

**REPUBLIC OF SOUTH AFRICA**

**MERCHANT SHIPPING BILL**

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of  
Bill published in Government Gazette No. 43073 of 6 March 2020.)  
(The English text is the official text of the Bill)*

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**(MINISTER OF TRANSPORT)**

**[B — 2020]**

**BILL**

To provide for the powers and duties of the Minister and the South African Maritime Safety Authority in the administration of this Act, to provide for the registration and licensing of ships in the Republic; to provide for the application of the labour laws to seafarers, to provide for the conditions of employment of seafarers and the health and well-being of seafarers on board a vessel; to promote the safety of life at sea; to establish inspection and enforcement mechanisms including those for marine casualties and crimes committed on ships; to provide for the regulation of marine traffic, to provide for legal proceedings and jurisdictional matters, to recognise and incorporate international conventions to which the Republic is bound in terms of the provisions of the Constitution and its incorporation into domestic law in terms of laws repealed by this Act; to provide a transition framework to the new requirements of this Act; and to provide for matters incidental thereto.

**Preamble**

**Whereas** maritime transport is essential to the South African economy;

**Whereas** maritime trade is essential to the growth and development of not only the Republic, but also the Southern African region and its geographic location makes it imperative that maritime transport is as efficient as possible;

**Whereas** the Comprehensive Maritime Transport Policy for South Africa as published in the government gazette no.40904 of 12 June 2017 provides an elaboration to the declared policy directives as of the White Paper on National

Transport Policy of 1996 and the subsequent macro national policies, the National Development Plan and the other coterie of interventionist programmes including Operation Phakisa in the ocean economy;

**Whereas** the Comprehensive Maritime Transport Policy has identified desired outcomes pertaining to the growth and development of the sector through statutory mechanisms;

**Whereas** it is necessary to ensure that South Africa can meet its international obligations under bilateral and multilateral agreements and duly adopted conventions with respect to navigation and shipping matters in general;

**Whereas** this Act is an integral part of a suite of legislation that gives effect to the vision of the Comprehensive Maritime Transport Policy;

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

## **ARRANGEMENT OF SECTIONS**

### **CHAPTER 1**

#### **DEFINITIONS, INTERPRETATION AND IMPLEMENTATION OF ACT**

1. Definitions and interpretation
2. Interpretation of provisions of Act
3. Application of Act

### **CHAPTER 2**

#### **ADMINISTRATION**

4. Powers of Minister
5. Powers of Authority
6. Technical standards for maritime transport
7. Authority responsible for administration of Act
8. Duty of proper officer, surveyor, marine safety investigator, court of marine enquiry, maritime court, court of survey, marine accident and incident investigation or other officer appointed in terms of Act to ensure compliance with Act
9. Survey of ship
10. Powers relating to inspection of hull
11. Powers relating to workplace
12. Advisory committee

### **CHAPTER 3**

#### **SHIP REGISTRATION, TONNAGE, LICENSING OF VESSELS AND NOTIFICATIONS OF INTENTION TO BUILD VESSELS**

##### ***Part 1***

##### ***Ship Registration***

13. South African ship
14. South African-owned ship
15. National Flag
16. Declaration of ship's nationality before clearance
17. South African Ship Registration Office
18. Registrar and Deputy Registrars of Ships
19. Powers and duties of Registrar
20. Appointment of staff
21. Seal of Registration Office and signature of Registrar
22. Registration of property in ship
23. Ships entitled to be registered
24. Inspection and tonnage measurement of ship before registration
25. Refusal of registration
26. Prohibition on dual registration
27. Marking of ship
28. Ship identity number
29. Continuous synopsis record
30. Name of registered ship and change of name
31. Power of Minister to disallow proposed name for ship
32. Registration certificate
33. Status and custody of registration certificate
34. New certificate and provisional certificate
35. Provisional certificate for ship becoming entitled to be registered while abroad
36. Provisional certificate issued by Registrar
37. Provisional certificate not to be issued in certain circumstances
38. Temporary pass
39. Improper use of certificate
40. South African Ships Register
41. Access to Register
42. Obsolete or incorrect entries in Register
43. Correction of clerical errors in Register
44. Rectification of Register
45. False entries in Register
46. Private law matters

47. Liability of person with beneficial interest
48. Interpretation
49. Registered agent
50. Alterations to ship
51. Ship lost or ceasing to be entitled to be registered
52. Power to remove ship from Register
53. Unregistered ship entitled to be registered not to leave Republic
54. Unregistered ship entitled to be registered not to leave foreign port
55. Effects of non-registration
56. Notice to consular representative
57. Forfeiture
58. Detention of ships
59. Co-operation with officials
60. False statements

## ***Part 2***

### ***Tonnage***

61. Tonnage once ascertained to be tonnage of ship
62. Tonnage of ships of other countries

## ***Part 3***

### ***Licensing of Vessels***

63. Application of Part 3
64. Prohibition on coastwise traffic
65. Certain vessels to be licensed
66. Renewal of coastal ship licence
67. Issue and period of validity of coastal ship licence
68. Cancellation of coastal ship licence
69. Unlicensed vessels not to be used
70. Measures to support South African ship ownership for coastwise traffic purposes

## ***Part 4***

***Notification of Intention to Build Vessel***

71. Notification of intention to build vessel

**CHAPTER 4  
SEAFARERS*****Part 1  
Application***

72. Application of Chapter 4

***Part 2  
Application of Labour Laws to Seafarers***

73. Application of Basic Conditions of Employment Act, 1997  
74. Application of Labour Relations Act, 1995  
75. Application of Occupational Health and Safety Act, 1993  
76. Application of Compensation for Occupational Injuries and Diseases Act,  
1993

**Part 3****Cadets**

- 77. Cadets
- 78. Prohibition on number of cadets to be engaged

**Part 4*****Manning, training and certification***

- 79. Manning of ships
- 80. Prohibition of going to sea undermanned
- 81. Unqualified seafarers going to sea
- 82. Certificate of competency and certificate of proficiency
- 83. Production of certificate or other document
- 84. Authority may vary requirements as to certificates
- 85. Certificates granted by competent foreign authorities
- 86. Cancellation and suspension of certificates

**Part 5*****Employment of Seafarers***

- 87. Medical examination of crew prior to engagement
- 88. Role of Authority
- 89. Crew agreement
- 90. Certificate as to crew agreement relating to foreign-going South African ship
- 91. Production of certificate as to crew agreement relating to foreign-going South African ship to customs officer
- 92. Surrender of certificate as to crew agreement
- 93. Crew list and changes in complement of seafarers
- 94. Prohibition of employment of children
- 95. Work of young person

**Part 6*****Wages***



96. Application of Part 6
97. Payment of wages
98. Allotment notes
99. Rights to wages and provisions and when such are to commence
100. Payment advice
101. Deductions and reduction in wages
102. Payment of wages upon termination of employment of seafarer and settlement of wages
103. Agreement to forfeit lien for wages is void
104. Restrictions on assignment of wages
105. Wages not to depend on freight
106. Wages when employment terminated before date of termination in crew agreement
107. Compensation in event of loss of seafarer's property
108. Compensation to a seafarer improperly discharged
109. Rights, remedies and liens of master

**Part 7**

**Other Conditions of Service**

110. Entitlement to leave

**Part 8**

**Repatriation and Discharge of and Desertion by Seafarers**

111. Repatriation of seafarers whose service terminates elsewhere than at proper return port
112. Discharge of seafarer on change of ownership
113. Discharge and leaving of seafarers behind
114. Leaving seafarers behind
115. Wages and other property of seafarer left behind

**Part 9**

***Deceased Seafarers***

- 116. Procedures following the death of seafarer or if seafarer is lost
- 117. Property of deceased seafarer may be recovered as wages

**Part 10*****Distressed Seafarers: Repatriation and Relief Costs***

118. Relief and maintenance of distressed seafarers

**Part 11*****Provisions, Accommodation and Health******Division 1******Provisions***

119. Free provisions  
120. Provisions adequate for voyage  
121. Adequate food catering facilities to be provided  
122. Compensation if short or bad provisions provided

***Division 2******Accommodation***

123. Crew accommodation

***Division 3******Health***

124. Medicines to be provided and kept on board certain ships  
125. Owner liable for medical attention  
126. Owner liable for medical attention where master or seafarer removed from ship  
127. Owner liable for medical attention on board ship  
128. Other expenses to be paid by master or seafarer  
129. Benefit in terms of Compensation for Occupational Injuries and Diseases Act, 1993  
130. Application of sections 125, 126, and 127  
131. Recovery of expenses from owner

**Division 4*****Inspection of provisions, water, accommodation, medicines and medical appliances***

- 132. Powers of inspection of provisions, water, accommodation, medicines and medical appliances and first aid equipment
- 133. Inspection of provisions, water and accommodation at sea

**Part 12*****Misconduct and Offences by Master and Seafarers***

- 134. Conduct by master or seafarer endangering ship or individual
- 135. Breach by seafarer of code of conduct
- 136. Impairment of seafarer's ability to carry out duties
- 137. Blood alcohol level and drug present in blood of seafarer
- 138. Desertion
- 139. Absence without leave
- 140. Notice to Authority of absence of seafarer at time of sailing
- 141. Unseaworthiness of ship as defence to charge of desertion or absence without leave
- 142. Deserters from foreign ships
- 143. Breach of crew agreement or misconduct by seafarer

**Part 13*****Documentation***

- 144. Official logbooks to be kept
- 145. Unlawful entries or alterations in official logbooks
- 146. Entry of offences in official log
- 147. Delivery of official logbooks to Authority
- 148. Transmission of official logbooks to Authority
- 149. Documents to be handed to successor on change of master
- 150. Births and deaths

**Part 14*****Safety Officers, Appointees, Committees and Representatives***

- 151. Appointment of safety officers, safety appointees and safety committees and election of safety representatives
- 152. Exemption from liability

**Part 15*****Security Officers***

- 153. Appointment of security officer

**Part 16*****General Provisions***

- 154. Mechanisms for making complaints

**Part 17*****Seafarers' Identity Documents***

- 155. Seafarers' Identity Documents
- 156. Application for seafarer's identity document
- 157. Issuing of seafarer's identity document by Authority
- 158. Period of validity of seafarer's identity document
- 159. Cancellation of seafarer's identity document
- 160. Surrender of expired or cancelled seafarer's identity document

**Part 18*****Financial Security for Loss of Life and Personal Injury***

- 161. Application of Part 18
- 162. Owner to maintain insurance or other financial security
- 163. Insurance certificates
- 164. Insurance certificates to be carried on ships

- 165. Additional liability of owner
- 166. Other benefits to reduce compensation
- 167. Liability for damages not affected
- 168. Recovery of compensation paid from third parties
- 169. Certain dealings with compensation prohibited
- 170. Cession or relinquishment of benefits void
- 171. Compensation not to form part of deceased seafarer's estate
- 172. Threats and compulsion
- 173. Equivalent arrangements

## **CHAPTER 5**

### **MARITIME SAFETY**

#### *Part 1*

#### *Application of Chapter*

- 174. Application of Chapter 5
- 175. Definition of "safety certificate" and "exemption certificate" for purposes of Chapter

**Part 2*****Safety Certification of Ships in General***

- 176. Only certificated ship permitted to go to sea
- 177. Application for safety certificate or exemption certificate by owner
- 178. Issuing of safety certificate or exemption certificate by Authority
- 179. Period of validity of safety certificate and exemption certificate
- 180. Application for renewal of safety certificate or exemption certificate by owner
- 181. Cancellation of safety certificate or exemption certificate
- 182. Surrender of expired or cancelled safety certificate

**Part 3*****Ships to which the Safety Convention Applies***

- 183. Application of Part 3
- 184. Inspection and survey by surveyor
- 185. Survey of passenger ship
- 186. Survey of cargo ship

**Part 4*****Local Safety Certificates***

- 187. Application of Part 4
- 188. Survey of ship to which this Part applies

**Part 5*****Fishing Vessels***

- 189. Application of Part 5
- 190. Inspection and survey of ship
- 191. Survey of fishing vessel
- 192. Exemption

**Part 6**

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**General Matters**

- 193. Maintenance of conditions after survey of passenger ship and cargo ship
- 194. Modification of safety convention certificates as respects lifesaving appliances
- 195. Carrying persons in excess

**Part 7*****Safety certificates not issued by Authority in respect of ship not registered or licensed in the Republic while it is in the Republic and Safety Convention certificates issued at request of parties to Safety Convention***

- 196. Recognition of safety certificate issued by country which is party to Safety Convention
- 197. Recognition of certificate relating to safety issued by country which is not party to Safety Convention
- 198. Issue of safety convention certificate by one government at request of another

**Part 8****Load Lines**

- 199. Application of Part 8
- 200. Exemptions from Part 8
- 201. Only marked and certificated ship permitted to go to sea
- 202. Application for international load line certificate or an international load line exemption certificate by owner
- 203. Issuing of load line certificate or load line exemption certificate by Authority
- 204. Period of validity of international load line certificate and international load line exemption certificate
- 205. Application for renewal of international load line certificate and international load line exemption certificate
- 206. Cancellation of international load line certificate or international load line exemption certificate
- 207. Surrender of expired or cancelled international load line certificate or international load line exemption certificate
- 208. Inspection and survey of ship



- 209. Maintenance of conditions after survey of ship
- 210. Entry of load line particulars in official logbook
- 211. Submersion of load line on South African ships

***Part 9 Load line certificate not issued by Authority in respect of ship not registered in the Republic while it is in the Republic and Load Line Convention certificates issued at request of parties to Load Line Convention***

- 212. Issue of international load line certificate by one government at request of another
- 213. Inspection and control of ship not registered in the Republic
- 214. Issue of special load line certificate in respect of ship not registered in the Republic
- 215. Recognition of certificates as to load lines issued in other countries
- 216. Ship not registered in Republic not to be taken to sea without load line certificate
- 217. Submersion of load line on ship not registered in the Republic

***Part 10***

***Safety of Navigation***

- 218. Ship's complement
- 219. Surveyor may direct that defects be made good
- 220. Display of safety convention certificate, local safety certificate or load line certificate
- 221. Information about stability of ship
- 222. Production of certificates to customs officer
- 223. Registration of private code or signals
- 224. Signals of distress
- 225. Report of alteration or damage affecting seaworthiness, efficiency or compliance with regulations
- 226. Unseaworthy ships not permitted to leave port
- 227. Obligation to secure seaworthiness of ship
- 228. Sending unseaworthy ship to sea in special circumstances
- 229. Unseaworthy ships to be detained
- 230. Ships may be inspected
- 231. Complaint as to seaworthiness to be in writing
- 232. Authority to pay compensation for damage if ship is seaworthy

- 233. Expenses to be paid by owner if complaint founded
- 234. Reports of dangers to navigation
- 235. Safe navigation and avoidance of dangerous situations
- 236. Safety certificates and memoranda issued before commencement of Act
- 237. Provisions of this Chapter not to be applied to ships not registered in the Republic driven into Republic ports by stress of weather
- 238. Admissibility in evidence of safety and load line certificates and surveyor's reports

***Part 11***  
***Carriage of Grain***

- 239. Application of Part 11
- 240. Carriage of grain

**Part 12****Carriage of Dangerous Goods**

- 241. Application of Part 12
- 242. Requirements for carriage of dangerous goods
- 243. Exemption from Part 12

**Part 13****Nuclear Ships**

- 244. Application of Part 13
- 245. Entry into port
- 246. Environmental hazard
- 247. Exemption from Part 13

**Part 14****Cargoes in General**

- 248. Carriage of timber deck cargo
- 249. Marking of heavy packages or objects
- 250. Requirements for packaging of containers

**Part 15*****Management for the Safe Operation of Ships***

- 251. Application of Part 15
- 252. Safety management system

**Part 16*****Safety Measures for High-Speed Craft***

- 253. Definition of high-speed craft
- 254. Application of Part 16
- 255. Requirements for high-speed craft

**Part 17*****Special Measures to Enhance Maritime Security***

- 256. Application of Part 17
- 257. Powers and duties of Minister with respect to security
- 258. Duties of owner and master
- 259. Master's discretion for ship safety and security
- 260. Ship security alert system

**Part 18*****Additional Safety Measures for Bulk Carriers***

261. Additional requirements

**Part 19*****Collisions, Accidents at Sea and Limitation of Liability***

262. Division of loss in case of collision
263. Damages for personal injury
264. Right of contribution
265. Report to Authority of marine casualty and other accidents to and on board ship
266. Notice to Authority of loss of ship
267. Limitation of owner's liability
268. Calculation of tonnage
269. Application of this Part to persons other than the owners

**CHAPTER 6****MARINE CASUALTY AND MARINE INCIDENT INVESTIGATIONS*****Part 1******Application***

270. Application of Chapter 6
271. Application of Chapter to certain ships
272. Matters to be investigated

***Part 2******Powers of officers, marine safety investigators, courts and persons appointed in terms of this Chapter***

273. General powers of officers, marine safety investigators, courts and persons appointed in terms of this Chapter

- 274. Powers of proper officer relating to cause of death on board ship
- 275. Powers of member of South African Police Service relating to marine casualties

***Part 3***

***Summons and Evidence***

- 276. Summoning of witnesses
- 277. Evidentiary procedures for marine accident and incident investigation unit and court of marine enquiry
- 278. Preservation of evidence

***Part 4***

***Marine Safety Investigation***

- 279. Preliminary enquiry and marine safety investigation
- 280. Marine accident and incident investigation unit
- 281. Assignment of inspector or competent person to marine accident and incident investigation unit
- 282. Duty of marine accident and incident investigation unit to inform master, owner or ship's agent of marine safety investigation
- 283. Power of Authority and marine accident and incident unit to detain ship

***Part 5***

***Courts of Marine Enquiry***

- 284. Establishment and convening of court of marine enquiry in Republic
- 285. Constitution of court of marine enquiry
- 286. Procedure at court of marine enquiry
- 287. Decisions of court of marine enquiry
- 288. Powers of court of marine enquiry
- 289. Court of record
- 290. Report to Minister
- 291. Appeals against decisions of courts of marine enquiry

**Part 6****Maritime Courts**

- 292. Convening of maritime court outside Republic
- 293. Establishment and constitution of maritime court
- 294. Procedure to be followed by maritime court
- 295. Decisions of maritime court
- 296. Powers of maritime court
- 297. Court of record
- 298. Submission of report
- 299. Appeals against decisions of maritime courts

**Part 7****Courts of Survey**

- 300. Appeal from surveyor to court of survey
- 301. Establishment and convening of court of survey
- 302. Constitution of court of survey
- 303. Procedure at court of survey
- 304. Manner of arriving at decisions by court of survey
- 305. Powers of court of survey
- 306. Court of survey may cause ship to be surveyed
- 307. Court of record
- 308. Submission of report

**Part 8****General Matters**

- 309. Rehearing of formal enquiry
- 310. Payment of allowances to person appointed to conduct preliminary enquiry into marine casualty, to marine safety investigator, member of court of marine enquiry, maritime court, court of survey and assessor



## CHAPTER 7 MARINE TRAFFIC

### *Part 1*

#### *General matters related to Marine Traffic*

- 311. Application of Part A
- 312. Entry into or departure from internal water
- 313. Right of innocent passage
- 314. Passage considered to be not innocent
- 315. Authority's powers relating to ship on non-innocent passage
- 316. Certain vessels to show flag
- 317. Immobilising, laying-up, stopping or anchoring
- 318. Ships and wreckage not to be sunk or abandoned
- 319. Suppression of illicit traffic in drugs on board foreign ships in territorial waters
- 320. Prohibitions in respect of offshore installations
- 321. Minister may determine safety zone for offshore installation
- 322. Notice to be given of proceedings in respect of foreign ships
- 323. Agreement with government of certain state or territory
- 324. Suspension of passage

### *Part 2*

#### *Aids to Navigation*

- 325. Establishment of aid to navigation
- 326. Vesting of aid to navigation
- 327. Determination of standards by Authority
- 328. Hazard created by light
- 329. Hazard created by new building, structure or other obstruction
- 330. Making fast to aid to navigation
- 331. Obligation to report damage
- 332. Obligation to report navigation hazard
- 333. Authorisation to provide aid to navigation

- 334. Period of validity, amendment, renewal suspension and cancellation of authorization
- 335. Auditing of national accountable aids to navigation party and local accountable aids to navigation party
- 336. Application for accreditation as an aids to navigation training organisation
- 337. Period of validity, amendment, renewal, suspension and cancellation of accreditation

**Part 3**  
**Vessel Traffic Services**

**Division 1**  
**Application**

338. Application of Part 3

**Division 2**  
**Duties of masters of vessels**

339. Entering, leaving or proceeding within vessel traffic service zone
340. If master of vessel is unable to communicate
341. Communication and obtaining clearance
342. Equipment failure
343. Masters to provide information required and comply with instructions by vessel traffic service operator

**Division 3**  
**Vessel traffic service operator**

344. Vessel traffic service operator
345. Powers of vessel traffic service operator

***Division 4******Vessel traffic service authority***

- 346. Provision of vessel traffic services
- 347. Duties of vessel traffic service authority
- 348. Vessel traffic service zone
- 349. Authorisation to provide vessel traffic service
- 350. Period of validity, amendment, renewal, suspension and cancellation of authorisation
- 351. Auditing vessel traffic service authority

***Division 5******Vessel traffic service training organisations***

- 352. Application for accreditation as a vessel traffic service training organisation
- 353. Period of validity, amendment, renewal, suspension and cancellation of accreditation
- 354. Auditing vessel traffic service training organisations

## **CHAPTER 8 OFFENCES AND PENALTIES**

### ***Part 1***

#### ***Offences and Penalties in respect of Registration of ships***

- 355. Offences relating to South African character of ship
- 356. General offences relating to registration of ships
- 357. Penalties in respect of offences relating to registration of ships

### ***Part 2***

#### ***Offences and Penalties in respect of Licensing of Vessels***

- 358. Offences in respect of vessel to be licensed
- 359. Offences in respect of vessel not to be used
- 360. Penalties in respect of offences regarding licensing of vessels

### ***Part 3***

#### ***Offences and Penalties in respect of Seafarers***

- 361. Offences in respect of number of or unqualified person going to sea
- 362. Offences in respect of certificates in general
- 363. Offences in respect of medical certificate
- 364. Offences in respect of crew agreement and certificate of crew agreement
- 365. Offences in respect of cadets and the employment of children and young persons
- 366. Offences in respect of deduction from wages for payment of fine
- 367. Offences in respect of discharge and leaving behind of seafarer
- 368. Offences in respect of conduct endangering ship or individual
- 369. Offences in respect of blood alcohol level and drug present in blood of seafarer
- 370. Offences in respect of entries or alterations in official logbook
- 371. Offences in respect of property of seafarer and insurance or other security
- 372. Penalties in respect of offences regarding seafarers

**Part 4*****Offences and Penalties in respect of Maritime Safety***

- 373. Offences in respect of manning of ship
- 374. Offences in respect of ship involved in collision
- 375. Penalties in respect of offences regarding safety of ships

**Part 5*****Offences and Penalties in respect of Marine Traffic***

- 376. Offences in respect of marine traffic in general
- 377. Offences in respect of aids to navigation
- 378. Offences in respect of vessel traffic services
- 379. Penalties in respect of offences regarding marine traffic

**Part 6*****Offences and Penalties in respect of Passenger Ships***

- 380. Offences in respect of passenger ships
- 381. Penalties in respect of passenger ships

**Part 7*****General Prohibitions***

- 382. Bribery
- 383. Forgery and other fraudulent acts
- 384. Obstructing administration of Act
- 385. Stowaways
- 386. Ships not to be boarded without authority
- 387. Obstruction of navigation of ship
- 388. Penalties in respect of offences regarding prohibitions in Part 6

**Part 8*****Offences in General***

- 389. Offences not expressly mentioned
- 390. Penalties for offences
- 391. Determination of fines

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**CHAPTER 9**  
**PROCEEDINGS BY AUTHORITY AND LEGAL PROCEEDINGS**

***Division 1***

***Jurisdiction***

- 392. Jurisdiction of Authority in respect of administrative penalty on admission of guilt
- 393. Jurisdiction of Authority in respect of release from forfeiture or mitigation of penalties
- 394. Jurisdiction in respect of offences committed outside the Republic
- 395. Jurisdiction of magistrates' courts to impose punishment

***Division 2***

***Conveyance of accused persons, witnesses and deserters and return of offenders***

- 396. Conveyance of accused persons and witnesses to the Republic
- 397. Conveyance of deserter on board ship
- 398. Imprisoned seafarers may be sent back on board

***Division 3***

***Forfeiture of ships, shares in ships and goods and detention of ships***

- 399. Forfeiture of ships, shares in ships and goods
- 400. Method of detaining vessel or share in ship or goods
- 401. Procedure in forfeiture of ship, a share in a ship or goods
- 402. Seizure of a ship, a share in a ship or goods detained or liable to forfeiture
- 403. No clearance to be granted to detained ship
- 404. Detention of foreign ship that has occasioned damage
- 405. Notice to be given to consular representative of proceedings taken in respect of foreign ships

***Division 4***



***Special evidential provisions***

- 406. Mode of making declaration
- 407. Power to dispense with declarations and other evidence
- 408. Admissibility of documents in evidence
- 409. Evidence as to agreement with crew

***Division 5******Presumptions***

- 410. Presumption in case of collision

***Division 6******Acts done by courts and functionaries of the Republic and other treaty countries***

- 411. Acts done by courts and functionaries of the Republic in relation to treaty ships other than South African ships
- 412. Acts done by courts and functionaries of other treaty countries in relation to South African ships

***Division 7******Prescription***

- 413. Prescription

***Division 8******Service of documents***

- 414. Service of documents

***Division 9******Satisfying award of compensation by court***

- 415. Appropriation of wages to satisfy award of compensation in offences against discipline

**CHAPTER 10  
REGULATIONS*****Part 1******Regulations Regarding Ship Registration***

- 416. Matters regarding registration of ships to be prescribed
- 417. Fees to be imposed for purposes of Chapter 3
- 418. Matters regarding registration of ships to be prescribed

**Part 2*****Regulations Regarding Seafarers***

- 419. Matters regarding manning, training and certification to be prescribed
- 420. Matters regarding crew agreement to be prescribed
- 421. Matters regarding wages to be prescribed
- 422. Matters regarding allotment notes to be prescribed
- 423. Matters regarding crew accommodation to be prescribed
- 424. Regulations relating to provision of food and water
- 425. Matters regarding alcohol and drugs to be prescribed
- 426. General matters regarding seafarers to be prescribed

**Part 3*****Regulations Regarding Safety of Life at Sea***

- 427. General matters regarding safety of life at sea to be prescribed
- 428. Matters regarding the carriage of grain to be prescribed
- 429. Matters regarding the carriage of maritime dangerous goods to be prescribed
- 430. Nuclear Ships
- 431. Matters regarding management for the safe operation of ships to be prescribed
- 432. Matters relating to high-speed craft to be prescribed
- 433. Special measures to enhance maritime safety to be prescribed
- 434. Additional safety measures for bulk carriers to be prescribed
- 435. Matters regarding vessels less than three metres in length to be prescribed

**Part 4*****Regulations Regarding Investigation of Allegations and Marine Casualty and Marine Incident Investigations***

- 436. General matters regarding investigations of allegations marine safety investigations, formal enquiries and appeals to be prescribed

**Part 5*****Regulations Regarding Marine Traffic***

- 437. Matters regarding aids to navigation to be prescribed
- 438. Matters regarding marine traffic to be prescribed

**Part 6*****Regulations Regarding Ship Security***

- 439. Matters regarding ship security to be prescribed

**Part 7*****Regulations Regarding Small Vessels and Inland Waters***

440. Matters regarding small vessels and inland waters to be prescribed

***Part 8***

***Regulations Regarding International Conventions***

441. Matters regarding international conventions to be prescribed

***Part 9***

***General Provisions Regarding Regulations***

442. General matters to be prescribed

443. Procedure for making regulations

## **CHAPTER 11**

### **GENERAL PROVISIONS**

- 444. Prohibition of use of vessels of less than three metres in length
- 445. Indemnification of State and Authority and certain persons in employ of State and Authority
- 446. Delegation of powers
- 447. Transitional provisions
- 448. International conventions to have force of law
- 449. Amendment and repeal of law
- 450. Short title and commencement

## CHAPTER 1

### DEFINITIONS, INTERPRETATION AND IMPLEMENTATION OF ACT

#### Definitions and interpretation

1. In this Act, unless the context indicates otherwise—

"**accident**", in relation to a vessel, includes—

- (a) the collapse or overturning of any lift, crane, davit, derrick, mobile powered access platform, access equipment, staging or bosun's chair or the failure of any loadbearing part thereof;
- (b) the explosion, collapse or bursting of any closed container, including a boiler or boiler tube, in which there is any gas (including air), liquid or any vapour at a pressure greater than atmospheric pressure;
- (c) any electrical short circuit or overload resulting in fire or explosion;
- (d) the sudden, uncontrolled release of flammable liquid or gas from any system, plant or pipeline;
- (e) the uncontrolled release or escape of any harmful substance;
- (f) either of the following occurrences in respect of any pipeline, valve or any piping system in a vessel—
  - (i) the bursting, explosion or collapse of a pipeline;
  - (ii) the accidental ignition of anything in a pipeline or of anything which, immediately before it ignited, was in a pipeline;
- (g) any contact of the human body with loose asbestos fibre;
- (h) the failure of any lashing wire, chain or appliance
- (i) any collapse or significant movement of cargo;

- (j) the malfunctioning of any hatch cover, hatch cover control wire or other mechanism;
- (k) any person falling overboard;
- (l) the parting of a towrope; and
- (m) the failure of bilge pumping arrangements or lifesaving or firefighting equipment to operate, and for the purposes of Part 18 of Chapter 4 only, resulting in a seafarer suffering loss of life or personal injury;

**"Admiralty Jurisdiction Regulation Act"** means the Admiralty Jurisdiction Regulation Act, 1983 (Act No. 105 of 1983);

**"aid to navigation"** means any device or system that is, with the exception of a lightship, external to a vessel, and is designed and operated to enhance the safe and efficient navigation of vessels and vessel traffic and includes, but is not limited to—

- (a) visual aid to navigation, a fixed and floating aid to navigation such a lighthouse, lightship, beacon, day-mark, leading line, sector light and auxiliary mark, the categories of buoys listed in the Maritime Buoyage System and other Aids to Navigation for Region A published by the International Association of Marine Aids to Navigation and Lighthouse Authorities or any other light, signal or mark established to aid marine navigation and includes any building, mooring and other works associated therewith;
- (b) e-navigation navigation system, such as, but not limited to, radio navigation aid, electronic position fixing system which includes any global navigation satellite system, differential global navigation satellite system and satellite-based augmentation system, positioning, navigation, and timing device or system, positioning, velocity and timing device or system, radar aid to



navigation, automatic identity system and automatic identity system aid to navigation, vessel traffic service and traffic separation scheme; and

- (c) any other light, signal or mark, fixed, or floating, device or apparatus that is a marine aid to navigation and includes any building, mooring and other works associated therewith, but does not include any device or apparatus that forms part of the equipment of a vessel, unless the vessel is a lightship;

**"Authority"** means the South African Maritime Safety Authority established by section 2 of the South African Maritime Safety Authority Act;

**"bareboat charter"**, in relation to a ship, means the charter of the ship for a fixed period on terms that give the charterer possession and control of the ship, including the right to appoint the master and crew;

**"Basic Conditions of Employment Act"** means the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);

**"Basic wages"** means the amount a seafarer earns before additional payments such as overtime;

**"beneficial interest"** includes any interest in a ship arising under contract, testamentary disposition or otherwise, but does not include any interest held by way of a mortgage;

**"berth"** means a designated location in a port or harbour used for mooring a vessel when not at sea that facilitates the unloading or loading of cargo or persons from that vessel;

**"cadet"** means a person appointed as an apprentice to a vessel to perform specified tasks under supervision of a qualified seafarer;

**"cargo"** means any cargo, except liquids in bulk and gases in bulk, that may require special precautions owing to its particular hazard to ships or persons on board;

**"cargo ship safety certificate"** means a certificate, issued in conformity with the Safety Convention under section 186(4);

**"carrier"** includes the owner of the charterer who enters into a contract of carriage with a shipper;

**"clearance"** includes any clearance or transire referred to in the Customs and Excise Act, 1964 (Act No.91 of 1964);

**"coastal cargo"** means goods, including oil, liquid fuel and gas, conveyed by a South African owned coastal ship licence vessel engaged in coastwise traffic;

**"coastal ship licence"** means a licence issued to a coastal ship licence vessel by the Authority under section 65;

**"coastal ship licence vessel"** means a South African owned ship contemplated in section 14 that conveys coastal cargo, but does not include any fishing vessel;

**"coastwise traffic"** means the conveyance of coastal cargo by a ship between the ports in the Republic and the transfer of bunker or oil cargo from a ship or tanker to any other ship or tanker, including a ship arriving from a place outside the Republic, bound for more than one port in the Republic and a ship clearing from any port in the Republic for a port outside the Republic, although bound for one or more intermediate ports in the Republic,

**"collision regulations"** means the regulations made under section 441 to give effect to the relative provisions of the International Collision Regulations Convention and Annexures thereto, or such regulations as applied under that section;

**"Compensation for Occupational Injuries and Diseases Act"** means the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993);

**"competent authority"** means the Minister, Authority or other organ of state having power to issue and enforce regulations and technical standards that have the force of law in respect of the subject matter of the provision concerned;

**"conditions of assignment"** means such of the load line regulations as are made to give effect to the relative provisions of the Load Line Convention and Annexes thereto, or such regulations as applied under section 441;

**"construction regulations"** means the regulations made under section 441 to give effect to the relative provisions of the Safety Convention, or such regulations as applied under that section;

**"constructively lost"** in relation to a ship means—

- (a) a ship that is reasonably abandoned for the reason that its actual total loss appears to be unavoidable;
- (b) a ship that cannot be preserved from actual total loss without an expenditure that would exceed its value when the expenditure has been incurred; or
- (c) a ship that has been damaged to the extent that the cost of repairing the damage would exceed its value when repaired;

**"Continuous synopsis record"** is a form of log book issued by the Authority that stays with the ship for its whole life, and records all changes of owner, flag, name, Class.

**"contract of carriage"** applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same;

**"country to which the Load Line Convention applies"** means a country in respect of which the Load Line Convention is for the time being in force, and includes any territory to which the said Convention applies in accordance with the relative Article thereof;

**"country to which the Safety Convention applies"** means a country in respect of which the Safety Convention is for the time being in force;

**"court"** means a court of competent jurisdiction;

**"court of marine enquiry"** means a court of marine enquiry established under Chapter 6 of this Act;

**"court of survey"** means a court of survey established under Chapter 6 of this Act;

**"crew"** means all seafarers on board a ship;

**"crew accommodation"** includes sleeping rooms, store rooms, galleys, mess rooms, sanitary accommodation, hospitals and recreation spaces provided for use by or for the benefit of seafarers;

**"Criminal Procedure Act"** means the Criminal Procedure Act, 1977 (Act No 51 of 1997);

**"customs officer"** means an officer as defined in section 1 of the Customs and Excise Act;

**"dangerous goods"** means any dangerous goods classified or defined in the regulations as dangerous goods;

**"data"** means electronic representations of information in any form;

**"deck line"** means a mark on each side of a ship indicating the position of the uppermost complete deck, as defined by the load line regulations;

**"Defence Act"** means the Defence Act, 2002 (Act No. 42 of 2002);

**"department"** means the department responsible for maritime transport;

**"dependant"**, in relation to a deceased seafarer, means—

- (a) a widow or widower who at the time of the seafarer's death was married to the seafarer according to civil law;
- (b) a widow or widower who at the time of the seafarer's death was a party to a marriage to the seafarer according to indigenous law or custom, if neither the husband nor the wife was a party to a subsisting civil marriage;
- (c) if there is no widow or widower referred to in paragraph (a) or (b), a person with whom the seafarer was at the time of the seafarer's death living in a permanent heterosexual or same-sex life partnership;
- (d) a child under the age of 18 years of the seafarer or of his or her spouse or permanent life partner, and includes a posthumous child, step-child, an adopted child and an illegitimate child; or
- (e) a child over the age of 18 years of the seafarer or of his or her spouse or permanent life partner, and a parent or any person who was acting in the place of a parent, a brother, a sister, a half-brother or half-sister, a grandparent or a grandchild of the seafarer, and who was at the time of the seafarer's death wholly or partly financially dependent on the seafarer;

**"distressed seafarer"** includes any master or seafarer—

- (a) who is a South African citizen and who by reason of having been discharged or left behind from or shipwrecked in any ship other than a South African ship at a place outside the Republic, is in distress at that place; or
- (b) whether he or she is a South African citizen or not, who, by reason of having been discharged or left behind from or shipwrecked in any South African ship at a place outside the Republic, is in distress at that place;

**"dynamically supported craft"** means any aircushion vehicle, sidewall craft, hydrofoil boat, or other similar craft, used wholly or principally in navigation by water;

**"electronic communication"** means electronic communication as defined in section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);

**"employee"** means any person on board a vessel, including a member of the crew, who is employed by or working for an employer and receives or is entitled to receive any remuneration, or who works under the direction or supervision of an employer, or any other person who on board a vessel in any manner assists in the carrying on or the conducting of the business of an employer, except as provided otherwise by regulation;

**"employer"** means any person, including the owner or master of a vessel, who employs any person or provides work for him or her on a vessel and who remunerates that person or expressly or tacitly undertakes to remunerate him or her, except as provided otherwise by regulation;

**"e-navigation"** is the harmonised collection, integration, exchange, presentation and analysis of maritime information on-board and ashore by electronic means to enhance berth to berth navigation and related services, for safety and security at sea and protection of the marine environment;

**"equipment"** includes boats, tackle, pumps, apparel, furniture, lifesaving appliances of every description, spars, masts, rigging and sails, fog signals, lights and signals of distress, medicines and medical and surgical stores and appliances, charts, radio apparatus, apparatus for preventing, detecting or extinguishing fires, buckets, compasses, axes, lanterns, loading and discharging gear and apparatus of all kinds,

and all other stores or articles belonging to or to be used in connection with, or necessary for, the navigation and safety of a ship;

**"excepted expenses"** means repatriation expenses incurred in cases where the cause of the seafarer's being left behind is desertion or absence without leave or imprisonment for misconduct;

**"exclusive economic zone"** means the exclusive economic zone referred to in section 7 of the Maritime Zones Act 1994 (Act No.15 of 1994);

**"exemption certificate"** means such a certificate, issued in conformity with the Safety Convention under section 175 (b) (i) and (ii);

**"existing ship"** for purposes of Part 8 of Chapter 5, means a ship which is not a new ship;

**"fishing vessel"** means any vessel, boat, ship or other craft which is used for, equipped to be used for or of a type that is normally used for fishing or related activities, and includes all gear, equipment, stores, cargo and fuel on board the vessel, but excludes a fishing vessel used for sport or recreation;

**"foreign"**, in relation to any ship, submarine or other underwater vehicle, means a ship, submarine or other underwater vehicle not having South Africa nationality by virtue of section 13;

**"foreign country"** means a country which is not a treaty country;

**"foreign-going ship"** means a ship plying between a port in one country and a port in another country;

**"foreign port"** means any place in another state, whether proclaimed a public harbour or not, to which ships may resort for shelter or to ship or unship goods or passengers;

**"foreign ship"** means a ship other than a treaty ship;

**"freight"** includes passage money and hire;

**"general navigation"** in this context means all navigation that does not involve entry or departure into a port or harbour;

**"goods"** includes all animals and movable property;

**"gross tonnage"** means the gross tonnage of a ship calculated as prescribed;

**"hazard"** means a source of or exposure to danger;

**"High Court"** means any division of the High Court of the Republic;

**"hydrofoil boat"** means any craft which is supported above the surface of water in normal operating condition by hydrodynamic forces generated on foils;

**"inland waters"** consist of dams, lagoons, lakes, rivers and wetlands, but do not include tidal lagoons and tidal rivers within the meaning of "sea" in section 1 of the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008);

**"immobilise"** means to render a ship temporarily incapable of sailing or manoeuvring under her own power;

**"incidental person"** for purposes of section 265, means persons other than the master and crew, and stevedores and shore contractors on board a vessel in the course and scope of their duties;

**"innocent passage"** means passage which is not prejudicial to the peace, good order or security of the Republic;

**"internal waters"** means the internal waters contemplated in section 3 of the Maritime Zones Act;

**"International Collision Regulations Convention"** means the Convention on the International Regulations for Preventing Collisions at Sea done at London on 20 October 1972, including any annexes, regulations, codes and protocols which are



issued in terms thereof; as modified by any amendment made under Article VI of that Convention that has entered into force for the Republic as contemplated in section 448;

**"international load line certificate"** means such a certificate, issued in conformity with the Load Line Convention under section 203, and includes an international load line exemption certificate;

**"international load line exemption certificate"** means such a certificate issued in conformity with the Load Line Convention under section 203;

**"international voyage"**, when used with reference to ships registered in a country to which the Load Line Convention applies, means a voyage from a port in one country to a port in another country, either of those countries being a country to which the Load Line Convention applies, and when used with reference to ships registered in a country to which the Safety Convention applies, means a voyage from a port in one country to a port in another country either of those countries being a country to which the Safety Convention applies;

**"Labour Relations Act"** means the Labour Relations Act, 1995 (Act No. 66 of 1995);

**"lay-up"** means to anchor or moor a ship which is temporarily withdrawn from service;

**"licence"** in relation to a ship, means a licence contemplated in section 65 and "licensed" must be construed accordingly;

**"lifesaving equipment regulations"** means the regulations made under section 441 to give effect to the relative provisions of the Safety Convention, or such regulations as applied under that section;

**"load line certificate"** means an international load line certificate or a local load line certificate issued by the Authority under Chapter 5;

**"Load Line Convention"** means the International Convention on Load Lines done at London on 5 April 1966, including any annexes, regulations, codes and protocols which are issued in terms thereof; as modified by any amendment made under Article 29 of that Convention that has entered into force for the Republic as contemplated in section 448;

**"load line exemption certificate"** means an international load line exemption certificate or a local load line exemption certificate issued by the Authority under Chapter 5;

**"load line regulations"** means the regulations made under section 441 to give effect to the relative provisions of the Load Line Convention and Annexes thereto, or such regulations as applied under that section;

**"load lines"** means the marks indicating the several maximum depths to which a ship is entitled to be loaded in various circumstances prescribed by the load line regulations;

**"load line ship"** means any ship of 14 metres or more in length, which is not solely engaged in fishing and is not a pleasure yacht;

**"local accountable aid to navigation party"** means an organ of state, a public or private entity, applicable body corporate, boat club, private lodge or estate and any other entity or body that need to establish an aid to navigation for the purpose to improve safety of navigation in their local area of jurisdiction;

**"local load line certificate"** means a certificate issued under section 203(2) and includes a local load line exemption certificate;

**CONTINUES ON PAGE 258 - PART 3**



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**AIDS HELPLINE: 0800-0123-22 Prevention is the cure**

**"local load line exemption certificate"** means a certificate issued under section 203(2);

**"local load line ship"** means a load line ship—

- (a) engaged on an international voyage and of less than 24 metres in length; or
- (b) not engaged on an international voyage;

**"local safety certificate"** means a local general safety certificate or a local safety exemption certificate as contemplated in section 175(a)(iii) and (b)(iii);

**"local safety exemption certificate"** means a certificate contemplated under section 175(1) (b) ;

**"machinery"** means any appliance or combination of appliances assembled, arranged or connected and which is used or intended to be used for converting any form of energy to perform work, or which is used or intended to be used, whether incidental thereto or not, for generating, receiving, storing, containing, transforming, transmitting, transferring or controlling any form of energy;

**"marine accident and incident investigation unit"** means the marine accident and investigation unit established by the Authority under Chapter 6 of this Act;

**"marine casualty"** means an event, or sequence of events which has resulted in any of the following and which has occurred directly in connection with the operation of a ship:

- (a) The death of, or serious injury to, a person;
- (b) the loss of a person from a ship;
- (c) the loss, presumed loss or abandonment of a ship;
- (d) material damage to the structure of a ship;
- (e) the stranding or disabling of a ship, or the involvement of a ship in a collision;
- (f) material damage to marine infrastructure external to a ship; or

(g) severe damage to the environment, or the potential for severe damage to the environment, brought about by a ship or ships;

**"marine incident"** means an event, or sequence of events, other than a marine casualty, which has occurred directly in connection with the operation of a ship that endangered, or, if not corrected, would endanger the safety of the ship, its occupants or any other person or the environment;

**"Marine Living Resources Act"** means the Marine Living Resources Act, 1998 (Act No. 18 of 1998);

**"marine safety investigator"** means any competent person appointed or designated by the Authority to conduct a marine safety investigation in terms of this Act;

**"maritime court"** means a maritime court established under Chapter 6 of this Act;

**"Maritime Fund"** means the Maritime Fund established by section 38 of the South African Maritime Safety Authority Act;

**"Maritime Labour Convention"** means the Maritime Labour Convention, 2006, done at Geneva on 7 February 2006, including any annexes, regulations, codes and protocols which are issued in terms thereof; and as modified by any amendment made under Article XIV of that Convention that has entered into force for the Republic as contemplated in section 448;

**"maritime safety"** means the safety of life, ships, goods and the environment arising from activities that may occur at sea, coastal or inland waterways;

**"master"** means, in relation to a ship, any person, other than a pilot, having charge or command of such ship;

**"material damage"** in relation to a marine casualty means the destruction of the marine infrastructure or ship or damage that—

- (a) significantly affects the structural integrity, performance or operational characteristics of marine infrastructure or a ship; and
- (b) requires major repair or replacement of a major component or components of such marine infrastructure or ship;

**"medical practitioner"** means—

- (a) at a place in the Republic, a person registered as such under the Health Professions Act, 1974 (Act No. 56 of 1974); and
- (b) at a place in the Republic for a vessel, other than a vessel used for sport or recreation, of less than 25 gross tons, a person registered as a medical practitioner, an occupational health nurse or community health nurse under the Health Professions Act, 1974 (Act No. 56 of 1974); and
- (c) at a place outside the Republic, a person who is entitled to practice as such under the law in force in that place;

**"Merchant Shipping Act"** means the Merchant Shipping Act, 1951 (Act No. 57 of 1951);

**"Minister"** means the Minister responsible for transport;

**"Month"** means a period of time between the same dates in successive calendar months;

**"mooring"** means any permanent structure to which a vessel may be secured and includes a quay, wharf, jetty, pier, anchor buoy and mooring buoy;

**"mortgage"** means a mortgage registered in terms of item 9 of Schedule 1;

**"national accountable aid to navigation party"** means an organ of state, statutory or other aid to navigation service provider and any other entity or body that needs to establish an aid to navigation for the purpose to improve safety of navigation on a national basis;

**"National Flag"** means the national flag of the Republic in terms of section 5 of the Constitution;

**"National Hydrographer"** means the organ of state that provide hydrographic and survey services in accordance with legislation promulgated by Parliament;

**"National Ports Act"** means the National Ports Act, 2005 (Act No. 12 of 2005);

**"National Ports Authority of South Africa"** means the National Ports Authority of South Africa as defined in terms of section 1 of the National Ports Act, 2005;

**"nautical mile"** means a distance of 1 852 metres;

**"net tonnage"** means the net tonnage of a ship calculated as prescribed;

**"new ship"** for purposes of Part 8 of Chapter 5 means a ship the keel of which was laid, or which was at a similar stage of construction, on or after 21 July 1968;

**"night"** for purposes of section 95, means a period of at least nine hours, starting no later than midnight ship's time and ending not earlier than 05:00 ship's time;

**"novel kind"** means a ship design that is so new and original that it has never been seen, used or even thought of before.

