of or damage to the goods referred to in the document, whether arising from contract or the ownership of the goods or otherwise.
- (2) A holder who has transferred a sea transport document must be regarded as having ceded his, her or its rights and as having delegated his, her or its obligations to the new holder except in so far as those rights or obligations arise from a *delectus personae* relating to the holder.

Saving of rights

5. Any—
- (a) right or obligation under a contract of carriage evidenced by or contained in a sea transport document; or
 - (b) liability of the consignee or holder by reason or in consequence of—
 - (i) that person being such consignee or holder;
 - (ii) that person's receipt of the goods by reason or in consequence of such consignment; or
 - (iii) the transfer of the document to that person,
- has full force and effect except to the extent to which it is affected or varied by this Act.

Evidence of shipment

6. A sea transport document that—
- (a) represents that goods have been shipped on board a vessel or have been received for shipment on board a vessel; and
 - (b) has been signed by the master of the vessel or by another person who had the actual authority, whether express or implied, or the ostensible authority of the carrier to sign that document,
- is, as against the carrier—
- (i) *prima facie* evidence in favour of a holder of the document, who is the shipper or other person to whom it was issued; and

(ii) **conclusive** evidence in favour of a subsequent holder, of the shipment of the goods or of their receipt for shipment. as the case may be.

Delivery

7. (1) A carrier is discharged from the obligation to deliver if that carrier makes delivery of the goods to which a sea transport document relates to a person entitled to such delivery in terms of subsection (2). 5

(2) A person presenting a sea transport document is entitled to delivery of the goods to which the document relates—

(a) only in accordance with the contract and on the terms contained in the document and subject to compliance with any obligation to which that delivery may be subject; and 10

(b) subject to subsection (3), if that person is the first person presenting the document in respect of those goods.

(3) (a) A carrier may require any person presenting a sea transport document in respect of any goods to establish a right to delivery. 15

(b) Any person required to establish his or her right to delivery as contemplated in paragraph (a) may do so either by application to court or by any other means that may be acceptable to the carrier.

(c) If a right to delivery is established by means other than an application to court, the carrier bears the risk that the person has no right to delivery and the carrier may require an indemnity acceptable to the carrier in respect of the delivery. 20

(4) Unless the court on an application contemplated in subsection (3)(b) orders otherwise, delivery made in terms of this section does not affect any right to damages.

Persons acting in bad faith

8. (1) **Nothing in section 3, 4, 5, 6 or 7 entitles any person in** possession of a sea transport document or any person making delivery of any goods to which a sea transport document relates to any right or to any defence to or discharge from any obligation if, at the time when that person acquired possession of the document or made that delivery— 25

(a) in the case of a person acquiring possession, that person knew or had reasonable grounds for believing that— 30

(i) the goods to which the document related had not been shipped or received for shipment; or

(ii) the person from whom possession was acquired had no right to transfer the document or any right thereunder; or 35

(b) in the case of a person making delivery, that person knew or had reasonable grounds for believing that the person to whom delivery was made had no right to receive delivery.

(2) The onus of proving that subsection (1)(a) or (b) applies is on the person alleging its application. 40

Regulations

9. (1) Subject to subsections (2) and (3), the Minister may make regulations—

(a) prescribing the circumstances in which and the conditions subject to which a record or document produced by a telecommunication system or an electronic or other information technology system, and effecting transactions such as those effected by any sea transport document, is to be regarded as a sea transport document; 45

(b) regarding generally all matters that are reasonably necessary or expedient to be prescribed in order to achieve the objects of this Act.

(2) The Minister must publish all regulations proposed to be made under subsection (1) in the *Gazette* for comment at least three months before the date contemplated for their commencement. 50

(3) Before the final promulgation of any regulation, the Minister must take into account any comment received on proposed regulations.

Amendment of law

10. Section 1 of the Admiralty Jurisdiction Regulation Act, 1983 (Act No. 105 of 1983), is hereby amended by the addition of the following subsection:

“(3) For the purposes of an action *in rem*, a charterer by demise shall be deemed to be, or to have been, the owner of the ship for the period of the charter by demise.”.

Short title and commencement

11. This Act is called the Sea Transport Documents Act, 2000, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.