

## RESPONSE TO QUESTIONS OF CLARITY ON MERCHANT SHIPPING AMENDMENT BILL, 2015

The Merchant Shipping Amendment Bill is amending the Merchant Shipping Act, 1951 (the “act”) in order to bring the latest developments in shipping into effect on south african law. This will ensure that our laws comply with international conventions (in this case the Maritime Labour Convention, 2006 – the “MLC convention” and the Work in Fishing Convention – the “fishing convention”). In our response, we may make reference to the convention as well as the act. The Act and regulations made under section 356 can be found at <http://www.samsa.org.za/legislation/merchant-shipping-act-1951>

1. General: what happens to someone who is in contravention with any section of this proposed act?
  - a. There are primary section which provides for this together;
    - i. Chapter I of the primary Act, Section 8 provides for the South African Maritime Safety Authority (the Authority) to ‘ensure compliance with this act’; and
    - ii. The act provides for the Authority to “impose penalty upon admission of guilt” under section 324. Chapter IX of this act deals with the “Offences, Penal Provisions and Legal Procedure”. This provides sufficient legal status.
2. If the intention is to protect children from being exploited – why should children be allowed conditionally – shouldn’t children (under age 16) be prohibited to be on the vessel classified as merchant
  - a. Section 110 of the Act prohibits the employment of children
  - b. Section 111 allows the employment of “young persons” onboard for training purposes. All training in this case is generally approved by the Authority under the relevant regulations.
3. P.1 = section 2(d) exclusion of a pilot makes sense following the insight in the committee, however excluding master is not

- a. The definition replaces the definition of “seaman”, else it remains the same.
  - b. The Master is the owner’s representative onboard a ship, and in most cases, his responsibilities are defined in throughout the Act
  - c. Cadet, is a trainee onboard a ship and there are specific sections dealing with them.
4. P.3 = definitio: medical examination of cadets (92) excluding cadet contradicts in my opinion with defition of a seafarer (why would only cadet be subject to medicals) does this by implication not exclude the rest?
- a. The rest are not excluded, as stated in 3(c) above, the section only deals with Cadets and apprentice officers. Section 101 of the Act deals with the rest of the crew.
5. P.5 = section 11: what would “adequate” mean /also “proper”
- a. ‘adequate’ refers to the acceptable means necessary for the seafarer to return to his/her proper return port. This includes, necessary accomodation, food and travel expenses.
  - b. ‘proper’ in the context of the “proper return port” which is defined in the act.

Quote

*"proper return port", in relation to a master, seaman or apprentice-officer discharged or left behind, means—*

*(a) the port at which the master, seaman or apprentice-officer was engaged; or*

*(b) a port in a country in which the master, seaman or apprentice-officer is domiciled; or*

*(c) a port agreed to as such by the master, seaman or apprentice-officer,*

*as decided by the proper officer;”*

unquote

6. P.7 = section 158(A) = complaints procedure: alignment with labour law/
  - a. Generally, the SA labour laws do not apply *mutatis mutandis* on board ships as shown in the Basic Conditions of Employment Act, 1997, Section 3. However, the international conventions provides for guidelines on labour which is auditable by foreign administration and provides international consistency.
7. P.8 = section 25(1) = every provision of this act.. vs outside the Republic. Being permissive only and ANY such court
  - a. Question not clear.
8. P.10 = section 26 = 'wholly engaged in plying between ports in SA'
  - a. Question not clear
9. Q = are there any vessels/ships excluded from this Act? If so, which? (subsistence & recreational fishing)
  - a. Section 3 of the Act. Generally, the Act exclude defence force ships of the Republic or any other country. There are specific exemptions, exclusions and exception through out the Act
10. Q = Def. "Seafarer" excludes a master, pilot, cadet. /vs/ proposed substitution of section of Section 92: "no person shall be employed as a cadet on any ship until that person has passed the color and vision test. Certified by a medical practitioner approved by the proper officer as physically fit for sea service" [Q = why not a seafarer/ what about master, pilot, etc.] [Q = what would the approval by the proper officer entail]
  - a. Master, Pilot, etc. are dealt with in Section 101
  - b. The approval of a medical practitioner is detailed in the Merchant Shipping (Medical and Eyesight) Regulations, 2004 published by the Minister under Section 356
11. Is there a difference between a seafarer & seamen? P.4/p.22(1) fishers (Fishing convention)

- a. No, the act is moving away from Seamen, which has a gender bias on it, towards “seafarer”

12. Q = p.5 (11) adequate provision for the maintenance? Proper return port?

- a. Refer Q.5 above

13. Q = p.7 (18) complaints procedure on board a South African ship. “should be in accordance with this act”. Do we have jurisdiction on non SA owner of a SA ship & crew who travels out of SA waters and fails to comply? Contradictory to p.9 (25)(1) every provision of this act. Outside the Republic in relation to SA ships, owners, crew shall be construed as being permissive. And any such court or functionary is empowered so to exercise authority.

- a. The question is unclear, however, we can state the following;

- i. The Ship Registration Act defines a South African ship as one which is wholly owned by a South African citizen of Majority Shares held by a South African, so the situation above cannot arise
- ii. Section 8, provides for the application of the Act on a foreign ship in South African waters.

14. Q = p.8 (20) In case of injury: discharge or left behind. “cured or dies or is returned” who decides about this? Shouldn’t the seafarer have a say in this? P.29 (29)(e) “fishers have the right to medical treatment ashore and the right to be taken ashore in a timely manner for treatment” also p.31 (art 38)

- a. Question not very clear, however;

- i. A seafarer who has died has no say;
- ii. There are various reasons a seafarer could be left behind, viz; admitted in hospital, absent without leave, refusal to re-join the ship, etc. which by their means, the seafarer has had his/her say;

15. Q = P.10 (26) criteria: “ wholly engaged in plying between ports in RAS while the ship is in RSA shall be binding on seafarer while the ship is outside the RSA” What does this

mean? What does wholly engaged mean? If they are wholly engaged between ports in RSA why would they go outside of RSA? Why would this apply on crew and not the vessel owner?

- a. The section in the Act is titled "Application of certain labour laws to seamen"
- b. Wholly engaged means engaged in voyages in South African waters
- c. This refers to a foreign ship, so, there is a possibility for the ship to be out of the country. We agree that this could be better written
- d. It only applies to them in the context of the whole section.

16. Q = since according to the convention Members may exercise inspections on each other: fees?

- a. The fees are determined in the "Determination of Charges" under the South African Maritime Safety Authority Act. They can be found at <http://www.samsa.org.za/legislation/south-african-maritime-safety-authority-act-1998>

17. Q = p.13 (3) determinations of categories of persons – unclear & very open: "competent authority in each member", "consultation" = by whom/ dispute/ no clear direction = bargaining councils

- a. Generally, in South Africa, SAMSA is a competent authority on the matters related to the bill.

18. Q = p.43 (2.5) – "prohibiting to employ a young person to work at night"

- a. Question is unclear.