**"Occupational Health and Safety Act"** means the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);

**"offshore installation"** means any of the following situated within the internal waters, territorial waters or the exclusive economic zone or on or above the continental shelf:

- (a) Any installation, including a pipeline, which is used for the transfer of any substance to or from—
- (i) a ship;
  - (ii) a research, exploration or production platform; or
  - (iii) the coast of the Republic;



- (b) any exploration or production platform used in prospecting for or the mining of any substance;
- (c) any exploration or production vessel used in prospecting for or the mining of any substance;
- (d) a telecommunications line as defined in section 1 of the Post and Telecommunications Matters Act, 1958 (Act No. 44 of 1958);
- (e) any vessel or appliance used for the exploration or exploitation of the seabed; and
- (f) aquaculture;

**"organ of state"** means an organ of state as defined in section 239 of the Constitution;

**"Organization"** means the International Maritime Organization (IMO), a specialized United Nations organization established on 17 March 1948 in terms of the International Maritime Organization Convention of the United Nations concluded in London, United Kingdom in 1948;

**"Overtime"** means time worked in addition to seafarer's normal working hours;

**"oversight"** means to monitor, inspect, audit and make recommendations pertaining to statutory compliance to organs of state and other persons who exercise and perform powers and duties in terms of this Act;

**"owner"** means any person to whom a ship or a share in a ship belongs, except if prescribed otherwise; except as provided in section 49 and for the purposes of section 267, includes any charterer of the ship, any person interested in or in possession of the ship, any manager or operator of the ship;

**"passage"** means navigation through the territorial waters in a continuous and expeditious manner for the purpose of —

- (a) traversing those waters without entering internal waters or calling at a roadstead or offshore installation outside internal waters; or
- (b) proceeding to or from internal waters or a call at any such roadstead or offshore installation, and includes stopping and anchoring, in so far as such stopping or such anchoring is incidental to ordinary navigation or is rendered necessary by vis major or distress or is for the purpose of rendering assistance to persons, ships or aircraft in danger or distress;

**"passenger"** means any person carried in a ship, except—

- (a) a person employed or engaged in any capacity on board the ship on the business of the ship;
- (b) a person on board the ship either in pursuance of the obligation laid upon the master to carry shipwrecked, distressed or other persons or by reason of any circumstances that neither the master nor the owner nor the charterer (if any) could have prevented; and
- (c) a child under one year of age;

**"passenger ship"** means a ship which carries more than 12 passengers;

**"passenger ship safety certificate"** means such a certificate, issued in conformity with the Safety Convention under section 175(a);

**"person"** includes a trust;

**"pilot"** means a person licensed in terms of section 77 of the National Ports Act, 2005 to provide pilotage services;

**"port"** in relation to—

- (a) a port in a country other than the Republic, means a place, whether proclaimed a public harbour or not, and whether natural or artificial, to which ships may resort for shelter or to ship or unship goods or passengers; and

(b) a port in the Republic, means any of the ports of Richards Bay, Durban, East London, Ngqura, Port Elizabeth, Mossel Bay, Cape Town, Saldanha Bay, Port Nolloth or a port which has been determined as such in terms of section 10(2) of the National Ports Act; a harbour, a fishing harbour as defined in section 1 of the Marine Living Resources Act, , or any place which has under this Act or any other law been designated as a place from or at which any vessel or a vessel of a particular type may be launched, beached, moored or berthed;

**"prescribed"** means prescribed by the Minister by regulation in terms of Chapter 10;

**"principal officer"** means the officer in charge of the office of the Authority at a port;

**"proper officer"** means an officer appointed by the Authority under the South African Maritime Safety Authority Act and designated by it to be the proper officer at the place or in respect of the area and in respect of the matter to which reference is made in the provision of this Act in which the expression occurs or if no such designation has been made—

(a) at a place in the Republic, a principal officer or, where there is no principal officer, a customs officer;

(b) at a place outside the Republic but within a treaty country, in the following order:

- (i) A career consular representative of the Republic;
- (ii) a diplomatic representative of the Republic;
- (iii) the person who, in terms of the law in force in the treaty country, is entrusted with the function or charged with the duty to which reference is made in the provision of this Act in which the expression occurs;
- (iv) a consular representative of a treaty country other than the Republic;
- (v) a diplomatic representative of a treaty country other than the Republic;

- (c) at a place outside any treaty country, the person, and in the order, indicated in subparagraphs (i), (ii), (iv) and (v) of paragraph (b); or
- (d) at a place outside the Republic, where there is no proper officer as defined in paragraph (b) or (c), any master of a South African ship who is specially authorised in writing to act as proper officer by the Authority, but only in relation to the functions and duties in respect of which, and subject to the conditions subject to which, he or she has been so authorised to act;

**"proper return port"**, in relation to a master or seafarer discharged or left behind, means—

- (a) the port at which the master or seafarer was engaged;
- (b) a port in a country in which the master or seafarer is domiciled; or
- (c) a port agreed to as such by the master or seafarer,

as determined by the Authority;

**"provisions"** means the supply with food, drink, or equipment to seafarers;

**"provisional registration certificate"** means a provisional registration certificate issued in terms of section 33, 34 or 35;

**"radio"** means a general term applied to the use of electromagnetic waves of frequencies arbitrarily lower than 3 000 GHz, propagated in space without artificial guide;

**"radio regulations"** means the regulations made under section 441 to give effect to the relative provisions of the Safety Convention, or such regulations as applied under that section;

**"rating"** means a seafarer other than a master or an officer;

**"recognised non-South African"**, used in relation to a safety convention certificate or an international load line certificate, signifies that the certificate has been issued

by the authority of the Government of a country other than the Republic to which the Safety Convention or the Load Line Convention, as the case may be, applies, and that the certificate complies with the regulations made under Chapter 10 to give effect to the relative provisions of the Safety Convention or with those made under section 441 to give effect to the relative provisions of the Load Line Convention, respectively;

**"Register"** means the South African Ships Register, established by section 40;

**"registered"**, in relation to a ship (except with reference to the law of another country), means registered or considered to be or regarded as registered under Chapter 3;

**"registered agent"**, in relation to a ship, means the person whose name and address are entered in the Register in respect of the ship in terms of section 49;

**"Registrar"** means the Registrar of Ships referred to in section 18;

**"registration certificate"**, except as provided in section 32, means a registration certificate issued in terms of this Act, but does not include a provisional registration certificate;

**"regulation"** means a regulation made by the Minister under Chapter 10 of this Act;

**"relevant insurance certificate"**, in relation to a ship, means—

- (a) a certificate of the kind referred to in section 163(1); or
- (b) a document that, under the regulations, is taken, for the purposes of this paragraph, to be a relevant insurance certificate in relation to the ship;

**"repatriation expenses"** means expenses incurred in returning a distressed seafarer to a proper return port and in providing him or her with the necessary clothing and maintenance until his or her arrival at such port and includes, in the case of a shipwrecked seafarer, the repayment of expenses incurred in conveying

him or her to port after shipwreck and maintaining him or her while being so conveyed;

**"Republic"** means the Republic of South Africa and includes the territorial waters;

**"safe"** means free from any threat which may cause bodily injury, illness or death, and free from any hazard as far as practicable;

**"safety appointee"** means any person appointed in terms of section 151(1)(a);

**"safety committee"** means a committee appointed in terms of section 151(1)(a);

**"Safety Convention"** means the International Convention for the Safety of Life at Sea done at London on 1 November 1974, including any annexes, regulations, codes and protocols which are issued in terms thereof as modified by any amendment made under Article VIII of that Convention that has entered into force for the Republic as contemplated in section 448;

**"safety convention certificate"** means a passenger ship safety certificate, a cargo ship safety construction certificate, a cargo ship safety equipment certificate, a cargo ship safety radio certificate or an exemption certificate;

**"safety of navigation"** is the process of planning, recording and controlling the movement of a craft safely from one place to another;

**"safety representative"** means any person elected in terms of section 151(1)(b);

**"safety zone"** means—

- (a) the area within a distance of 500m measured outward from any point on the exterior side of an offshore installation referred to in paragraphs (a) and (b) of the definition of offshore installation other than a pipeline; or
- (b) the area determined by the Minister under section 321;

**"salvor"** means any person conducting a salvage operation as defined in Article 1 of the International Convention on Salvage, 1989, as amended, being the Schedule to

the Wreck and Salvage Act, 1996 (Act No. 94 of 1996), provided that the service must be rendered in relation to a ship;

**"seafarer"** means any person who is employed or engaged or works in any capacity on board a ship to which this Act applies and in the case of a deceased seafarer as contemplated in Part 18 of Chapter 4, includes his or her dependents;

**"security"** means to protect South African sovereignty, to safeguard maritime resources and marine living resources against unlawful interference, to support free and open seaborne commerce by pre-empting intentional, unauthorised acts designed to cause harm, damage or disruption, to counter maritime-related terrorism, weapons proliferation, human trafficking and other transnational crimes, piracy, environmental destruction and illegal seaborne immigration;

**"senior surviving deck officer"** means a certificated deck officer as prescribed;

**"serious injury"** an injury which is sustained by a person, resulting in incapacitation where the person is unable to function normally for more than 72 hours, commencing within seven days from the date when the injury was suffered;

**"severe damage to the environment"** means damage to the environment which produces a major deleterious effect upon the environment;

**"share"**, in relation to a ship, means one of the shares into which the property right in the ship is divided in terms of section 22;

**"sheltered waters"** means any of the following:

- (a) A tidal lagoon or a tidal river within the meaning of "sea" in section 1 of the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008);
- (b) the waters within the breakwaters of any port in the Republic; and
- (c) inland waters;

**"ship"** means any kind of vessel used in navigation by water, however propelled or moved, and includes—

- (a) a barge, lighter or other floating vessel, including a floating dock;
- (b) a structure that is able to float or be floated and is able to move or be moved as an entity from one place to another; and
- (c) a dynamically supported craft;

and includes all gear, equipment, stores, cargo and fuel aboard the ship, and any article belonging to or to be used in connection with or necessary for the operation and safety of the ship and "vessel" has a corresponding meaning;

**"ship entitled to be registered"** means a ship entitled to be registered in terms of section 23;

**"Ship Registration Act"** means Ship Registration Act, 1998 (Act No. 58 of 1998);

**"Shipping Acts"** mean the Marine Pollution (Control and Civil Liability) Act, 1981 (Act No. 6 of 1981), the Marine Pollution (Prevention of Pollution from Ships) Act, 1986 (Act No. 2 of 1986), the Marine Pollution (Intervention) Act, 1987 (Act No. 64 of 1987), and this Act;

**"Shipping information Centre"** means an electronic information centre established by the Department to attend to the needs of ship owners including those with shipping aspirations as prescribed;

**"ship's officer"** means a deck officer, other than the master, electro-technical officer or engineer officer, defined as prescribed, whether certificated or uncertificated, employed as such on board a ship, and any reference to a ship's officer must, in its application to a ship in which a navigating officer, mate, boatswain, marine engineman or assistant marine engineman is employed, be construed as including a



reference to a navigating officer, mate, boatswain, marine engineman or assistant marine engineman;

**"shore contractor"** for purposes of section 265, means a person temporarily employed to effect general or specific repairs, alterations, renovations, improvements, painting, maintenance of vessel or machinery, tank or hatch cleaning and related tasks on or in a vessel;

**"small vessel"** means a vessel of less than 25 gross tons and of more than three metres in length;

**"South African Maritime Safety Authority Act"**, means the South African Maritime Safety Authority Act, 1998 (Act No. 5 of 1998);

**"South African national"** means—

- (a) a South African citizen in terms of the South African Citizenship Act, 1995 (Act No. 88 of 1995);
- (b) a company registered in terms of the Companies Act, 2008 (Act No. 71 of 2008), of which the majority of shareholders are South African nationals;
- (c) a close corporation in terms of the Close Corporations Act, 1984 (Act No. 69 of 1984) established before the commencement of the Companies Act, 2008 (Act No. 71 of 2008), of which the majority of members are South African nationals;
- (d) a trust in which—
  - (i) the majority of trustees having the controlling power at any given time are South African nationals referred to in paragraphs (a) and (b); and
  - (ii) a majority of the beneficial interests are held by such South African nationals;

- (e) a co-operative registered in terms of the Co-operatives Act, 2005 (Act No. 14 of 2005), of which all the members are South African nationals but, where any member is a juristic person, such person's principal place of business must be in the Republic; and
- (f) the Government of the Republic;

**"South African Police Service Act"** means South African Police Service Act, 1995 (Act No. 68 of 1995);

**"South African resident"** means—

- (a) a natural person whose permanent place of abode is in the Republic, whether or not he or she is from time to time temporarily absent from the Republic;
- (b) a natural person who is in possession of a permanent residence permit as defined in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002);
- (c) a body corporate, wherever incorporated, that is registered in terms of section 23 of the Companies Act, 2008 (Act No. 71 of 2008), and has its principal office, as contemplated in that Act, in the Republic; and
- (d) a trust in which—
  - (i) the majority of trustees having the controlling power at any given time are South African residents referred to in paragraphs (a), (b) and (c);  
and
  - (ii) a majority of the beneficial interests are held by such South African residents;

**"South African ship"** means a ship that has South African nationality in terms of section 13 or is licensed in the Republic in terms of section 65;

**"special load line certificate"** means a certificate issued under section 214;

**"sport or recreation"** means any sporting or recreational activity carried on in, on or under the water, irrespective of whether that activity is of a competitive nature or whether prizes are involved, provided it is not carried on for commercial purposes;

**"standard"** means—

- (a) any provision occurring in a specification, compulsory specification, code of practice or standard method within the meaning of the Standards Act;
- (b) any provision occurring in any specification, code or any other directive having standardisation as its aim and issued by an institution or organisation inside or outside the Republic which, whether generally or with respect to any particular article or matter and whether internationally or in any particular country or territory, seeks to promote standardisation; or
- (c) any type approval by the International Maritime Organisation, European Union or other flag state administration, as approved by the Authority;

**"Standards Act"** means the Standards Act, 2008 (Act No. 8 of 2008);

**"STCW Convention"** means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers done at London on 7 July 1978, including any annexes, regulations, codes and protocols which are issued in terms thereof as modified by any amendment made under Article XII of that Convention that has entered into force for the Republic as contemplated in section 448;

**"STCW-F Convention"** means the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995, including any annexes, regulations, codes and protocols which are issued in terms thereof; which entered into force on 29 September 2012, as modified by Article 10 of that Convention that has entered into force for the Republic as contemplated in section 448;

**"stevedore"** for purposes of section 265, means a person employed in the loading or unloading of a vessel or in related activities;

**"surveyor"** means any person recognised or appointed in terms of section 5(b);

**"technical standard"** means a standard that specifies the technical requirements, data, information or guidance relating to an acceptable means of compliance to this Act;

**"temporary pass"** means a temporary pass issued in terms of section 38;

**"territorial waters"** means the territorial waters contemplated in section 4 of the Maritime Zones Act;

**"this Act"** includes any proclamation, notice, rule or regulation issued or made thereunder;

**"timber cargo regulations"** means the regulations made under section 441 to give effect to the relative provisions of the Safety Convention, or such regulations as applied under that section;

**"Tonnage Convention"** means the International Convention on Tonnage Measurement of Ships done at London on 23 June 1969, including any annexes, regulations, codes and protocols which are issued in terms thereof, as modified by any amendment made under Article 18 of that Convention that has entered into force for the Republic as contemplated in section 448;

**"tons"** or **"tonnage"** means the tons or tonnage of a ship calculated as prescribed;

**"treaty country"** in relation to any provision of this Act, means the Republic and any country which is a party to any bilateral treaty or agreement entered into by the Republic in connection with any matter dealt with in such provision;

**"treaty ship"** means a ship registered at any place in a treaty country under the relative laws in force at that place or any ship which by the law of a treaty country is recognised as a ship belonging to that treaty country;

**"unregistered"**, in relation to a ship, means not registered in terms of this Act or in terms of the law of another state;

**"unseaworthy"**, used in relation to a vessel, means that she—

- (a) is not in a fit state as to the condition of her hull, equipment or machinery, the stowage of her cargo or ballast, or the number or qualifications of her master or crew, or in any other respect, to encounter the ordinary perils of the voyage upon which she is engaged or is about to enter;
- (b) does not comply with the conditions of assignment as contemplated in section 203; or
- (c) is loaded beyond the limits allowed—
  - (i) by a load line certificate issued in the Republic under this Act;
  - (ii) if she is a load line ship, registered in a country in which the Load Line Convention applies, by a recognised non-South African international load line certificate; or
  - (iii) by a load line certificate to which a notice issued under section 215 applies:

Provided that a safety convention ship not registered in the Republic, in respect of which a recognised non-South African safety convention certificate is produced, must not be considered unseaworthy, as regards the condition of her hull, equipment or machinery, unless it appears, on the report of a surveyor, that she cannot proceed to sea without danger to human life owing

to the fact that the actual condition of the hull, equipment or machinery does not correspond substantially with the particulars stated in the certificate;

**"user"**, in relation to machinery, means any person who uses machinery on a vessel for his or her own benefit;

**"very serious marine casualty"** means a marine casualty involving the total loss of the ship, a death or severe damage to the environment;

**"vessel traffic service"** means a service implemented by a competent authority, designed to improve the safety and efficiency of vessel traffic and to protect the environment and has the capability to interact with the traffic and respond to traffic situations developing in the vessel traffic service zone;

**"vessel traffic service authority"** means the National Ports Authority of South Africa or other entity authorised by the Authority in terms of section 349 to provide a vessel traffic service;

**"vessel traffic service operator"** means a person who is responsible for remotely monitoring and directing the movements of vessels as part of a system of vessel traffic services;

**"vessel traffic service zone"** means a vessel traffic service zone established in terms of section 348 for which a vessel traffic service must be provided by a vessel traffic service authority;

**"wage"** means the amount of money paid or payable to an employee in respect of ordinary hours of work;

**"warship"** means a ship belonging to the armed forces of a state bearing the external marks distinguishing such ship of its nationality, under command of an officer duly commissioned by the government of the state, and whose name appears

in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline;

**"watchkeeping personnel"** means everyone forming part of a navigational or engineering watch on a ship;

**"Work in Fishing Convention"** means the Work in Fishing Convention, 2007, done at Geneva on 30 May 2007, including any annexes, regulations, codes and protocols which are issued in terms thereof, as modified by any amendment made under article 45 of that Convention that has entered into force for the Republic as contemplated in section 448;

**"workplace"** means any place on a vessel where an employee performs work in the course of his or her employment;

**"wreck"** following upon a maritime casualty, means:

- (a) A sunken or stranded ship;
- (b) any part of a sunken or stranded ship, including any object that is or has been on board such a ship;
- (c) any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or
- (d) a ship that is about, or may reasonably be expected, to sink or to strand, where effective measures to assist the ship or any property in danger are not already being taken;

**"Wreck and Salvage Act"** means the Wreck and Salvage Act, 1996 (Act No. 94 of 1996);

**"year"** means a calendar year, but for the purpose of the inspection of vessels required by this Act it means 12 calendar months from the date of the certificate of inspection or survey; and

**"young person"** means a person who is under the age of 18 years but no younger than 16 years of age.

### **Interpretation of provisions of Act**

2. (1) Whenever in this Act reference is made to—

- (a) an act or omission by or a duty resting upon or a fault committed by a vessel;
- (b) damage or loss suffered by a vessel; or
- (c) a liability resting upon a vessel,

such reference must, unless the context indicates otherwise, be construed as a reference to—

- (i) an act or omission by or a duty resting upon or a fault committed by the person responsible for the navigation of the vessel in connection with the navigation thereof;
- (ii) damage or loss suffered by the owner or the person having an interest in the vessel or her cargo or freight, in connection with the vessel or her cargo or freight; or
- (iii) a liability resting upon the person in charge of the vessel or upon the person who in law is answerable for the conduct of the person in charge of the vessel, in connection with such conduct, respectively.

(2) In this Act references to a ship built or constructed before or after any date must be construed as references to a ship the keel of which has been laid or which is at a similar stage of construction before or after that date, as the case may be.



(3) In subsection (2) 'similar stage of construction' means the stage at which—

- (a) construction identifiable with the ship has begun; and
- (b) assembly of the ship has commenced and comprises at least 50 tons or one per cent of the estimated mass of all structural material, whichever is less.

(4) Any reference in this Act to an entry of an occurrence or other fact in the official logbook of a ship must, in the application of the provision in which the reference occurs to a ship for which no official logbook is kept, be construed as a reference to a record of such occurrence or fact made otherwise than in an official logbook.

(5) Any reference in this Act to any order or entry made or document issued under any provision of this Act must, unless otherwise indicated, must be construed as including a reference to an order or entry made or document issued under the corresponding provision of any law repealed by section 449.

### **Application of Act**

**3.** (1) This Act, in addition to the Republic, also applies to Marion Island and Prince Edward Island: Provided that in its application voyages between ports in the Republic and ports in those islands must be considered to be voyages between ports in the Republic and ports outside the Republic.

(2) This Act binds the State: Provided that the Minister may by notice direct that sections 89, 90, 92, 93, 97, 99, 100, 101, 102, 103 and 113 must not apply in respect of the master or seafarers of any ship named in the notice and belonging to an organ of state or to the National Ports Authority of South Africa

whose conditions of service are governed by laws other than this Act or statutory regulations other than regulations made under this Act.

(3) Unless otherwise indicated, those provisions of this Act which apply to vessels which are registered or licensed in the Republic or which in terms of this Act are required to be so licensed, apply wherever such vessels may be.

(4) Unless otherwise indicated, provisions of this Act which apply to vessels other than those referred to in subsection (3) apply only while such vessels are within the Republic or the territorial waters thereof.

(5) The provisions of this Act do not apply to ships belonging to—

- (a) the services in the South African National Defence Force contemplated in section 12 of the Defence Act;
- (b) the South African Police Service Act; or
- (c) a warship of any other country.

(6) Except as otherwise prescribed, the provisions of this Act shall apply to any vessel contemplated in section 63(2)(b) as if such vessel were licensed in terms of this Act.

(7) The Minister may by notice in the *Gazette* declare that any of the provisions of this Act which are by that notice specified, subject to the exemptions, modifications and restrictions so specified, and which do not by virtue of the other provisions of this Act apply to a particular ship or to ships of a particular class, category or tonnage, apply to that ship or to ships of that class, category or tonnage: Provided that provisions which in terms of this Act apply only to South African ships must not by any such notice be applied also to ships not registered in the Republic and vice versa.

(8) The Minister may by notice in the *Gazette* declare that any of the provisions of this Act which are by that notice specified, subject to the exemptions, modifications and restrictions so specified, apply to any inland waters so specified.

(9) If the Minister is satisfied that—

- (a) ships registered in any country other than the Republic are required by the law in force in that country to comply with provisions which are substantially the same as, or equally effective with, any of the provisions of this Act which apply to such ships while they are within the Republic or the territorial waters thereof; and
  - (b) that country has made or has undertaken to make provision for the exemption of South African ships while they are within that country or the territorial waters thereof from the corresponding requirements of the law of that country,
- the Minister may by notice in the *Gazette* declare that the said provisions of this Act does not apply to any ship of that country, while she is within the Republic, if it is proved that the ship complies with the corresponding provisions of the law in force in that country and thereafter upon such proof being furnished, the said provisions of this Act does not apply to such ship.

(10) Unless otherwise indicated, only the provision of sections 11(1), 151, 152, 219, 265, 279, 390 and Chapter 10 shall apply to—

- (a) every owner and master of any vessel, and every user, employer and employee;
- (b) all crew on board a vessel who have entered into a contract of employment with the master or with the owner or operator of such vessel, or any person

who in the case of a vessel of less than 100 gross tons can be regarded as crew on board such vessel;

- (c) every other person on board a vessel in the execution of his or her duties, or working on the exterior shell or appurtenances of a vessel, including the equipment used by such person, whether or not the vessel is afloat; and
- (d) every working gear, lifting gear, anchor or cable, any machinery, every gangway or accommodation ladder, any equipment or every appurtenance in or on a vessel which forms a part of the construction or equipment of such vessel, including any machinery or equipment brought on board a vessel and which does not form part of the equipment of such vessel.

(11) The provisions referred to in subsection (10) do not apply to a vessel while it is being constructed or dismantled.

## CHAPTER 2

### ADMINISTRATION

#### Powers of Minister

4. The Minister may—
- (a) make regulations regarding any matter contemplated, required or permitted to be prescribed by the Minister in terms of this Act, for the incorporation of any international convention defined in this Act and generally for the effective administration and achievement of the objects of this Act;
  - (b) following the conducting of a benchmarking study by the Department and after consultation with the Minister responsible for Trade, Mineral Resources and

- National Treasury make regulations establishing the criteria for designation of a national shipping company;
- (c) following the results of a socio economic impact assessment by the Department and after consultation with Cabinet, make regulations on measures to promote export of certain strategic minerals using South African ships;
  - (d) make regulations establishing the Shipping information Centre;
  - (e) with the exception of the power to make regulations, delegate or assign any duty to any official of the department in regard to any matter dealt with by this Act;
  - (f) monitor the impact of any mechanisms, programs or interventions anticipated in section 70;
  - (g) monitor the impact of any international convention that is incorporated into law by means of the mechanisms provided for in section 448;
  - (h) monitor the impact of any technical standard that may be issued by the Authority under section 6;
  - (i) in accordance with the provisions of the Constitution, conclude any bi-lateral merchant shipping agreement after consultation with any relevant organ of state; and
  - (j) appoint, any advisory panel, committee advising him or her in regard to any particular matter dealt with by this Act.

### **Powers of Authority**

- 5.** The Authority may—
- (a) appoint such officers as it considers necessary for the administration of this Act as contemplated in section 27 of the South African Maritime Safety Authority Act;
  - (b) recognise or appoint as a ship surveyor, engineer surveyor or radio or other surveyor any qualified person whom the Authority considers fit to act as such for the purposes of this Act;
  - (c) subject to such conditions as may be determined by the Authority, and with the concurrence of the Minister, exempt any person from any of or all the provisions of the regulations made under Chapter 10;
  - (d) issue technical standards as contemplated in section 6; and
  - (e) acquire as appropriate systems, equipment; marine and aerial surveillance crafts to promote the implementation of this Act

### **Technical standards for maritime transport**

- 6.** (1) The Authority must issue technical standards for maritime transport on such matters as may be prescribed by regulation.
- (2) The manner in which any technical standard for maritime transport must be issued, published, amended or withdrawn, and the procedure to be followed by the Authority in respect of any such issue, publication, amendment or withdrawal, must be as prescribed.
- (3) A technical standard has the force of law.

(4) If a provision of a technical standard issued by the Authority in terms of this section differs in any way to any provision of this Act, this Act must apply.

### **Authority responsible for administration of Act**

7. (1) The Authority is responsible for the administration of this Act, and must exercise and perform all powers and duties incidental thereto.

(2) The Authority must, subject to the provisions of this Act or any other law, have such powers and perform such duties as are assigned to it by the Minister.

(3) All powers conferred and all duties imposed upon the Authority shall be exercised or performed by the Authority, or by a person or organisation under a delegation from or under the control or direction of the Authority.

### **Duty of proper officer, surveyor, marine safety investigator, court of marine enquiry, maritime court or court of survey, marine accident and incident investigation or other officer appointed in terms of Act to ensure compliance with Act**

8. (1) If a proper officer has reason to suspect that this Act is or has not been complied with in respect of any ship within the Republic or the territorial waters of the Republic, which is not registered in the Republic, or in respect of any South African ship wherever she may be, the proper officer must take such steps as

in his or her opinion are necessary including judicial authorisation to ensure compliance with the said provisions.

(2) The marine accident and incident investigation unit, any court of marine enquiry, maritime court, court of survey, marine safety investigator, proper officer, surveyor, or any other persons authorised by this Act, or required by the Authority, to make any survey or inspection or conduct any investigation, may—

- (a) board any South African ship wherever she may be, or any ship other than a South African ship while she is in a port in or the territorial waters of the Republic, and inspect same or any part thereof, or any equipment thereof, or any articles on board, or any logbooks, certificates, other documents or any electronic communication or data relating to the ship or the crew thereof, and muster the crew of the ship and interrogate them, and require the master and crew to demonstrate the related competency at their place or places of duty;
- (b) subject to paragraphs (c) and (d), at any reasonable time, and with judicial authorisation, enter and inspect any land, building or premises for the purpose of ensuring compliance with this Act;
- (c) may at any reasonable time and after reasonable notice has been given to the owner or occupier of the land or building and after obtaining judicial authorisation, enter and inspect a private dwelling for the purpose of ensuring compliance with this Act; and
- (d)

(3) The marine accident and incident investigation unit, any court of marine enquiry, maritime court, court of survey, marine safety investigator, proper officer, surveyor, or other person authorised under this Act, or required by the Authority, to make any survey or inspection or conduct any investigation, is not



required to give reasonable or any notice to enter land or a building other than a private dwelling and may conduct an inspection or take enforcement action without the consent of the owner or occupier of such land or building and without a warrant if—

- (a) he or she believes on reasonable grounds that a warrant will be issued to him, her or it; and
- (b) the delay in obtaining the warrant would defeat the object of the inspection and enforcement action.

(4) The marine accident and incident investigation unit, any court of marine enquiry, maritime court, court of survey, marine safety investigator, proper officer, surveyor, or other person authorised under this Act, or authorised by the Authority, to make any survey or inspection or conduct any investigation, may not investigate a matter in which he or she or a member or an employee has a direct or indirect personal or private interest.

(5) In ascertaining compliance with this Act, the marine accident and incident investigation unit, any court of marine enquiry, maritime court, court of survey, marine safety investigator, proper officer, surveyor, or any other person authorised under this Act, or required by the Authority, to make any survey or inspection or conduct any investigation, may—

- (a) be accompanied by an interpreter, a police officer, a peace officer or any other person who may be able to assist with the inspection;
- (b) question any person who is or was on that land and who, in the opinion of the authorised person, may be able to furnish information on a matter to which this Act relates;

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- (c) question any person about any act or omission in respect of which there is a reasonable suspicion that it might constitute a contravention of this Act;
  - (d) question a person about any structure, object, document, book or record or inspect any written or electronic information or object which may be relevant to the investigation;
  - (e) examine any book, record or other written or electronic information and make a copy thereof or an extract therefrom and remove such document, book, record or written or electronic information in order to make copies or extracts;
  - (f) require a person to produce or to deliver to a place specified by the proper officer, surveyor, marine safety investigator, court or other officer appointed in terms of this Act, any document, book, record, or any written or electronic information referred to in paragraph (e) for inspection;
  - (g) require from such person an explanation of any entry in such document, book, record or written or electronic information;
  - (h) inspect any article, substance, plant or machinery which is or was on the land, or any work performed on the land or any condition prevalent on the land, or remove for examination or analysis any article, substance, plant or machinery or a part or sample thereof;
  - (i) seize any book, record or other document, details or any article, substance, plant or machinery or a part or sample thereof which in his or her opinion may serve as evidence at the trial of any person charged with an offence under this Act, provided that the user of the article, substance, plant or machinery concerned, as the case may be, may make copies of such book, record or document before such seizure;

- (j) direct any person to appear before him, her or it at such time and place as may be determined by the proper officer, surveyor, marine safety investigator, court or other officer appointed in terms of this Act and question such person either alone or in the presence of any other person on any matter to which this Act relates; and
- (k) take photographs or make audio visual recordings or tape recordings of any person or anything for the purpose of his, her or its investigation.

(6) If the marine accident and incident investigation unit, any court of marine enquiry, maritime court, court of survey, marine safety investigator, proper officer, surveyor, or any other person authorised under this Act, or required by the Authority to make any survey or inspection or conduct any investigation, removes or seizes any article, substance, plant or machinery, book, record or other document as contemplated above, he, she or it must issue a receipt to the owner or person in control thereof and return it as soon as practicable after achieving the purpose for which it was removed or seized.

(7) Where the marine accident and incident investigation unit, any court of marine enquiry, maritime court, court of survey, marine safety investigator, proper officer, surveyor, or any other person authorised under this Act, or required by the Authority, to make any survey or inspection or conduct any investigation, enters any ship or land in terms of section (2)(a) or (b), the master or a person who controls or manages the land must at all times provide such facilities as are reasonably required by him, her or it, to enable him, her or it to perform his, her or its functions effectively and safely under this Act.

(8) Any employee of the marine accident and incident investigation unit, member of any court of marine enquiry, maritime court, court of survey, marine

safety investigator, proper officer, surveyor, or other person authorised by this Act, or required by the Authority, to make any survey or inspection or conduct any investigation, who enters and searches any ship, land or private dwelling under this section, must conduct such search or seizure with strict regard for decency and order, and with regard for each person's right to dignity, freedom, security and privacy.

(9) Every person must—

- (a) upon demand, assist to the best of his or her ability any person in the exercise of any of the powers conferred by this section;
- (b) answer fully and satisfactorily, to the best of his or her ability, all questions lawfully put to him or her by a person in the exercise of any of the powers conferred by this section, and, upon being required to do so, produce any book, document or thing in his or her possession or under his or her control: Provided that in connection with the interrogation of any such person by, or the production of any such book, document or thing to any such person, the law relating to privilege, as applicable to a witness summoned to give evidence or produce any book, document or thing before a court of law applies.

### **Survey of ship**

9. Subject to the provisions of this Act, a surveyor may inspect any South African ship wherever it may be or any ship not registered in the Republic while she is within the Republic for the purpose of ascertaining whether it complies with the provisions of this Act.

### **Powers relating to inspection of hull**

**10.** A proper officer may in the execution of his or her duties or in the exercise of his or her functions under this Act, if he or she considers it necessary to do so, direct that any South African ship wherever she may be, or any ship other than a South African ship while she is within the Republic or the territorial waters of the Republic, be taken into dock at the owner's expense, in order that every part of the hull thereof may be inspected.

### **Powers relating to workplace**

- 11.** (1) Subject to subsection (2), when—
- (a) an employer performs an act or requires or permits an act to be performed which in the opinion of the Authority threatens or is likely to threaten the safety of any person at a workplace or in the course of his or her employment, the Authority may by notice in the prescribed form prohibit that employer from—
    - (i) continuing or commencing with the performance of that act; or
    - (ii) requiring or permitting that act to be continued or commenced with;
  - (b) a user uses any machinery or proposes to use it in a manner or in circumstances which in the opinion of the Authority threatens or is likely to threaten the safety of any person who works with such machinery or who is or may come in the vicinity thereof, the Authority may by notice in the prescribed form prohibit that user from—
    - (i) continuing or commencing with the use of such machinery; or

(ii) the use of such machinery in that manner or those circumstances.

(2) A prohibition imposed under subsection (1) may be revoked in writing by the Authority if arrangements to the satisfaction of the Authority have been made to dispose of the threat which gave rise to the imposition of the prohibition.

(3) When the Authority is of the opinion that the safety of any person at a workplace or in the course of his or her employment or in connection with the use of machinery is threatened on account of the refusal or failure of an employer or a user to take reasonable steps in the interest of such person's safety, the Authority may by notice in the prescribed form direct that employer or user to take such steps as are specified in the notice, within a specified period.

(4) When on board a vessel in the vicinity of a workplace there is any nuisance which in the opinion of the Authority threatens or is likely to threaten the safety of an employee performing work at that workplace, the Authority may by notice in the prescribed form direct the person responsible for such nuisance or the owner or master of such vessel to remove the nuisance within a specified period.

(5) When the Authority is of the opinion that an employer or a user has failed to comply with a provision of a regulation applying to him or her, the Authority may by notice in the prescribed form direct that employer or user to take, within a period specified in the notice, such steps which in the opinion of the Authority are necessary to comply with the said provision and as are specified in the notice.

(6) The period contemplated in subsections (3), (4) or (5) may be extended by the Authority by notice in the prescribed form to the person concerned.

(7) The Authority may by notice in the prescribed form prohibit an employer from requiring or permitting employees or any employee belonging to a

category of employees specified in the notice, to be exposed in the course of their employment for a longer period than a period specified in the notice to any article or condition which in the opinion of the Authority threatens or is likely to threaten the safety of such employees or the employee belonging to such category of employees.

(8) An employer must forthwith bring the contents of a notice contemplated in subsection (7) to the attention of the employees or employee concerned.

### **Advisory committee**

12. (1) The Minister may appoint a committee to advise the Minister in regard to a particular matter dealt with by this Act.

(2) Members of any committee contemplated in subsection (1) must be appointed by the Minister as prescribed.

(3) Members of a committee appointed under subsection (1) must be paid allowances towards subsistence and transport as may be prescribed, or, if they are members of the public service, allowances towards subsistence and transport as are prescribed by the laws governing the public service.

## **CHAPTER 3**

### **SHIP REGISTRATION, TONNAGE, LICENSING OF VESSELS AND NOTIFICATIONS OF INTENTION TO BUILD VESSELS**

#### ***Part 1***

#### ***Ship Registration***

**Division 1****South African ships****South African ship**

**13.** A South African ship is a ship that has South African nationality and is—

- (a) a registered ship; or
- (b) a ship that is not registered but is entitled to be registered in terms of section 23(a) or (b); and
- (c) a ship engaged in coastwise traffic.

**South African-owned ship**

**14.** (1) A South African-owned ship is—

- (a) a fishing vessel that is owned, or owned and controlled, as provided in the definition of local fishing vessel in section 1 of the Marine Living Resources Act;
- (b) any ship, other than a fishing vessel, that—
  - (i) is wholly owned by one or more South African nationals;
  - (ii) is owned by three or more persons as joint owners of the ship, where the majority of those persons are South African nationals; or



- (iii) is owned by two or more persons as owners in common, where the majority of the shares in the ship are owned by South African nationals;  
or
- (c) a ship engaged in coastwise traffic that—
  - (i) is wholly owned by one or more South African nationals; or
  - (ii) is owned by three or more persons as joint owners of the ship where the majority of those persons are South African nationals.

(2) For purposes of subsection (1)(b)(iii), where two or more persons are joint owners of a share or shares in a ship—

- (a) in the case of two or more shares that are owned by the same persons, the interest of each owner in the shares is ascertained by dividing the number of the shares by the number of the owners of the shares; or
- (b) in the case of a share to which paragraph (a) does not apply, the interest of each owner in the share is ascertained by dividing the number one by the number of the owners of the share,

and, if the sum of the interests so ascertained in respect of all jointly-owned shares in the ship as being the interests of South African nationals is a whole number or a whole number and a fraction, the number of those shares that are equal to that whole number is considered to be owned by South African nationals.

### **National Flag**

**15.** (1) Every South African ship is entitled to fly the National Flag, without any defacement or modification.

(2) The master of a South African ship must cause the National Flag to be hoisted—

- (a) on a signal being made to the ship by any ship in the naval service of the Republic;
- (b) on entering or leaving any foreign port; and
- (c) if the ship is of 50 or more gross tons, on entering or leaving any South African port.

(3) No person on board a South African ship may hoist—

- (a) any distinctive national colours except the National Flag and a courtesy flag of the country in which the ship may be;
- (b) any colours usually worn by ships in the naval service of the Republic or colours resembling such colours; or
- (c) any pennant usually carried by ships in the naval service of the Republic or any pennant resembling such pennant.

(4) On application in the prescribed manner by the owner of a ship contemplated in section 13(b), the Registrar may issue a certificate to that owner stating that the ship is entitled to fly the National Flag in terms of this section.

**Declaration of ship's nationality before clearance**

16. (1) A customs officer may not grant a clearance in respect of any ship until the master of the ship has declared to that officer the nationality of the ship, which declaration the officer must record on the clearance certificate.

(2) A ship that attempts to proceed to sea without a clearance contemplated in subsection (1) may be detained by a customs officer or the Authority until the relevant declaration is made.

***Division 2******Registrar and Registration Office*****South African Ship Registration Office**

17. (1) The South African Ship Registration Office established in terms of section 7 of the Ship Registration Act, continues to exist and is considered to be established in terms of this Act.

(2) The Authority may establish branch offices of the Registration Office and any branch office established in terms of the Ship Registration Act, is construed to be a branch office established in terms of this Act.

(3) The South African Ship Registration Office and its branch offices are at the respective places in the Republic that the Authority has determined in terms of the Ship Registration Act.

## Registrar and Deputy Registrars of Ships

- 18.** (1) The chief executive officer of the Authority is the Registrar.
- (2) The Registrar may appoint a Deputy Registrar of Ships from the staff of the Authority appointed in terms of section 27 of the South African Maritime Safety Authority Act.

## Powers and duties of Registrar

**19.** (1) The Registrar must do all things necessary in connection with, or incidental to the exercise of the Registrar's powers in terms of this Act or any other law, including the powers that may be prescribed in relation to furnishing of information and documents, as well as the delivery of certificates and other documents granted or issued in terms of this Act.

(2) The Registrar must maintain the Register and must for that purpose—

- (a) receive and record all information and documents required or permitted to be lodged with the Registrar in terms of this Act;
- (b) grant, issue, vary or revoke certificates and other documents required to be issued in terms of this Act; and
- (c) issue copies of and extracts from—
- (i) any certificate or other document contemplated in paragraph (b); and
- (ii) any entry in the Register.

### **Appointment of staff**

- 20.** (1) The staff appointed by the Authority in terms of the Ship Registration Act, are considered to be appointed in terms of this Act.
- (2) The Authority may appoint additional staff for the Registration Office or any branch office from its staff appointed in terms of section 27 of the South African Maritime Safety Authority Act.

### **Seal of Registration Office and signature of Registrar**

- 21.** (1) The seal of the Registration Office approved by the Minister in terms of the Ship Registration Act, is considered to be the seal approved by the Minister in terms of this Act.
- (2) The Minister may in the prescribed manner approve the form for the seal of the Registration Office if the form of that seal changes
- (3) The seal of the Registration Office is under the control of the Registrar.
- (4) In all judicial proceedings judicial notice must be taken of the impression of the seal of the Registration Office on a document and it must be presumed, in the absence of evidence to the contrary, that the seal was duly impressed.
- (5) If a signature on a document purports to be the signature of the Registrar or of a person authorised to sign the document by virtue of a delegation in terms of section 446, it must be presumed, in the absence of evidence to the contrary, that the signature is that of a person who at the relevant time was holding

the office of Registrar or was performing the duties of the office of the Registrar, or was empowered to sign that document.

### ***Division 3***

#### ***Registration of South African Ships***

##### **Registration of property in ship**

- 22.** (1) For the purposes of the registration of a ship—
- (a) the property in a ship is divided into 64 shares;
  - (b) subject to paragraph (c), subsection (2) and item 4 of Schedule 1, the number of persons registered as owners of a ship may not at any time exceed 64;
  - (c) any number of persons not exceeding five may be registered as joint owners of a ship or of one or more shares in a ship;
  - (d) a joint owner of a ship or of one or more shares in a ship may not dispose of his or her interest separately;
  - (e) a person may not be registered as the owner of a fractional part of a share in a ship;
  - (f) a body corporate is registered as an owner by its corporate name; and
  - (g) a trust is registered as an owner in the name of the trust.

(2) For the purposes of subsection (1)(b), where a share in a ship is jointly owned or two or more shares in a ship are jointly owned by the same persons, the joint owners of that share or of those shares, must be regarded as one person.

### **Ships entitled to be registered**

**23.** Subject to this Chapter, the following ships are entitled to be registered:

- (a) South African-owned ships;
- (b) small vessels, other than fishing vessels, that are—
  - (i) wholly owned by South African residents or South African residents and South African nationals; or
  - (ii) operated solely by South African residents or South African nationals or both such residents and such nationals; and
- (c) ships on bareboat charter to South African nationals.

### **Inspection and tonnage measurement of ship before registration**

**24.** (1) No ship may be registered, unless—

- (a) that ship has undergone the prescribed inspection; and
- (b) a certificate relating to the tonnage measurement of the ship issued in terms of this Act has been lodged with the Registrar.

(2) Subsection (1)(b) does not apply to a prescribed ship, or ships of a prescribed class or description.

### **Refusal of registration**

**25.** (1) Despite a ship being entitled to be registered, the Registrar may refuse to register the ship if the Registrar is satisfied that—

- (a) it would be inappropriate for the ship to be registered having regard—

- (i) to the relevant requirements of the Shipping Acts in respect of—
  - (aa) the condition of the ship in respect of its safety or any risk of pollution; and
  - (bb) the safety, health and welfare of persons employed or engaged on the ship; or
- (ii) to the interests of the Republic or international merchant shipping;
- (b) the applicant does not comply with the prescribed requirements for ownership;
- (c) the prescribed conditions have not been complied with, including conditions which limit the tonnage or age of the ship; or
- (d) the registration of the ship is prohibited in terms of regulations made under Chapter 10.

(2) If the Registrar refuses in terms of this section to register a ship, the Registrar must serve a notice on the applicant stating that registration is refused and the reasons for such refusal. .

### **Prohibition on dual registration**

- 26.** (1) The Registrar may not register a ship in terms of this Act if it is registered in terms of the law of another state, unless—
- (a) in the case of a South African-owned ship, it was acquired pursuant to an order of court in terms of section 9 of the Admiralty Jurisdiction Regulation Act, and the evidence contemplated in subsection (2)(c) has been lodged with the Registrar; or



(b) in the case of a ship on bareboat charter to a South African national, the evidence contemplated in subsection (2) (d) has been lodged with the Registrar.

(2) If, in respect of a ship that has at any time been registered in terms of the law of another state, an application is made for the registration of the ship in terms of this Act, the application must be accompanied by the evidence required by the Registrar to establish—

- (a) that the ship is no longer registered in terms of the law of another state;
- (b) that steps have been taken or are proposed to terminate registration in terms of the law of another state before the ship is registered in terms of this Act;
- (c) in the case of a ship referred to in subsection (1)(a), that all reasonable steps to secure the termination of the ship's registration in terms of the law of that other state have been unsuccessful; or
- (d) in the case of a ship referred to in subsection (1)(b), that the owner of the ship and the competent authority of the state of primary registration consent to the ship's registration in terms of this Act.

(3) A ship on bareboat charter to a South African national referred to in subsection (1)(b) is a ship that—

- (a) is registered in terms of the law of another state;
- (b) is not a prescribed ship or a ship of a prescribed class or description; and
- (c) is on bareboat charter to one or more South African nationals, and to no other person.

## *Identity*

### **Marking of ship**

**27.** (1) A ship may not be registered until it has been marked in the prescribed manner with the marks directed by the Registrar by notice in writing served on the owner or one of the owners, and the prescribed evidence that the ship has been so marked is lodged with the Registrar.

(2) Subject to subsection (4), if the markings placed on a registered ship in accordance with the requirements of subsection (1) are not maintained, the owner and master of the ship are each guilty of an offence.

(3) Subject to subsection (4), no person may conceal, remove, alter, deface obliterate, or allow any person under his or her control to conceal, remove, alter, deface or obliterate any marking that is on a registered ship in accordance with the requirements of subsection (1).

(4) Subsections (2) and (3) do not apply in respect of anything authorised by the regulations or done for the purpose of escaping capture by an enemy or by a foreign ship of war in the exercise of some belligerent right.

### **Ship identity number**

**28.** (1) Section 28 applies to all passenger ships of 100 gross tonnage and upwards and to all cargo ships of 300 gross tonnage and upwards.

(2) The Authority must provide every ship with an identity number which conforms to the International Maritime Organisation's ship identification number scheme.

(3) The ship's identification number must also be inserted on the certificates.

(4)

### **Continuous synopsis record**

**29.** (1) The Authority must issue a continuous synopsis record to every South African ship to which this Part applies.

(2) The continuous synopsis record must provide an on-board record of the history of the ship with respect to the prescribed information contained therein.

(3) The continuous synopsis record must be in the format and guidelines for its maintenance as prescribed by the Organization.

### **Name of registered ship and change of name**

**30.** (1) A registered ship may not be described by any name other than the name by which the ship is for the time being registered.

(2) An application may be made to the Registrar in terms of section 31, in the prescribed manner for a change in the name of a registered ship.

(3) The Registrar must disallow a name if—

- (a) the name proposed for a ship in an application for the registration of the ship;  
or
- (b) the new name proposed for a registered ship in an application in terms of subsection (2), and is a prescribed name, or a name included in a prescribed class of names.

(4) If the Registrar grants an application in terms of subsection (2)—

- (a) the Registrar must cause the new name of the ship to be entered in the Register and endorsed on the ship's registration certificate; and
- (b) section 27 applies in respect of the marking of the new name on the ship as if the ship had been registered by that name.

### **Power of Minister to disallow proposed name for ship**

**31.** If the Minister has reason to believe that the description of a ship by a certain name is likely to prejudice the Republic's international relations, the Minister may, by notice in writing to the Registrar, disallow—

- (a) the name proposed for a ship in an application for the registration of the ship;  
or
- (b) the new name proposed for a registered ship in an application in terms of section 30(2).

## ***Registration certificates***

### **Registration certificate**

**32.** (1) On completion of the registration of a ship, the Registrar must issue a registration certificate in respect of the ship in the prescribed form.

(2) The certificate contemplated in subsection (1) must contain the particulars entered in the Register in respect of the ship, and any other matter that may be prescribed.

### **Status and custody of registration certificate**

**33.** (1) In this section, 'registration certificate' includes a provisional registration certificate.

(2) A registration certificate may be used only for the lawful navigation of a ship, and may not be detained to secure any civil right or claim.

(3) A person who has possession or control of a registration certificate may not fail, without reasonable grounds, to deliver the certificate on demand to—

- (a) the person entitled to the custody thereof for the purposes of the lawful navigation of the ship;
- (b) the Registrar, a Deputy Registrar or a proper officer;
- (c) a customs officer; or
- (d) any other person entitled by law to require its delivery.

(4) If the person required by subsection (3) to deliver a registration certificate is outside the Republic, or persists in not delivering the certificate, the certificate must be regarded as lost and section 34 (1) (a) is applicable.

(5) If in any criminal proceedings in respect of a contravention of this section a court is of the opinion that a certificate is lost, the court must make an order to that effect and cause a copy of the order to be served on the Registrar.

### **New certificate and provisional certificate**

**34.** (1) If a registration certificate is —

(a) mislaid, lost or destroyed; or

(b) lodged with the Registrar,

the Registrar must, on application in the prescribed manner, issue a new certificate in substitution for that certificate.

(2) If an event contemplated in subsection (1)(a) occurs while the ship concerned is —

(a) at a foreign port at which there is a proper officer; or

(b) at sea or at a foreign port at which there is no proper officer and,

subsequently, but before arriving at a South African port, the ship arrives at a foreign port at which there is a proper officer,

the Registrar or the proper officer at that port must, subject to the regulations, on application to him or her, issue a provisional registration certificate in respect of that ship in the prescribed form.

(3) Subject to subsection (5), a provisional registration certificate issued in terms of subsection (2) must be regarded as a registration certificate until—

- (a) the ship arrives at a South African port; or
- (b) the expiration of a period of six months, calculated from the date on which the certificate was issued, whichever may occur first.

(4) A proper officer who issues a provisional registration certificate in terms of this section must forward a copy of the certificate to the Registrar.

(5) If, while a provisional registration certificate issued in terms of subsection (2) is valid, an application is made in the prescribed manner, the Registrar may by notice in writing served on the applicant extend the period referred to in subsection (3)(b), and in that event the reference in that provision to a period of six months must be regarded as a reference to such extended period.

(6) A person who has possession of a provisional registration certificate issued in terms of subsection (2) must lodge that certificate with the Registrar within 10 days after the ship's arrival at a South African port.

(7) On lodgement of a provisional registration certificate in terms of subsection (6), the Registrar may issue—

- (a) a further provisional registration certificate in respect of that ship; or
- (b) a new registration certificate in respect of that ship.

(8) A provisional registration certificate issued in terms of subsection (7)(a) must from the date on which it was issued, be regarded as a registration certificate for the period that the Registrar may determine in that certificate.

**Provisional certificate for ship becoming entitled to be registered while abroad**

**35.** (1) If, while a ship—

- (a) is at a foreign port at which there is a proper officer, but before arriving at a South African port, it becomes a ship entitled to be registered; or
- (b) is at sea or at a foreign port at which there is no proper officer, it becomes a ship entitled to be registered and, subsequently, but before arriving at a South African port, the ship arrives at a foreign port at which there is a proper officer, the proper officer at that port may, subject to the regulations, on application to the proper officer, issue a provisional registration certificate in respect of that ship in the prescribed form.

(2) Subject to subsection (4), a provisional registration certificate issued in terms of this section must be regarded as a registration certificate until—

- (a) the ship arrives at a South African port; or
- (b) the expiration of a period of six months, calculated from the date on which the certificate was issued, whichever may occur first.

(3) A proper officer who issues a provisional registration certificate in terms of this section must forward a copy of the certificate to the Registrar.

(4) If, while a provisional registration certificate issued in terms of subsection (1) is valid, an application is made in the prescribed manner, the Registrar may by notice in writing served on the applicant extend the period referred to in subsection (2)(b), and in that event the reference in that provision to a period of six months must be regarded as a reference to such extended period.



(5) A person who has possession of a provisional registration certificate issued in terms of subsection (1) must lodge the certificate with the Registrar within 10 days after the ship's arrival at a South African port.

(6) On lodgement of a provisional registration certificate in terms of subsection (5), the Registrar may issue a further provisional registration certificate in respect of that ship.

(7) A provisional registration certificate issued in terms of subsection (6) must with effect from the date on which it was issued be regarded as a registration certificate for the period that the Registrar may determine in that certificate.

### **Provisional certificate issued by Registrar**

**36.** (1) If, while a ship is at sea or at a foreign port, it becomes a ship entitled to be registered, the Registrar may, subject to the regulations, on application to the Registrar, issue a provisional registration certificate in respect of that ship in the prescribed form.

(2) If, while a ship is at a South African port, it becomes a ship entitled to be registered, the Registrar may, subject to the regulations, on application to him or her, if the Registrar is satisfied that it is the intention of the owner of the ship that the ship will depart from that port to a place outside the Republic, issue a provisional registration certificate in respect of that ship in the prescribed form.

(3) Subject to subsection (4), a provisional registration certificate issued in terms of this section must be regarded as a registration certificate until—

- (a) in the case of a ship in respect of which a certificate was issued in terms of subsection (1) the—
- (i) ship arrives at a South African port; or
  - (ii) expiration of a period of six months, calculated from the date on which the certificate was issued, whichever may occur first; or
- (b) in the case of a ship in respect of which a certificate was issued in terms of subsection (2) the—
- (i) ship returns from a place outside the Republic to a South African port; or
  - (ii) expiration of a period of six months, calculated from the date on which the certificate was issued, whichever may occur first.

(4) If, while a provisional registration certificate issued in terms of subsection (1) or (2) is valid, an application is made in the prescribed manner, the Registrar may by notice in writing served on the applicant extend the period referred to subsection (3)(a)(ii) or (b)(ii), as the case may be, and in that event the reference in the relevant provision to a period of six months must be regarded as a reference to such extended period.

(5) A person who has possession of a provisional registration certificate issued in terms of subsection (1) or (2) must lodge the certificate with the Registrar—

- (a) if the certificate was issued in terms of subsection (1), within 10 days after the ship's arrival at a South African port; or
- (b) if the certificate was issued in terms of subsection (2), within 10 days after the ship's return from a place outside the Republic to a South African port.

(6) On lodgement of a provisional registration certificate in terms of subsection (5), the Registrar may issue a further provisional registration certificate in respect of that ship.

(7) A provisional registration certificate issued in terms of subsection (6) must from the date on which it was issued, be regarded as a registration certificate for the period that the Registrar may determine in that certificate.

### **Provisional certificate not to be issued in certain circumstances**

**37.** A provisional registration certificate may not be issued by a proper officer in terms of section 35(1), or by the Registrar in terms of section 36(1) or (2), unless the person who issues the certificate is satisfied that, at the time when he or she issues the certificate, an application for registration of the ship has been lodged with the Registrar and that the application has yet to be dealt with.

### **Temporary pass**

**38.** (1) The Authority may direct the Registrar to issue a temporary pass in respect of an unregistered ship entitled to be registered if the Authority is satisfied that by reason of special circumstances permission should be granted for the ship to travel from—

- (a) a South African port to a foreign port; or
- (b) a foreign port to another foreign port or to a South African port.

- (2) The Registrar must issue the pass contemplated in subsection (1) in the prescribed form and may determine in the pass the—
- (a) voyage that the ship is authorised to make; and
  - (b) date of expiry of the pass.

(3) Subject to the matters that may be determined in the pass, a temporary pass issued in terms of this section must be regarded as a registration certificate.

### **Improper use of certificate**

**39.** A person who, in relation to a ship, whether or not it is a registered ship, uses or permits the use of an invalid registration certificate, provisional registration certificate or temporary pass, is guilty of an offence.

## ***Division 4***

### ***The Register***

#### **South African Ships Register**

**40.** (1) The South African Ships Register established in terms of section 33 of the Ship Registration Act, continues to exist and is considered to be established in terms of this Act.

(2) All matters required or permitted by this Act to be entered in the Register must be so entered.

(3) The Register may be divided into parts so as to distinguish between classes or descriptions of ships or the services and trade they provide.

(4) The Register and copies of the Register, or of such part or parts of the Register that the Authority may direct, must be kept at the Registration Office or at the branch offices that the Authority may direct.

### **Access to Register**

**41.** Any person may have access to the Register at any reasonable time during the hours when the Registration Office, or a branch office is open for business, and is entitled against payment of the prescribed fee to be furnished with a copy of or extract from any entry in the Register.

### **Obsolete or incorrect entries in Register**

**42.** (1) The Registrar may, by notice in writing served on the registered agent or any owner of a ship, require the registered agent or any owner of a ship to furnish the Registrar within a period determined in the notice, but not less than 30 days after the date of service of the notice, with the information and documents relating to the ship that are determined in the notice, if—

- (a) in respect of the particular ship, no entry or amendment of an entry has been made in the Register for the prescribed period;
- (b) the Registrar has reason to suspect that—
  - (i) any particular entered in the Register in respect of that ship, other than particulars relating to a mortgage, are incorrect;

- (ii) in respect of that ship, any notice, information or document in respect of which an entry in the Register is required by this Act to be made has not been lodged with the Registrar within the period contemplated in paragraph (a); or
- (iii) the ship has been either actually or constructively lost, taken by an enemy, burnt or broken up.

(2) If a person on whom a notice is served in terms of subsection (1)—

- (a) fails to furnish the Registrar within the period determined in the notice with the information and documents determined in the notice; or
- (b) furnishes information or documents that in the opinion of the Registrar justify the closure of the registration of the ship or the alteration of any entry made in the Register in respect of that ship,

the Registrar must inform the Authority of that failure or furnish the Authority with that information or those documents.

(3) If the Authority is of the opinion that the failure of a person to comply with a notice served on him or her in terms of subsection (1), or any information or document it was furnished with by the Registrar justifies further action, the Authority may by notice in writing give the Registrar the directions that it considers fit in respect of the closure of the registration of the ship or in respect of any entry or amendment of an entry to be made in the Register.

(4) The Registrar must comply with any direction given in terms of subsection (3) and, where the Authority directs the closure of the registration of the ship—

- (a) if the Authority states in the direction that it is of the opinion that the ship has been either actually or constructively lost, taken by an enemy, burnt or broken up, the Registrar must make an entry in the Register of that statement, and the registration of the ship must be regarded as closed, except in so far as it relates to any unsatisfied mortgage of the ship; or
- (b) in any case other than contemplated in paragraph (a), the directions contemplated in subsection (3) must be regarded as a notice in terms of section 51(1)(b), and section 51 is applicable.

### **Correction of clerical errors in Register**

**43.** The Registrar may correct or cause to be corrected, without deleting, any clerical error or obvious mistake in the Register.

### **Rectification of Register**

**44.** (1) In this section, 'court' means any division of the High Court within its area of jurisdiction.

(2) If an entry—

- (a) is omitted from the Register;
- (b) is made in the Register without sufficient cause;
- (c) wrongly exists in the Register; or
- (d) in the Register contains an error or defect,

whether or not by reason of a decision of an officer, including a decision that the officer was empowered in terms of this Act to make, any interested person or the

Registrar may apply to a court for rectification of the Register, and that court may make the order that it considers fit in respect of the rectification of the Register.

(3) Without prejudice to the generality of subsection (2)(a), the reference in that provision to an entry omitted from the Register includes a reference to a matter that is required or permitted by this Act to be entered or to remain in the Register, but is not entered in or is removed from the Register.

(4) A court may in proceedings in terms of this section decide any question that is necessary or expedient to decide in connection with the rectification of the Register.

(5) Notice of an application in terms of this section by an interested person must be served on the Registrar, who must appear and be heard in court if so directed by the court.

(6) A copy of an order in terms of this section must be served on the Registrar, and on receipt of the order the Registrar must rectify the Register accordingly.

### **False entries in Register**

**45.** No person may intentionally make a false entry or cause a false entry to be made in the Register.



**Division 5*****Private Law Provisions for registered ships*****Private law matters**

**46.** (1) Despite anything to the contrary in any other law, but subject to subsection (2), a registered ship or a share in a registered ship may not, after the coming into operation of this Act, be mortgaged by a bond registered in a deeds registry, and no bond so registered—

(a) before such coming into operation, shall, after the expiration of 60 days from such coming into operation; or

(b) after such coming into operation,

confer upon the mortgagee any preference against other creditors.

(2) The mortgagee under any bond by which a registered ship or a share in a registered ship is hypothecated and that is registered in a deeds registry at the coming into operation of this Act may produce to the Registrar within 60 days after such coming into operation or within any further period the Registrar may allow in special circumstances a copy of the duplicate original of the bond filed in the deeds registry certified by the registrar of deeds in charge of that registry; and the Registrar must thereupon record the mortgage in the Register, where after the provisions of this Act relating to the mortgage of ships and shares in ships apply in respect of that mortgage: Provided that for the purposes of item 10 of Schedule 1 the mortgage must be regarded to have been registered in the Register on the date on which and at the time at which the said bond was registered in the deeds registry.

(3) Whenever the Registrar records any mortgage in terms of subsection (2), he or she must send written notice thereof to the registrar of deeds in charge of the deeds registry in which the bond was registered, and on receipt of that notice the registrar must endorse on the duplicate original of the bond filed in the deeds registry the fact that the mortgage has been so recorded.

(4) Subsections (1), (2) and (3) do not apply in respect of any bond that is valid in accordance with the law of the state in which the ship is registered.

(5) Subject to subsection (6), a mortgage of a registered ship or of a share in a registered ship is considered to be a special mortgage as defined in section 2 of the Insolvency Act, 1936 (Act No. 24 of 1936), and ranks and is dealt with as if it were a mortgage bond hypothecating immovable property situate in the Republic.

(6) For the purposes of subsection (5)—

- (a) 'mortgage', in relation to a ship or a share in a ship, means a registered mortgage executed and valid in accordance with the law of the state in which the ship is registered; and
- (b) 'registered' includes being registered in terms of the law of another state.

(7) Subject to subsections (8) and (9), Schedule 1 applies in respect of—

- (a) the creation, transfer, transmission or discharge of a mortgage of a ship or a share in a ship;
- (b) the transfer or transmission of rights in a ship or a share in a ship; and
- (c) any matter incidental to paragraphs (a) and (b).

(8) Schedule 1 does not apply in respect of a ship excluded from its application by regulations made under Chapter 10.

(9) Schedule 1 and regulations made for the purposes of Schedule 1, or the provisions of the regulations made under Chapter 10, do not apply to ships registered in terms of section 23(c), and any matter or question in respect of such ships corresponding to those provisions are determined by reference to the law of the state of primary registration.

### **Liability of person with beneficial interest**

**47.** (1) A person who has a beneficial interest in any ship or a share in a ship which is registered in the name of another person as owner, will be liable, together with the registered owner for any pecuniary penalty imposed on the owners of registered ship in terms of the Shipping Acts or any other law.

(2) The Authority may institute civil proceedings for the enforcement of any such penalty against both the person so interested and the owner, or either of them, jointly or jointly and severally.

## ***Division 6***

### ***General Provisions***

#### **Interpretation**

**48.** In division 6, 'owner', except in sections 49 and 355, means—  
(a) in relation to a ship registered in terms of section 23 (a) or (b)(i), the registered owner of the ship; and

- (b) in relation to a ship registered in terms of section 23 (b) (ii) or (c), the registered agent of the ship.

## Registered agent

**49.** (1) The name and address of the registered agent of a registered ship must be entered into the Register.

(2) The registered agent of a ship must be—

- (a) in the case of a ship referred to in section 23 (b)(ii), the operator or one of the operators of the ship;
- (b) in the case of a ship referred to in section 23(c), the charterer or one of the charterers of the ship;
- (c) in the case of a ship without a managing owner, other than a ship referred to in paragraph (a) or (b), the person or one of the persons who is a ship's agent in respect of the ship or a person managing the ship; or
- (d) in any other case, the managing owner or one of the managing owners.

(3) If a change occurs in the person or the address of the registered agent, a notice of the change, containing the prescribed information, must be lodged with the Registrar within 14 days after the change has occurred—

- (a) by the person whose name appears as the registered agent in the Register if that person is not the owner of the ship; or
- (b) in any case other than paragraph (a), the owner of the ship.

(4) A reference in subsections (1) and (3) to the address of a person is a reference to—

- (a) in the case of a natural person—

- (i) the address of the place in the Republic at which the person ordinarily resides; or
  - (ii) if the person does not ordinarily reside in the Republic, the address in the Republic to which all communications to that person should be sent in terms of subsection (5); or
- (b) in the case of any other person, the address of the principal place of business of that person in the Republic.

(5) Any document required or permitted to be served in terms of the Shipping Acts, or required or permitted to be served in terms of any other law for the purpose of the institution of, or otherwise in connection with, proceedings for the contravention of any provision of the Shipping Acts, or in terms of any instrument in terms of those Acts, on the owner of a ship, must be regarded as duly served on that owner if—

- (a) delivered to the registered agent;
- (b) sent to the registered agent by post at the last address notified in terms of subsection (3); or
- (c) left for the registered agent at the address contemplated in paragraph (b).

### **Alterations to ship**

**50.** If a registered ship has been altered to the extent that it no longer corresponds with the particulars relating to the ship's tonnage or description contained in the Register, the registered agent must give notice of the alteration to the Registrar in the prescribed manner and within the prescribed period, and the Registrar must, subject to sections 24 and 27, enter the alteration in the Register as

prescribed and issue a new registration certificate in respect of the ship as if the ship were not registered.

### **Ship lost or ceasing to be entitled to be registered**

**51.** (1) If a registered ship—

(a) is either actually or constructively lost, taken by an enemy, burnt or broken up; or

(b) ceases to be entitled to be registered, the owner of the ship must, immediately after obtaining knowledge of the event, give notice of the event in writing to the Registrar.

(2) When the Registrar receives a notice contemplated in subsection (1), the Registrar must make an entry of the event to which the notice relates in the Register.

(3) Where an entry has been made in the Register in terms of subsection (2), the registration of the ship must be regarded as closed, except in so far as it relates to any unsatisfied mortgage of the ship.

(4) If a ship in respect of which the Registrar has received notice in terms of subsection (1) is subject to an unsatisfied mortgage—

(a) the registration of the ship, in so far as it relates to the mortgage, but subject to subsections (5) and (6), is not closed; and

(b) the Registrar must give notice in writing to each mortgagee that he or she has received notice in terms of subsection (1) of the event so referred to.

(5) Subject to subsection (6), where the Registrar gives notice in terms of subsection (4), the registration of the ship, in so far as it relates to the

mortgage, must be regarded as closed on the expiration of a period of 60 days after the date of the notice.

(6) If a mortgagee makes an application to a court within 60 days after the date of the notice in terms of subsection (4) or within the extended period that the court may allow, on application made either before or after the expiration of that period, the court may—

- (a) order that the ship and the ship's equipment be sold;
- (b) make any other order for and in respect of the distribution of the proceeds of the sale that the court considers fit; and
- (c) make orders and give direction with respect to the closure of the registration of the ship that it deems fit, including, in the case of an application for an extension of time, an order that the registration may not be regarded as closed for the period that the court may determine.

(7) Notice of an application made in terms of subsection (6), including an application for an extension of time, must be served on the Registrar.

(8) An order in terms of subsection (6) may be on the terms and conditions as to costs and otherwise that the court considers fit.

(9) The Registrar must give effect to any order or direction given by the court in terms of this section in so far as such order relates to the Register.

(10) Where the registration of a ship is closed or regarded as closed in terms of this section, the person having possession of the registration certificate or provisional registration certificate relating to that ship must deliver the certificate to the Registrar or a proper officer in accordance with the regulations.

## Power to remove ship from Register

**52.** (1) Where the Authority—

- (a) has reason to suspect that a registered ship is not entitled to be registered;
- (b) is satisfied that a registered ship has contravened the prescribed conditions of registration; or
- (c) is satisfied that, having regard to the matters referred to in section 25(1), it would be inappropriate for a registered ship to continue to be registered, it may serve a notice in terms of subsection (2) on the registered agent of the ship.

(2) A notice contemplated in subsection (1) must state that the Authority—

- (a) is not satisfied that the ship in question is entitled to be registered or to continue to be registered, as the case may be; and
- (b) intends on the expiration of a period of 30 days after the date of service of the notice to direct that the ship's registration be closed, unless it is satisfied that it would be inappropriate to do so in view of representations that may be made to it by the registered agent within that period.

(3) If, after consideration of the representations contemplated in subsection (2), the Authority is of the opinion that the ship should be deregistered, the Authority must deregister that ship and the provisions of section 51 applies with the necessary changes that the context may require.



**Unregistered ship entitled to be registered not to leave Republic**

**53.** (1) An unregistered ship entitled to be registered may not depart from a South African port to a place outside the Republic.

(2) The master of a ship that departs from a South African port in contravention of subsection (1), and any owner of that ship who orders or permits such departure, are each guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three years.

(3) A customs officer may not grant a clearance in respect of an unregistered ship entitled to be registered, that is about to depart from a South African port to a place outside the Republic.

(4) Subsections (1) and (3) do not apply to a prescribed ship, or a ship of a prescribed class or description.

**Unregistered ship entitled to be registered not to leave foreign port**

**54.** (1) Where an unregistered ship entitled to be registered is at a foreign port at which there is a proper officer, the ship may not depart from that port on a voyage unless and until a registration certificate, provisional registration certificate or temporary pass is issued in respect of that ship.

(2) The master of a ship that departs from a foreign port in contravention of subsection (1) and any owner of that ship who orders or permits such departure are each guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three years.

(3) Subsection (1) does not apply to a prescribed ship, or a ship of a prescribed class or description.

### **Effects of non-registration**

**55.** (1) A ship contemplated in section 53(2) or 54(2)—

- (a) is not recognised as a South African ship; and
- (b) is not entitled to any benefit, privilege, advantage or protection usually enjoyed by a registered ship.

(2) A ship to which subsection (1) applies, is dealt with in the same manner as if the ship were registered for the purposes of any law providing for—

- (a) the payment of levies, fees or other charges;
- (b) the liability for fines, detention and forfeiture; and
- (c) the punishment of offences committed on board a ship or by any person belonging to a ship.

### **Notice to consular representative**

**56.** If any foreign ship is detained in terms of this Act, or if any criminal proceedings are instituted in terms of this Act against the master or owner of any foreign ship, notice must forthwith be served by the Authority on the consular representative of the flag state at or nearest to the port where the ship is for the time being, and such notice must state the grounds on which the ship has been detained or the proceedings have been taken.

## Forfeiture

**57.** (1) In this section, 'officer' means—

- (a) an officer of the Authority appointed in writing to be an officer for the purposes of this section;
- (b) a member of the South African Police Service; or
- (c) a member of the South African National Defence Force.

(2) Where a ship is subject to forfeiture in terms of this Act, the Authority may seize and detain the ship and the Minister may apply to a court for an order contemplated in subsection (3).

(3) On application being made in terms of subsection (2), the court may order a ship and its equipment to be forfeited to the State.

(4) Anything forfeited in terms of this section becomes the property of the State and may be sold or otherwise dealt with as the Minister considers fit.

(5) Notwithstanding the provisions of this section, the provisions of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998) must apply to any forfeiture which is permitted in terms of that Act.

## Detention of ships

**58.** (1) Where provision is made in this Act for the detention of a ship, the ship may be detained by the Authority.

(2) Where a ship detained in terms of this Act goes to sea before it is released from detention by the Authority, the master and any owner of that ship who orders or permits such action are each guilty of an offence.

(3) A customs officer may not grant a clearance in respect of a ship that is detained in terms of this Act.

### **Co-operation with officials**

**59.** (1) If an officer is taken to sea in a ship without his or her consent, the master, and any owner of the relevant ship who orders or permits such action, are each guilty of an offence and, in addition to any penalty for that offence, are jointly and severally liable to pay all expenses incidental to the officer's return.

(2) The master and each member of the crew of any ship must—

- (a) immediately comply with any lawful instruction given or request made by an officer and must facilitate safe boarding and inspection of the ship; and
- (b) take all measures to ensure the safety of an officer in the performance of his or her duties.

### **False statements**

**60.** (1) A person is guilty of an offence if that person —

- (a) by means of a statement that he or she knows to be false or misleading; or
- (b) by means of a document that to his or her knowledge contains information that is false or misleading, causes or attempts to cause an officer to do or refrain from doing any act or thing in the exercise of the officer's powers or the performance of the officer's duties in terms of this Act.

(2) No person may—

- (a) make a statement to an officer, whether orally or in writing; or
  - (b) present a statement in writing to an officer,
- knowing it to be false or misleading in a material aspect.

(3) For the purposes of the application of this section in respect of a body corporate, but without prejudice to the liability of any person other than the body corporate—

- (a) a statement made or presented or otherwise used by a person acting on behalf of a body corporate is considered to have been made, presented or otherwise used by the body corporate; and
- (b) the knowledge of any person employed by or concerned in the management of a body corporate is considered to be knowledge of the body corporate.

## ***Part 2***

### ***Tonnage***

#### **Tonnage once ascertained to be tonnage of ship**

**61.** (1) Whenever the tonnage of a ship has been ascertained and recorded in accordance with this Act, that tonnage must be the tonnage of the ship.

(2) In the event that —

- (a) any alteration is made in the form or capacity of the ship;

or

- (b) it is discovered that the tonnage of the ship has been erroneously computed,

the ship must be resurveyed, and her tonnage re-determined in accordance with this Act.

### **Tonnage of ships of other countries**

**62.** (1) Whenever the Minister is satisfied that provisions substantially the same as those of this Act relating to the measurement of the tonnage of ships are in force in any other country, the Minister may, by notice in the *Gazette*, direct that ships registered in that country must without being resurveyed in the Republic be presumed to be of the tonnage denoted in their certificates of registry or other national papers, in the same manner, to the same extent, and for the same purposes as the tonnage denoted in the certificate of registry of a South African ship is presumed to be the tonnage of that ship, and that the space shown by the certificate of registry or other national papers of any ship registered in such other country, as deducted from tonnage on account of being occupied by seafarers and appropriated to their use, must for the purpose of determining her tonnage be presumed to have been certified by a surveyor under section 268 to comply with those of the provisions of this Act which apply to such a space in the case of a South African ship.

(2) Whenever the Minister has given any such direction as is mentioned in subsection (1), the presumptions referred to must apply in respect of any ship registered in the country to which the direction relates.

(3) If any question arises as to whether the tonnage of any ship registered in any country to which any such direction relates, as denoted in her certificate of registry or other national papers, materially differs from that which would be her tonnage if measured under this Act, or as to whether the construction and the equipment of any ship so registered as regards the said space do for the purpose of determining the tonnage of the ship conform to the standards required under this Act, the Authority may direct that a surveyor inspect the ship.

(4) If from the report of a surveyor so directed to inspect a ship it appears to the Authority that the tonnage of that ship, as so denoted, materially differs from that which would be her tonnage if measured under this Act or that her construction and equipment as regards the said space do not, for the purpose of determining her tonnage conform to the said standards, or if for any reason it appears to the Authority that the tonnage of any ship so registered has been erroneously computed, the Authority may order that, notwithstanding any direction for the time being in force under this section, that ship or any ship registered in the country to which the direction relates must, for all or any of the purposes of this Act or the Ship Registration Act, be surveyed in accordance with this Act.

### ***Part 3***

#### ***Licensing of Vessels***

#### **Application of Part 3**

**63.** (1) Part 3 applies to all South African owned ships engaged in coastwise traffic.

(2) Part 3, with the exception of section 64 (1), do not apply to any vessel—

- (a) if the vessel is entitled to be registered in the Republic in terms of section 23 (a) or (b);
- (b) of less than 100 gross tons used solely for sport or recreation.

### **Prohibition on coastwise traffic**

**64.** (1) No ship, other than a South African owned ship referred to in section 14(1) (c), is permitted to engage in coastwise traffic.

(2) No coastal cargo is to be carried on a ship other than a South African owned ship referred to in section 14(1)(c).

### **Certain vessels to be licensed**

**65.** (1) The owner or the master of—

- (a) a South African owned ship engaged in coastwise traffic; or
- (b) a prescribed ship, must be in possession of a coastal ship licence issued to the owner or master in terms of this Act by the Authority.

(2) An application for a coastal ship licence in terms of subsection (1), must be made in the prescribed form and be accompanied by the prescribed documents and fees.

### **Renewal of coastal ship licence**



**66.** (1) The owner or master of any vessel which in terms of section 65 is required to be licensed, and in respect of which a coastal ship licence has been issued, must before or at the expiration of the period for which the coastal ship licence was issued or renewed, apply to the Authority for a renewal thereof.

(2) The provisions of section 65 (2) must apply, with the necessary changes required by the context, to any application for the renewal of a coastal ship licence.

### **Issue and period of validity of coastal ship licence**

**67.** (1) The Authority shall issue a coastal ship licence in the prescribed form and subject to such conditions as may be prescribed.

(2) A coastal ship licence issued under this Part shall be valid for a minimum period of 10 years calculated from the date of issue unless such coastal ship licence is cancelled in terms of section 68.

### **Cancellation of coastal ship licence**

**68.** (1) If the Authority is satisfied that a coastal ship licence issued under this Act was obtained fraudulently or on wrong information the Authority may cancel the coastal ship licence.

(2) If by reason of the contents of a report by a surveyor, or for any other reason, the Authority is satisfied that—

- (a) material alterations which affect the seaworthiness of a coastal ship licence vessel which has been licensed under this Act have taken place since the coastal ship licence was issued;
- (b) the lifesaving appliances have not been maintained on such coastal ship licence vessel in an effective condition; or
- (c) the master of such a coastal ship licence vessel is not a fit and proper person to operate the coastal ship licence vessel,

the Authority may —

- (i) cause the coastal ship licence vessel to be detained;
- (ii) direct that the deficiency or other cause for the detention of the coastal ship licence vessel be remedied; and
- (iii) suspend the coastal ship licence.

(3) If the Authority is satisfied that —

- (a) the deficiency or other cause for the detention of the coastal ship licence vessel is remedied, the Authority may re-instate the coastal ship licence; or
- (b) after due notice, the directions of the Authority are not complied with, the coastal ship licence must be cancelled.

### **Unlicensed vessels not to be used**

**69.** No person shall use a coastal ship licence vessel which in terms of section 65 is required to be licensed, for any purpose whatsoever, unless the owner or master of the coastal ship licence vessel holds a valid and current coastal ship licence issued in respect thereof.

## **Measures to support South African ship ownership**

**70.** The Minister, in consultation with the Ministers responsible for trade and industry, Mineral Resources and National Treasury, must identify existing programmes and interventions to be utilised and extended or recommend the development of new programmes to support and promote South African ship ownership.

### ***Part 4***

#### ***Notification of Intention to Build Vessel***

##### **Notification of intention to build vessel**

**71.** (1) A person who, after commencement of this Act, intends to build a vessel which, when completed must be registered or licensed in the Republic, must, before beginning to build the vessel, furnish to the Authority such written particulars of the vessel as may be prescribed.

(2) The person on whose account a vessel is built, is for the purposes of subsection (1), considered to have built that vessel.

## **CHAPTER 4**

## **SEAFARERS**

### ***Part 1***

## ***Application***

### **Application of Chapter 4**

72. (1) This Chapter applies to every South African ship wherever it may be and the owner who for the purposes of this section is deemed an employer of and seafarers employed on such ship.

(2) Part 4 applies to every ship referred to in subsection (1) and every ship registered under the law of a country other than South Africa, to which the STCW Convention applies which calls at any port in South Africa.

(3) If there is a collective agreement in place between employers and seafarers of fishing vessels which provides for wages and other conditions of employment agreed to under a registered bargaining council or statutory council in terms of the Labour Relations Act, then the terms of that agreement apply to the employment of the seafarer concerned.

(4) The provisions of this Chapter that are not provided for in the collective agreement referred to in subsection (3) continue to apply to the employers and seafarers who are party to that collective agreement.

## ***Part 2***

### ***Application of Labour Laws to Seafarers***

#### **Application of Basic Conditions of Employment Act**

**73.** (1) The provisions of the Basic Conditions of Employment Act, except section 41 of that Act, do not apply to this Chapter except to the extent which may be provided for in a sectoral determination under that Act.

(2) Any sectoral determination under the Basic Conditions of Employment Act, which is binding in respect of seafarers employed on board any—

- (a) South African ship; or
- (b) ship which is not registered in the Republic and which is wholly engaged in plying between ports in the Republic, while that ship is in the Republic, must be binding in respect of such seafarers while that ship is outside the Republic.

(3) The Minister may prescribe the minimum conditions of employment to apply to a —

- (a) coastal ship licence vessel;
- (b) South African owned ship; and
- (c) South African registered ship, including special conditions of employment that relate to female seafarers, the normal hours of work and the hours of rest.

### **Application of Labour Relations Act**

**74.** (1) (a) Save to the extent provided in this section, nothing in this Act must affect the application of the provisions of the Labour Relations Act to seafarers in respect of their employment on any South African ship irrespective of—

- (i) where the agreement was concluded;
- (ii) any contractual terms to the contrary;
- (iii) where the employer resides; or
- (iv) where the work is performed.

(b) The Commission for Conciliation, Mediation and Arbitration and the Labour Court must have jurisdiction, as provided in the Labour Relations Act, in respect of seafarers employed on South African ships.

(2) To the extent to which any provision of this Act which, but for the provisions of this section, would apply to a seafarer is inconsistent with any agreement or award under the Labour Relations Act, which is binding in respect of those seafarers, the provisions of this Act referred to must not apply in respect of those seafarers.

(3) Any agreement or award under the Labour Relations Act, which is binding in respect of any seafarers employed on board any—

(a) South African ship; or

(b) ship which is not registered in the Republic and which is wholly engaged in plying between ports in the Republic, while that ship is in the Republic, must be binding in respect of such seafarers while that ship is outside the Republic.

(4) Notwithstanding any provision to the contrary in the Labour Relations Act, the following provisions must apply to a seafarer employed on a South African ship, as well as to a seafarer employed on a ship which is not registered in the Republic, but which is wholly engaged in plying between ports in the Republic while in the Republic:

(a) A seafarer must only be permitted to participate in or support any form of strike while on board a ship if the ship is safely moored at a safe berth and there is no risk of the strike endangering the ship or the lives of the crew on board that ship;

- (b) any seafarer who supports or participates in a strike in the manner as permitted in this subsection shall not be guilty of any offence in terms of this Act merely by reason of the fact that he or she has taken part in such strike;
- (c) watchkeeping personnel indicated in the prescribed safe manning document are considered to render an essential service and are precluded from participating in a strike;
- (d) a fixed term contract, regardless of the duration thereof, must be permissible in respect of a seafarer employed in terms of this Chapter; and
- (e) the provisions of section 186(1) (b) of the Labour Relations Act must not be applicable to seafarers employed in terms of this Chapter.

### **Application of Occupational Health and Safety Act**

**75.** (1) The Minister must prescribe minimum occupational health and safety standards to apply on a ship regulated in terms of this Act.

(2) The Occupational Health and Safety Act does not apply to any owner, master or seafarer engaged or employed on a ship or to any ship regulated in terms of this Act, other than as may be prescribed.

### **Application of Compensation for Occupational Injuries and Diseases Act**

**76.** (1) No provision in this Chapter relating to the compensation of a seafarer for an injury sustained within the ambit of this Chapter must deprive that seafarer of any right to compensation to which he or she may be entitled in terms of Part 18 of this Chapter or the Compensation for Occupational Injuries and Diseases Act—

- (a) for temporary partial disablement or temporary total disablement in respect of any period for which he or she has not been paid wages in terms of this section;
- (b) for permanent disablement; or
- (c) serious disfigurement.

(2) A seafarer is not entitled to receive any compensation under Part 18 of this Chapter or the Compensation for Occupational Injuries and Diseases Act, for temporary partial disablement or temporary total disablement in respect of any period for which he or she has been paid wages in terms of this section; but his



or her employer who has paid such wages to him or her for that period must, if he or she has paid all assessments for the payment of which he or she is liable under that Act, be entitled to recover under Part 18 of this Chapter or that Act, an amount equal to the compensation that would, but for the provisions of this section, have been payable to the seafarer under part 18 of this Chapter or that Act in respect of that period.

### ***Part 3***

#### ***Cadets***

#### **Cadets**

77. (1) No person must be engaged as a cadet on board any South African ship unless he or she—
- (a) is a South African citizen;
  - (b) has attained the age of 16 years;
  - (c) has passed the prescribed colour and form vision tests;
  - (d) has been certified physically fit for the sea service by a medical practitioner approved by the Authority; and
  - (e) has obtained an undertaking from the master of the ship to train him or her or cause him or her to be trained in navigation and as a seafarer or in engineering and in the duties of a ship's officer.

(2) No crew agreement may be signed by the owner or master of any South African ship for the engagement of a person as a cadet unless that person complies with the provisions of subsection (1).

(3) The Minister may prescribe training and certification requirements pertaining to cadets.

### **Prohibition on number of cadets to be engaged**

78. No person must engage or permit cadets to serve on board a South African ship in excess of the prescribed number.

## ***Part 4***

### ***Manning, training and certification***

#### **Manning of ships**

79. (1) Subject to the provisions of this Part, the owner and the master of every ship to which this Chapter applies, must ensure that the ship has a sufficient number of seafarers on board to ensure that she is operated safely, efficiently and with due regard to security as prescribed and that seafarers are duly certificated as prescribed or considered to be so certificated and are employed in their appropriate capacities.

(2) An unmanned ship defined as prescribed, must not be required to comply with the provisions of this Act relating to seafarers.

(3) The owner and the master of every coasting ship engaged in coastal traffic contemplated in Part 3 of Chapter 3 must ensure that, in addition to the requirements in subsection (1), the seafarers employed on board that ship are South

African nationals as defined in paragraph (a) of the definition of "South African national" as contemplated in section 1.

### **Prohibition of going to sea undermanned**

**80.** No owner or master of a ship to which this Chapter applies must cause that ship to go to sea or attempt to go to sea without carrying the number of officers and other persons as required under section 79(1) or a notice issued in terms of section 140.

### **Unqualified seafarers going to sea**

**81.** (1) No person must go to sea as a certificated officer or rating of any description unless he or she is the holder of a certificate issued in terms of section 82.

(2) No owner or master of a ship must employ any person as an officer or rating unless he or she has satisfied himself that the person is the holder of a certificate issued in terms of section 82.

### **Certificate of competency and certificate of proficiency**

**82.** (1) No person must go to sea as a—

(a) master of a ship to which this Part applies, unless he or she is the holder of a valid certificate of competency;

- (b) officer of a ship to which this Part applies, unless he or she is the holder of a valid certificate of competency; or
- (c) rating of a ship to which this Part applies, unless he or she is the holder of a valid certificate of proficiency, issued in terms of this Act.

(2) A certificate issued in terms of subsection (1) (a) or (b) must be of a grade appropriate to the ship in which the master or officer is employed and to his or her station in the ship, or of a higher grade.

(3) Whenever the question arises whether any certificate is of a higher grade than any other certificate, that question must be determined by the Authority, in accordance with the regulations relative thereto, if any.

### **Production of certificate or other document**

**83.** (1) Any person employed or engaged to serve in any ship to which this Part applies who holds a certificate or other document which is evidence that he or she is qualified for the purposes of section 82 must, on demand, produce the certificate or other document to the Authority, any surveyor of ships or proper officer and, if he or she is not himself or herself the master, to the master of the ship.

(2) The master of a ship to which this Part applies must produce to the functionary from whom he or she requests a clearance for the ship, the certificates of competency and proficiency which the master, officers and other persons on board the ship are required to hold under section 82.

### **Authority may vary requirements as to certificates**

**84.** Notwithstanding the provisions of section 79, the Authority may, in its discretion and for such periods and under such conditions as it may specify if it is satisfied that no suitable holder of a certificate of the required grade and granted under this Act or referred to in section 85 is available, permit a South African ship to go to sea from any port whatsoever or a ship other than a South African ship to go to sea from a port in the Republic without the prescribed number of certificated officers or other persons, and while any such permission remains in force any person who acts in terms thereof must not, if the conditions under which it was granted are complied with, be considered to have contravened the provisions of section 79.

### **Certificates granted by competent foreign authorities**

**85.** (1) A master or a ship's officer who holds a valid certificate of competency granted to him or her by a competent authority in another country must not be engaged as such on a South African ship, except as authorised under subsection (2) or as prescribed and while any such authorisation remains in force, and if the conditions under which it was granted are complied with, the person so engaged must be considered duly certificated under this Act in respect of such ship, provided his or her certificate is of a grade appropriate to his or her station in such ship, or of a higher grade.

(2) If the Authority is satisfied that a certificate referred to in subsection (1) is of corresponding value to any certificate of competency granted

under this Act, the Authority may, with or without conditions, permit the engagement on a South African ship of a person who is the holder of such a certificate, and who has knowledge of a language sufficient to enable him or her to communicate effectively in the performance of his or her duties, or to communicate bridge to bridge or bridge to shore if such communication is part of his or her duties.

(3) If an agreement has been entered into between the Authority and one or more foreign authorities recognising that a certificate referred to in subsection (1), which has been issued by such foreign authority, is of corresponding value to any certificate of competency granted under this Act, the Authority must, with or without conditions, permit the engagement on a South African Ship of a person who is the holder of such a certificate, and who possesses knowledge of a language sufficient to enable him or her to communicate effectively in the performance of his or her duties, or to communicate from bride to bridge or bridge to shore if such communication is part of his or her duties.

(4) Subsections (1), (2) and (3) do not apply to any coastal ship licence vessel engaged in coastal traffic.

### **Cancellation and suspension of certificates**

**86.** (1) Notwithstanding anything contained in this Act, the Authority may cancel or suspend a certificate of competency, service or qualification, after following the prescribed due process if —

- (a) the holder has been convicted of any offence and sentenced to imprisonment without the option of a fine, or has been convicted of any offence under this Act; or

- (b) any court in any country, the Commission for Conciliation, Mediation and Arbitration or a bargaining council in the Republic has found that the holder breached a provision of the Act or intentionally or negligently failed to perform his or her duties as a Master or seafarer; or
- (c) the holder obtained the certificate on erroneous information.

(2) An owner of a South African ship who is aware of a conviction, finding or circumstance contemplated in subsection (1), is required to report such to the Authority together with any available evidence.

### ***Part 5***

#### ***Employment of Seafarers***

##### **Medical examination of crew prior to engagement**

**87.** (1) The master of a South African ship must not employ a seafarer unless a medical certificate referred to in subsection (2) is submitted by or on behalf of a seafarer to the master.

- (2) A medical certificate referred to in subsection (1) must —
- (a) be signed by a medical practitioner approved by the Authority;
  - (b) indicate that the seafarer has been examined in the prescribed manner by that medical examiner and found to comply with the prescribed medical standards; and
  - (c) be valid for the prescribed period.

(3) If required to do so by the Authority, the master must produce the medical certificate referred to in subsection (1), and if the master fails to do so, the Authority may refuse to permit the employment of the seafarer concerned.

(4) The Authority may on the ground of urgency authorise the employment of a seafarer for a single voyage or for the prescribed period, notwithstanding the fact that a medical certificate has not been submitted to the master as required by subsection (1).

(5) Any medical examination for the purpose of this section must be at the expense of the owner of the ship concerned and any subsequent medical examination taken by the seafarer due to the fact that he or she did not obtain the medical certificate on the initial medical examination, must be at the expense of the seafarer.

(6) The provisions of this section must apply, with the changes required by the context, to the engagement of a master.

### **Role of Authority**

- 88.** The Authority may refuse to allow the employment of a seafarer who—
- (a) has not completed any period of prescribed pre-sea training; or
  - (b) does not possess knowledge of a language sufficient to enable him or her to understand fully any necessary orders given to him or her in that language in the performance of his or her duties, or to communicate ship to shore or bridge to shore if such communication is part of his or her duties.



## Crew agreement

89. (1) No person must be employed as a seafarer on any South African ship unless he or she enters into a crew agreement relating to that South African ship as contemplated in this Part.

(2) The master of every South African ship must conclude a crew agreement with every seafarer whom he or she employs to serve on that ship, on behalf of the employer provided that the proper office may refuse to allow the engagement of the seafarer.

(3) The owner or master of a South African ship must not take the ship to sea or cause or permit another person to take that ship to sea, if a crew agreement is not in force in relation to every seafarer on board.

(4) The crew agreement may be a separate contract concluded with each seafarer individually or a collective crew agreement concluded with all seafarers jointly, the crew agreement must contain provisions for health and social security protection benefits.

(5) The amount of seafarer entitlement to annual leave or where applicable, the formula used for calculating the annual leave and the remuneration payable during that period of leave.

(6) The agreement should include wages which the seafarer is to receive, and which must include particulars of the basic wages to be paid, payment to be made for overtime, bonuses, allowances paid, paid leave or any other

additional payments, or in the case of fishing vessels the basic daily rate and commission scales.

(7) If the master of a South African ship engages a seafarer and there is a valid collective agreement in existence in respect of that ship, the master must, notwithstanding that collective agreement, enter into a separate agreement with that seafarer.

(8) The crew agreement must be in the prescribed form and comply with the prescribed requirements.

(9) The owner or master of every South African ship must provide each seafarer with a copy of the applicable crew agreement as soon as practicable after the conclusion thereof but no later than when that seafarer joins the vessel.

(10) No person must—

- (a) fraudulently alter a crew agreement;
- (b) make a false entry in a crew agreement; or
- (c) give a false copy of a crew agreement to another person.

### **Certificate as to crew agreement relating to foreign-going South African ship**

**90.** The master of a foreign-going South African ship must issue a certificate indicating that—

- (a) a crew agreement has been duly concluded with the crew of that ship; or
- (b) in the case of a collective crew agreement, he or she has complied with the prescribed provisions.

### **Production of certificate as to crew agreement relating to foreign-going South African ship to customs officer**

**91.** The master of a foreign-going South African ship must before proceeding to sea from a port in the Republic produce to the customs officer, if that officer should so require, the certificate referred to in section 90, and any such ship may be detained until the certificate is so produced.

### **Surrender of certificate as to crew agreement**

**92.** The owner or master of a South African ship, including a coasting ship and fishing vessel must hand over a crew agreement that has expired in accordance with the prescribed requirements.

### **Crew list and changes in complement of seafarers**

**93.** (1) The owner or master of a South African ship must, at all times, keep a full and accurate crew list specifying details of, and such details of changes in the complement of the ship's seafarers.

(2) The crew list must contain the full names, ages, gender, and places of birth of all the crew, including the master their ratings on board, their last ships or other employments and the dated and places of their joining the ship.

(2) The master must provide the Authority with a copy of the crew list prior to departure in the manner determined by the Authority.

(3) If a South African ship is lost or abandoned, the master or owner thereof must, as soon as possible, deliver or transmit to the Authority the list of the crew, duly made out to the time of the loss or abandonment.

### **Prohibition of employment of children**

**94.** The owner or master of a South African ship engaged in coastwise traffic must not employ, permit to be employed or retain the employment of any child under the age of 18 years in any capacity on board the ship.

### **Work of young person**

**95.** (1) The owner or master of a South African ship must not permit a young person to perform any work—

- (a) that is inappropriate for a person of that age;
- (b) that places the young person's well-being, education, physical or mental health, or spiritual, moral or social development at risk; and
- (c) at night unless—
  - (i) such work is on a school-ship or training-ship, if the work is of a kind approved by the Authority and is carried on subject to supervision by officers approved or appointed by it;
  - (ii) the effective training of the young person concerned would be impaired if he or she did not work at night; or
  - (iii) the specific nature of the training requires that the young person must perform duties at night.

(2) The guardian of a young person must not cause or permit the young person to work in contravention of the terms of this section.

(3) The Minister may prescribe any matter pertaining to the work of young persons.

### ***Part 6***

### ***Wages***

#### **Application of Part 6**

**96.** This Part does not apply to any owner or master of and a seafarer employed on a South African ship if that owner, master and seafarer has concluded an agreement in terms of which that seafarer must be wholly compensated by a share in the profits earned by the employment of that ship.

## Payment of wages

97. (1) An owner of a South African ship must pay a seafarer employed by him or her the wages agreed on—

- (a) in money in South African currency; or
- (b) in money in a foreign currency at the prescribed rate of exchange; and
- (c) in cash to the seafarer, by direct deposit or electronic fund transfer into a bank account designated by the seafarer or by allotment note.

(2) The owner or master of a South African ship must not pay or agree to pay in advance to or on account of any seafarer in respect of wages an amount in excess of one month's wages.

(3) Any agreement for the payment in advance of wages to or on account of any seafarer in contravention of subsection (2) is void, and any money paid pursuant to any such agreement must not be deducted from the seafarer's wages, and no person must have any right of action or setoff against the seafarer or his or her assignee in respect of any money so paid.

(4) A seafarer is entitled to claim wages for any period during which the seafarer has not performed his or her duties if he or she was incapable of doing so by reason of illness or injury, unless the contrary is proved.

(5) The circumstances under which a seafarer of a South African ship is not entitled to wages must be prescribed.

**Allotment notes**

98. (1) Subject to the provisions of this section a seafarer engaged on a South African ship may before the commencement of a voyage make stipulations for the payment during his or her absence by means of an allotment note to a near relative or a savings bank or a body engaged in the promotion of the welfare of seafarers and registered under the advisory board on Social Development Act 2001 act 3 of 2001 of any portion of the wages which he or she may earn during the voyage.

(2) Allotment notes may provide for any portion or all of a seafarer wages to any person designated by him or her to be a recipient of such wages or part thereof..

(3) The master, owner or authorized agent of the owner shall bear the costs incurred in effecting payment of the allotment of all or part of a seafarer's wages.

(2) A person to whom any part of a seafarer's wages has been allotted by an allotment note issued in terms of subsection (1) must have the right to recover that part in his or her own name and for that purpose must have the same remedies as the seafarer has for the recovery of his or her wages.

(3) In any proceedings brought by a person named in such an allotment note as the person to whom any part of a seafarer's wages has been allotted, it must be construed, unless the contrary is shown, that the seafarer is entitled to the wages specified in the note and that the allotment has not been varied or cancelled.

**Rights to wages and provisions and when such are to commence**

**99.** The rights of a seafarer of a South African ship to wages and provisions must begin either at the time at which he or she commences work or at the time specified in the crew agreement, for his or her commencement of work or presence on board, whichever happens first.



## Payment advice

**100.** (1) The master or the owner of a South African ship must provide each seafarer employed on that ship with a payment advice which must contain a full and true account of the seafarer's wages in a form approved by the Authority.

(2) The frequency of providing a payment advice must be at least every 30 days or as may be agreed in the crew agreement, which agreement must require a payment advice at least every 30 days.

(3) The contents of a payment advice must be prescribed.

## Deductions and reduction in wages

**101.** (1) A deduction from the wages of a seafarer employed on a South African ship is only permitted if it is—

- (a) included in a payment advice referred to in section 100; or
- (b) deducted in terms of this section.

(2) If a limit on the amount of deductions which may be made has been prescribed, that amount may not be exceeded during the period provided for.

(3) The master of the ship must keep a record of deductions and reductions as prescribed.

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## **Payment of wages upon termination of employment of seafarer and settlement of wages**

**102.** The time of payment and the amount of wages in the case of a seafarer whose employment on a foreign-going South African ship is completed or terminated or time of payment of wages of a seafarer who is discharged from a coasting ship or a fishing vessel and the process for the settlement of wages must be concluded within 30 days or as agreed in the crew agreement.

### **Agreement to forfeit lien for wages is void**

**103.** A seafarer of a South African ship must not by agreement forfeit his or her lien on the ship for his or her wages, or be deprived of any remedy for the recovery of wages to which in the absence of the agreement he or she would be entitled, or abandon his or her right to wages in the case of the loss of the ship and every stipulation in any crew agreement inconsistent with the provisions of this section is void.

### **Restrictions on assignment of wages**

**104.** (1) The following provisions apply to wages due or to become due to a seafarer of a South African ship:

- (a) It is not liable to attachment or subjected to any form of execution under a judgment or order of any court;

- (b) an assignment or hypothecation thereof does not bind the person making the same;
- (c) a power of attorney or authority for the receipt thereof is not irrevocable; and
- (d) a payment of wages to a seafarer must be valid in law, notwithstanding any previous assignment or hypothecation of those wages, or any attachment of or execution upon those wages.

(2) Nothing in this section affects the provisions of this Act regarding allotment notes or those of section 415 of this Act or those of sections 99 and 100 of the Income Tax Act, 1962 (Act No. 58 of 1962).

### **Wages not to depend on freight**

**105.** The right to wages does not depend on the earning of freight, and every seafarer of a South African ship who would be entitled to demand and recover wages if the ship in which he or she has served had earned freight is, subject to all other laws and conditions applicable, entitled to recover the wages notwithstanding that freight has not been earned.

### **Wages when employment terminated before date of termination in crew agreement**

**106.** (1) If in the prescribed circumstances, the employment of a seafarer of a South African ship is terminated before the date contemplated in the crew agreement, the seafarer is entitled to receive wages at the rate provided in the crew

agreement for the period from the date his or her services are so terminated until he or she is returned to and arrives at a proper return port.

(2) The minimum and maximum period for which the seafarer is entitled to receive wages and the circumstances in which he or she is not entitled to receive the maximum or minimum wages, must be prescribed.

### **Compensation in event of loss of seafarer's property**

**107.** A seafarer who suffers a loss of any or all of his or her property on board the ship on which he or she is employed by reason of the wreck, loss, abandonment, flooding, stranding, fire on board or collision of that ship, is entitled, as prescribed, to compensation from the owner of the ship for such loss.

### **Compensation to a seafarer improperly discharged**

**108.** If a seafarer of a South African ship is discharged otherwise than in accordance with the terms of the crew agreement—

- (a) before the commencement of the voyage; or
- (b) before one month's wages are earned, without fault on his or her part justifying that discharge and without his or her consent,

the seafarer is, without prejudice to his or her rights under the Labour Relations Act, entitled to receive from the owner or master, in addition to any wages which he or she may have earned, compensation not exceeding one month's wages for any damage caused to him or her by the discharge, and may recover that compensation as if it were wages duly earned.

**Rights, remedies and liens of master**

**109.** (1) The master of a South African ship has the same rights, liens and remedies for the recovery of his or her wages as a seafarer has under this Part or by any law or custom.

(2) The master of a South African ship has the same rights, liens and remedies for the recovery of disbursements or liabilities properly made or incurred by him or her on account of the ship as a master has for the recovery of his or her wages.

(3) If in any proceedings in any court hearing the claim of a master in respect of wages or of disbursements or liabilities properly made or incurred on account of the ship any right of setoff or counterclaim is set up, the court may enter into and adjudicate upon all questions and settle all accounts then arising or outstanding and may direct payment of any balance found to be due.

***Part 7******Other Conditions of Service*****Entitlement to leave**

**110.** Every seafarer employed on a South African ship is entitled to leave accrued at the rate of at least 2.5 days per month of employment except in the case of a seafarer employed on board a fishing vessel.

A seafarer employed on board a fishing vessel is entitled to leave as stipulated in an agreement concluded with a registered bargaining or statutory council.

Leave commences when the seafarer arrives at his or her proper return port.

In this section month means a period of 30 days , and includes Saturdays, Sundays and public holiday, as defined in section 1 of the Public Holidays Act , 1994 act no.

86 of 1994

**Part 8*****Repatriation and Discharge of and Desertion by Seafarers*****Repatriation of seafarers whose service terminates elsewhere than at proper return port**

**111.** (1) For the purposes of this section "repatriation" means to make provision for the maintenance of the seafarer according to his or her rank or rating, and for the return of that seafarer to a proper return port.

(2) A seafarer employed on a South African ship must be repatriated at the cost of the owner of that ship in the following circumstances:

- (a) If the seafarer's crew agreement expires while the ship is not in the Republic;
- (b) if the seafarer's crew agreement is terminated by the owner or the seafarer and the termination is a valid termination; or
- (c) if the seafarer is no longer able to carry out his or her duties under their crew agreement or circumstances are present that prevents the seafarer from carrying out his or her duties.

(3) An owner of a South African ship must not—

- (a) require any seafarer to contribute in advance to the cost of repatriation at the commencement of the crew agreement; or
- (b) deduct the cost of repatriation from the seafarer's wages or other entitlements, unless the seafarer is found to be in serious contravention of his or her crew agreement.

## **Discharge of seafarer on change of ownership**

**112.** (1) If a South African ship is transferred or disposed of while she is at or on a voyage to any port outside the Republic every seafarer employed on that ship must be discharged at that port and repatriated as prescribed, unless he or she consents in writing to complete the voyage in the transferred ship if continued.

(2) Every seafarer discharged in terms of subsection (1) must, if the voyage for which he or she was engaged is not continued, be entitled to the wages to which he or she would have been entitled if his or her service had been wrongfully terminated by the owner before the expiration of the period for which the seafarer was engaged.

(3) If a seafarer is discharged from a South African ship in terms of subsection 1, the provisions of section 106 shall apply as if the service of the seafarer had remained without his or her consent and before the expiration of the period for which the seafarer was engaged and the provisions of the said section shall notwithstanding subsection 3 thereof be applicable whatever maybe his or her nationality and where ever maybe situated the port where he or she was engaged.

## **Discharge and leaving of seafarers behind**

**113.** (1) The master of a South African ship must not—

- (a) discharge a seafarer before the expiration of the period for which he or she was engaged, unless the seafarer consents to his or her discharge; or
- (b) except in circumstances beyond his or her control, leave a seafarer behind, without the approval of the Authority or proper officer.



(2) The Minister must prescribe the procedure to be followed in the case where a seafarer is missing and is left behind outside the Republic otherwise than on being discharged from the ship.

## **Leaving seafarers behind**

**114.** No person must cause a seafarer to be wrongfully left behind—

- (a) at any place in the Republic, in the case of a ship other than a South African ship; or
- (b) at any place in the case of a South African ship.
- (c) without the authority of the proper officer, who shall certify on the agreement with the crew that he has granted such authority, and also the reason for the seafarer being discharged or the seafarer or apprentice-officer being left behind.

## **Wages and other property of seafarer left behind**

**115.** If a seafarer belonging to a South African ship is left behind, the master of the ship must enter in the official logbook a statement of the amount due to the seafarer in respect of wages at the time when he or she was left behind and of all property left on board by him or her, and must take such property into his or her charge and deliver such statement and property to the Authority as soon as practicable.

## ***Part 9***

### ***Deceased Seafarers***

#### **Procedures following the death of seafarer or if seafarer is lost**

**116.** (1) If a seafarer employed on a South African ship dies whilst on the ship, the master must in the prescribed manner—

- (a) record the death and other particulars as contemplated in section 115;
- (b) dispose of the body;
- (c) report the death to the Authority; and
- (d) inform the next-of-kin of the seafarer of his or her death.

(2) If a seafarer employed on a South African ship dies and leaves property on board the ship or if the seafarer is lost with the ship, property belonging to the seafarer must be dealt with in the prescribed manner.

(3) The Minister must prescribe the circumstances in which a ship will be considered as lost and the documents that would constitute sufficient proof of the seafarers on board the ship when lost for purposes of any proceedings for the recovery of wages in terms of subsection (2).

(4) For the purposes of Part 9 "property" include money, wages due or balance of wages due and any other property of the seafarer.

### **Property of deceased seafarer may be recovered as wages**

**117.** Section 106 applies, with the necessary changes that the context may require, in respect of the property of a deceased seafarer.

**Part 10*****Distressed Seafarers, Repatriation and Relief Costs*****Relief and maintenance of distressed seafarers**

**118.** (1) The Authority must on application made by a distressed seafarer, provide for the return of that seafarer to a proper return port as prescribed.

(2) A distressed seafarer shall not have any right to be maintained or sent to a proper return port except to the extent and on the conditions provided for in the regulations.

(3) All repatriation expenses, other than excepted expenses, incurred by or on behalf of the State in accordance with the provisions of this Act constitute a debt due to the State, for which the owner of the ship to which the seafarer in respect of whom the expenses were incurred belonged at the time of his or her discharge or other event which resulted in the seafarer becoming a distressed seafarer, must be liable.

(4) The owner of the ship is not entitled to recover from the seafarer any amount paid by the owner to the State in settlement or part settlement of such debt in terms of subsection (3).

(5) All excepted expenses incurred by or on behalf of the State in respect of the distressed seafarer in accordance with the provisions of this Act constitute a debt due to the State for which the distressed seafarer and the owner of the ship to which that seafarer belonged at the time of his or her discharge or other

event which resulted in him or her becoming a distressed seafarer are jointly and severally liable.

(6) The owner is entitled to recover from the seafarer any amount paid by the owner to the State in settlement or part settlement of such debt, and may apply to the satisfaction of the owner's claim so much as may be necessary of any wages due to the seafarer.

(7) All excepted expenses incurred in accordance with the provisions of this Act in respect of any distressed seafarer by the owner of the ship to which he or she belonged at the time of his or her discharge or other event which resulted in him or her becoming a distressed seafarer must constitute a debt due to the owner for which the seafarer is liable.

(8) The owner may apply to the satisfaction of the owner's claim so much as may be necessary of any wages due to the seafarer.

(9) The owner is not entitled to recover from the seafarer any repatriation expenses other than excepted expenses.

(10) In any proceedings for the recovery of expenses which in terms of subsection (3) or (5) are a debt due to the State, the production of an account of the expenses and proof of payment by or on behalf of or under the direction of the Authority is, on the face of it, evidence that the expenses were incurred or repaid in accordance with the provisions of this Act by or on behalf of the State.

**Part 11****Provisions, Accommodation and Health****Division 1****Provisions****Free provisions**

**119.** The owner of a prescribed ship must provide or ensure the provision of free provisions to the seafarers employed on that ship for the period of employment.

**Provisions adequate for voyage**

**120.** The master of a prescribed ship must not take the ship to sea or cause or permit that ship to be taken to sea, unless the ship is carrying:

- (a) Drinking water of suitable quality and quantity;
- (b) food of suitable quality, quantity, nutritive value and variety; and
- (c) provisions other than referred to in paragraph (a) or (b) that may be prescribed, having regard to the nature and duration of the voyage and the number, and cultural and religious backgrounds, of the seafarers employed on the ship.

**Adequate food catering facilities to be provided**

**121.** The owner of a prescribed ship must not take the ship to sea or cause or permit that ship to be taken to sea, unless that ship has catering facilities that are arranged and equipped so as to enable proper meals to be served to the seafarers employed on the ship.

**Compensation if short or bad provisions provided**

**122.** (1) Any seafarer employed on a South African ship is entitled to compensation for the reduction or bad quality of provisions, if any of the provisions which the master of a South African ship is required to provide is reduced, or any of those provisions are bad in quality, for an amount which the court or the Authority considers reasonable, having regard to all the circumstances.

(2) The compensation contemplated in terms of subsection (1) may be recovered in money.

***Division 2******Accommodation*****Crew accommodation**

**123.** (1) The owner of a South African ship must provide the prescribed crew accommodation to the satisfaction of the Authority.

(2) The owner of a South African ship must not take that ship or cause or permit that ship to be taken to sea, if that ship does not comply with the accommodation prescribed in terms of subsection (1).

### ***Division 3***

#### ***Health***

#### **Medicines to be provided and kept on board certain ships**

**124.** The owner and master of a South African ship of any prescribed class must ensure that there is on board that ship an adequate supply, according to the prescribed scales, of antiscorbutic, medicines and appliances for the treatment and prevention of diseases and accidents likely to occur at sea and of the prescribed first aid equipment.

#### **Owner liable for medical attention**

**125.** (1) This section applies if a master or seafarer of a South African ship who is not at his or her proper return port:

- (a) Is injured or contracts a disease;
- (b) suffers from any illness; or
- (c) requires essential dental care.

(2) Expenses for the following are to be paid by the owner of the ship—



- (a) providing the available necessary surgical and medical advice and attendance, and medicine, until the master or seafarer is cured, dies or arrives at his or her proper return port;
- (b) the maintenance of the master or seafarer until he or she is cured, dies or arrives at his or her proper return port;
- (c) the conveyance of the seafarer to his or her proper return port; and
- (d) if the seafarer or master dies before arriving at his or her proper return port, his or her burial or, if the master's or seafarer's body is conveyed to that port at the request of a member of his or her family, the conveyance of the master's or seafarer's body to that port.

(3) Expenses paid by the owner of the ship must not be deducted from the wages of the master or the seafarer concerned.

(4) The owner of the ship shall not be liable in respect of:

- (a) Any injury sustained otherwise than in the service of the ship;
- (b) injury, sickness or death due to the wilful misconduct of the sick, injured or deceased seafarer; or
- (c) sickness or infirmity intentionally concealed when the crew agreement is concluded.

#### **Owner liable for medical attention where master or seafarer removed from ship**

**126.** (1) This section applies if a master or seafarer of a South African ship —

- (a) Is suffering from a disease or illness or requires essential dental care; and

(b) is temporarily removed from the ship for the purpose of preventing infection or otherwise for the convenience of the ship.

(2) The owner of the ship must pay for the —

(a) removal of the master or seafarer from, and the master's and seafarer's return to, the ship;

(b) available necessary surgical and medical advice and attendance, essential dental care and medicine, while the master or seafarer is away from the ship; and

(c) maintenance of the master or seafarer while he or she is away from the ship.

(3) The payment by the owner of the ship in respect of subsection (2) must not be deducted from the wages of the master or the seafarer concerned.

### **Owner liable for medical attention on board ship**

**127.** Expenses for all medicine, surgical and medical advice and attendance, and essential dental care, given to a master or seafarer of a South African ship whilst on board the ship must be paid by the owner of the ship, without any deduction from the wages of the master or seafarer concerned.

### **Other expenses to be paid by master or seafarer**

**128.** Any reasonable expenses duly incurred by the owner for any master or seafarer in respect of illness or burial of that master or seafarer that are not expenses required to be paid by the owner under sections 125, 126, and 127 may, if

proved to the satisfaction of the Authority, be deducted from the salary or wages of the master or seafarer.

### **Benefit in terms of Compensation for Occupational Injuries and Diseases Act**

**129.** (1) Nothing contained in sections 125, 126, and 127 may deprive a person of any benefit to which he or she may be entitled under the provisions of Part 18 of this Chapter or the Compensation for Occupational Injuries and Diseases Act, if Part 18 is not applicable, and to which sections 125, 126, and 127 does not entitle him or her.

(2) (a) A seafarer is not entitled to receive the same benefit under sections 125, 126, and 127, Part 18 of this Chapter and also under the Compensation for Occupational Injuries and Diseases Act.

(b) An employer who has incurred any expense relating to a seafarer under sections 125, 126, and 127 which the insurer or Compensation Commissioner would, but for the provisions of this section, have been liable to defray, must, if the employer has paid all assessments for the payment of which the employer is liable under that Act, be entitled to recover that expense from the insurer or the Compensation Commissioner.

### **Application of sections 125, 126, and 127**

**130.** In sections 125, 126, and 127, in the case of a ship which is engaged in sea fishing for financial gain or reward, the expression seafarer does not include

any person who is entitled to be remunerated only by a share in the profits or the gross earnings of the working of the boat.

### **Recovery of expenses from owner**

**131.** If any expenses payable by the owner of a South African ship in terms of sections 125, 126, and 127 are paid by any other person, those expenses must be repaid to that person by the owner, and if not repaid, these expenses will constitute a debt recoverable in any competent court from the owner.

### ***Division 4***

### ***Inspection of provisions, water, accommodation, medicines and medical appliances***

### **Powers of inspection of provisions, water, accommodation, medicines and medical appliances and first aid equipment**

**132.** (1) A port health officer, district surgeon or other medical officer of the Department of Health in the Republic, or any medical practitioner outside the Republic, or a surveyor may at the request of the Authority board any South African ship and inspect—

- (a) the provisions and water provided for the use of the seafarers or passengers;
- (b) the crew accommodation and the accommodation for passengers; and
- (c) the medicines, medical appliances and first aid equipment carried,

for the purpose of ascertaining whether it complies with this Act, the prescribed requirements or any other applicable law.

(2) The duties and findings of a person making an inspection contemplated as referred to in subsection (1) and the duties of the master upon receipt of such findings must be prescribed.

(3) A ship which has been inspected may be detained until the master takes the necessary steps to effect the findings of the person who inspected the ship in terms of this section.

(4) The provisions of this section must not in any way derogate from or modify the powers and duties of a port health officer under the National Health Act, 2003 (Act No. 61 of 2003).

### **Inspection of provisions, water and accommodation at sea**

**133.** (1) The master of a South African ship which is at sea must ensure that provisions and water provided for the use of the seafarers and passengers and the crew accommodation and the accommodation for passengers be inspected, at least once in every ten days, to determine whether it is maintained in accordance with the provisions of this Act, the prescribed requirements and any other applicable law.

(2) The person making the inspection must enter a statement of the result of the inspection in the official logbook.

(3) if a seafarer of a South African ship considers -

(a) that the provisions or water for the use of the seafarer are at any time of bad quality or deficient in quantity

(b) that the crew accommodation is unsanitary or is not in accordance with the regulations or that in any other respect the conditions under which the seafarer is leaving on board ship are not of a reasonably good standard, he or she may complain therefore to the proper officer who shall investigate the complaint or cause it to be investigated.

(4) If the proper officer or person making the investigation finds that the living conditions are not of a reasonably good standard, as the case may be, he shall communicate that finding in writing to the master.

(5) Upon the finding being communicated to him or her the master shall forthwith-

(a) if the finding is in terms of paragraph (a) of subsection (2), provide other provisions

of water of good quality or sufficient in quantity, as the case may be, and shall not

permit any provisions or water so found to be of bad quality to be used on board the

ship; or

(b) if the finding is in terms of paragraph (b) of subsection (2), take steps to the satisfaction of the proper officer to provide crew accommodation that is sanitary and

in accordance with the regulations; or

(c) if the finding is in terms of paragraph (c) of subsection (2), take steps to the satisfaction of the proper officer to ensure that the living conditions of the seamen and

apprentice-officers are of a reasonably good standard;

and the ship shall be detained until this has been done.

**Part 12*****Misconduct and Offences by Master and Seafarers*****Conduct by master or seafarer endangering ship or individual**

**134.** (1) No master of or seafarer employed on or belonging to any ship wherever registered must—

- (a) do anything tending to the immediate loss, destruction or serious damage of the ship, or tending to endanger the life of or to cause injury to any person belonging to or on board the ship; or
- (b) refuse or omit to do any lawful act proper and requisite to be done by him or her for preserving the ship from immediate loss, destruction or serious damage, or for preserving any person belonging to or on board the ship from danger to life or from injury.

(2) Subject to the provisions of section 74(4), no seafarer employed on or belonging to a South African ship must—

- (a) report for duty or carry out his or her duties under the influence of alcohol or drugs as contemplated in section 136 and 137;
- (b) wilfully disobey any lawful command or neglect his or her duty;
- (c) be guilty of continued wilful disobedience to lawful commands or continued wilful neglect of duty;
- (d) combine with any of the crew to disobey lawful commands, or to neglect duty, or to impede the navigation of the ship or retard the progress of the voyage;
- (e) assault any person on board;



- (f) prevent, hinder, and retard the loading, unloading or departure of the ship; or
- (g) wilfully damage the ship, misappropriate, make any improper use of, or wilfully damage any of the ship's stores, equipment or cargo.

(3) No seafarer on or before being employed to serve on a South African ship must make a false statement of the name of his or her last ship or alleged last ship, or make a false statement of his or her own name.

### **Breach by seafarer of code of conduct**

**135.** (1) The Minister may prescribe the minimum requirements to be contained in a code of conduct for the purpose of maintaining discipline on board a South African ship and may provide for the hearing on shore by a disciplinary body of a complaint by the master or owner of a South African ship against a seafarer.

(2) The owner or master of a South African ship may submit complaint to a disciplinary body against a seafarer alleging that the seafarer breached a provision of the code of conduct during his or her employment on that ship, whether the seafarer was on board the ship or not and in the Republic or elsewhere.

(3) The proceedings and decisions of a disciplinary body and a seafarer's right to appeal may be prescribed.

### **Impairment of seafarer's ability to carry out duties**

**136.** No seafarer employed on a South African ship or a foreign ship must report for duty or carry out his or her duties on board that ship, if that seafarer is under the influence of alcohol or any other drug, medicinal or otherwise, to such an extent that the seafarer's ability to carry out the duties of such seafarer is impaired.

### **Blood alcohol level and drug present in blood of seafarer**

**137.** (1) No seafarer employed on a South African ship or a foreign ship must report for duty or carry out his or her duties on board that ship, including operating any machinery or equipment, if—

- (a) the blood alcohol level of that seafarer is equal to or exceeds the prescribed blood alcohol level; or
- (b) a drug having a narcotic effect is present in the blood of the seafarer as prescribed in terms of Chapter 10.

(2) No owner or master of a South African ship or a foreign ship must permit or require a seafarer to carry out or continue to carry out his or her duties on board the ship, if the owner or master is aware that the seafarer's ability to carry out those duties is impaired by the influence of alcohol or a drug having a narcotic effect.

(3) The Authority may require a seafarer employed on a South African ship or a foreign ship to undergo a prescribed test for the purpose of determining—

**CONTINUES ON PAGE 386 - PART 4**



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- (a) the blood alcohol level of that seafarer; or
- (b) the presence of a drug having a narcotic effect in the blood of that seafarer.

(4) The Authority may not exercise a power under subsection (3) in relation to a seafarer of a foreign ship unless the ship is—

- (a) in a port in the Republic;
- (b) entering or leaving a port in the Republic;
- (c) in the internal waters of South Africa; or
- (d) in the territorial waters of South Africa, other than in the course of innocent passage.

(5) As soon as practicable after a seafarer has undergone a blood or a drug test contemplated in subsection (3), the person who conducted the test must give the Authority and the seafarer a written statement specifying the test result and the date and time of the test and issue a prescribed certificate.

## **Desertion**

**138.** (1) Subject to the provisions of section 74 (4), no seafarer employed on or belonging to a treaty ship must without reasonable cause—

- (a) at a port in the Republic, in the case of a treaty ship other than a South African ship; or
- (b) at any place whatsoever, in the case of a South African ship, absent himself from his or her ship with the intention of not returning thereto.

(2) Any person who contravenes the provisions of subsection (1) must be guilty of desertion.

(3) If it is shown to the satisfaction of the Authority that a seafarer employed on or belonging to a South African ship has been found guilty of desertion, the Authority may direct that the seafarer's certificates of discharge be withheld as prescribed.

(4) No person must harbour or secrete a seafarer who has contravened or is contravening the provisions of subsection (1).

### **Absence without leave**

**139.** (1) Subject to the provisions of section 74(4), no seafarer employed on or belonging to a treaty ship must without reasonable cause—

(a) at a port in the Republic, in the case of a treaty ship other than a South African ship; or

(b) at any place whatsoever, in the case of a South African ship, fail or refuse to join his or her ship or to proceed to sea therein, or be absent without leave from his or her ship or from his or her duty, either at the commencement or during the progress of a voyage.

(2) Any person who contravenes the provisions of subsection (1), except when if his or her conduct does not amount to desertion, as defined in section 138 is guilty of absence without leave.

(3) If it is shown to the satisfaction of the Authority that a seafarer employed on or belonging to a South African ship has been guilty of absence without leave, the Authority may direct that the seafarer's certificates of discharge be withheld as prescribed.

(4) No person must knowingly harbour or secrete a seafarer who has contravened or is contravening the provisions of subsection (1).

### **Notice to Authority of absence of seafarer at time of sailing**

**140.** If a seafarer employed on or belonging to a treaty ship is not on board that ship at the time of sailing—

(a) from a port in the Republic, in the case of a treaty ship other than a South African ship; or

(b) from any port whatsoever, in the case of a South African ship,

the master of the ship must, as soon as possible, give written notice of the fact in the prescribed form and manner to the Authority.

### **Unseaworthiness of ship as defence to charge of desertion or absence without leave**

**141.** (1) For the purpose of sections 113, 138 and 139, the fact that the ship on which a seafarer is employed or to which he or she belongs is unseaworthy must be considered to be reasonable cause: Provided the seafarer has, before absenting himself or being absent from, or failing or refusing to join, or to proceed to sea in his or her ship, complained to the master or the Authority that the ship is unseaworthy.

(2) If the Authority has reason to believe that the applicable ship is unseaworthy and that ship is at any port in the Republic, the Authority must, whether

or not that ship is registered in the Republic, detain it until he or she is satisfied that it is in a seaworthy state.

(3) Whenever in any proceedings against any seafarer on a charge of desertion or absence without leave the defence referred to in subsection (1) is raised, the court may order the ship to be inspected by a surveyor.

(4) If it is not proved that the ship was unseaworthy, the expenses incurred in connection with any such inspection must be paid to the Authority by the seafarer by whom the said defence has been raised, and upon demand by the Authority the unpaid amount of such expenses must be deducted by the master or owner of the ship out of the wages due or to become due to the said seafarer and paid over to the Authority.

(5) If it is proved that the ship was unseaworthy, the expenses incurred in connection with the inspection must be paid to the Authority by the master or owner of the ship, who must also pay to the seafarer charged, such compensation for the damage suffered by the seafarer by reason of the charge having been made against the seafarer as the court may award.

### **Deserters from foreign ships**

**142.** (1) If the Minister is satisfied that due facilities are or will be given by the Government of any foreign country for apprehending seafarers who desert or are absent without leave from South African ships in that country, the Minister may by notice in the *Gazette* declare that the provisions of subsection (2) must apply to seafarers belonging to ships of that country.



(2) If the provisions of this subsection have in terms of subsection (1) been applied to seafarers belonging to ships of any foreign country, any magistrate may, on application by the master of a ship of that country, if he or she is satisfied from information taken on oath that reasonable grounds exist for suspecting that any seafarer has deserted or is absent without leave from that ship, issue a warrant for the apprehension of that seafarer and for bringing him or her before a judicial officer, and such warrant must be executed in the same manner as a warrant issued under section 43 of the Criminal Procedure Act.

(3) A judicial officer before whom the seafarer is brought in terms of subsection (2) may, on proof that the seafarer has deserted or is absent without leave from that ship, order that the seafarer be conveyed on board that ship or delivered to the master or a ship's officer or the owner of that ship, to be so conveyed, and any such order must be duly executed.

(4) No person must harbour or secrete any person liable to be apprehended under the provisions of this section.

### **Breach of crew agreement or misconduct by seafarer**

**143.** (1) Should a seafarer commit an incident of misconduct or commit a serious breach of his or her crew agreement, the master of a South African ship may—

- (a) require that the seafarer be subjected to an on-board disciplinary process; or
- (b) after a procedurally and substantively fair process, require that the seafarer be immediately or subsequently discharged from the ship and, where applicable in terms of this Act, repatriated.

(2) The master must, in each such case referred to in subsection (1), enter a statement regarding the disciplinary incident into the official logbook and must provide the seafarer concerned with a copy of the entry.

### ***Part 13***

#### ***Documentation***

##### **Official logbooks**

**144.** (1) The master of every South African ship of—

- (a) more than 25 gross tons; or
- (b) 25 gross tons or less who has entered into a crew agreement of the ship must keep an official logbook in the prescribed form and in one of the official languages of the Republic.

(2) The regulations may make provisions in relation to the keeping of logbooks, including but not limited to—

- (a) whether the official logbook may be separate or part of the ordinary ship's logbook;
- (b) the entries that are to be made in a logbook and the circumstances in which those entries are to be made;
- (c) the manner in which the official logbook must be completed;
- (d) the period within which entries are to be made in the logbook; and
- (e) requiring entries in the logbook to be signed.

(3) Every entry in an official logbook that is made in the manner provided by this Act and prescribed must be admissible in evidence.

### **Unlawful entries or alterations in official logbooks**

**145.** (1) No person shall 24 hours after the arrival of a South African ship at its final port of destination of a voyage make any entry in the official logbook of that ship respecting an occurrence prior to the arrival of the ship at that port.

(2) No person must wilfully destroy, mutilate or render illegible an entry in an official log book, wilfully make a false entry in such book, or wilfully fail to make any entry which it is his or her duty to make in such book.

### **Entry of offences in official log**

**146.** If, in or in respect of any South African ship, any offence within the meaning of this Act of desertion or absence without leave or against discipline is committed, or if any act of misconduct is committed for which the offender's agreement imposes a fine and for which it is intended to enforce the fine—

- (a) an entry of the offence or act must be made by the master in the official logbook, and signed by him or her and also by a ship's officer or one of the crew;
- (b) the offender, if still in the ship, must, before the next subsequent arrival of the ship at any port, or, if the ship is at the time in port, before her departure therefrom, either be furnished by the master with a copy of the entry or have the same read over distinctly and audibly to him or her in one of the official languages selected by the offender, and the offender may thereupon make such reply thereto as he or she thinks fit;

- (c) a statement that a copy of the entry has been so furnished or that the entry has been so read over, and of the offender's reply must be entered and signed in manner aforesaid; and
- (d) in any subsequent legal proceedings the entries required by this section must, if practicable, be produced or proved, and in default of that production or proof the court hearing the case may in its discretion refuse to receive evidence of the offence or act of misconduct.

### **Delivery of official logbooks to Authority**

**147.** The owner or master of every ship on board which an official logbook is required to be kept in terms of this Act, must ensure that the official logbook is delivered to the Authority when required.

### **Transmission of official logbooks to Authority**

**148.** (1) If for any reason the official logbook ceases to be required in respect of a South African ship, the master or owner of the ship, must, if the ship is then in the Republic, within one month, and if it is elsewhere, within six months, after the cessation, deliver or transmit to the Authority the official logbook duly completed up to the time of the cessation.

(2) If a ship is lost or abandoned the master or owner thereof must, as soon as possible, deliver or transmit to the Authority the official logbook duly completed up to the time of the loss or abandonment.

### **Documents to be handed to successor on change of master**

**149.** If, at any time before or during the progress of a voyage, the master of a South African ship is removed or superseded, or, for any other reason, is succeeded in the command by another person, the master must deliver to his or her successor the prescribed documents in the masters custody relating to the navigation of the ship and to the crew and his or her successor must immediately on assuming the command of the ship enter in the official logbook a list of such documents.

### **Births and deaths**

**150.** (1) If, on a South African ship—

- (a) a person carried on that ship gives birth to a child, dies or disappears; or
- (b) a seafarer employed on or person belonging to that ship, is injured or contracts an illness that incapacitates him or her from the performance of his or her duty,

the master of that ship must record the occurrence in the official logbook of the ship together with such particulars with respect to the occurrence as are prescribed and the master must, within the prescribed period, provide or submit the particulars of the occurrence in the prescribed form to the Authority.

(2) The Authority must, upon receipt of the prescribed form, submit the form to the registrar or assistant registrar of births and deaths within whose area the port is situated

**Part 14*****Safety Officers, Appointees, Committees and Representatives*****Appointment of safety officers, safety appointees and safety committees and election of safety representatives**

- 151.** (1) For the purposes of safety on board prescribed vessels—
- (a) an employer must appoint a safety officer, a safety appointee and a safety committee in the prescribed manner; and
  - (b) a group of employees may from their number elect a safety representative in the prescribed manner.
- (2) A safety officer, safety appointee and safety committee must, subject to the provisions of section 152, perform such functions as may be prescribed.
- (3) A safety representative may in the manner prescribed by regulation, and subject to the provisions of section 152, on behalf of the employees which he or she represents make representations and submit requests to and consult with any employer, safety officer, safety appointee or safety committee.
- (4) An employer must comply with the requirements prescribed by regulations to enable a safety officer, safety appointee, safety committee and safety representative to perform their duties.
- (5) Nothing in this section must be construed as conferring a right upon any person to inspect any place, article, substance or document which is subject to restrictions on the grounds of national security, unless he or she satisfies

any test or complies with any requirement imposed on account of such restrictions by or on behalf of the State.

### **Exemption from liability**

**152.** A safety officer, a safety appointee, a safety representative, a safety committee or any member thereof, as referred to in section 151, must not incur any civil liability by reason of the fact that he or she failed to exercise or perform any power or duty under this Act.

## ***Part 15***

### ***Security Officers***

#### **Appointment of security officer**

**153.** (1) For the purposes of security on board prescribed vessels, an employer must appoint a ship security officer in the prescribed manner.

(2) A security officer must perform such functions as may be prescribed.

## **Part 16**

### **General Provisions**

#### **Mechanisms for making complaints**

**154.** (1) A master or owner of a South African ship must draw up and keep on board a complaints procedure, not in conflict with the provisions of this Act, and must make such complaints procedure available to all seafarers.

(2) If a seafarer of a South African ship considers that his or her rights in terms of the Maritime Labour Convention have been breached, he or she may lodge a complaint with the master.

(3) Upon receiving a complaint from a seafarer made in terms of subsection (2), the master must—

- (a) record the complaint in the official logbook;
- (b) investigate the complaint or cause it to be investigated;
- (c) attempt to resolve the complaint within 24 hours; and
- (d) record his or her findings and any action taken in the official logbook.

(4) If the situation remains unresolved or if the breach of the seafarer's rights is still considered to exist, the seafarer may lodge a complaint with the Authority, who will adjudicate the complaint.



**Part 17****Seafarers' Identity Documents****Seafarers' Identity Documents**

**155.** (1) Each seafarer employed on board a ship to which this Chapter applies, must hold a valid seafarer's identity document issued in terms of this Part.

(2) For the purposes of this section, "valid" means the seafarer's identity document has not expired or been cancelled by the Authority or been surrendered by the seafarer.

**Application for seafarer's identity document**

**156.** A seafarer must apply to the Authority for a seafarer's identity document and the application must be on the prescribed form and be accompanied by—

- (a) the prescribed documents;
- (b) the number, size and colour of photographs of the applicant as may be prescribed;
- (c) the prescribed fee; and
- (d) any other information that the Authority may require.

### **Issuing of seafarer's identity document by Authority**

**157.** (1) The Authority must, on receipt of an application for a seafarer's identity document, consider the application and if it is satisfied that the applicant qualifies for such identity document issue the applicant with a seafarer's identity document in the prescribed form containing the prescribed particulars.

(2) If the applicant does not comply with the requirements in this Chapter or as may be prescribed, the Authority may refuse to issue the applicant with a seafarer's identity document.

(3) If the Authority refuses to issue a seafarer's identity document it must provide reasons for that refusal.

### **Period of validity of seafarer's identity document**

**158.** The period of validity of a seafarer's identity document is five years and the seafarer must, within the prescribed period, apply to the Authority in the prescribed manner for a renewal of his or her seafarer's identity document.

### **Cancellation of seafarer's identity document**

**159.** (1) The Authority may cancel a seafarer's identity document, if it is satisfied that it was obtained fraudulently or on wrong information or when the seafarer no longer meets the conditions of its issue.

(2) When a seafarer's identity document is cancelled by the Authority, the Authority must notify the owner or master of the ship of the cancellation.

### **Surrender of expired or cancelled seafarer's identity document**

**160.** A seafarer's identity document which has expired or has been cancelled must on demand be surrendered to the Authority by the seafarer.

## ***Part 18***

### ***Financial Security for Loss of Life and Personal Injury***

#### **Application of Part 18**

**161.** (1) This Part applies to the following ships:

- (a) Ships that are registered or licensed in the Republic, or required to be so registered or licensed; or
- (b) ships contemplated in section 187(1) that are required to have a local safety certificate.

(2) Notwithstanding subsection (1), this Part does not apply to—

- (a) a ship that is used solely for sport or recreation; or
- (b) any other ship, or class of ships, prescribed for the purposes of this paragraph.

(3) For the purposes of this Part, an accident must be considered to have arisen out of and in the course of the employment or engagement of a seafarer

notwithstanding that the seafarer was at the time of the accident acting contrary to any law applicable to the seafarer's employment or engagement or to any order by or on behalf of his or her employer or the owner of the ship, or that the seafarer was acting without any order of his or her employer or the owner of the ship, or an agent or servant of the owner of the ship, if the seafarer was so acting for the purposes of or in the interests of or in connection with the business of the ship.

(4) For the purposes of this Part, the conveyance of a seafarer free of charge to or from his or her place of employment or engagement for the purposes of his or her employment or engagement by means of a vehicle driven by the employer or the owner of the ship, or an agent or servant of the owner of the ship, must be considered to take place in the course of the seafarer's employment or engagement.

### **Owner to maintain insurance or other financial security**

**162.** (1) The owner of a ship must maintain insurance or other financial security as prescribed to provide compensation for every seafarer belonging to the ship who suffers loss of life or personal injury as a result of an accident.

(2) To avoid doubt, the regulations may prescribe when a seafarer must be taken, for the purposes of subsection (1), to belong to a ship.

(3) No owner of a ship must demand or receive a contribution from a seafarer towards the cost of insurance or other financial security required to be maintained in terms of this section.

**Insurance certificates**

**163.** (1) The insurance or other financial security referred to in section 162 must be evidenced by a certificate in the prescribed form that—

- (a) is issued by the person providing the insurance or security;
- (b) comes into force on the day specified in the certificate; and
- (c) remains in force, subject to the regulations, until the expiration of the day specified in the certificate, being the earlier of the following days—
  - (i) the day that is the last day in the period of 12 months beginning on the day on which the certificate comes into force;
  - (ii) the day that is the last day in the balance of the period during which the relative insurance or security is to remain in force.

(2) The owner of a ship must lodge with the Authority, in the prescribed manner and time, an authenticated copy of each certificate issued in terms of subsection (1) in relation to the ship.

(3) A relevant insurance certificate and any other document relating to insurance or other financial security that is evidenced by such a certificate must be admissible in evidence.

**Insurance certificates to be carried on ships**

**164.** (1) The master and the owner of a ship must ensure that the relevant insurance certificate is carried on board the ship at all times.

(2) The master and the owner of a ship that enters or leaves, or attempts to enter or leave, a port must ensure that the relevant insurance certificate that is in force in relation to the ship is on board that ship.

(3) The Authority may require the master or other person in charge of a ship to produce a relevant insurance certificate that is in force in relation to the ship.

(4) If the Authority believes on reasonable grounds that the master or other person in charge of a ship is attempting to take the ship out of a port in the Republic at a time when the ship does not have on board a relevant insurance certificate, the Authority may detain the ship until such time as such a certificate is obtained or produced to the Authority.

(5) This section commences 90 days after the commencement of section 162.

### **Additional liability of owner**

**165.** (1) In this section 'relevant incident' means any occurrence in respect of which this Part requires compensation to be paid but in respect of which compensation is not available, or not fully available, because—

- (a) the person providing insurance or other financial security in terms of section 162 is financially incapable of meeting that person's obligations in terms of the insurance or security; or
- (b) the owner concerned has failed to maintain insurance or other financial security in terms of section 162.

(2) If a relevant incident occurs in relation to a ship, the owner of the ship at the time of the incident or, if the incident consists of a series of occurrences, the owner of the ship at the time of the first occurrence is be liable to pay to a seafarer so much of any benefit that would have been payable to the seafarer under an insurance or other financial security in terms of section 162 which remains unpaid because of the incident.

(3) Section 267 does not apply to liability in terms of this section.

### **Other benefits to reduce compensation**

**166.** (1) A seafarer is not entitled to receive the same benefit under this Part and also under—

- (a) another provision of this Act;
- (b) the Compensation for Occupational Injuries and Diseases Act;
- (c) the Road Accident Fund Act, 1996 (Act No. 56 of 1996); or
- (d) any other law.

(2) A person who has paid a benefit in terms of this Part may recover from any other person providing the same benefit under a law referred to in subsection (1) so much of the benefit as that other person would, but for this section, have been liable to pay.

### **Liability for damages not affected**

**167.** (1) To avoid doubt, nothing in this Part affects any liability for damages in respect of loss of life or personal injury suffered by a seafarer as a result of an accident.

(2) However, in awarding damages a court must take account of compensation paid in terms of this Part.

### **Recovery of compensation paid from third parties**

**168.** (1) If loss of life or personal injury in respect of which compensation is payable in terms of this Part was caused in circumstances resulting in some person other than the owner of the ship concerned in this section referred to as 'the third party' being liable for damages in respect of the loss of life or personal injury, the person liable to pay the compensation may bring an action against the third party for the recovery of any compensation payable in terms of this Part.

(2) In an action referred to in subsection (1), the amount recoverable must not exceed the amount of damages, if any, that in the opinion of the court would, but for section 169(2), have been awarded to the seafarer concerned.



### **Certain dealings with compensation prohibited**

**169.** (1) Despite anything to the contrary in any law, compensation in terms of this Part, other than compensation that forms part of a deceased seafarer's estate, must not—

- (a) be ceded or pledged;
- (b) be capable of attachment or any form of execution under a judgment or order of a court of law; or
- (c) be set off against any debt of the person entitled to the compensation.

(2) However, the person liable to pay compensation in terms of this Part may pay the compensation in whole or in part to the owner of a ship to the extent that the owner has, for the purposes contemplated in section 165, made or undertaken to make voluntary payments to a seafarer.

### **Cession or relinquishment of benefits void**

**170.** Any provision of an agreement existing at the commencement of this section or concluded thereafter in terms of which a seafarer cedes or purports to cede or relinquishes or purports to relinquish any right to compensation in terms of this Part must be void.

### **Compensation not to form part of deceased seafarer's estate**

**171.** If a seafarer has dependents, compensation in terms of this Chapter for loss of life must not form part of the deceased seafarer's estate.

## Threats and compulsion

**172.** No person must threaten a seafarer or in any way compel or influence a seafarer to do something resulting in or directed at the deprivation of that seafarer's right to compensation in terms of this Part.

## Equivalent arrangements

**173.** (1) If the owner of a ship makes arrangements to provide compensation for loss of life and personal injury which, in the opinion of the Authority is not less favourable to seafarers than that required by this Part, the Authority may, subject to such conditions as the Authority may determine, approve the arrangements in writing.

(2) If the Authority has approved the arrangement referred to in subsection (1)—

- (a) the seafarers concerned must be entitled to compensation for loss of life and personal injury in accordance with the arrangements; and
- (b) the owner concerned must not be required to maintain insurance or other financial security in terms of this Part.

(3) The Authority may at any time in writing withdraw the approval or amend the conditions referred to in subsection (1).

(4) The arrangements established by the Compensation for Occupational Injuries and Diseases Act, are considered to have been approved by the Authority under subsection (1).

**CHAPTER 5****MARITIME SAFETY*****Part 1******Application of Chapter*****Application of Chapter 5**

**174.** (1) This Chapter applies to—

- (a) a ship to which the Safety Convention applies;
- (b) a ship to which the Safety Convention does not apply but which must comply with the applicable provisions of this Chapter;
- (c) a fishing vessel; and
- (d) a ship which is not provided for in this Chapter but which may be prescribed by the Minister.

(2) A ship to which the Safety Convention applies as contemplated in subsection (1)(a) is a ship contemplated in section 183.

(3) A ship to which the Safety Convention does not apply as contemplated in subsection (1)(b), is—

- (a) a passenger ship which is not intended to be or is engaged in an international voyage; or
- (b) any ship, other than a passenger ship, of whatever size—
  - (i) which is intended to be, or is engaged in an international voyage; or

- (ii) which is, or is to be registered or licensed in the Republic, which is not intended to be or is engaged in an international voyage.

(4) For the purposes of subsection (1)(c), if the Minister makes this Chapter applicable to a ship by means of regulations, that ship must comply with the sections in this Chapter so made applicable and any other requirements which the Minister may prescribe.

### **Definition of "safety certificate" and "exemption certificate" for purposes of this Chapter**

**175.** In this Chapter, unless the context indicates otherwise—

(a) a "safety certificate" means—

- (i) a passenger ship safety certificate issued by the Authority in terms of Part 3;
- (ii) a cargo ship safety certificate issued by the Authority in terms of Part 3;
- (iii) a local safety certificate issued by the Authority in terms of Part 4; and
- (iv) a fishing vessel safety certificate issued by the Authority in terms of Part 5;

(b) an "exemption certificate" means—

- (i) a passenger ship exemption certificate issued by the Authority in terms of Part 3;
- (ii) a cargo ship exemption certificate issued by the Authority in terms of Part 3;
- (iii) a local exemption certificate issued by the Authority in terms of Part 4; and

- (iv) a fishing vessel exemption certificate issued by the Authority in terms of Part 5.

## ***Part 2***

### ***Safety Certification of Ships in General***

#### **Certificated ship**

**176.** (1) The owner of a ship must only take the ship to sea, or require or permit any other person to take that ship to sea, if—

- (a) that ship has a safety certificate of a specified type or an exemption certificate or such certificate as required by this Act; and
- (b) that safety certificate or exemption certificate is valid.

(2) For the purposes of this section, "valid" means the safety certificate or exemption certificate has not expired or been cancelled by the Authority or been surrendered by the owner.

#### **Application for safety certificate or exemption certificate by owner**

**177.** (1) Any owner of a ship who is required to be holder of a valid safety certificate or exemption certificate, must apply to the Authority for such safety certificate or exemption certificate.

(2) An application for a safety certificate or exemption certificate must be on the prescribed form and be accompanied by—

- (a) the prescribed documents;

- (b) the prescribed fee; and
- (c) any other information that the Authority may require.

### **Issuing of safety certificate or exemption certificate by Authority**

**178.** (1) The Authority must, on receipt of an application for a safety certificate or exemption certificate, survey the ship to determine if it complies with the requirements of this Chapter and the prescribed requirements.

(2) The Authority may, after consideration of the report of the surveyor—

- (a) issue a safety certificate in the prescribed form if it is satisfied that the ship is constructed and equipped in accordance with all the requirements of this Act;  
or
- (b) issue an exemption certificate in the prescribed form; or
- (c) refuse to issue a safety certificate or an exemption certificate.

(3) If the Authority refuses to issue a safety certificate or an exemption certificate, the Authority must provide reasons for that refusal.

### **Period of validity of safety certificate and exemption certificate**

**179.** (1) The period of validity of a safety certificate is:

(a) If that safety certificate is a Safety Convention certificate for a ship contemplated in section 174(2)—

- (i) in the case of a passenger ship, 12 months;
- (ii) in the case of a cargo ship, as prescribed;

- (b) if that safety certificate is a local safety certificate for a ship contemplated in section 174(3), as prescribed; or
- (c) if it is a safety certificate for a prescribed ship contemplated in section 174(4).

(2) An exemption certificate must not be valid for longer than the period of validity of the safety certificate to which it refers.

### **Application for renewal of safety certificate or exemption certificate by owner**

**180.** (1) Any holder of a safety certificate or exemption certificate must apply to the Authority for the renewal of the safety certificate or exemption certificate, within the prescribed period.

(2) The provisions of sections 185 and 186 relating to the surety of ships apply, with the necessary changes required by context, to the renewal of a safety certificate or an exemption certificate.

### **Cancellation of safety certificate or exemption certificate**

**181.** (1) The Authority must cancel a safety certificate or an exemption certificate, if, by reason of the contents of a report by a surveyor, or for any other reason, the Authority is satisfied that—

- (a) the certificate was obtained fraudulently or on wrong information; or
- (b) subsequent to the issue of the safety certificate or exemption certificate—
  - (i) the hull, equipment or machinery of the ship has, for any reason, become insufficient;
  - (ii) the ship has, for any reason, become unseaworthy; or

(iii) the ship no longer complies with the requirements of this Act to the same extent that she complied when that certificate was issued

(2) When a safety certificate or exemption certificate is cancelled by the Authority, the Authority must notify the owner or master of the ship of the cancellation.

### **Surrender of expired or cancelled safety certificate**

**182.** (1) A certificate which has expired or has been cancelled must on demand be surrendered by the owner or master of the ship to the Authority.

(2) If any certificate required to be surrendered under subsection (1) is not surrendered, the Authority may cause the ship to be detained until the certificate is surrendered.

## ***Part 3***

### ***Ships to which the Safety Convention Applies***

#### **Application of Part 3**

**183.** (1) This Part applies to a ship to which the Safety Convention applies as contemplated in section 174 (2).

(2) This Part does not apply, unless expressly provided otherwise in this Part or made applicable as prescribed, to—

- (a) a cargo ship of less than 500 gross tonnage;
- (b) a ship not propelled by mechanical means;



- (c) a wooden ship of primitive build;
- (d) a pleasure yacht not engaged in trade; or
- (e) a fishing vessel.

### **Inspection and survey by surveyor**

**184.** (1) A ship must be inspected and surveyed by a surveyor to determine if the ship complies with the requirements of this Act and for purposes of issuing a safety certificate in terms of this Chapter.

(2) Every surveyor who inspects and surveys a vessel in terms of this section must after such inspection and survey submit a report in the prescribed form to the Authority and the report must contain the prescribed particulars.

### **Survey of passenger ship**

**185.** (1) The Authority must, to ensure that the workmanship of all parts of the ship and its equipment is in all respects satisfactory—

- (a) conduct the following surveys for a passenger ship:
  - (i) A survey of the arrangements, materials and scantlings of the structure, boilers and other pressure vessels and their appurtenances;
  - (ii) a survey of the main and auxiliary machinery;
  - (iii) a survey of the electrical installation;
  - (iv) a survey of the radio installations including those used in lifesaving appliances;
  - (v) a survey of the fire protection, fire safety systems and appliances;

- (vi) a survey of the life-saving appliances and arrangements;
  - (vii) a survey of the shipborne navigational equipment;
  - (viii) a survey of the nautical publications; and
  - (ix) a survey of the means of embarkation for pilots and other equipment;
- and
- (b) conduct an inspection of the ship to ensure that it is equipped with the lights, shapes, means of making sound signals and distress signals as required by this Act.

(2) The Authority must conduct the survey and inspection referred to in subsection (1), for the purpose, in the manner, containing such content and at such intervals as may be prescribed.

### **Survey of cargo ship**

**186.** (1) The Authority must conduct the following surveys for a cargo ship:

- (a) A safety equipment survey;
- (b) a safety radio survey; and
- (c) safety construction survey.

(2) For the purposes of subsection (1)—

- (a) a safety equipment survey is a survey of the cargo ship's life-saving appliances and arrangements and fire safety systems and appliances;
- (b) a safety radio survey is a survey of a ship's radon installation; and
- (c) a safety construction survey is a survey of its structure, machinery and equipment.

(3) The Authority must conduct the surveys referred to in subsection (1), for the purpose, in the manner, containing such content and at such intervals as may be prescribed.

(4) A single Cargo Ship Safety Certificate may be issued in the prescribed form instead of certificates issued in terms of the construction regulations, the lifesaving equipment regulations, and the collision regulations and a cargo ship safety certificate must replace the latter certificates within three years of this Act coming into operation.

#### ***Part 4***

#### ***Local Safety Certificates***

#### **Application of Part 4**

**187.** (1) This Part applies to a ship contemplated in section 174 (1) (b) and (3) and any reference to a ship in this Part is a reference to a ship provided for in that section.

(2) If a ship contemplated in section 174 (1) (b) and (3) has a safety certificate issued in terms of Part 3, it does not have to apply for a local safety certificate in terms of this Part.

#### **Survey of ship to which this Part applies**

**188.** (1) The Authority must conduct such surveys, for such purposes, in the manner, containing such content and at such intervals as may be prescribed.

(2) A ship must be inspected and surveyed by a surveyor to determine if the ship complies with the requirements of this Act and for purposes of issuing a local safety certificate in terms of this Chapter.

(3) Every surveyor who inspects and surveys a ship in terms of this section, must after such inspection and survey submit a report in the prescribed form to the Authority.

### ***Part 5***

### ***Fishing Vessels***

#### **Application of Part 5**

**189.** This Part applies to any prescribed fishing vessel.

#### **Inspection and survey of ship**

**190.** (1) The Authority must conduct surveys, for the purposes, in the manner, containing such content and at such intervals as may be prescribed.

(2) A fishing vessel must be inspected and surveyed by a surveyor to determine if the fishing vessel complies with the requirements of this Chapter and as prescribed, for purposes of issuing a fishing vessel safety certificate in terms of this Chapter.

(3) Every surveyor who inspects and surveys a fishing vessel in terms of this section must after such inspection and survey submit a report in the prescribed form to the Authority.

### **Survey of fishing vessel**

**191.** The Minister must prescribe the requirements for—

- (a) the hull, equipment and machinery of a fishing vessel of any description and the description may include a reference to an area in which the vessel operates or the dates on which they were first registered in terms of the Ship Registration Act; and
- (b) the safety equipment life-saving radio and navigational equipment.

### **Exemption**

**192.** (1) The Minister may exempt any fishing vessel or a description of a fishing vessel from any requirement in this Chapter or as may be prescribed.

(2) An exemption by the Minister may be generally or for a specified time or with respect to a specified voyage.

## ***Part 6***

### ***General Matters***

### **Maintenance of conditions after survey of passenger ship and cargo ship**

**193** (1) The condition of a passenger or cargo ship and its equipment must be maintained to comply with the provisions of this Act to ensure that the ship

in all respects will remain fit to proceed to sea without danger to the ship or persons on board.

(2) No person must make a change in or to the structural arrangements, machinery, equipment and other items inspected and included in a survey in terms of this Part after that inspection and survey has been completed, unless the Authority has approved such change.

(3) Whenever an accident occurs to a ship or a defect is discovered, either of which affects the safety of the ship or the efficiency or completeness of its life-saving appliances or other equipment, the master or owner of the ship must, as soon as is practicable, report that accident or defect to the Authority and the Authority must investigate the accident or defect to determine whether a survey contemplated in this Part is necessary.

(4) If the ship is in a port of a country other than South Africa, the master or owner must report the accident or defect referred to in subsection (3) to the Authority and the appropriate authority of that country at which port the ship is in.

### **Modification of safety convention certificates as respects lifesaving appliances**

**194.** (1) If, on any international voyage, a passenger ship registered in the Republic, in respect of which a safety convention certificate is in force, has on board a total number of persons less than the number stated in that certificate to be the number for which the lifesaving appliances on the ship provides, the Authority may, at the request of the master of the ship, issue a memorandum stating the total number of persons carried on the ship on that voyage, and the consequent modification which may be made for the purpose of that voyage in the particulars

with respect to lifesaving appliances stated in the certificate, and that memorandum must be annexed to the certificate.

(2) The master of the ship in respect of which any such memorandum has been issued must return it to the Authority at the end of the voyage to which it relates.

(3) If a recognised non-South African safety convention certificate is produced in respect of a passenger ship not registered in the Republic, and there is attached to the certificate a memorandum which —

- (a) has been issued by the authority of the Government of the country in which the ship is registered; and
- (b) modifies for the purpose of any particular voyage, in view of the number of persons actually carried on that voyage, the particulars stated in the certificate with respect to lifesaving appliances,

the certificate must have effect for the purpose of that voyage as if were modified in accordance with the memorandum.

### **Carrying persons in excess**

**195.** No master or owner of any vessel registered or licensed in the Republic must anywhere, and no master of any vessel not registered or licensed in the Republic must in the Republic, permit persons to be on board or on or in any part of the vessel in excess of the number permitted by the vessel's safety certificate, certificate referred to in section 194 or any other certificate or document required in terms of section 196 or 197: Provided that the master may, for the purpose of enabling persons to be moved from any place in consequence of a threat to their

lives or in the event of force majeure, carry more persons on board a ship than are permitted by the said certificate or memorandum and such carriage must not constitute a contravention of the provisions of this section.

### ***Part 7***

#### ***Safety certificates not issued by Authority in respect of ship not registered or licensed in the Republic while it is in the Republic and Safety Convention certificates issued at request of parties to Safety Convention***

#### **Recognition of safety certificate issued by country which is party to Safety Convention**

**196.** (1) The provisions of this section apply to a ship that is registered or licensed in a country that is a party to the Safety Convention, while it is in the Republic.

(2) A valid safety convention certificate issued in respect of a ship referred to in subsection (1) by the country referred to in that subsection, must have the same effect as a corresponding certificate issued by the Authority under section 176.

(3) A surveyor of a ship to which this section applies, must only verify whether the safety convention certificate is valid, unless there are clear grounds for believing that—

(a) the condition of the ship or of its equipment does not correspond substantially with the particulars of the certificate; or



(b) the ship and its equipment are not in compliance with the provisions of the Safety Convention to ensure that the ship has in all respects remained fit to proceed to sea without danger to the ship or persons on board, and if either of the circumstances in paragraph (a) or (b) is present, the surveyor may inspect the ship —

- (i) for the purpose of determining the maximum number of persons that the ship is fit to carry;
- (ii) for the purpose of verifying that the ship is in the condition of seaworthiness indicated in the safety certificate produced; or
- (iii) if the safety of life at sea require that it be investigated.

(4) On receipt of the report of a surveyor of an inspection made under subsection (3)(a), the Authority must issue a certificate stating the maximum number of persons which the ship is fit to carry.

(5) The Authority may dispense with an inspection of the ship for the purpose of determining the maximum number of persons that it is fit to carry as contemplated in subsection (3)(a), if the safety certificate referred to in subsection (2) or an additional certificate issued by the government of the country referred to in subsection (2)—

- (a) stating the maximum number of persons that the ship is fit to carry; and
- (b) the Authority is satisfied that the number has been determined substantially in the same manner as it would have been determined in the case of a ship registered in the Republic,

(6) If, after an inspection by a surveyor of an inspection made under subsection (3)(b), the Authority is satisfied that a ship contemplated in subsection (2) is unseaworthy, it may direct that the safety convention certificate of that ship not be

recognised in the Republic, and thereafter the safety certificate must have no effect in the Republic.

### **Recognition of certificate relating to safety issued by country which is not party to Safety Convention**

**197.** (1) The provisions of this section apply to a ship that is registered or licensed in a country that is not a party to the Safety Convention, while it is in the Republic.

(2) A valid certificate relating to safety issued in respect of a ship referred to in subsection (1), must have the same effect as a certificate issued by the Authority under section 176.

(3) The Authority may, after an inspection by a surveyor, if it is satisfied that the ship referred to in subsection (1) is not seaworthy, direct that the certificate relating to safety of that ship not be recognised in the Republic, and thereafter the certificate relating to safety must have no effect in the Republic.

### **Issue of safety convention certificate by one government at request of another**

**198.** (1) The Authority may request the government of a country who is a party to the Safety Convention to issue an appropriate safety convention certificate in respect of a ship registered in the Republic and a certificate issued in pursuance of

such a request must contain a statement that it has been so issued and must be considered to have been issued—

- (a) in the case of a passenger ship, under section 175 (a) (i); or
- (b) in the case of a cargo ship, under section 175 (a) (ii).

(2) The Authority may, at the request of the government of a country to which the Safety Convention applies, cause an appropriate safety convention certificate to be issued in respect of a ship registered in that country, if it is satisfied in like manner as in the case of a ship registered in the Republic, that the certificate can properly be issued: Provided that it may cause the certificate to be issued if it is satisfied that the ship is constructed and equipped in accordance with all the requirements of the construction regulations, the lifesaving equipment regulations, the radio regulations and any other regulations which may have been made and which are applicable to the ship and to the voyages on which it is to be engaged, in so far as those requirements are requirements of the Safety Convention applicable as aforesaid, notwithstanding the fact that it is not constructed or equipped in accordance with any requirements of the said regulations that are not applicable requirements of the Safety Convention, and that it is equipped in accordance with the requirements of the collision regulations.

(3) A certificate issued in pursuance of a request referred to in subsection (2) must contain a statement that it has been so issued and must have effect as if it had been issued by the government of the country in which the ship is registered.

***Part 8***

***Load Lines***

***Division 1***

***Application of Part 8***

## Application of Part 8

- 199.** (1) This Part applies to a ship registered in the Republic and—
- (a) engaged on an international voyage and that is not a ship referred to in paragraph (b) (c) and (d);
  - (b) engaged on an international voyage and that ship is a new ship of more than 14 metres but less than 24 metres in length;
  - (c) engaged on an international voyage and that ship is an existing ship of less than 150 gross tons; and
  - (d) not engaged on an international voyage, if that ship is more than 14 metres in length.

(2) This Part does not apply to a ship referred to in subsection (1) if that ship is—

- (a) a fishing vessel; or
- (b) a pleasure yacht not engaged in trade.

## Exemptions from Part 8

**200.** The Authority may, on application contemplated in division 2 of this Part, exempt a ship—

- (a) which embodies a feature of a novel kind, from a provision of this Part or prescribed requirements, if the application of a provision of this Part or a prescribed requirement, could seriously impede research into the development of such a feature and its incorporation in ships engaged on international voyages, provided that the ship complies with the safety requirements, which, in the opinion of the Authority are adequate for the service for which it is intended and are such as to ensure the overall safety of the ship;
- (b) which is not normally engaged on international voyages but which, in exceptional circumstances, is required to undertake a single international voyage, provided that the ship complies with safety requirements which, in the opinion of the Authority is adequate for the voyage which is to be undertaken by the ship.

***Division 2******Load Line Certification of Ships in General*****Only marked and certificated ship permitted to go to sea**

**201.** (1) No owner or master of a ship must take the ship to sea, or require or permit any other person to proceed to sea from a port within or outside the Republic unless—

- (a) that ship has been surveyed and marked as prescribed;
- (b) has on board the applicable load line certificate or the applicable load line exemption certificate; and
- (c) that load line certificate or load line exemption certificate is valid.

(2) If a ship has a valid international load line certificate or international load line exemption certificate that was issued in terms of this Part and has not expired or been cancelled by the Authority or been surrendered by the owner in place but it only engages on voyages in the Republic, that international load line certificate or international load line exemption certificate is considered to be a local load line certificate or local load line exemption certificate for the period of validity for which it was issued,

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## **Application for international load line certificate or an international load line exemption certificate by owner**

**202.** (1) Any owner of a ship who is required to be holder of an international load line certificate or an international load line exemption certificate, must apply to the Authority for such certificate.

(2) An application for an international load line certificate or an international load line exemption certificate must be on the prescribed form and be accompanied by the—

- (a) prescribed documents, including a special power of attorney if the application is submitted on behalf of the owner;
- (b) prescribed fee; and
- (c) any other information that the Authority may require.

## **Issuing of load line certificate or load line exemption certificate by Authority**

**203.** (1) The Authority must, on receipt of an application for a load line certificate or a load line exemption certificate, survey the ship to determine if it complies with the requirements of this Chapter and the prescribed requirements.

(2) The Authority must, after consideration of the report of the surveyor, if it is satisfied that—

- (a) the ship is marked with deck lines and load lines of the description and number prescribed;



- (b) the ship's load lines are in the position required by the load line regulations;  
and
- (c) the ship complies with the conditions of assignment, the Authority must —
  - (i) if it is a ship referred to in section 199(1)(a), issue an international load line certificate in the prescribed form;
  - (ii) if it is a ship referred to in section 199 (1)(b) or (c), issue a local load line certificate in the prescribed form;
  - (iii) if it is a ship referred to in section 199(1)(a), issue an international load line exemption certificate in the prescribed form; or
  - (iv) if it is a ship referred to in section 199(1)(b) or (c), issue a local load line exemption certificate in the prescribed form.

(3) If a ship to which the provisions of this Chapter apply, does not comply with the provisions of paragraph (a), (b) or (c), refuse to issue a load line certificate or a load line exemption certificate.

(4) If the Authority refuses to issue a load line certificate or a load line exemption certificate, it must provide reasons for that refusal.

### **Period of validity of international load line certificate and international load line exemption certificate**

**204.** (1) The period of validity of an international load line certificate must, subject to subsection (4), be as prescribed and must not exceed five years from the date of issue.

(2) The period of validity of an international load line exemption certificate must be as prescribed but that period must not exceed five years from the date of issue.

(3) If, after a survey referred to in section 208, the Authority is not in a position to issue a new international load line certificate or international load line exemption certificate before the expiry of the current certificate in place for that ship, the Authority may extend the period of validity of the original certificate for a period that must not exceed five months.

(4) An extension of the period of validity of an international load line certificate or international load line exemption certificate under subsection (4) must—

(a) be granted only where there have been no alterations in the structure, equipment, arrangements, material or scantlings which affect the ship's freeboard; and

(b) be endorsed on the original certificate.

### **Application for renewal of international load line certificate and international load line exemption certificate**

**205.** (1) Any holder of an international load line certificate or international load line exemption certificate must apply to the Authority for the renewal of safety certificate or exemption certificate, within the prescribed period.

(2) The provisions of sections 202, 203 and 204 apply, with the necessary changes required by context, to the renewal of an international load line certificate or international load line exemption certificate.

## **Cancellation of international load line certificate or international load line exemption certificate**

**206.** (1) The Authority must cancel an international load line certificate or international load line exemption certificate, if, by reason of the contents of a report by a surveyor, or for any other reason, it is satisfied that—

- (a) it was obtained fraudulently or on wrong information;
- (b) since it was issued, structural alterations including the renewal of any part thereof, which affect the position of the load lines, have taken place in the hull or superstructures of the ship;
- (c) the fittings and appliances for the protection of an opening, a guard rail, a freeing port and a means of access to crew accommodation are not maintained in an effective condition;
- (d) the certificate is not endorsed to show that the ship has been inspected;
- (e) the structural strength of the ship is lowered to such an extent that the ship is unsafe; or
- (f) the marking of the deck lines and load lines on the ship have not been properly maintained.

(2) When a load line certificate or load line exemption certificate is cancelled by the Authority, it must notify the owner or master of the ship of the cancellation.

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**Surrender of expired or cancelled international load line certificate or international load line exemption certificate**

**207.** (1) A load line certificate or load line exemption certificate which has expired or has been cancelled must, on demand be surrendered by the owner or master of the ship to the Authority.

(2) If any certificate required to be surrendered under subsection (1) is not surrendered, the Authority may cause the ship to be detained until the certificate is surrendered.

***Division 3***

***Inspection and survey***

**Inspection and survey of ship**

**208.** (1) The Authority must, to ensure that the arrangements, material and scantlings fully comply with the prescribed requirements and to ensure that alterations have not been made to the hull or superstructures which would affect the calculations determining the position of the load line, ensure that a surveyor conducts such surveys and inspections for the purpose of issuing a load line certificate or load line exemption certificate , in the manner, containing such content and at such intervals as may be prescribed.

(2) Every surveyor who inspects and surveys a vessel in terms of this section must after such inspection and survey submit a report in the prescribed form to the Authority.

#### ***Division 4***

#### ***General matters***

#### **Maintenance of conditions after survey of ship**

**209.** (1) The owner and the master of a load line ship registered in the Republic must maintain the marking of her deck lines and load lines in the position specified in the load line certificate in force in respect of that ship or if the Authority approved the alteration of the position of the deck lines or load line, in the position approved.

(2) No person must conceal, remove, alter, deface or obliterate, or cause or instruct any person under his or her control to conceal, remove, alter, deface or obliterate any mark placed on any ship in accordance with the provisions of this Act, except with the approval of the Authority or except for the purpose of escaping unlawful capture by an enemy or by a foreign ship.

#### **Entry of load line particulars in official logbook**

**210.** (1) When a load line certificate has been issued in terms of this Act in respect of a load line ship registered in the Republic, the master, before making

any other entry in the official logbook must enter therein the particulars as to the position of the deck line and load lines specified in the certificate.

(2) Before any load line ship registered in the Republic leaves any port within or outside the Republic, or before any passenger ship not registered in the Republic and plying between ports in the Republic or between a port in the Republic and any other port, leaves any port in the Republic, for the purpose of proceeding to sea, the master must—

- (a) enter in the official logbook the prescribed particulars relating to the depth to which the ship is for the time being loaded; and
- (b) cause a notice in the prescribed form, and containing such of the said particulars as may be prescribed, to be displayed in some conspicuous place on board the ship and to be kept so displayed and legible until the ship arrives at some other port.

### **Submersion of load line on South African ships**

**211.** (1) The master of a load line ship registered in the Republic must not—

- (a) so load the ship;
- (b) cause the ship to be so loaded; or
- (c) bring the ship into any port in the Republic so loaded,

as to submerge in salt water, when the ship has no list, the load line on each side of the ship appropriate to the circumstances then existing.

(2) Any surveyor who finds upon inspection that the ship is loaded in contravention of subsection (1), must give notice in writing to that effect to the

master, pointing out the extent of the overloading, and requiring that the matter be rectified.

(3) A copy of every notice so given must be transmitted by the surveyor to the proper officer at any port at which a clearance for that ship may be requested, and a clearance must not be granted, and the ship must be detained, until a certificate under the hand of a surveyor is produced stating that the deficiency has been made good.

### ***Part 9***

#### ***Load line certificate not issued by Authority in respect of ship not registered in the Republic while it is in the Republic and Load Line Convention certificates issued at request of parties to Load Line Convention***

#### **Issue of international load line certificate by one government at request of another**

**212.** (1) The Authority may request the government of a country to which the Load Line Convention applies to issue an international load line certificate in respect of a load line ship registered in the Republic and a certificate issued in pursuance of such a request must contain a statement that it has been so issued, and must be considered to have been issued under section 203.

(2) The Authority may, at the request of the government of a country to which the Load Line Convention applies, issue an international load line convention certificate in respect of a load line ship registered in that country, after a survey and inspection of the ship contemplated in this Part and if it is satisfied that

the ship is marked with deck lines and load lines of the description and number and in the position required in terms of the Load Line Convention.

(3) A certificate issued in terms of subsection (2) must contain a statement that it has been so issued, and must have effect as if it had been issued by the Government of the country in which the ship is registered.

### **Inspection and control of ship not registered in the Republic**

**213.** (1) If a ship which is registered in a country to which the Load Line Convention applies other than the Republic, is within the Republic and a valid international load line certificate or international load line exemption certificate issued by that country in respect of that ship is in place, a surveyor's powers of inspecting the ship with respect to load line must be limited to ascertaining whether—

- (a) the ship is loaded beyond the limits allowed by the certificate;
- (b) the position of the load lines on the ship corresponds with the position specified in the certificate;
- (c) since the certificate was issued any structural alterations have taken place in the hull or superstructures of the ship which affect the position of the load lines; and
- (d) the fittings and appliances for the protection of openings, the guard rails, the freeing ports and the means of access to the crew accommodation have been maintained on the ship in as effective a condition as they were in when the certificate was issued.

(2) If a surveyor finds on inspection that the ship is loaded beyond the limits allowed by the certificate, he or she must give notice in writing to that effect



to the master, pointing out the extent of the overloading and requiring that the matter be rectified.

(3) If a surveyor finds on inspection that the load lines of the ship are not in the position specified in the certificate, he or she must give notice in writing to that effect to the owner or master, pointing out the defects and requiring the same to be made good.

(4) A copy of every notice given under subsection (2) or (3) must be transmitted by the surveyor to the proper officer at any port at which a clearance for that ship may be requested, and a clearance must not be granted, and the ship must be detained, until a certificate under the hand of a surveyor is produced stating that the matter has been rectified or the deficiency made good.

(5) If no valid or no certificate contemplated in subsection (1), is produced to the surveyor on such demand as aforesaid, the surveyor must have all the powers and duties with regard to that ship granted to a surveyor in terms of this Part as if that ship is registered in South Africa.

(6) For the purposes of this section a ship must be considered to be loaded beyond the limits allowed by the certificate if it is so loaded as to submerge in salt water, when the ship has not list, the appropriate load line on each side of the ship, that is to say, the load line appearing by the certificate to indicate the maximum depth to which the ship is for the time being entitled under the Load Line Convention to be loaded.

## **Issue of special load line certificate in respect of ship not registered in the Republic**

**214.** (1) The Authority may issue a special load line certificate in respect of any ship that is not registered in the Republic, if that ship—

- (a) is more than 14 metres in length; or
- (b) is not a fishing vessel or pleasure yacht engaged in trade.

(2) The provisions of this Chapter relating to the issue, effect, duration, renewal and cancellation of a local load line certificate must apply, with the necessary changes as the context may require, to a special load line certificate:

Provided that—

- (a) if the ship contemplated in subsection (1) is registered in a country to which the Load Line Convention does not apply, the special load line certificate must be available in respect of international voyages as well as other voyages;
- (b) if the ship contemplated in subsection (1) is registered in a country to which the Load Line Convention applies, the special load line certificate must only be valid if the ship is not plying on international voyages, and must be endorsed with a statement to that effect, and may be cancelled by the Authority if it is satisfied that the ship is so plying; and
- (c) a survey for the purpose of ascertaining whether the certificate should remain in force must take place whenever the Authority so requires.

**Recognition of certificates as to load lines issued in other countries**

**215.** If the Minister is satisfied—

(a) either—

(i) that, by the law in force in any treaty country other than the Republic provision has been made for the fixing, marking and certifying of load lines on ships or any class or description of ships registered in that treaty country; or

(ii) that such provision has been made by the law in force in any foreign country with respect to ships or any class or description of ships registered in that country, and has also been so made or it has been agreed that provision must be so made for recognising load line certificates issued in the Republic as having the same effect in ports of that country as certificates issued under the said provision; and

(b) that the provision for the fixing, marking and certifying of load lines is based on the same principles as the corresponding provisions of this Chapter and of the load line regulations and is equally effective,

he or she may, by notice in the *Gazette*, direct that certificates issued in pursuance of that provision in respect of ships or that class or description of ships registered in that treaty country or in respect of ships or that class or description of ships registered in that foreign country, must have the same effect, for the purposes of this Chapter as special load line certificates.

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## **Ship not registered in Republic not to be taken to sea without load line certificate**

**216.** The master of a ship not registered in the Republic must not cause or permit her to proceed to sea from a port in the Republic unless there is load line certificate on board and in force in respect of that ship—

- (a) if it is registered in a country, other than the Republic, to which the Load Line Convention applies, and—
  - (i) is engaged in an international voyage, an international load line certificate recognised by the Authority or issued by it in terms of this Chapter; or
  - (ii) is not engaged in an international voyage, an international load line certificate recognised by the Authority, a special load line certificate issued in terms of section 214 or a certificate which in terms of a notice issued under section 215 has the same effect as a special load line certificate; or
- (b) if it is not registered in a country to which the Load Line Convention applies a special load line certificate or a certificate which in terms of a notice issued under section 215 has the same effect as a special load line certificate.

## **Submersion of load line on ship not registered in the Republic**

**217.** The provisions of section 211 must, with the necessary changes that the context may require, apply to a ship not registered in the Republic, while it is at

any port in the Republic: Provided that in the application of section 211, the expression "the load line" must mean—

- (a) in the case of a ship in respect of which there is a produced international load line certificate recognised by the Authority, the load line appearing by the certificate to indicate the maximum depth to which the ship is for the time being entitled under the Load Line Convention to be loaded;
- (b) in the case of a ship in respect of which there is produced certificate which, in terms of a notice issued under section 215, has the same effect for the purposes of this Chapter as a special load line certificate, the load line appearing by the certificate to indicate the maximum depth to which the ship is for the time being entitled, under the law in force in the country in which the ship is registered, to be loaded; or
- (c) in any other case, the load line which corresponds with the load line indicating the maximum depth to which the ship is for the time being entitled under the load line regulations to be loaded, or if no load line on the ship corresponds as aforesaid, the lowest load line thereon.

### ***Part 10***

#### ***Safety of Navigation***

##### **Ship's complement**

**218.** (1) The owner and the master of every South African ship operating at a port in the Republic or going to sea from any port must ensure that, the

prescribed number of ship's officers and other persons are employed on board that ship.

(2) Subject to subsection (3), the owner and the master of every ship other than a South African ship operating at a port in the Republic or going to sea from any such port must ensure that, in addition to the ship's officers and other persons must be employed on board that ship, there are employed as crew the number and descriptions of persons prescribed by the law of the flag of the ship.

(3) Notwithstanding subsection (2), subsection (1) must apply to a ship referred to in that paragraph, as if it were a South African ship, if—

- (a) the matters contemplated in that paragraph are not prescribed by the law of the flag of the ship; or
- (b) having regard to—
  - (i) the complement normally carried by similar ships on similar voyages;
  - (ii) the complement which the ship in question has recently carried on previous voyages; and
  - (iii) the nature and place of the service for which the ship is intended, the Authority has reason to believe that the ship is not sufficiently and efficiently manned.

### **Surveyor may direct that defects be made good**

**219.** (1) If upon the inspection of a vessel a surveyor finds that the prescribed provisions regarding maritime occupational safety, or that the vessel is not equipped as required by the construction regulations, lifesaving equipment, radio, collisions or any other applicable regulations which may have been made or

not marked as required by the load line regulations, or that the equipment is not in good condition, or that the deck lines or load lines are not being properly maintained, or that the master and crew cannot demonstrate the related competency at their place or places of duty, he or she must give notice in writing to that effect to the owner or master, pointing out the deficiencies or defects and requiring that they be made good.

(2) A copy of every notice so given must be transmitted by the surveyor to the proper officer at any port at which a clearance for that vessel may be requested, and a clearance must not be granted, and the vessel must be detained, until a certificate under the hand of a surveyor is produced stating that the deficiencies or defects have been supplied or made good.

### **Display of safety convention certificate, local safety certificate or load line certificate**

**220.** Immediately after receipt of a safety convention certificate, a local safety certificate or a load line certificate, the owner or master must cause it to be framed and displayed in some conspicuous place on board the vessel for the information of all on board, and must cause it to be kept so framed and displayed so long as it remains in force and the vessel is in use: Provided that this section must not apply to ships which have been exempted from these provisions.

### **Information about stability of ship**

**221.** (1) The owner of every South African ship of the class or tonnage prescribed by regulation built after the coming into operation of this section must cause to be kept on board the ship such information in writing about the stability of the ship as is necessary for the guidance of the master in loading, ballasting the ship and under varying conditions of service the ship.

(2) The information required in terms of subsection (1) must be determined by regulation, and must be based upon the determination of the stability of the ship by means of an inclining test of the ship: Provided that the Authority may allow the information to be based on a similar determination of the stability of a sister ship.

(3) When any such information is provided concerning a ship, the owner of the ship must send a copy of such information to the Authority: Provided that the owner must not be required to send a copy of any information to the Authority if a copy of the same information has been previously sent to the Authority.

(4) For the purposes of section 149 every document containing such information as is referred to in this section must be considered as a document relating to the navigation of the ship.

### **Production of certificates to customs officer**

**222.** (1) The master of any ship which is at any port in the Republic must produce to the customs officer from whom a clearance for that ship is requested—



- (a) if it is a ship to which section 203 or 214 applies, the certificate or certificates which in terms of those sections must be on board that ship;
- (b) if it is a load line ship registered in the Republic, the certificate which in terms of section 176 must be on board that ship;
- (c) if it is a load line ship not registered in the Republic, the certificate which in terms of section 215 must be on board that ship; or
- (d) if it is a load line ship carrying a deck cargo of timber, a certificate issued under section 248(1).

(2) If the certificate or certificates required to be produced under subsection (1) are not produced, the ship must be detained until such certificate or certificates are produced.

### **Registration of private code or signals**

**223.** (1) If the owner of a ship, wherever registered, desires to use any signals for the purpose of a private code he or she may register them with the Authority, who may publish a list of the signals registered.

(2) The Authority may refuse to register any signals which, in its opinion, cannot easily be distinguished from signals generally used as signals of distress, signals for pilots, signals of urgency, signals prescribed for indicating that a message is about to be sent relating to a danger, or from signals registered in the name of any other person.

(3) The Authority may, if it thinks fit, cancel the registration of any signal at any time.

(4) No person must—

- (a) use a signal registered, except by the authority of the person in whose name it is registered; or
- (b) use any signal the registration of which has been cancelled by the Authority.

### **Signals of distress**

**224.** (1) The master of a vessel which is registered or licensed in the Republic or which, in terms of this Act, is required to be so licensed must not, within or outside the Republic, and the master of any other vessel must not, within the Republic or the territorial waters thereof, use or display or cause or permit any person under his authority to use or display, and no person must use or display at a place on land within the Republic from which it can be seen from the sea—

- (a) any signal which by regulation is declared to be a signal of distress, except in the circumstances and for the purpose prescribed; or
- (b) any private signal, whether registered or not, which is likely to be mistaken for any such signal of distress.

(2) Any person convicted of contravening subsection (1) must be liable, in addition to any penalty imposed under Chapter 10, to pay compensation for any labour undertaken, risk incurred or loss sustained in consequence of the signal used or displayed having been taken to be a signal of distress.

(3) Such compensation may, without prejudice to any other remedy, be recovered in the same manner in which salvage is recoverable in terms of this Act.

## **Report of alteration or damage affecting seaworthiness, efficiency or compliance with regulations**

**225.** (1) If any alteration including any renewal of any part thereof has been made in, or any damage has been sustained by, a South African ship so material as to affect her seaworthiness or her efficiency, whether in her hull, equipment or machinery, or her compliance with such of the construction regulations, the lifesaving equipment regulations, the radio regulations, the collision regulations, the load line regulations or any other regulations which may have been made, as apply to her, the owner or master must, as soon as possible, forward a report to the Authority, giving full particulars of the alteration or damage.

(2) If, by reason of the contents of a report made in terms of subsection (1), or for any other reason, the Authority is of the opinion or suspects that—

- (a) a South African ship is unseaworthy; or
- (b) the hull, equipment or machinery of a South African ship is insufficient; or
- (c) a South African ship does not comply with such of the regulations referred to in subsection (1) as apply to her,

it may give special directions for the inspection of the ship by a surveyor, notwithstanding the fact that a safety convention certificate, a local safety certificate or a load line certificate is still in force in respect of that ship.

(3) Any ship in respect of which any such directions as are referred to in subsection (2)(4) have been given may be detained by the Authority.

(4) If any such directions are not complied with, the Authority may cancel any certificates issued in respect of that ship under this Chapter.

### **Unseaworthy ships not permitted to leave port**

**226.** No person, including the owner or master, must cause or permit—

- (a) any ship other than a ship of South African nationality to be navigated away from any port in the Republic; or
- (b) any ship of South African nationality to be navigated away from any port, in an unseaworthy state and unless there is a valid safety certificate or safety exemption certificate in place in respect of that ship.

### **Obligation to secure seaworthiness of ship**

**227.** (1) In every contract of service, express or implied, between the owner of a ship and the master and in every agreement between the master and the crew there must be implied, notwithstanding any agreement to the contrary, an obligation on the owner of the ship that the owner and the master and every agent charged with the loading, preparing for sea or sending to sea of the ship must use all reasonable means to ensure the seaworthiness of the ship for the voyage at the time when the voyage commences, and to keep her in a seaworthy condition for the voyage and during the voyage.

(2) This section must apply in respect of every contract to serve on a South African ship and in respect of every contract to serve on a ship not registered in the Republic, if the contract is entered into in the Republic.

### **Sending unseaworthy ship to sea in special circumstances**

**228.** Nothing in sections 226 and 227 contained must subject the owner or master of any ship to any liability, civil or criminal, by reason of the ship being sent or taken to sea in an unseaworthy state, if it be proved that—

- (a) the owner used all reasonable means to ensure the seaworthiness of the ship; and
- (b) owing to special circumstances, the sending or taking of the ship to sea in such an unseaworthy state was reasonable and justifiable.

### **Unseaworthy ships to be detained**

**229.** If, on complaint made to the Authority in accordance with the provisions hereinafter contained, or without any complaint but after an inspection by the Authority of a ship at any port in the Republic, it must, whether or not the ship is registered in the Republic, detain it, if it is found to be unseaworthy, until it is satisfied that it is in a seaworthy state.

### **Ships may be inspected**

**230.** (1) If any ship is detained in terms of section 229, the Authority may, before releasing it, require those defects or deficiencies which are believed or alleged to exist to be inspected by a surveyor.

(2) The surveyor who makes the inspection under this section, must report fully to the Authority who detained the ship on such supposed or alleged defects or deficiencies.

(3) The Authority must transmit a copy of the surveyor's report to the master of the ship.

### **Complaint as to seaworthiness to be in writing**

**231.** Every complaint in respect of the seaworthiness of a ship must be in writing, stating the name and address of the complainant, and if the ship be detained, a copy of the complaint, including the name and address of the complainant, must be served on the master of the ship together with the notice of detention issued under section 400.

### **Authority to pay compensation for damage if ship is seaworthy**

**232.** If, on inspection it is determined that any ship detained under the provisions of section 229 is seaworthy, the Authority must pay to the owner compensation for any damage suffered by the owner by reason of the detention if it is proved that there was not reasonable cause, by reason of the condition of the ship or the act or default of the owner or master, for the detention of the ship.

### **Expenses to be paid by owner if complaint founded**

**233.** If, on inspection, it is found that any complaint in respect of a ship detained under section 229 was well founded, the owner must pay to the Authority all expenses incurred in connection with the inspection and the ship must not be released until such expenses are paid.

### **Reports of dangers to navigation**

**234.** (1) The master of a South African ship on meeting with dangerous ice, a dangerous derelict, dangerous storm or any other direct danger to navigation, must forthwith send information accordingly by all means of communication at his or her disposal and in accordance with the regulations, to ships in the vicinity and to such authorities on shore as may be prescribed.

(2) Any person in charge of a radio station which is under the control of the Independent Communications Authority of South Africa established in terms of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000), or which is carried on under licence issued by it, must on receiving the prescribed signal that a message is about to be sent under this section, refrain from sending messages for a time sufficient to allow other stations to receive the message, and must transmit the message in such manner as may be required by the Authority.

(3) Compliance with this subsection is a necessary condition of every licence granted by the Independent Communications Authority of South Africa under the Electronic Communications Act, 2005 (Act No. 36 of 2005), or any amendment.

(4) Nothing in subsection (3) must interfere with the transmission by radio of any signal which by regulation has been declared to be a signal of distress.

(5) For the purpose of this section, the expression "dangerous storm" means a hurricane, typhoon, cyclone, or other storm of a similar nature and the master of a ship must be considered to have met with a dangerous storm if he or she has reason to believe that there is such a storm in his or her vicinity.

### **Safe navigation and avoidance of dangerous situations**

**235.** (1) Prior to proceeding to sea, the master must ensure that the intended voyage has been planned using the appropriate nautical charts and nautical publications for the area concerned, taking into account the guidelines and recommendations determined by the Authority:

- (a) The voyage plan must identify a route which:
- (i) Takes into account any relevant ships' routing systems;
  - (ii) ensures sufficient sea room for the safe passage of the ship throughout the voyage;
  - (iii) anticipates all known navigational hazards and adverse weather conditions; and
  - (iv) takes into account the marine environmental protection measures that apply and avoids, as far as possible, actions and activities which could cause damage to the environment.

(2) The master must navigate carefully and at appropriate speed.

(3) The owner or any other person must not prevent or restrict the master of the ship from taking or executing any decision which, in the master's



professional judgment, is necessary for safe navigation and protection of the marine environment.

### **Safety certificates and memoranda issued before commencement of Act**

**236.** Any certificate or memorandum issued under the authority of the Government of the Republic before the coming into operation of this section, and being of a similar nature to any certificate or memorandum for the issue of which provision is made by this Chapter, must, during the period for which it is expressed to be valid, be considered to have been issued under this Act.

### **Provisions of this Chapter not to be applied to ships not registered in the Republic driven into Republic ports by stress of weather**

**237.** Notwithstanding the fact that any provision of this Chapter is expressed to apply to ships not registered in the Republic while they are within the Republic or within the territorial waters thereof, that provision must not be applied to a ship not registered in the Republic if she would not have been within the Republic or within the territorial waters thereof but for stress of weather or any other circumstances that neither the master nor the owner nor the charterer (if any) of the ship could have prevented or forestalled.

### **Admissibility in evidence of safety and load line certificates and surveyor's reports**

**238.** Every safety convention certificate, local safety certificate, and load line certificate and every report made by a surveyor in terms of any provision of this Act must be admissible in evidence.

### ***Part 11***

#### ***Carriage of Grain***

##### **Application of Part 11**

**239.** This Part applies to—

- (a) every South African ship wherever it may be; and
- (b) any other ship while within any port in the Republic, or while embarking or disembarking passengers within the territorial waters of the Republic, or while loading or discharging cargo or fuel within those waters.

##### **Carriage of grain**

**240.** (1) No person must carry in any ship, except as prescribed, grain as cargo.

(2) Whenever grain is loaded in any port in the Republic on board any ship, wherever it may be registered, or is loaded on board a South African ship in any port outside the Republic, the owner or the master of the ship, or any agent of the owner who is charged with the loading or with sending the ship to sea laden with the grain, must take all precautions prescribed by regulation to prevent the grain from shifting and in addition must take all other precautions to prevent the grain from

shifting which in the circumstances are necessary and reasonable and if all such precautions are not taken, the ship must be considered to be unseaworthy.

(3) Whenever any ship, wherever it may be registered, having been loaded with grain outside the Republic without the taking of all such precautions as are referred to in subsection (1), enters any port in the Republic so laden, the owner or master of the ship must be guilty of an offence and the ship must be considered unseaworthy: Provided that this subsection must not have effect if the ship would not have entered any such port but for stress of weather or any other circumstances that neither the master nor the owner nor the charterer (if any) could have prevented or forestalled.

(4) Subsections (1) and (2) must not apply in respect of a ship loaded in all respects in accordance with any provisions approved by the Authority in the special case.

(5) On the arrival at a port in the Republic from a port outside the Republic of any ship, wherever it may be registered, carrying a cargo of grain, the master must cause to be delivered to the Authority a notice stating—

(a) the draught of water and freeboard of the said ship after the loading of her cargo was completed at the final port of loading; and

(b) the following particulars of the grain are carried, namely—

(i) the kind of grain and the quantity thereof, stated in cubic feet, bushels, or tons weight;

(ii) the mode in which the grain is stowed; and

(iii) the precautions taken to prevent the grain from shifting.

**Part 12*****Carriage of Dangerous Goods*****Application of Part 12**

**241.** (1) This Part applies to—

- (a) every South African ship; and
- (b) any other ship while within any port in the Republic, or while embarking or disembarking passengers within the territorial waters of the Republic, or while loading or discharging cargo or fuel within those waters.

(2) The provisions of this Part must not apply to—

- (a) a ship's distress signals;
- (b) the carriage of naval or military stores for the public service under conditions authorised by the Authority; or
- (c) a ship's stores and equipment or to a particular cargo carried in a ship specially built or converted as a whole for that purpose as determined by the Authority.

**Requirements for carriage of dangerous goods**

**242.** (1) No person must send by or carry in any ship, except as prescribed, as cargo or ballast, any dangerous goods.

(2) No person must send by any ship, or, if he is not the master or owner of a ship carry in that ship, any dangerous goods without hazard warning placarding and distinctly marking, in English, their nature on the outside of the

package containing the same, as prescribed, and without giving written notice of the nature of such goods and of the name and address of the sender thereof to the master or owner of a ship at or before the time of sending the same to be taken on board the ship.

(3) The master or owner of a ship may refuse to take on board any package or parcel which the master or owner of a ship suspects to contain dangerous goods, and may require such package or parcel to be opened to ascertain the fact.

### **Exemption from Part 12**

**243.** The Authority must not, in any circumstances, grant a ship an exemption from the provisions of this Part and the prescribed requirements.

**Part 13*****Nuclear Ships*****Application of Part 13**

**244.** (1) Part 13 applies—

- (a) to every nuclear South African ship wherever it may be;
- (b) to any other nuclear ship while within any port in the Republic, or while embarking or disembarking passengers within the territorial waters of the Republic, or while loading or discharging cargo or fuel within those waters; and
- (c) in addition to the National Nuclear Regulator Act, 1999 (Act No. 47 of 1999) and the Nuclear Energy Act, 1999 (Act No. 46 of 1999).

(2) A "nuclear ship" means a ship provided with a nuclear power plant.

**Entry into port**

**245.** The master of a nuclear ship must, before entering a port in the Republic—

- (a) notify the Authority of his or her intention to enter that port;
- (b) confirm that there is on board a valid nuclear ship safety certificate;

- (c) confirm that there is on board a valid nuclear installation licence, if applicable, or a nuclear vessel licence issued in terms of the National Nuclear Regulator Act; and
- (d) confirm that the exposure or hazards at sea or in port, to the crew, passengers or public, or to the waterways or food or water resources is within the prescribed limits as reflected in Annexure 2 of the National Nuclear Act 4 of 1999 as appropriate.

### **Environmental hazard**

**246.** In the event of any marine casualty or accident likely to lead to an environmental hazard the master of a nuclear ship must immediately inform the Authority and if the ship is a South African ship, the master must also immediately inform the competent authority of the country in whose waters the ship may be, or whose waters the ship approaches in a damaged condition.

### **Exemption from Part 13**

**247.** The Authority must not, in any circumstances, grant a ship an exemption from the provisions of this Part and the prescribed requirements.

**Part 14*****Cargoes in General*****Carriage of timber deck cargo**

**248.** (1) Whenever a deck cargo of timber is loaded on a load line ship at a port in the Republic the owner or master must cause the ship to be inspected by a surveyor who, if satisfied that the ship is suitable for the carriage of deck cargoes of timber and that such cargo is properly stowed and secured in accordance with the timber cargo regulations, must issue a certificate to that effect.

(2) Neither the owner nor the master of any such ship must cause or permit her to proceed to sea from a port in the Republic unless there is on board a certificate issued under subsection (1) in force in respect of that ship.

(3) In any proceedings against an owner or master in respect of a contravention of the timber cargo regulations, it must be a good defence to prove that the contravention was due solely to deviation or delay, being deviation or delay caused solely by stress of weather or other circumstances which neither the master nor the owner nor the charterer if any could have prevented or forestalled.

(4) This section must apply to all ships.



### **Marking of heavy packages or objects**

**249.** No person must in the Republic consign to be loaded on any ship, and no owner or master of any ship in the Republic, must cause or permit to be loaded on that ship any package or object of a gross weight of one thousand kilograms or more, unless its weight is plainly and durably marked on the outside of the package or object: Provided that in the case of a package or object of such a character that its exact weight would be difficult to ascertain an approximate weight may be so marked accompanied by the word "approximate" or any reasonable abbreviation thereof.

### **Requirements for packaging of containers**

**250.** (1) Whenever containers are packed in the Republic, the shipper, packer or consignor are obliged to ensure the container is packed properly with appropriate use of blocking, bracing and lashing to ensure the cargo does not move in the container while it is being transported.

(2) No container may be packed beyond the maximum permitted gross mass for that particular container.

(3) No container which does not have a valid safety approval plate may be packed with cargo intended for transport.

(4) Only a container which is suitable for the safe carriage of the particular cargo intended to be loaded in the container may be loaded with that particular cargo.

(5) All cargo packed in containers is to be suitably stowed and securely lashed, as prescribed.

(6) Prior to loading containers on board ships, the shipper must ensure that the gross mass of such is in accordance with the verified gross mass declared on the shipping documents.

(7) The shipper is responsible for obtaining and providing the verified gross mass of a packed container in terms of prescribed methods.

(8) A container partially or fully packed should not be loaded onto a ship unless the Master or his or her representative and the representative of the terminal at which the container will be loaded have obtained, in advance of a vessel loading, the verified gross mass of the container.

## ***Part 15***

### ***Management for the Safe Operation of Ships***

#### **Application of Part 15**

**251.** (1) Part 15 applies to South African ships regardless of the date of construction as follows—

- (a) passenger ships including passenger high-speed craft;
- (b) oil tankers, chemical tankers, gas carriers, bulk carriers and cargo high-speed craft of 500 gross tonnage and upwards; and
- (c) other cargo ships and mobile offshore drilling units of 500 gross tonnage and upwards.

(2) This Part must not apply to a ship operated by an organ of state for non-commercial purposes.

### **Safety management system**

**252.** (1) The owner of a ship to which this Part applies must comply with the prescribed requirements regarding safety management and must maintain a safety management system in accordance therewith.

(2) The Authority must issue a safety management certificate in the manner and form prescribed.

(3) The Authority must conduct the prescribed inspections to verify the proper functioning of the safety management system of the ship.

## ***Part 16***

### ***Safety Measures for High-Speed Craft***

#### **Definition of high-speed craft**

**253.** For the purposes of Part 16, a "high-speed craft" means a craft that is capable of a maximum speed, in metres per second equal to or exceeding:

$$3.7 \nabla^{0.1667}$$

Where  $\nabla$  = volume of displacement corresponding to the design waterline ( $\text{m}^3$ ), excluding craft the hull of which is supported completely clear above the water surface in non-displacement mode by aerodynamic forces generated by ground effect.

## Application of Part 16

**254.** (1) Part 16 applies to South African high-speed craft constructed on or after 1 January 1996 as follows—

- (a) passenger craft which do not proceed in the course of their voyage more than 4 hat operational speed from a place of refuge when fully laden; and
- (b) cargo craft of 500 gross tonnage and upwards which do not proceed in the course of their voyage more than 8 hat operational speed from a place of refuge when fully laden.

(2) Any craft, irrespective of the date of construction, which undergoes repairs, alterations, modifications and outfitting related must continue to comply with at least the prescribed requirements previously applicable to the craft.

(3) Repairs, alterations and modifications of a major character, and outfitting related, must meet the prescribed requirements for a craft constructed on or after 1 July 2002 in so far as the Authority considers reasonable and practicable.

## Requirements for high-speed craft

**255.** A high-speed craft must comply with all prescribed requirements.

**Part 17*****Special Measures to Enhance Maritime Security*****Application of Part 17**

**256.** Part 17 must apply to the following types of South African ships engaged on international voyages—

- (a) a passenger ship, including a high-speed passenger craft;
- (b) a cargo ship, including high-speed craft, of 500 gross tonnes or heavier; and
- (c) a mobile offshore drilling unit that is not on location.

**Powers and duties of Minister with respect to security**

**257.** (1) The Minister must determine the security level and ensure the provision of security-level information to ships entitled to fly the South African flag.

(2) If any change in the security level occurs, the Minister must update the security-level information if it considers it necessary.

(3) The Minister may prescribe such matters as may be necessary to ensure ship and port security.

## Duties of owner and master

**258.** (1) If there is a change in the security level contemplated in section 257 and a higher level is determined, the master must respond without undue delay to any such change.

(2) If the ship cannot comply with the requirements of the security level determined by the Authority, the master must inform the Authority before that ship communicates with the port or enters a port, whichever occurs earlier.

(3) The owner must ensure that, at all times, there is available on board the ship information to enable the Authority to establish—

- (a) who is responsible for appointing the seafarers or other persons employed or engaged on board the ship in any capacity on the business of that ship;
- (b) who is responsible for deciding employment of the ship; and
- (c) in cases where the ship is engaged on bareboat charter, who the parties are to such charter.

## Master's discretion for ship safety and security

**259.** (1) The master must have, to the exclusion of the owner of the ship, charterer or any other person, the power to make any decision, if in the master's opinion, it is necessary to maintain the safety and security of the ship.

- (2) The power referred to in subsection (1), includes the power to
- (a) deny a person, other than a person appointed by the Authority or a peace officer appointed in terms of the Criminal Procedure Act, access to the ship; or

(b) refuse to load cargo, including containers or other closed cargo units.

(3) If, in the opinion of the master, a conflict between any safety and security requirement arises during its operations, the master must give effect to those requirements necessary to maintain the safety of the ship.

### **Ship security alert system**

**260.** (1) A ship must be provided with a ship security alert system.

(2) A ship security alert system must—

- (a) be capable of being activated from the navigation bridge and in at least one other location; and
- (b) comply with the prescribed requirements and standards of performance.

## ***Part 18***

### ***Additional Safety Measures for Bulk Carriers***

#### **Additional requirements**

**261.** The Authority may prescribe any requirements for South African ships that are bulk carriers and such requirements must apply in addition to other requirements in this Act.

## ***Part 19***

### ***Collisions, Accidents at Sea and Limitation of Liability***

## Division of loss in case of collision

**262.** (1) Whenever by the fault of two or more ships damage or loss is caused to one or more of them or to the cargo or freight of one or more of them or to any property on board one or more of them, the liability to make good the damage or loss must be in proportion to the degree in which each ship was at fault: Provided that—

- (a) if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability must be apportioned equally;
- (b) nothing in this section must operate so as to render any ship liable for any loss or damage to which her fault has not contributed; and
- (c) nothing in this section must affect the liability of any person under any contract, or must be construed as imposing any liability upon any person from which he or she is exempted by any contract or by any provision of law, or as affecting the right of any person to limit his or her liability in the manner provided by law.

(2) For the purposes of this Chapter, references to damage or loss caused by the fault of a ship must be construed as including references to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages.



### **Damages for personal injury**

**263.** (1) Whenever loss of life or personal injuries are suffered by any person on board a ship owing to the fault of that ship and of any other ship or ships, the liability of the owners of the ships concerned must be joint and several.

(2) Nothing in this section must be construed as depriving any person of any right of defence on which, independently of this section, such person might have relied in an action brought against him or her by the person injured, or any person entitled to sue in respect of such loss of life, or must affect the right of any person to limit his or her liability in cases to which this section relates in the manner provided by law.

### **Right of contribution**

**264.** (1) Whenever loss of life or personal injuries are suffered by a person on board a ship owing to the fault of that ship and of any other ship or ships, and a proportion of the damages is recovered against the owner of one of the ships which exceeds the proportion in which it was in fault, the said owner may recover by way of contribution the amount of the excess from the owners of the other ship or ships to the extent to which those ships were respectively in fault: Provided that no amount must be so recovered which could not, by reason of any statutory or contractual limitation of, or exemption from, liability, or which could not for any other reason, have been recovered in the first instance as damages by the persons entitled to sue therefor.

(2) In addition to any other remedy provided by law, the person entitled to any contributions under subsection (1) must, for the purpose of recovering the contribution, have, subject to the provisions of this Act, the same rights and powers as the persons entitled to sue for damages in the first instance.

### **Report to Authority of marine casualty and other accidents to and on board ship**

**265.** (1) The owner or master of any ship which—

- (a) has been involved in a marine casualty or marine incident; or
- (b) has been in a position of great peril either from the action of some other ship or for any other reason; or
- (c) having left any port in the Republic, has put back to that port; or
- (d) has fouled or done any damage to any harbour, dock or wharf or to any lightship, buoy, beacon or sea mark,

must as soon as practicable and using the fastest means of communication available, report the event to the Authority in the form prescribed, stating the nature of the event and of the probable cause thereof, the name of the ship, its official number, the port to which it belongs, the place where the event occurred and the place where the ship then is, and giving all other available relevant information.

(2) Whenever a stevedore, a shore contractor or incidental persons are involved in a very serious marine casualty or resulting in serious injury to any person, or in an accident, their employer must, in the form and stating the particulars referred to in subsection (1), forthwith report the event to the nearest Authority by the fastest means of communication available.

(3) Subsection (1) must, subject to subsection (4), apply to every ship which is registered or licensed in the Republic or which is in terms of this Act required to be so licensed and to or in respect of or on board of which any such event as is referred to in subsection (1) has occurred anywhere, and it must apply to a ship registered in a country other than the Republic only while it is within the Republic or the territorial waters thereof and if any such event has occurred to or in respect of or on board of the ship during a voyage to a port in the Republic or within the Republic or the territorial waters thereof.

(4) Subsection (1)(f) must not apply to any vessel belonging to National Ports Authority of South Africa and used by that authority in connection with the working of its harbours.

(5) Any employee, employer or user who learns about an event referred to in subsection (1), must forthwith notify the owner or master concerned of such event.

(6) The owner or master of any ship concerned and any employee or user who learns about an event referred to in subsection (2), must forthwith notify the employer concerned of such event.

(7) No person must disturb or remove anything from the scene of a marine casualty or an accident required to be reported in terms of this section unless permitted by the Authority or the independent marine casualty investigation unit in order to hold a preliminary enquiry or marine safety investigation into the marine casualty or accident, by that person.

## Notice to Authority of loss of ship

**266.** If the owner or the agent of the owner of a South African ship or of a ship plying between ports in the Republic or between a port in the Republic and any other port has reason, owing to the non-appearance of the ship or to any other circumstances, to believe or to fear that the ship has been wholly lost, he or she must as soon as practicable notify the Authority in writing of the loss or the feared loss and of the probable occasion thereof, stating the name of the ship, its official number, the port to which it belongs, and giving all other available relevant information.

## Limitation of owner's liability

**267.** (1) The owner or salvor of a ship, whether registered in the Republic or elsewhere, must not, if any loss of life or personal injury to any person, or any loss of or damage to any property or rights of any kind, whether movable or immovable, has occurred on board or in direct connection with the operation of a ship or with salvage operations, and consequential loss resulting therefrom—

(a) if no claim for damages in respect of loss of or damage to property or rights arises, be liable for damages in respect of loss of life or personal injury to an aggregate amount exceeding an amount determined by the Minister by notice in the *Gazette* and, until the time that the amount is so determined, must not be liable for such damages to an aggregate amount exceeding—

- (i) three million and twenty thousand special drawing rights for a ship with a tonnage not exceeding 2 000 tons; and
  - (ii) for a ship with a tonnage over 2 000 tons, three million and twenty thousand special drawing rights together with the following additional amount—
    - (aa) for each ton from 2 001 to 30 000 tons, one thousand two hundred and eight special drawing rights;
    - (bb) for each ton from 30 001 to 70 000 tons, nine hundred and six special drawing rights; and
    - (cc) for each ton over 70 000 tons, six hundred and four special drawing rights; or
- (b) if no claim for damages in respect of loss of life or personal injury arises, be liable for damages in respect of loss of or damage to property or rights to an aggregate amount exceeding an amount determined by the Minister by notice in the *Gazette* and, until the time that the amount is so determined, must not be liable for such damages to an aggregate amount exceeding—
- (i) one million five hundred and ten million special drawing rights for a ship with a tonnage not exceeding 2 000 tons; and
  - (ii) for a ship with a tonnage over 2 000 tons, one million five hundred and ten special drawing rights together with the following additional amount—
    - (aa) for each ton from 2 001 to 30 000 tons, six hundred and four special drawing rights;
    - (bb) for each ton from 30 001 to 70 000 tons, four hundred and fifty three special drawing rights; and

- (cc) for each ton over 70 000 tons, three hundred and two special drawing rights; or
- (c) if claims for damages in respect of loss of life or personal injury and also claims for damages in respect of loss of or damage to property or rights arise, be liable for damages to an aggregate amount exceeding the amount worked out in accordance with paragraph (a): Provided that—
- (i) the amount by which the amount worked out in accordance with paragraph (a) exceeds the amount worked out in accordance with paragraph (b) must be applied only to claims for damages in respect of loss of life or personal injury;
  - (ii) the amount worked out in accordance with paragraph (b) must be applied *pro rata* to the balance of the claims for damages in respect of loss of life or personal injury and the claims for damages in respect of loss of or damage to property or rights;
  - (iii) in any event, the amount to be applied to claims for damages in respect of loss of or damage to property or rights must not exceed the amount worked out in accordance with paragraph (b) for those claims; and
  - (iv) subject to the paragraphs in this section, all claims rank on equal footing, without preference.

(2) However, the owner of a ship is not entitled to the benefit of the limits of liability in subsection (1) if it is proved that the loss, injury or damage in question resulted from the owner's personal act or omission, committed either with intent to cause the loss, injury or damage or recklessly and with knowledge that the

loss, injury or damage would probably result. The onus of proving that this subsection applies is on the person alleging its application.

(3) To avoid doubt, the liability limits in terms of subsection (1) must apply only in respect of claims arising after the commencement of the provision establishing the applicable limits.

(4) The provisions of this section must apply only to claims in respect of loss of life or personal injury or any loss of or any damage to any property or rights occurring on board or in direct connection with the operation of a ship or with salvage operations in relation to a ship and consequential loss resulting therefrom—

- (a) arising on any single occasion, and in the application of the said provisions claims for damages in respect of loss, injury or damage arising out of two or more distinct occasions must not be combined; or
- (b) falling within the definition of 'maritime claim' in section 1 of the Admiralty Jurisdiction Regulation Act.

(5) (a) (i) The amounts mentioned in subsection (1) must be converted into South African currency or any other currency that may be applicable on the basis of the value of the currency on the date of the occasion on which the claim arose, and

(ii) The Court may, at any time, give the directions it thinks fit about the currency, or currencies, that are to be applicable and about the ascertainment, subject to paragraphs (b) and (c), of the value of any applicable currency on the relevant date.

(b) For the purpose of converting from special drawing rights into South African currency the amounts mentioned in subsection (1), one special

drawing right must be treated as equal to such a sum in South African currency as the International Monetary Fund have fixed as being the equivalent of one special drawing right for—

- (i) the relevant date under paragraph (a); or
- (ii) if no sum has been so fixed for that date, the last preceding date for which a sum has been so fixed, and

(c) A certificate given by or on behalf of the National

Treasury stating—

- (i) that a particular sum in South African currency has been fixed as mentioned in paragraph (b) for a particular date; or
- (ii) that no sum has been so fixed for that date and that a particular sum in South African currency has been so fixed for a date which is the last preceding date for which a sum has been so fixed,

is, on the face of it and unless rebutted, evidence of those matters for the purposes of subsection (1); and a document purporting to be a such a certificate must, in any proceedings, be admissible in evidence and, in the absence of evidence to the contrary, be considered to be such a certificate.

(6) If any claims set out in subsection (1) above are made against any person for whose act, neglect or default the owner or **salvor** is responsible, such person must be entitled to avail himself or herself of the limitation of liability provided for in this section.

(7) The limits of liability for any **salvor** not operating from any ship or for any **salvor** operating solely on the ship to, or in respect of which, he is rendering salvage services must be calculated according to a tonnage of 1,500 tons.



(8) The provisions of subsections (1) to (7) must not apply to claims—

- (a) for salvage, including, if applicable, any claim for special compensation under Article 14 of the International Convention on Salvage, 1989, as amended, being the Schedule to the Wreck and Salvage Act, 1996, or contribution in general average;
- (b) for oil pollution damage;
- (c) for nuclear damage;
- (d) by servants of the owner of a ship or salvor whose duties are connected with the ship or the salvage operations, including claims of their heirs, dependents or other persons entitled to make such claims;
- (e) for wreck removal.

### **Calculation of tonnage**

**268.** (1) For the purpose of section 267, the tonnage of a ship must be her gross tonnage.

(2) There must not be included in such tonnage any space occupied by seafarers and appropriated to their use which has been certified by a surveyor to comply in all respects with the requirements of this Act.

- (3) The measurement of such tonnage must be in the case of—
- (a) a South African ship, as prescribed;
  - (b) a treaty ship registered elsewhere than in the Republic, according to the law of the treaty country where the ship is registered; or

(c) a foreign ship, according to the law of the Republic, if capable of being so measured.

(4) In the case of any foreign ship, which is incapable of being measured under the law of the Republic, the Authority must, after consideration of the available evidence concerning the dimensions of the ship, give a certificate stating what would, in its opinion, have been the tonnage of the ship if it had been duly measured according to the law of the Republic and the tonnage so stated in such certificate must, for the purpose of section 267, be considered to be the tonnage of the ship.

#### **Application of this Part to persons other than the owners**

**269.** Any obligation imposed by Part 19 upon any owner of a ship must be imposed also upon any person other than the owner who is responsible for the fault of the ship and in any case where, by virtue of any charter or lease, or for any other reason, the owner is not responsible for the navigation and management of the ship, this Part must be construed to impose any such obligation upon the charterer or other person for the time being so responsible, and not upon the owner.

**CHAPTER 6****MARINE CASUALTY AND MARINE INCIDENT INVESTIGATIONS*****Part 1******Application*****Application of Chapter 6**

**270.** (1) Chapter 6 applies to—

- (a) preliminary enquiry conducted by the Authority;
- (b) a marine safety investigation conducted by the independent accident and incident unit established in terms of Part 4;
- (c) a formal enquiry conducted by a court of marine enquiry convened in terms of Part 5;
- (d) a formal enquiry conducted by a maritime court convened in terms of Part 6;  
or
- (e) an appeal conducted by a court of survey convened in terms of Part 7; and

(2) The sole objective of the proceedings specified in subsection (1) must be the prevention of future accidents through the ascertainment of its causes and circumstances. It must not be the purpose of such proceedings to determine liability nor, except so far as is necessary to achieve its objective, to apportion blame.

## Application of Chapter to certain ships

**271.** (1) A preliminary enquiry or a marine safety investigation or both such enquiry and investigation may be conducted in respect of—

- (a) any ship registered or licensed under this Act;
- (b) any ship which must be licensed in terms of section 65;
- (c) any ship registered in a foreign country where a marine casualty or incident occurred in the territorial waters of the Republic;
- (d) any ship registered in a foreign country—
  - (i) where such ship is involved in a marine casualty in a port or waters other than a port in or the territorial waters of the Republic; and
  - (ii) the first port where that ship arrives at after the marine casualty occurred, is a port in the Republic; and
  - (iii) no investigation was conducted by any competent court or other investigatory body of the country where the marine casualty occurred;
- (a) any ship registered in a foreign country wherever it may be, on board which a South African citizen dies or sustains a serious injury; and
- (b) any vessel in inland waters.

(2) Subject to subsection (3), a preliminary enquiry and a marine safety investigation into a marine casualty may not be conducted in respect of a ship registered in any treaty country other than the Republic unless the government of that treaty country requests the Authority to conduct such investigation.

(3) Notwithstanding subsection (2), a preliminary enquiry and a marine safety investigation into a marine casualty may be conducted in respect of a

ship referred to in that subsection if the ship is wholly engaged in plying between ports in the Republic.

### **Matters to be investigated**

**272.** Chapter 6 applies to—

- (a) a preliminary enquiry conducted by the Authority and a marine safety investigation conducted by the marine accident and incident unit and a formal enquiry conducted by a marine court of enquiry or maritime court regarding—
  - (i) an allegation of a breach of the obligations of the owner in terms of this Act or an allegation of incompetency or misconduct of a master or crew;
  - (ii) a marine casualty;
  - (iii) a marine incident;
  - (iv) a complaint by the master or any member of the crew of a South African ship; or
  - (v) the protection of the interest of the owner of a South African ship or of the cargo; and
- (b) an appeal to the Authority regarding the outcome of an inspection of a vessel by a surveyor.

**Part 2*****Powers of officers, marine safety investigators, courts and persons appointed  
in terms of this Chapter*****General powers of officers, marine safety investigators, courts and persons  
appointed in terms of this Chapter**

**273.** (1) Any—

- (a) marine safety investigator, proper officer or surveyor;
- (b) marine accident and incident investigation unit;
- (c) court of marine enquiry, maritime court;
- (d) court of survey; or
- (e) any other person authorised by this Act, or required by the Authority, to make any survey or inspection or conduct any investigation,

may, in the execution of his, her or its duty or the exercise of his, her or its functions, in addition to the powers granted in terms of section 8—

- (i) administer an oath or affirmation to any person appearing in obedience to any summons or otherwise, and interrogate him or her and inspect and detain any book, document or thing produced;
- (ii) require any person interrogated to subscribe to a declaration of the truth of the statement made by him or her;
- (iii) direct any person not to destroy, amend or in any way alter the content or appearance of any document or other item of evidence;

- (iv) require any person who is not usually resident in the Republic and who may be required to attend as a witness at a marine safety investigation or a court of marine enquiry to sign an undertaking in the prescribed form that he or she will return to the Republic to give evidence at such marine safety investigation or court of marine enquiry upon receipt of a summons or order and to furnish a physical address at which service of charges, or a summons can be made, and such address must be within 20 kilometers of the city centre of any city in which a Court equivalent to the High Court of South Africa is situated;
  - (v) take steps to prevent any person referred to in paragraph (iv) from leaving the Republic until security has been provided by the person on his or her behalf in an amount and form to be determined by the Authority, but such amount must not exceed the prescribed amount; and
  - (vi) take steps to prevent the sailing of any ship—
    - (aa) on which a person referred to in paragraph (iv) has been serving if that person is unable to furnish the security required by the Authority, until the owner or operator of such ship provides security to the satisfaction of the Authority to cover the living expenses, repatriation costs and salary of such person whilst he or she remains in the Republic; and
    - (bb) in respect of which a marine casualty or marine incident has occurred.
- (2) Every person—
- (a) must upon demand, assist to the best of his or her ability any person or court in the exercise of any of the powers conferred by subsection (1);
  - (b) summoned to give information whose prescribed expenses have been paid or will be paid after attendance, must attend at the time and place specified, and remain in attendance until excused by the person from further attendance;

- 
- (c) must take the oath or affirmation administered to him or her by a person or court referred to in subsection (1);
  - (d) must answer fully and satisfactorily, to the best of his or her ability, all questions lawfully put to him or her, and, upon being required to do so, produce any book, document or thing in his or her possession or under his or her control: Provided that in connection with the interrogation of any such person by, or the production of any such book, document or thing to any such person, the law relating to privilege, as applicable to a witness summoned to give evidence or produce any book, document or thing before a court of law must apply;
  - (e) upon being required to do so, must subscribe to a declaration of the truth of any statement made by him or her;
  - (f) may not be entitled to refuse to answer any question upon the ground that the answer would tend to expose him or her to a criminal charge;
  - (g) directed in terms of subsection (1)(d)(iii) not to destroy, amend or in any way alter the content or appearance of any document or other item of evidence must take all such steps as are reasonable and necessary to preserve such document or item of evidence;
  - (h) who has signed an undertaking contemplated in subsection (1)(d)(iv) or provided security as contemplated in subsection (1)(d)(v) must, if subsequently requested to attend a marine safety investigation or a court of marine enquiry, and whose reasonable expenses have been paid or offered to him or her in respect of such marine safety investigation or court of marine enquiry, attend at the time and place specified, or make himself available to give evidence, whether in person or on commission or by such other means



directed by the presiding officer and remain in attendance or available until excused by the presiding officer or other person or court from further attendance or remaining available.

(3) A person who is required to establish security in terms of subsection (1)(d)(v) must provide such security which—

- (a) must, if it is in cash, be held in an interest bearing account by the Authority and earn interest for the benefit of the person who has deposited such security;
- (b) may be used by the Authority to cover any living expenses of such person;
- (c) may be forfeited to the Authority should the person fail to comply with his or her obligations;
- (d) must be returned to the person who provided the security, together with any applicable interest and after deducting the living expenses, repatriation costs and salary contemplated in subsection (1)(d)(v) as soon as the marine safety investigation or court of marine enquiry has commenced its first sitting.

(4) Security which is forfeited to the Authority as contemplated in subsection (3)(c) must be paid into the Maritime Fund.

(5) Any person who, after being sworn in by a person in the exercise of the said powers under this section, gives a false answer to any question put to him or her, or makes a false statement on any matter, knowing that answer or statement to be false, must be guilty of perjury.

### **Powers of proper officer relating to cause of death on board ship**

**274.** (1) If a person dies on board any foreign-going South African ship the proper officer at the port where the crew of the ship is discharged, or the proper officer at any earlier port of call in the Republic, must, on the arrival of the ship at that port, inquire into the cause of the death, and must make in the official logbook an endorsement to the effect, either that the statement of the cause of death in the book is in his or her opinion true, or the contrary, according to the result of his or her inquiry.

(2) If in the course of an inquiry it appears to the proper officer that a death has been caused on board the ship by violence or other improper means, the proper officer must either report the matter to the Authority, or if the emergency of the case so requires, take immediate steps to bring the offender to justice by reporting the matter to the police.

### **Powers of member of South African Police Service relating to marine casualties**

**275.** A member of the South African Police Service—

(a) may investigate any marine incident or marine casualty if he or she has reason to believe that a crime was committed and that crime constituted or was the cause of the marine incident or the marine casualty; and

- (b) may exercise any power or duty afforded to a marine safety investigator in terms of this Act and afforded to him or her in terms of the South African Police Services Act, 1995, and the Criminal Procedure Act, 1977.

### ***Part 3***

#### ***Summons and Evidence***

##### **Summoning of witnesses**

**276.** (1) The Authority, marine accident and incident investigation unit, court of marine enquiry, maritime court or court of survey, may, for purposes of a marine safety investigation, formal enquiry, investigation or hearing under this Chapter, issue a summons in the exercise of its powers under section 273 in the prescribed form and serve it as prescribed.

(2) If a person refuses to obey a summons, the Authority, marine accident and incident investigation unit, court of marine enquiry, maritime court or court of survey may request a court of competent jurisdiction to compel compliance with the summons.

(3) Any court of competent jurisdiction may, in the case of refusal to obey a summons, issue an order requiring compliance with the summons and failure to obey the order may be punished by the court as contempt.

(4) A witness must be paid the prescribed expenses which may not be more than what a witness attending or summoned to give evidence in a civil case before a magistrate's court is entitled to.

## **Evidentiary procedures for marine accident and incident investigation unit and court of marine enquiry**

**277.** (1) Any person summoned to appear at the marine safety investigation of the marine accident and incident investigation unit or a court of marine enquiry must not be entitled to refuse to answer any question upon the ground that the answer would tend to incriminate him or her or upon the ground that he or she may be tried on a criminal charge and may be prejudiced at such a trial by his or her answer.

(2) No evidence regarding any questions and answers contemplated in subsection (1) must be admissible in any other proceedings, criminal or otherwise, except in criminal proceedings where the person concerned stands trial on a charge relating to the administering or taking of an oath or the administering or making of an affirmation or the giving of false evidence or the making of a false statement in connection with such questions and answers.

(3) Any person called upon to give evidence at a hearing may be assisted at his or her interrogation by counsel, an attorney or agent.

### **Preservation of evidence**

**278.** (1) The owner or master, or if the master of the ship has not survived, the senior surviving deck officer, of a ship involved in a marine casualty which must be reported in terms of section 265, must, following such marine casualty, as far as is practicable, ensure that all—

- (a) charts;
- (b) log books;
- (c) electronic and magnetic recording and video tapes, including information from a voyage data recorder or any other recording system relating to all relevant periods preceding, during and after the accident, but in any event including periods of no less than six hours preceding and after the accident; and
- (d) all documents or other records which might reasonably be considered pertinent to the accident, are kept and that no alteration is made to any recordings or entries in them.

(2) In the case of an accident involving a South African ship, the owner or master, or if the master of the ship has not survived, the senior surviving deck officer, of a ship must ensure that—

- (a) all information from a voyage data recorder or any other recording system relating to the circumstances of an accident is saved and preserved, in particular by taking steps, where necessary, to prevent such information from being overwritten; and
- (b) any other equipment which might reasonably be considered pertinent to the investigation of the accident is so far as practicable left undisturbed.

(3) The duty under subsection (1) to ensure that documents, information or records are kept and not altered and to ensure under subsection (2) that information is saved and preserved, or that equipment is left undisturbed, must continue until—

- (a) notification is received from the Authority, proper officer or surveyor that no investigation is to take place or that the investigation has been completed; or

(b) the Authority or a proper officer or surveyor carrying out the investigation gives written notification in the prescribed form, that he or she no longer requires them.

(4) Following a marine casualty in South African waters involving any ship, the persons referred to in subsection (1) must comply with the requirements of that subsection and subsection (2) if directed to do so by the Authority.

(5) A proper officer or surveyor may, pending the outcome of any investigation conducted in terms of this Act, or pending notification from the proper officer that no investigation will be held, prohibit persons from gaining access to, or interfering with, any ship, ship's boat or other equipment involved in a marine casualty, subject to section 5(5) of the Admiralty Jurisdiction Regulation Act.

(6) A proper officer or surveyor may take into his or her possession original documents referred to in subsection (1) and retain same as long as a vessel is detained by the Authority and may make copies of and retain any document referred to in subsection (1) and, subject to any applicable rules of evidence, tender the documents in evidence at any marine safety investigation, conducted by the Authority, court of marine enquiry or maritime court.

**Part 4*****Marine Safety Investigation*****Preliminary enquiry and marine safety investigation**

**279.** (1) The marine accident and incident unit contemplated in section 280 must, as soon as practicable after receipt of an allegation or reasonable suspicion in respect of or the occurrence of a marine casualty or marine incident on or involving a ship referred to in section 271, conduct a preliminary enquiry into that allegation, marine casualty or marine incident.

(2) A preliminary enquiry conducted in terms of this Part is independent from a criminal investigation or other investigation conducted by a court of marine enquiry or maritime court or conducted by a court of competent jurisdiction in order to determine the fault and liability of persons.

(3) A preliminary enquiry report must—

- (a) include only findings of fact, supported as may be by whatever documents or other evidence were available to the marine safety investigator;
- (b) not be used in evidence in any legal proceedings, except for a court of marine enquiry;
- (c) make recommendations, if appropriate, that the allegation, marine casualty or marine incident be investigated by the marine accident and incident investigation unit; and
- (d) make such other recommendations as may be competent in terms of this Act.

(4) The report of a preliminary enquiry must be submitted, without delay, by the marine accident and incident investigation unit to the Minister who may, upon receipt thereof:

- (a) convene a court of marine enquiry; or
- (b) take such other action as may be competent in terms of this Act.

(5) If the South African Police Service or the National Prosecuting Authority have notified the marine accident and incident unit that an investigation or criminal proceedings regarding the relevant event has been initiated, the marine accident and incident unit must ensure that the investigation or criminal proceedings is not hindered because of the investigation conducted by it.

### **Marine accident and incident investigation unit**

**280.** (1) For the purpose of conducting marine safety investigations in marine casualties and such other matters as may be considered necessary and appropriate, the Authority must—

- (a) establish a marine accident and incident investigation unit as prescribed;
- (b) appoint or contract any competent person as a marine safety investigator to that unit; or
- (c) request a department referred to in section 281, to assign an inspector or other competent person to the unit to assist a marine safety investigator with a marine safety investigation of a very serious marine casualty.

(2) The Minister must, after consultation with the Authority, appoint a person as the chief marine safety investigator of the marine accident and incident investigation unit.



(3) The marine accident and incident investigation unit must exercise its powers and duties in the prescribed manner and conduct its marine safety investigation—

- (a) in accordance with any prescribed requirements, the provisions of this Act and any applicable international norms and standards;
- (b) in an independent, impartial and objective manner without fear, favour or prejudice; and
- (c) with the objective of preventing subsequent marine casualties and marine incidents and maintaining standards of safety and competence.

(4) The marine accident and incident investigation unit must, on conclusion of a marine safety investigation, without delay, report its findings and recommendations in the prescribed form, to the Minister.

(5) A report of the marine accident and incident investigation unit must—

- (a) not include a finding which determines liability or apportions blame;
- (b) not be used in evidence in any legal proceedings, except for a court of marine enquiry;
- (c) make recommendations with the objective of preventing future marine casualties and marine incidents only; and
- (d) not include any recommendation for the dis-rating of a seafarer, the suspension of a certificate, the imposition of a fine or other sanction.

(6) A recommendation of the marine accident and incident investigation unit may include a recommendation—

- (a) that the Authority issue a technical standard in terms of section 6 of this Act or to amend a technical standard that was so issued in an endeavour to prevent future marine casualties and marine incidents;
- (b) that the Minister convenes a marine court of enquiry or a maritime court;
- (c) that legislation is amended in an endeavour to prevent future marine casualties and marine incidents;
- (d) indicating the time period in which implementation of the measures specified in the recommendations is preferable; and
- (e) to implement any other recommendation that relates to the improvement of maritime safety.

(7) After receipt of the report of the marine accident and incident unit, the Minister must without delay—

- (a) if the Minister established a commission in terms of section 51 of the South African Maritime Safety Authority Act, submit the report to that commission;
- (b) notify the Authority to implement the recommendations of the marine accident and incident unit that relates to the exercise of its powers and duties; and
- (c) implement the recommendations that relates to the exercise of his or her powers and duties.

(8) In order to prevent similar marine casualties and incidents, in addition to an investigation the marine accident and incident investigation unit may collect and analyse data related to maritime safety, unless it jeopardises the independence of the unit.

(9) The marine accident and incident investigation unit must only be dissolved by an act of Parliament.

### **Assignment of inspector or competent person to marine accident and incident investigation unit**

**281.** (1) The marine accident and incident unit may request the Director-General of the department of labour to assign a person designated as an inspector under section 28 of the Occupational Health and Safety Act to assist the marine accident and incident investigation unit to conduct a marine safety investigation of a marine casualty which relates to any matter in respect of which the Authority and the Director-General of department responsible for Labour would both have jurisdiction.

(2) The marine accident and incident unit may request the Director-General of the department responsible for environmental affairs to assign a person designated as an environmental management inspector under the National Environmental Management Act, 1998 (Act No. 107 of 1998) or other official with the appropriate expertise employed in the department responsible for environmental affairs, to assist the marine accident and incident investigation unit to conduct a marine safety investigation of a marine casualty that has resulted in significant pollution or degradation of any part of the coast or territorial waters of the Republic.

### **Duty of marine accident and incident investigation unit to inform master, owner or ship's agent of marine safety investigation**

**282.** The marine accident and incident unit must, as soon as is practicable, inform the master or owner of a ship referred to in section 271, or the ship's agent, of the—

- (a) allegation, marine casualty or marine incident to be investigated by the marine accident and incident investigation unit;
- (b) time and place where the marine safety investigation will commence;
- (c) name and contact details of the marine accident and incident investigation unit;
- (d) legislation under which the marine safety investigation is to be conducted;
- (e) rights and obligations of the parties; and
- (f) rights and obligations of the Minister.

### **Power of Authority and marine accident and incident unit to detain ship**

**283.** Subject to the provisions of this Chapter, the Authority and the marine accident and incident unit have the right to detain a ship to conduct a preliminary enquiry and a marine safety investigation, provided the ship is not unduly delayed.

## ***Part 5***

### ***Courts of Marine Enquiry***

#### **Establishment and convening of court of marine enquiry in Republic**

- 284.** (1) The court of marine enquiry is hereby established.
- (2) The Minister, independent of any marine safety investigation that may have been conducted by the marine accident and incident investigation unit in terms of section 280, may convene a marine court of enquiry to conduct a formal

enquiry into any allegation referred to in section 272 (a)(i), marine casualty or marine incident.

(3) Within one month after receipt of a recommendation from the marine accident and investigation unit to convene a court of marine enquiry as contemplated in this section, the Minister must notify the unit of his or her decision on whether or not to convene a court of marine enquiry.

(4) The court of marine enquiry must be convened by the Minister no later than three months after issue of the notice of decision contemplated in subsection (3).

### **Constitution of court of marine enquiry**

**285.** (1) A court of marine enquiry must consist of a presiding officer and either two other members.

(2) The Minister must prescribe—

- (a) the manner of selection and appointment of members to the court of marine enquiry;
- (b) the general qualifications and ineligibility of persons to be appointed as, vacation of office by, conflicts and disclosure of interest by, remuneration and benefits of members of the marine court of enquiry;
- (c) qualifications of the presiding officer of the marine court of enquiry;
- (d) the powers and duties of the presiding officer and other members;
- (e) procedure for decisions of the court of marine enquiry;
- (f) staff of the marine court of enquiry; and
- (g) any other matter for the effective functioning of a marine court of enquiry.

(3) No member of a marine court of enquiry is liable for any report, finding, point of view or recommendation that is given in good faith and is submitted to the Minister or made known under this Act.

### **Procedure at court of marine enquiry**

**286.** (1) A court of marine enquiry may, subject to the provisions of this Act, determine the procedure to be followed at the formal enquiry.

(2) Every formal enquiry must, unless the court decides otherwise, be held in open court and the decision or finding, with the reasons thereof, must, at the conclusion of the enquiry, or as soon as possible thereafter, be delivered in open court.

### **Decisions of court of marine enquiry**

**287.** (1) No decision taken by the court of marine enquiry will be invalid merely by reason of a vacancy or of the fact that any person not entitled to sit as a member of the court of marine enquiry, sat as such a member at the time when the decision was taken, if the decision was taken by the majority of the members of the court of marine enquiry present at the time and who were entitled to sit as members of the court of marine enquiry.

(2) The decision of a court of marine enquiry must—

- (a) not include a finding which determines liability or apportions blame;
- (b) not be used in evidence in any legal proceedings;

- (c) make recommendations with the objective of preventing future marine casualties and marine incidents only; or
- (d) not include any recommendation for the disrating of a seafarer, the suspension of a certificate, the imposition of a fine or other sanction.

### **Powers of court of marine enquiry**

**288.** A court of marine enquiry may, during the formal enquiry, order any person who in its opinion may be able to give information which is likely to assist it in the carrying out of its duties, or who it suspects or believes has in his or her possession or custody or under his or her control any book, document or thing the inspection of which is likely to assist it in the carrying out of its duties, to produce such information, book, document or thing.

### **Court of record**

**289.** The court of marine enquiry is a court of record.

### **Report to Minister**

**290.** (1) The presiding officer of the marine court of enquiry must upon conclusion of the formal inquiry submit to the Minister the notes of evidence and as many copies as the Minister may require of the record of the proceedings, the report, decision, any dissenting decision and the reasons for the decision and dissenting decision.

(2) The Minister must, within 30 days of receipt of the report of the court of marine enquiry, publish that report on the official website of the department responsible for transport.

(3) When the investigation affects a master or member of the crew of a ship other than a South African ship the Minister must transmit a copy of the court's decision, together with the notes of the evidence, to the proper authority in the country where the ship is registered.

### **Appeals against decisions of courts of marine enquiry**

**291.** There must be no right to appeal a decision of a court of marine enquiry.

## ***Part 6***

### ***Maritime Courts***

#### **Convening of maritime court outside Republic**

- 292.** A proper officer may convene a maritime court to investigate—
- (a) a complaint which appears to a proper officer outside the Republic to require immediate investigation is made to him or her by the master or any member of the crew of a South African ship;
  - (b) the interest of the owner of a South African ship or of the cargo thereof if it appears to such an officer to require it;



- (c) an allegation of incompetency or misconduct which is made to him or her against the master or any of the ship's officers of a South African ship;
- (d) any marine casualty involving a South African ship near the place where a proper officer may be or whenever the crew or part of the crew of any South African ship which has been involved in a marine casualty arrives at that place; or
- (e) an allegation that the actions or omissions of any owner of any ship have in any way contributed directly or indirectly to a very serious marine casualty of or on board a South African ship.

#### **Establishment and constitution of maritime court**

**293.** (1) The maritime court is hereby established.

(2) A maritime court must consist of the proper officer who convenes it and either two or four other members appointed by the proper officer.

(3) The proper officer who convenes the maritime court must be the presiding officer.

(4) The Minister must prescribe—

- (a) the manner of selection and appointment of members to the maritime court;
- (b) the general qualifications and ineligibility of persons to be appointed as, vacation of office by, conflicts and disclosure of interest by, remuneration and benefits of members of the maritime court;
- (c) the manner in which the seat of a presiding officer may be filled, if the proper officer, for any reason, cannot act as presiding officer;
- (d) the powers and duties of the presiding officer and other members;

- (e) procedure for decisions of the court of marine enquiry; and
- (f) any other matter for the effective functioning of a maritime court.

(4) No member of a maritime court is liable for any report, finding, point of view or recommendation that is given in good faith and is submitted to the Authority or made known under this Act.

### **Procedure to be followed by maritime court**

**294.** (1) A maritime court enquiry may, subject to the provisions of this Act, determine the procedure to be followed at the investigation.

(2) Every investigation must, unless the court decides otherwise, be held in open court and the decision or finding, together with the reason therefor, must, at the conclusion of the investigation, or as soon as possible thereafter, be delivered in open court.

### **Decisions of maritime court**

**295.** (1) No decision taken by the maritime court will be invalid merely by reason of a vacancy or of the fact that any person not entitled to sit as a member of the court of marine enquiry, sat as such a member at the time when the decision was taken, if the decision was taken by the majority of the members of the court of marine enquiry present at the time and who were entitled to sit as members of the court of marine enquiry.

(2) The decision of a maritime court must—

- (a) not include a finding which determines liability or apportions blame;

- (b) not be used in evidence in any legal proceedings;
- (c) make recommendations with the objective of preventing future marine casualties and marine incidents only; and
- (d) not include any recommendation for the dis-rating of a seafarer, the suspension of a certificate, the imposition of a fine or other sanction.

### **Powers of maritime court**

**296.** A maritime court may order any person, who in its opinion may be able to give information which is likely to assist it in the carrying out of its duties, or who it suspects or believes has in his or her possession or custody or under his or her control any book, document or thing the inspection of which is likely to assist it in the carrying out of its duties, to produce such information, book, document or thing.

### **Court of record**

**297.** The maritime court is a court of record.

### **Submission of report**

**298.** (1) The presiding officer of the maritime court must upon conclusion of the investigation submit to the Authority the notes of evidence and as many copies as the Authority may require of the record of the proceedings, the report, decision, any dissenting decision and the reasons for the decision and dissenting decision.

(2) The Minister must, within 30 days of receipt of the report of the maritime court, publish that report on the official website of the department responsible for transport.

(3) When the investigation affects a master or member of the crew of a ship other than a South African ship the Authority must transmit a copy of the court's decision, together with the notes of the evidence, to the proper authority in the country where the ship is registered.

### **Appeals against decisions of maritime courts**

**299.** There must be no right to appeal a decision of a maritime court.

## ***Part 7***

### ***Courts of Survey***

#### **Appeal from surveyor to court of survey**

**300.** (1) An owner or the master of a vessel may, subject to subsection (2), appeal to the Authority if he or she is aggrieved by—

- (a) a statement in the report of inspection;
- (b) a notice given under Chapter 5; or
- (c) a refusal to give a certificate under Chapter 5,

by a surveyor who has inspected that vessel.

(2) Whenever a surveyor inspects any vessel, a surveyor must, if the owner or the master of the vessel so requires, be accompanied on the inspection

by a person nominated by the owner or the master and if the person so nominated agrees with the surveyor as to the statement, notice or refusal referred to in subsection (1), the owner or the master of the vessel must have no right of appeal.

(3) For purposes of this section, the owner of a vessel may be represented by an agent.

### **Establishment and convening of court of survey**

**301.** (1) The court of survey is hereby established.

(2) Whenever an appeal is submitted the Authority in terms of section 301 and that appeal has been duly noted, the Authority must convene a court of survey.

### **Constitution of court of survey**

**302.** (1) A court of survey must consist of a presiding officer and either two or four members.

(2) If, in the opinion of the Authority, an appeal involves a question of construction or design or of scientific difficulty or an important principle, the Authority must appoint one or more persons with competence and experience in that construction, design, scientific field or principle to serve as a member of the court of survey.

(3) The Minister must prescribe—

(a) the manner of selection and appointment of members to the court of survey;

- (b) the general qualifications and ineligibility of persons to be appointed as, vacation of office by, conflicts and disclosure of interest by, remuneration and benefits of members of the court of survey;
- (c) qualifications of the presiding officer of the court of survey; and
- (d) any other matter for the effective functioning of a court of survey.

(4) Whenever a foreign ship is the subject of an appeal the Authority may consult a diplomatic or consular representative of the country in which that ship is registered before appointing the members to the court of survey.

(5) No member of a court of survey is liable for any report, finding, point of view or recommendation that is given in good faith and is submitted to the Authority or made known under this Act.

### **Procedure at court of survey**

**303.** (1) A court of survey may, subject to the provisions of this Act, determine the procedure to be followed at the hearing of the appeal.

(2) Every appeal must, unless the court decides otherwise, be held in open court and the decision or finding must, at the conclusion of the appeal, or as soon as possible thereafter, be delivered in open court.

### **Manner of arriving at decisions by court of survey**

**304.** (1) The decision of the majority of the members of a court of survey must be the decision of the court.

(2) The decision of the court of survey must be declared by one of the members concurring in that decision together with the reasons for that decision.

(3) Any member who dissents from the decision of the court of marine enquiry may declare his or her dissent and reasons therefor.

(4) If the members of the court of survey are unable to reach a unanimous decision or a decision by majority, the presiding officer must report that fact to the Authority, and thereupon the Authority may refer the appeal back to the court for reconsideration or may discharge the members of the court and appoint another court of survey to hear the appeal.

(5) Notwithstanding the provisions of this section, if a ship has been detained or it is proposed to detain a ship by reason of a report made or a notice given by a surveyor, or by reason of a refusal by a surveyor to grant a certificate, and appeal is made against the making of the report or the giving of the notice or the refusal to grant the certificate, the ship must, if it has been detained, be released, and if it has not yet been detained, must not be detained after the first meeting of the court, unless a majority of the members of the court are in favour of her being detained.

### **Powers of court of survey**

**305.** A court of survey may, if the appeal is against—

- (a) any statement in a report by a surveyor, dismiss the appeal, in which event the statement must stand, or uphold the appeal and cancel or vary the statement; or

- (b) any notice given by a surveyor, dismiss the appeal and confirm that notice or uphold the appeal and set aside the notice; or
- (c) the refusal by a surveyor to grant a certificate, dismiss the appeal and confirm that refusal or uphold the appeal and grant the certificate.



### **Court of survey may cause ship to be surveyed**

**306.** (1) A court of survey may appoint a surveyor to inspect the ship which is the subject of appeal and report to the court.

(2) The owner and master of the ship and any person, appointed by the owner or master, and also any person appointed by the Authority, may attend at any inspection made in terms of this section.

### **Court of record**

**307.** The court of survey is a court of record.

### **Submission of report**

**308.** (1) The presiding officer of the court of survey must upon conclusion of the hearing submit to the Authority the notes of evidence and as many copies as the Authority may require of the record of the proceedings, the report, decision, any dissenting and the reasons for the decision and dissenting decision.

(2) When the hearing affects a master or member of the crew of a ship other than a South African ship the Authority must transmit a copy of the court's decision, together with the notes of the evidence, to the proper authority in the country where the ship is registered.

**Part 8:****General Matters****Rehearing of formal enquiry**

- 309.** (1) The Minister may, after submission of the finding of the marine court of enquiry or a maritime court contemplated in sections 290 and 308, and if—
- (a) new and vital evidence which could not be produced during the formal enquiry or investigation has been discovered;
  - (b) if, in the opinion of the Minister, there is ground for suspicion that a miscarriage of justice has occurred; or
  - (c) if, in the opinion of the Minister, there are other compelling reasons which necessitate a rehearing,

the Minister may order that the case be reheard.

(2) The court of marine enquiry or maritime court may be constituted by the same members that conducted the formal enquiry or investigation in the first instance or other members appointed by the Minister.

(3) The Minister may order that the investigation conducted by the maritime court be reheard by a court of marine enquiry.

(4) The provisions of this Chapter must apply to any formal enquiry that is reheard.

**CONTINUES ON PAGE 514 - PART 5**



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**AIDS HELPLINE: 0800-0123-22 Prevention is the cure**

**Payment of allowances to person appointed to conduct preliminary enquiry into marine casualty, to marine safety investigator, member of court of marine enquiry, maritime court, court of survey and assessor**

**310.** Any person appointed by the Authority to conduct a preliminary enquiry, any marine safety investigator, member of a court of marine enquiry, maritime court, court of survey or any assessors must, if he or she is in the employ of the government in any sphere of government, be paid such allowances towards subsistence and transport as may be prescribed (otherwise than under this Act) for employees of his or her class, and if he or she is not in the employ of the government of the Republic, or if no such allowances have been prescribed for government employees of his or her class, he or she must be paid such allowances towards subsistence and transport as may be prescribed.

**CHAPTER 7**

**MARINE TRAFFIC**

***Part 1***

***General matters related to Marine Traffic***

**Application of Part 1**

**311.** Part 1 must not apply to—

- (a) ships owned or used by the Government of the Republic for non-commercial purposes; or
- (b) any other ship or class of ship exempted by the Minister by regulation.

### **Entry into or departure from internal water**

**312.** Subject to the provisions of this Part, the master of any ship must not, except as prescribed, cause it to enter or leave internal waters of the Republic other than a harbour or a fishing harbour.

### **Right of innocent passage**

**313.** Subject to the provisions of this Chapter, every ship must enjoy the right of innocent passage through the territorial waters.

### **Passage deemed to be not innocent**

**314.** Notwithstanding the provisions of section 313, the passage of a ship which carries or has on board in the territorial waters cargo or any appliance or apparatus the use of which or persons who may constitute a threat against the sovereignty, territorial integrity or political independence of the Republic, must be deemed to be not innocent, and that ship and cargo and those persons may be dealt with as provided by section 315.

**Authority's powers relating to ship on non-innocent passage**

**315.** (1) The Authority may require the master of a ship of which the passage is in terms of section 314 deemed to be not innocent or is believed by the Authority to be not innocent—

- (a) to stop or anchor the ship;
- (b) to declare the ship's name, official number, flag, type, gross tonnage, destination and cargo;
- (c) to move the ship to a place specified by the Authority;
- (d) to produce for inspection by an authorised person all papers or documents relative to the ship and its cargo and allow him or her to make copies thereof;
- (e) to allow authorised persons on board the ship to inspect the ship, its equipment and cargo; or
- (f) to deliver any person referred to in section 314 to an authorised person having powers of arrest, in order to be dealt with according to the law.

(2) If the master of the ship fails to perform, within the time specified by the Authority, any act which the master has in terms of subsection (1) been required to perform, the Authority may cause such act to be performed, with the employment of such force as may be necessary.

(3) If the Authority is satisfied that the passage of the ship is not innocent, it may cause the ship and its cargo or part thereof, to be detained on such conditions as may be prescribed, for a period not exceeding seven days or such further period as an order of a division of the High Court of South Africa may authorise.

(4) The Authority may, in respect of the ship and its cargo or part thereof detained in terms of subsection (3)—

- (a) cause the ship and cargo or part thereof to be released from such detention; and
- (b) subject to any order referred to in subsection (3), cause the ship and cargo or part thereof, to be seized and dealt with in such manner as may be directed by it.

(5) If the ship and cargo or part thereof, or the ship or cargo or part thereof, is sold by virtue of the provisions of subsection (4)(b), the proceeds of such sale must be paid into the Maritime Fund.

(6) Notwithstanding the provisions of subsections (1) and (2), the Authority may require the master of a ship referred to in subsection (1), or who fails to comply with any provision of this Act or any other law, to remove his or her ship from the territorial waters immediately.

(7) The provisions of this section, save subsection (6), do not apply to a warship of a country other than South Africa or a foreign ship owned or used by a government for non-commercial purposes.

(8) For the purpose of this section, "authorised person" means—

- (a) any officer appointed in terms of the Public Service Act 1994(Act No. 103 of 1994)any officer of the South African Navy;
- (b) any member of the South African Police Service above the rank of sergeant;
- (c) any officer designated or appointed by the Authority;
- (d) any member of the South African National Defence Force above the rank of sergeant employed on police duties in terms of section 3(2)(b) of the Defence Act;



- (e) any person accompanying any person referred to in paragraph (a), (b), (c), (d) or (d) and acting under his or her instructions.

### **Certain vessels to show flag**

**316.** Unless otherwise authorised by the Authority, the master of any foreign submarine or other foreign underwater vehicle must not cause it to navigate the territorial waters or internal waters otherwise than on the surface and with its flag being shown.

### **Immobilising, laying-up, stopping or anchoring**

**317.** (1) Except with the permission of the Authority and in accordance with any prescribed condition or condition imposed by the Authority in a particular case, no person must within the territorial waters or internal waters immobilise or lay-up a ship.

(2) The Authority may require the master or owner of a ship immobilised or laid-up or to be immobilised or laid-up to find security to the satisfaction of the Authority in an amount determined by it for the recovery of any costs incurred by the Authority in enforcing any condition applicable to the immobilising or laying-up of the ship, or in the exercise of its powers under this Act.

(3) No person must stop or anchor a ship for repairs within the territorial waters or internal waters except with the main engine thereof kept in readiness for immediate use and in accordance with any prescribed condition or condition imposed by the Authority in a particular case.

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**Ships and wreckage not to be sunk or abandoned**

**318.** No person must within the territorial waters or internal waters intentionally—

- (a) sink, dump or dispose of, or cause to be sunk, dumped or disposed of, a ship, a wreck or a hulk except at a place agreed to by the Authority; or
- (b) abandon a ship which is not in distress, a wreck, a hulk or an object which may interfere with navigation.

**Suppression of illicit traffic in drugs on board foreign ships in territorial waters**

**319.** If the Authority on reasonable grounds suspects that the provisions of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992) relating to dependence-producing drugs are or have been contravened by any person on board a foreign ship in the territorial waters or in relation to any such drug carried by or on board such ship, such ship and its cargo and such person may for the purpose of applying the said provisions be dealt with as provided in section 315(1) and (2), with the necessary changes as required by context.

### **Prohibitions in respect of offshore installations**

**320.** (1) The master or a person on board a ship in charge of the navigation of the ship, may not—

- (a) through his or her act or omission in connection with the navigation of that ship, damage an offshore installation or any part thereof;
- (b) enter a safety zone, drag or drop anchor nearer than 500m to a pipeline or a telecommunications line, except if rendering an emergency service or a previously agreed service to the offshore installation; and
- (c) cause the ship bottom to trawl nearer than 500m to a pipeline or telecommunications line while fishing.

(2) No liability arises in terms of subsection (1) where the master or person on board the ship in charge of the navigation thereof acted for the purpose of—

- (a) securing the safety of the ship;
- (b) any other ship or an offshore installation;
- (c) preventing damage to the ship;
- (d) any other ship or the cargo thereof or an offshore installation,
- (e) saving life, and such action was necessary for that purpose or was reasonable in the circumstances.

### **Minister may determine safety zone for offshore installation**

**321.** Subject to compliance with Article 60(5) of the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982, the Minister may, in respect of an offshore installation referred to in paragraphs (a) and (b) of the definition of safety zone, by notice in the *Gazette*, determine that the area specified in the notice must be the safety zone for the offshore installation in question.

### **Notice to be given of proceedings in respect of foreign ships**

**322.** If any action in terms of this Act is contemplated or taken in respect of any foreign ship, or if any proceedings in terms of this Act are contemplated or taken against the master or owner or a member of the crew of or any person on board of any foreign ship, the Authority must, if the master of the ship so requests, forthwith advise the agents of the ship and the consular representative of the country whose flag the ship flies at the nearest harbour to such ship, of the action or proceedings taken or contemplated and of the grounds thereof.

### **Agreement with government of certain state or territory**

**323.** If agreed upon between the Government of the Republic and the government of any other state or territory of which the territorial waters are contiguous to the territorial waters of the Republic, the Authority may for and in respect of that state or territory perform any function which it would be capable of

performing in the Republic in terms of this Chapter, as if that state or territory formed part of the Republic.

### **Suspension of passage**

**324.** Notwithstanding the provisions of this Act, if the Minister after consultation with the Minister of Defence considers it essential for the protection of the security of the Republic, the Minister may, for a specified period, by notice in the *Gazette*, suspend the passage of ships in specified areas of the territorial waters or prohibit entry into internal waters.

## ***Part 2***

### ***Aids to Navigation***

#### **Establishment of aid to navigation**

**325.** (1) Subject to subsection (2), in order to assist with safe navigation within port limits, along the coast of the Republic, within any fishing harbour, small harbour or marina, on offshore installations, on wrecks, sheltered waters and any other place or area where it is considered necessary for an aid to navigation to be established, the Authority, as the competent authority, must ensure that to the extent necessary and practical, an aid to navigation is erected or installed operated and maintained as the volume of traffic justifies and the degree of risk requires, taking into account any standards determined by the Authority and international guidelines and recommendations.

(2) The Authority must determine standards to assist the navigation of vessels within port limits and along the coast of the Republic and may exercise and perform all powers and duties necessary to ensure adherence to such standards.

(3) Privately owned aids to navigation must be established and maintained in accordance with the provisions of this Act.

(4) The Authority may, after consultation with the Minister, by notice in the *Gazette*, determine a geographical area, other than a port defined in section 1 of the National Ports Act, where an aid to navigation may be erected or installed.

### **Vesting of aid to navigation**

**326.** (1) Any aid to navigation as contemplated in section 325 must vest as prescribed.

(2) The National Ports Authority of South Africa must continue to operate and maintain any aid to navigation which vests in it or which it erects or installs in terms of the National Ports Act.

### **Determination of standards by Authority**

**327.** (1) The Authority must, after consultation with the Minister, by notice in the *Gazette*, determine standards to ensure the standardisation, harmonisation and compliance of all aids to navigation which are erected, installed, operated, maintained, altered or discontinued in the Republic, including sheltered waters—

- (a) in a geographical area determined by the Authority in terms of section 346(2);
- (b) which vests in or is erected or installed by the National Ports Authority of South Africa in terms of the National Ports Act; or
- (c) which are owned by any national accountable aids to navigation party or local accountable aids to navigation party.

(2) No aid to navigation must be established, discontinued or have its lighting characteristics or any other distinguishing feature altered, without the prior written consent of the Authority.

### **Hazard created by light**

**328.** (1) No person must show a light, including light from a fire, in such a place or manner as to mislead vessels navigating in the waters of South Africa, including sheltered waters.

(2) The Authority may, if it is desirable for the safety of navigation to do so, by notice in the prescribed form, require the owner of an aid to navigation or any other type of light—

- (a) to remove it or to move it to another position within the period determined in the notice;
- (b) to modify it or to alter its character to such an extent and in such a manner as the Authority may require in the notice, within the period determined in the notice; or
- (c) in the case of a light, with effect from a date determined in the notice—
  - (i) to effectively screen the light; or
  - (ii) to refrain from lighting the light.

(3) The period specified in a notice referred to in subsection (1)(c) must be at least 14 days, other than in exceptional circumstances relating to the safety of persons or vessels.

(4) If the owner does not comply with the notice referred to in subsection (1), the Authority may do in regard to the aid to navigation or light anything that the owner was required by the notice to do and for that purpose a person authorised by the Authority may enter the place where such light is situated and forthwith extinguish or screen the same without causing unnecessary damage.

(5) Any expense incurred by the Authority under this section may be recovered by the Authority from the owner, as a debt due by the owner to the Authority.

(6) For the purpose of this section, the owner, of an aid to navigation or light, includes an organ of state that has the control or management of that aid to navigation or light.

### **Hazard created by new building, structure or other obstruction**

**329.** (1) If a new building, structure or other obstruction may possibly obscure or interfere with an aid to navigation, the Authority may, if it is desirable for the safety of navigation to do so, by notice in the prescribed form, require the owner or service provider of any construction of that building, structure or other obstruction, to modify the design in order to alleviate the obscuring of or interference with that aid to navigation.



(2) If the owner or service provider does not comply with the notice referred to in subsection (1), the Authority may do in regard to the building, structure or other obstruction that the owner was required by the notice to do.

(3) Any expense incurred by the Authority under this section may be recovered by the Authority from the owner or his or her service provider, as a debt due by the owner to the Authority.

(4) For the purpose of this section, the owner of such building, structure or other obstruction, includes an organ of state that has the control or management of that construction.

### **Making fast to aid to navigation**

**330.** No vessel may be made fast to any aid to navigation.

### **Obligation to report damage**

**331.** (1) If a vessel, or anything towed by a vessel, runs down, fouls, moves, damages or destroys an aid to navigation in the territorial waters or inland waters of the Republic, the person in charge of the vessel must—

(a) immediately report the occurrence to the national accountable aids to navigation party or a local accountable aids to navigation party which has jurisdiction in the port or area where the aid to navigation is situated or report the occurrence to the Authority;

(b) within 24 hours of that occurrence, submit a written report setting out the circumstances of the occurrence to that national accountable aids to

navigation party or a local accountable aids to navigation party or to the Authority; and

- (c) furnish any other particulars that may be requested by that national accountable aids to navigation party or a local accountable aids to navigation party or the Authority.

(2) If an aid to navigation has failed or has moved out of position as a result of a vessel colliding with it, the national accountable aids to navigation party or a local accountable aids to navigation party or the Authority, must inform the National Hydrographer accordingly.

(3) The owner of a vessel that runs down, fouls, moves, damages or destroys an aid to navigation is responsible for the damages and the associated costs for reinstating the aid to navigation.

### **Obligation to report navigation hazard**

**332.** (1) A person in charge of a vessel in the territorial or inland waters of the Republic who discovers an uncharted hazard to navigation, or discovers that an aid to navigation is missing, out of position or malfunctioning, must without delay, report it to the vessel traffic service authority which has jurisdiction in the port or area where the aid to navigation is situated, the Authority or the National Hydrographer.

(2) The vessel traffic service authority or the Authority must, upon receipt of a report contemplated in subsection (1), notify the National Hydrographer thereof.

### **Authorisation to provide aid to navigation**

**333.** The Authority must determine, on prescribed terms, the authorisation to act as a national accountable aids to navigation party or a local accountable aids to navigation party.

### **Period of validity, amendment, renewal suspension and cancellation of authorisation**

**334.** The period of validity, amendment, renewal, suspension and cancellation of an authorisation must be as prescribed.

### **Auditing of national accountable aids to navigation party and local accountable aids to navigation party**

**335.** (1) The Authority may conduct an audit of—

- (a) the operations of the applicant for authorisation to determine if it meets the prescribed criteria before it approves the application; and
- (b) a national accountable aids to navigation party or a local accountable aids to navigation party at any time to determine if it complies with the conditions to which its authorisation is subject.

(2) An audit may review all aspects of the operation of a national accountable aids to navigation party or a local accountable aids to navigation party that are relevant to its provision of aids to navigation, as may be prescribed.

(3) A national accountable aids to navigation party or a local accountable aids to navigation party that is the subject of an audit must comply with all reasonable requests made by an auditor for the conduct of the audit.

(4) The Authority may appoint a competent person to conduct audits on its behalf.

### **Application for accreditation as an aids to navigation training organisation**

**336.** (1) No person may conduct or provide training pertaining to aids to navigation unless he or she is accredited in terms of this Part to provide such training.

(2) A person may apply to the Authority for accreditation as an aid to navigation service training organisation.

(3) The application for accreditation must be made on the form and in the manner prescribed and be accompanied by the prescribed documents and fees.

(4) The application for accreditation may be approved or denied by the Authority or may be approved subject to such conditions as it may consider necessary.

(5) When considering an application for accreditation the Authority must apply the prescribed criteria.

(6) If an application for accreditation is approved, the certificate of accreditation must be issued in the prescribed form.

## **Period of validity, amendment, renewal, suspension and cancellation of accreditation**

**337.** The period of validity, amendment, renewal, suspension and cancellation of an accreditation must be as prescribed.

### ***Part 3***

#### ***Vessel Traffic Services***

##### ***Division 1***

##### ***Application***

### **Application of Part 3**

- 338.** Part 3 of this Chapter applies to—
- (a) a master of a vessel of the prescribed type or class;
  - (b) a vessel traffic service operator; and
  - (c) each of the following entities—
    - (i) an entity that applies to the Authority for authorisation to provide a vessel traffic service;
    - (ii) National Ports Authority of South Africa;
    - (iii) a vessel traffic service authority that is the holder of an authorisation issued by the Authority;
    - (iv) an entity that applies to the Authority for accreditation as a vessel traffic service training organisation; and

- (v) a vessel traffic service training organisation.

## ***Division 2***

### ***Duties of masters of vessels***

#### **Entering, leaving or proceeding within vessel traffic service zone**

**339.** (1) Unless the master is unable to establish or maintain communication as contemplated in section 340, no vessel of a prescribed type or class must—

- (a) enter, leave or proceed within a vessel traffic service zone without a clearance being obtained from the vessel traffic service authority providing vessel traffic services in that vessel traffic service zone; and
- (b) proceed within a vessel traffic service zone unless able to maintain direct communication with a vessel traffic service operator as prescribed.

(2) If the clearance referred to in subsection (1) is required for a vessel traffic services zone—

- (a) administered by the National Ports Authority of South Africa in terms of the National Ports Act, the clearance must be obtained in terms of the provisions of that Act; or
- (b) administered by the Authority in terms of this Chapter, the clearance must be obtained as prescribed.

(3) The Ports Rules which apply in a vessel traffic service zone described in Schedule 2 of this Act, supersede any section in this Part or any regulations which may be prescribed in terms of this Act;

(4) Ports Rules means the Ports Rules made by the National Ports Authority (Pty) Ltd, approved and published by the Minister under section 80 (2) of the National Ports Act, in the *Gazette*

#### **If master of vessel is unable to communicate**

**340.** If the master of a vessel—

- (a) is unable to obtain a clearance required in terms of section 339 because of an inability to establish direct communication with a vessel traffic services operator, or
- (b) after obtaining a clearance, is unable to maintain direct communication with a vessel traffic services operator,

the vessel may, subject to section 341, nevertheless proceed on its route.

#### **Communication and obtaining clearance**

**341.** The master must—

- (a) in the circumstances described in section 340, take all reasonable measures to communicate with a vessel traffic services operator as soon as possible; and
- (b) in the circumstances described in section 340(a), obtain a clearance as soon as possible after direct communication is established.

#### **Equipment failure**

**342.** In the circumstances described in section 340, if the master is unable to establish or maintain direct communication because of an equipment failure on the vessel, the vessel must—

- (a) if it is in a port or anchorage where the equipment can be repaired, remain there until it is able to establish communication as prescribed; and
- (b) if it is not in a port or anchorage where the equipment can be repaired, proceed to the nearest reasonably safe port or anchorage on its route when it is safe to do so and remain there until it is able to establish communication as prescribed.

**Masters to provide information required and comply with instructions by vessel traffic service operator**

**343.** The master of a vessel must—

- (a) provide any pertinent information required by a vessel traffic service operator; and
- (b) comply with each instruction of the movement of a vessel given to the vessel by a vessel traffic service operator.

***Division 3***

***Vessel traffic service operator***

**Vessel traffic service operator**



**344.** A vessel traffic service authority may appoint any person who complies with the prescribed requirements, as a vessel traffic service operator.

#### **Powers of vessel traffic service operator**

**345.** Subject to any other Act of Parliament governing ports or harbours and to the regulations made under such an Act, for the purpose of promoting safe and efficient navigation or environmental protection, a vessel traffic service operator may, with respect to any vessel of a prescribed type or class that is about to enter or is within a vessel traffic service zone—

- (a) grant a clearance to the vessel to enter, leave or proceed within the vessel traffic service zone;
- (b) direct the master, pilot or person in charge of the deck watch of the vessel to provide, in the manner and at any time that may be specified in the direction, any pertinent information in respect of the vessel that may be specified in the direction;
- (c) direct the vessel to use any radio frequencies in communications with coast stations or any other vessel that may be specified in the direction; and
- (d) direct the vessel, at the time, between the times or before or after any event that may be specified in the direction—
  - (i) to leave the vessel traffic service zone;
  - (ii) to leave or refrain from entering any area within the vessel traffic service zone that may be specified in the direction, or
  - (iii) to proceed to or remain at any location within the vessel traffic service zone that may be specified in the direction.

## ***Division 4***

### ***Vessel traffic service authority***

#### **Provision of vessel traffic services**

**346.** (1) Vessel traffic services must be provided by a vessel traffic service authority in a vessel traffic service zone.

(2) If the Authority establishes a vessel traffic service for a geographic area determined by it, the Authority is considered to be an authorised vessel traffic service authority for purposes of this Part.

(3) Where the National Ports Authority of South Africa is the vessel traffic service authority for a vessel traffic service zone described in Schedule 2 of this Act, the National Ports Authority of South Africa is considered to be an authorised vessel traffic service authority for purposes of this Part and does not have to obtain authorisation from the Authority in terms of this Part, but is subject to an inspection and audit conducted in terms of this Part.

(4) The National Ports Authority of South Africa must implement any recommendation made pursuant to an audit referred to in subsection (2) if that recommendation pertains to a safety standard.

(5) No person or entity may provide vessel traffic services unless that person or entity is authorised in subsection (2) or is authorised by the Authority in terms of this Part to do so.

**Duties of vessel traffic service authority**

**347.** In operating a vessel traffic service the vessel traffic service authority must—

- (a) ensure that the objectives of the vessel traffic service are met;
- (b) ensure that the standards set by the Authority for levels of services and vessel traffic service operators' qualifications and vessel traffic service equipment are met;
- (c) ensure that the vessel traffic service operations are harmonised with, where appropriate, ship reporting and routing measures, aids to navigation, pilotage and port operations;
- (d) consider, where appropriate, the participation of the pilot both as a user and provider of information;
- (e) ensure that a continuous listening watch on the designated radio frequencies is kept and that all published services are available during the operational hours of the vessel traffic service;
- (f) ensure that operating procedures for routine and emergency situations are established; and
- (g) in a timely manner, provide seafarers with full details of the requirements to be met and the procedures to be followed in the vessel traffic service zone.

## **Vessel traffic service zone**

**348.** For purposes of this Part, the Authority must, by notice in the *Gazette*, determine any new vessel traffic service zone for an area other than the vessel traffic service zone described in Schedule 2 of this Act.

## **Authorisation to provide vessel traffic service**

**349.** The Authority must determine, on terms prescribed, the requirements for the establishment of any new vessel traffic zone and applications for authorisation to act as a vessel traffic service authority for a new vessel traffic zone.

## **Period of validity, amendment, renewal, suspension and cancellation of authorisation**

**350.** The period of validity, amendment, renewal, suspension and cancellation of an authorisation must be prescribed.

## **Auditing vessel traffic service authority**

**351.** (1) The Authority must exercise oversight over all vessel traffic services in the prescribed manner and may conduct an inspection and audit of—

(a) the operations of the applicant for authorisation to determine if it meets the prescribed criteria before it approves the application; and

(b) the vessel traffic service authority at any time to determine if it complies with the conditions to which its authorisation is subject.

(2) An audit may review all aspects of the operation of a vessel traffic services authority that are relevant to its provision of the vessel traffic service, as may be prescribed.

(3) A vessel traffic services authority that is the subject of an audit must comply with all reasonable requests made by an auditor for the conduct of the audit.

(4) The Authority may appoint a competent person to conduct an inspection and audit on its behalf.'

### ***Division 5***

#### ***Vessel traffic service training organisations***

#### **Application for accreditation as a vessel traffic service training organisation**

**352.** (1) No person may conduct or provide training pertaining to vessel traffic services unless such person is accredited in terms of this Part to provide such training.

(2) A person may apply to the Authority for accreditation as a vessel traffic service training organisation.

(3) The application for accreditation must be made on the form and in the manner prescribed and be accompanied by the prescribed documents and fees.

(4) The application for accreditation may be approved or denied by the Authority or may be approved subject to such conditions as it may consider necessary.

(5) When considering an application for accreditation the Authority must apply the prescribed criteria.

(6) If an application for accreditation is approved, the certificate of accreditation must be issued in the prescribed form.

### **Period of validity, amendment, renewal, suspension and cancellation of accreditation**

**353.** The period of validity, amendment, renewal, suspension and cancellation of an accreditation must be prescribed.

### **Auditing vessel traffic service training organisations**

**354.** (1) The Authority may conduct an audit of—

- (a) the operations of the applicant for accreditation as a vessel traffic service training organisation to determine if it meets the prescribed criteria before it approves the application; and
- (b) the vessel traffic service training organisation to determine if it complies with the conditions to which its accreditation is subject.

(2) An audit may review all aspects of the operation of a vessel traffic service training organisation that are relevant to its provision of the vessel traffic service training.

(3) A vessel traffic service training organisation that is the subject of an audit must comply with all reasonable requests made by an auditor for the conduct of the audit.

(4) The Authority may appoint a competent person to conduct an audit on the Authority's behalf.

## CHAPTER 8

### OFFENCES AND PENALTIES

#### *Part 1*

#### *Offences and Penalties in respect of Registration of ships*

#### **Offences relating to South African character of ship**

**355.** (1) Subject to subsection (2), if the master or owner of a ship that is not a South African ship does anything, or permits anything to be done, to cause the ship to appear to be a South African ship, that ship is subject to forfeiture in terms of this Act, and the master or owner commits an offence.

(2) Subsection (1) does not apply—

- (a) where the assumption of South African nationality has been made for the purpose of escaping capture by an enemy or by a foreign ship of war in the exercise of some belligerent right; or
- (b) in respect of any prescribed mark displayed on a ship within a period of 14 days after the date of termination of that ship's registration in terms of any provision of this Act.

(3) If the master or owner of a South African ship does anything, or permits anything to be done, for the purpose of—

- (a) concealing the nationality of the ship from any person entitled by law to inquire into the nationality of the ship;
- (b) deceiving a person contemplated in paragraph (a); or
- (c) causing the ship to appear not to be a South African ship,

that ship is subject to forfeiture in terms of this Act, and the master or owner, is guilty of an offence.

(4) Without prejudice to the generality of subsections (1) and (3), those subsections apply in particular to acts or deliberate omissions relating to—

- (a) the flying of a National Flag;
- (b) the carrying or production of registration certificates or other documents relating to the nationality of a ship; and
- (c) the display of marks required by the law of any state.

### **General offences relating to registration of ships**

**356.** (1) Any person who fails to comply with or contravenes section 15(2) or (3), 27(3), 30(1), 33(2) or (3), 34(6), 35(5), 37(4), 51(10), 59(2) or 60(2) or item 4(1), 12(2), 13(1) or 14(2) of Schedule 1 commits an offence.

(2) A person who is guilty of an offence under this Act which is not provided for in this Part shall on conviction be liable to a fine or to imprisonment for a period not exceeding two years.



## **Penalties in respect of offences relating to registration of ships**

**357.** (1) Any person who fails to comply with or contravenes section 27(2), 50 or 51(1) or item 8(1) or (2) of Schedule 1 is, in respect of each day on which that person contravenes that section or item, guilty of an offence, including the day of a conviction for an offence in terms of this subsection or any subsequent day, and liable on conviction to a fine or to imprisonment for a period not exceeding three months.

(2) A person who has been convicted of a contravention of section 355(1) or (3), 33, 39 or 60(1) or (2) is liable on conviction to a fine or to imprisonment for a period not exceeding five years.

(3) Where a body corporate is guilty of an offence in terms of this Act, a director, manager, secretary or other officer of the body corporate who is in any way, by act or omission, directly or indirectly, concerned in or a party to the offence, is also guilty of that offence and is punishable accordingly.

## ***Part 2***

### ***Offences and Penalties in respect of Licensing of Vessels***

#### **Offences in respect of vessel to be licensed**

**358.** The owner or the master of a coastal ship licence vessel contemplated in section 65 which operates at or from a port in or from anywhere else on the coast

of the Republic without a coastal ship licence issued in terms of that section, commits an offence.

### **Offences in respect of vessel not to be used**

**359.** A person who uses a coastal ship licence vessel which is required to be licensed in terms of section 65 for purposes of coastwise traffic without being in possession in a valid coastal ship licence, commits an offence.

### **Penalties in respect of offences regarding licensing of vessels**

**360.** (1) A person who commits an offence in terms of section 358 or 359 shall, upon first conviction, be liable to a fine or imprisonment for a period not exceeding six months.

(2) The owner or master of a vessel who is a repeat offender or who commits an offence in terms of section 358 or 359 on a continuous basis, shall be liable to a fine or imprisonment for a period not exceeding 5 years and the vessel is subject to forfeiture.

(3) A person who is guilty of an offence under this Act which is not provided for in this Part shall on conviction be liable to a fine, or to imprisonment for a period not exceeding three months.

**Part 3*****Offences and Penalties in respect of Seafarers*****Offences in respect of number of or unqualified person going to sea**

**361.** (1) If a ship goes to sea or attempts to go to sea and the master and seafarers employed in that ship are not the prescribed number or are not qualified as contemplated in Part 4 of Chapter 4, the owner and the master commits an offence.

(2) Where a person goes to sea as a qualified officer or seafarer of any description without being such a qualified officer or seafarer as contemplated in Part 4 of Chapter 4, he or she commits an offence.

**Offences in respect of certificates in general**

**362.** (1) Any person employed or engaged to serve in any ship to which Chapter 4 applies, who holds a certificate or other document which is evidence that he or she is qualified for the purposes of section 82 shall, on demand, produce it to the Authority, any surveyor or proper officer and, if he or she is not the master, then he or she must produce such document or certificate to the master of the ship.

(2) Where, without reasonable excuse, a person fails to comply with subsection (1), he or she commits an offence.

### **Offences in respect of medical certificate**

**363.** (1) The master or owner of a South African ship who employs a seafarer who has not submitted a medical certificate to the master, commits an offence.

(2) The owner of a South African ship who employs a master who has not submitted a medical certificate to him or her, commits an offence.

### **Offences in respect of crew agreement and certificate of crew agreement**

**364.** (1) Any person who fraudulently alters or makes a false entry in a crew agreement or gives a false copy of that crew agreement to another person, commits an offence.

(2) Any master who does not—

- (a) issue a certificate contemplated in section 91;
- (b) produce the certificate referred to in paragraph (a) to a customs officer; or
- (c) hand over an expired crew agreement as contemplated in section 92,

commits an offence.

### **Offences in respect of cadets and the employment of children and young persons**

**365.** (1) Any person who engages or permits a cadet to serve on board a South African ship contrary to the provisions of section 77 or who engages or

permits cadets to serve on board that ship in excess of the prescribed number, commits an offence.

(2) A person who requires or permits a child or young person to work in contravention of section 94 or 95, commits an offence.

### **Offences in respect of deduction from wages for payment of fine**

**366.** (1) If a master or owner fails without reasonable cause to pay over to the Authority or the proper officer any fine as required by section 146, the master or owner commits an offence.

(2) An act of misconduct for which a fine has been imposed and deducted from the wages of the seafarer shall not be otherwise punished under this Act.

### **Offences in respect of discharge and leaving behind of seafarer**

**367.** (1) The master of a South African ship who discharges or leaves a seafarer behind contrary to the provisions of section 113(1) or 114, commits an offence.

(2) The master of a ship contemplated in section 140 who does not give written notice as required in that section, commits an offence.

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**Offences in respect of conduct endangering ship or individual**

**368.** (1) A master or seafarer who contravenes the provisions of section 134(1), commits an offence.

(2) A seafarer who—

- (a) continually and wilfully disobeys a lawful command or continually neglects his or her duties;
- (b) together with the crew continually and wilfully disobeys a lawful command, continually neglects his or her duties, impedes the navigation of this ship or retards the progress of the voyage;
- (c) prevents, hinders, retards the loading or unloading or departure of the ship; or
- (d) wilfully damages the ship, or misappropriates, or makes any improper use of, or wilfully damages, any of the ship's stores, equipment or cargo; or
- (e) makes a false statement of the name of his or her last ship or alleged last ship, or of his or her own name,

commits an offence.

**Offences in respect of blood alcohol level and drug present in blood of seafarer**

**369.** (1) A seafarer employed on a ship contemplated in section 137(1) and who reports for duty or who carries out his or her duties on board that ship with—

(a) a blood alcohol level equal to or exceeding the prescribed blood alcohol level; or

(b) a drug having a narcotic effect, as prescribed, present in his or her blood, is guilty of an offence.

(2) The owner and master of a South African ship or a foreign ship who permits or requires a seafarer to carry out or continue his or her duties on board that ship while he or she is aware that the seafarer's ability to carry out those duties is impaired by the influence of alcohol or a drug having a narcotic effect, commits an offence.

(3) A seafarer who refuses or fails to undergo an alcohol or drug test contemplated in section 137(3), commits an offence.

### **Offences in respect of entries or alterations in official logbook**

**370.** A person who makes an entry into an official logbook after the period referred to in section 145(1) or who wilfully destroys or mutilates or renders illegible an entry in an official log book, or wilfully makes a false entry in such book, or wilfully fails to make any entry which it is his or her duty to make, commits an offence.

### **Offences in respect of property of seafarer and insurance or other security**

**371.** (1) An owner of a ship who demands or receives from a seafarer a contribution towards the cost of insurance or other financial security required to be maintained in terms of Part 18 of Chapter 4, commits an offence.

(2) If a certificate of insurance is not lodged in accordance with section 163(2), the owner commits an offence for each day that it is not so lodge.

(3) If a ship enters or leaves, or attempts to enter or leave, a port in the Republic without having on board a relevant insurance certificate that is in force in relation to the ship as contemplated in section 161(1), the master and the owner of the ship commits an offence.

(4) If a ship referred to in Part 18 of Chapter 4 does not carry a certificate of insurance other than as contemplated in subsection (4) on board the ship, the master and the owner of that ship commits an offence.

(5) If the Authority requires the master or other person in charge of a ship to produce an insurance certificate that is in force in relation to the ship and, if the master or other person refuses or fails to produce the certificate to the Authority, the master or other person commits an offence.

(6) Any person who threatens a seafarer or in any way compels or influences a seafarer to do something resulting in or directed at the deprivation of that seafarer's right to compensation in terms of this Part shall be guilty of an offence.

### **Penalties in respect of offences regarding seafarers**

**372.** (1) A person who commits an offence in terms of a section referred to in Column 1 of Table 1 hereunder, shall be liable, upon conviction, to a penalty not exceeding the penalty indicated in Column 2 of Table 1 hereunder, for that particular offence.



(2) A person who is guilty of an offence under this Act which is not provided for in this Part shall on conviction be liable to a fine, or to imprisonment for a period not exceeding three months.

TABLE 1

Section in terms of which offence is committed	Penalty
367(2), 369(1), (2) and (3) and 371(3)	Fine
363, 364, 365, 366, 367	Fine or imprisonment for a period not exceeding three months
368(1), 369(2)(a) and (b) and 370	Fine or imprisonment for a period not exceeding six months
361(1) and (2), 368(2)(c), (d) and (e) and 371(6)	Fine or imprisonment for a period not exceeding 12 months
368(1), 371(2), (5) and (6)	Fine or imprisonment for a period not exceeding 24 months
371(4)	Fine or imprisonment for a period not exceeding five years

#### **Part 4**

### ***Offences and Penalties in respect of Maritime Safety***

#### **Offences in respect of manning of ship**

**373.** If a ship goes to sea or attempts to go to sea without carrying such seafarers as it is required to carry under section 79, the owner or master commits an offence.

#### **Offences in respect of ship involved in collision**

**374.** A person who, being the master of a ship involved in a collision, fails to comply with the provisions of Part 19 of Chapter 5 or who, being the master of a ship to which any provision of the collision regulations applies, without reasonable cause contravenes or fails to comply with that provision, commits an offence.

## Penalties in respect of offences regarding safety of ships

**375.** (1) A person who commits an offence in terms of a section referred to in Column 1 of Table 2 hereunder, shall be liable, upon conviction, to a penalty not exceeding the penalty indicated in Column 2 of Table 2 hereunder, for that particular offence

(2) A person who is guilty of an offence under this Act which is not provided for in this Part shall on conviction be liable to a fine or imprisonment for a period not exceeding three months.

**TABLE 2**

<b>Section in terms of which offence is committed</b>	<b>Penalty</b>
195	Fine or imprisonment for a period not exceeding three months, and in addition, for every passenger in excess of the number permitted by the certificate or memorandum, a fine double the highest fare payable by any passenger on board
176(1)(a) or (b), 201(b), 209, 216(a)(ii), 224(1) and 235(2)	Fine or imprisonment for a period not exceeding six months
176(1)(a) or (b), 201(a), 216(a)(i) or (b), 218(1), 240, 242(1) or (2), 248(1) or (2)	Fine or imprisonment for a period not exceeding 12 months
203(3)	Fine or imprisonment for a period not exceeding two years
211(1)	Fine, or imprisonment for a period not exceeding two years, and in addition, a fine for every 25 mm or fraction thereof by which the appropriate load line on each side of the ship was submerged or would have been submerged if the ship had no list.
226	For vessels of less than 25 gross tons, a fine, or imprisonment for a period not exceeding six months.
	For vessels of 25 gross tons and over but less than 100 gross tons, a fine, or

	imprisonment for a period not exceeding one year.
	For vessels of 100 gross tons and over but less than 500 gross tons, a fine, or imprisonment for a period not exceeding two years.
	For vessels of 500 gross tons and over but less than 1 000 gross tons, a fine, or imprisonment for a period not exceeding three years.
	For vessels of over 1 000 gross tons, a fine, or imprisonment for a period not exceeding four years.
265(1)(a)	Fine, or imprisonment for a period not exceeding three years.

### ***Part 5***

#### ***Offences and Penalties in respect of Marine Traffic***

##### **Offences in respect of marine traffic in general**

**376.** (1) The master of any foreign submarine or other foreign underwater vehicle who contravenes the provisions of section 316, commits an offence.

(2) Any person who contravenes the provisions of section 317(1) or (3) commits an offence.

(3) Any person who contravenes the provisions of section 318 commits an offence.

(4) The master or a person on board a ship in charge of the navigation of the ship, who contravenes the provisions of section 320, commits an offence.

(5) The master of a ship who willfully fails to observe a suspension or prohibition of passage, published by the Minister in the *Gazette* in terms of section 324, commits an offence.

### **Offences in respect of aids to navigation**

**377.** (1) The master of a vessel who fails to comply with his or her duties as master of that vessel contemplated in section 330 and 331, commits an offence.

(2) A person or persons who makes fast to any aid to navigation in contravention of section 330 or damages it and fails to report it as required in terms of section 331, commits an offence.

(3) Any person who provides aids to navigation or performs aids to navigation services without an authorisation as contemplated in section 333, commits an offence.

(4) Any person who gives, conducts or undertakes aids to navigation training in contravention of section 336, commits an offence.

(5) Any owner who refuses to adhere to section 329, commits an offence.

(6) Any person who wilfully or negligently does anything which causes the view of an aid to navigation to be obstructed in such a manner as to lessen its efficiency, commits an offence.

(7) Any person who—  
(a) wilfully or negligently damages, destroys, removes or allows a vessel to foul an aid to navigation;

- (b) wilfully, negligently or without lawful authority does anything which interferes with an aid to navigation so as to hinder the effective use of that aid;
  - (c) trespasses on or without lawful excuse, is found in or on—
    - (i) an aid to navigation; or
    - (ii) on any land upon which an aid to navigation is situated; and
  - (d) fails to notify the National Hydrographer as soon as practicable after an aid to navigation has failed, is damaged, destroyed or fouled,
- commits an offence.

### **Offences in respect of vessel traffic services**

**378.** (1) The master of a vessel who fails to comply with his or her duties as master of that vessel contemplated in section 339, 340, 341, 342 and 343, commits an offence.

(2) Any person or entity who provides vessel traffic services contrary to the provisions of section 348, commits an offence.

(3) Any person who gives, conducts or undertakes vessel traffic service training in contravention of section 352, commits an offence.

### **Penalties in respect of offences regarding marine traffic**

**379.** (1) A person who commits an offence in terms of a section referred to in Column 1 of Table 3 hereunder, shall be liable, upon conviction, to a penalty not exceeding the penalty indicated in Column 2 of Table 3 hereunder, for that particular offence.

(2) A person who is guilty of an offence under this Act which is not provided for in this Part shall on conviction be liable to a fine, or to imprisonment for a period not exceeding three months.

**TABLE 3**

<b>Section in terms of which offence is committed</b>	<b>Penalty</b>
376(4)	Fine or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.
376(3) or (4), 377 or 378(1), (2) or (3)	Fine or imprisonment for a period not exceeding three months
376(1)	Fine or imprisonment for a period not exceeding 12 months
376(2) or (5)	Fine or imprisonment for a period not exceeding two years

**Part 6**

***Offences and Penalties in respect of Passenger Ships***

**Offences in respect of passenger ships**

- 380.** (1) No person shall—
- (a) if, on account of his or her being drunk or disorderly, he or she has been refused admission to a passenger ship by the owner thereof or any person in his or her employ, and if he or she has received or been tendered a refund of his or her fare, go on board the ship;
- (b) if, on account of his or her being drunk or disorderly on board any passenger ship, he or she has been requested by the master or any other person employed in the ship to leave the ship at any place in the Republic at which

- he or she can conveniently do so, and if he or she has received or been tendered a refund of his fare, refuse or fail to comply with the request;
- (c) after having been refused admission to a passenger ship by the owner thereof or any person in his or her employ on account of the ship being full, and having received or been tendered a refund of his or her fare, go on board the ship;
- (d) if, having gone on board a passenger ship at any place in the Republic, he or she has been requested, on account of the ship being full, by the master of or any other person employed in the ship to quit the ship, before it has left that place, and has received or been tendered a refund of his or her fare, refuse or fail to comply with the request;
- (e) travel in any passenger ship without first paying his or her fare, and with intent to evade payment thereof;
- (f) if he or she has paid his or her fare for a certain distance, proceed in a passenger ship beyond that distance without first paying the additional fare for the additional distance, and with intent to evade payment thereof;
- (g) if he or she has arrived in a passenger ship at a place to which he or she has paid his or her fare, refuse or fail to quit the ship;
- (h) being on board a passenger ship, and being requested by the master of or any other person employed in the ship, either to pay his or her fare or exhibit his or her ticket or other document showing payment of his or her fare, refuse or fail to comply with the request; or
- (i) being on board a passenger ship, and being requested by the master or any other person employed in the ship to furnish his or her name and address, refuse or fail to comply with the request or furnish a false name or address.



(2) If a crime which has been committed on board a passenger ship is reported to the master and the master fails to take reasonable steps to report the crime to the Authority and South African Police Service, the Master commits an offence.

(3) The master of any passenger ship to which this Part applies, and all persons called by the master to his or her assistance, may, without any warrant, detain any person who commits a crime and deliver that person to the South African Police Service.

(4) If a master fails to exercise his or her power in terms of subsection (3) and in so doing, unreasonably places the safety of any seafarer or passenger at risk, the master commits an offence.

(5) The provisions of subsection (1) to (4) shall apply in respect of all passenger ships wherever registered while they are in the Republic or when the majority of passengers aboard the ship originally embarked and plan to finally disembark in a South African port

(6) For the purposes of this section, a crime means a crime contemplated in Schedule 1 of the Criminal Procedure Act.

### **Penalties in respect of passenger ships**

**381.** A person who commits an offence in terms of section 380 shall be liable, upon conviction, to a fine or to imprisonment for a period not exceeding three months.

**Part 7****General Prohibitions****Bribery**

- 382.** A person who, in respect of a matter relating to this Act—
- (a) not being authorised so to do, gives or promises to give, directly or indirectly, any reward to an officer or a person who is employed by an organ of state, or upon whom any duty is imposed or to whom any function is entrusted under this Act, in respect of the performance or non-performance, by any such officer or person, of his or her employment, duty or function;
  - (b) agrees with or proposes to any such officer or person to do, or permit anything in contravention or evasion of this Act; or
  - (c) being an officer or a person referred to in paragraph (a)—
    - (i) demands or receives, except from or through the organ of state or in accordance with the provisions of this Act, any reward in respect of the performance or non-performance of his or her employment, duty or function; or
    - (ii) by any wilful act, neglects or defaults do or permit or agree to do or permit anything in contravention or evasion of this Act, commits an offence.

**Forgery and other fraudulent acts**

**383.** A person who—

- (a) forges any document issued under this Act;
- (b) makes any false representation for the purpose of procuring the issue of any document under this Act, or for the purpose of inducing any person to do any acts which by this Act he or she is authorised to do;
- (c) produces or otherwise puts off any forged document purporting to be a document issued under this Act, which he or she knows to be forged;
- (d) produces or otherwise uses any document issued under this Act which has been cancelled or suspended or which has expired or to which he or she is not entitled;
- (e) makes in any document, produced or delivered to any person authorised to receive it under this Act, any statement which he or she knows is untrue in any particular;
- (f) produces or delivers any document which contains any statement which he or she knows is untrue in any particular to any person authorised to receive it under this Act; or
- (g) lends to any person who he or she knows is not entitled to a document issued under this Act or allow any such document to be used by any such person, commits an offence.

**Obstructing administration of Act**

**384.** person who—

- (a) damages, destroys, conceals or disposes of any vessel or goods to prevent the detention, forfeiture or seizure thereof under this Act;
- (b) rescues, damages or destroys any vessel or goods detained, forfeited or seized under this Act;
- (c) being the owner or master of a vessel which has been detained under this Act, or any other person under the control of either of them, causes or permits the vessel to proceed to sea without the permission of the Authority;
- (d) receives or has in his or her possession any vessel or goods forfeited under this Act;
- (e) being the master of a vessel proceeding to sea, wrongfully takes to sea any officer authorised to detain the vessel or any surveyor or other officer when on board the vessel in the execution of his or her duty;
- (f) insults, resists, hinders or misleads any person or court upon whom any duty is imposed or any power is conferred or to whom any function is entrusted under this Act, in the discharge of that duty or the exercise of that power or the performance of that function, or refuses or fails to give all reasonable assistance, when called upon to do so, to any such person or court in such discharge, exercise or performance, or hinders or prevents any other person from assisting any such person or court in such discharge, exercise or performance;

- (g) harbours or secretes a seafarer who has contravened or is contravening the provisions of section 138(1) or who is liable to be apprehended under the provisions of section 142;
- (h) hinders or prevents any witness from attending in obedience to any summons issued under this Act; or
- (i) hinders or prevents the service of any document under this Act, commits an offence.

### **Stowaways**

**385.** (1) No person shall go to sea in a ship without the consent of the owner, master, a ship's officer or some other person entitled to give that consent, or secrete himself or herself for the purpose of going to sea without that consent.

(2) A person who goes to sea in a ship without the consent mentioned in subsection (1) commits an offence.

(3) A person who goes to sea in a ship without the consent mentioned in subsection (1) shall, so long as he or she remains in the ship, be considered to belong to the ship and be subject to the same laws and regulations for preserving discipline as if he or she were a member of the crew and had signed the agreement with the crew.

(4) Subsections (1) and (2) shall apply to any person who goes to sea or secretes himself or herself for the purpose of going to sea—

- (a) in a South African ship going to sea from any port ; or
- (b) in a ship other than a South African ship going to sea from a port in the Republic; or

(c) in a ship other than a South African ship going to sea from a port outside the Republic and bound for a port in the Republic.

(5) The master of any South African ship arriving at any port within or outside the Republic, and the master of any ship other than a South African ship arriving at a port in the Republic, shall, if any person has gone to sea in that ship without the consent mentioned in subsection (1), report the fact in writing to the Authority as soon as practicable after the arrival of the ship.

### **Ships not to be boarded without authority**

**386.** A person who, is not duly authorised under this Act or any other law but who—

(a) goes on board any ship, whether registered in the Republic or not, which is about to arrive, is arriving or has arrived in the Republic, without the permission of the owner or master; or

(b) remains on board any such ship at a port in the Republic, after being required to leave by the owner or master or by a member of the South African Police Service, a customs officer or the Authority,

commits an offence.

### **Obstruction of navigation of ship**

**387.** A person who, without reasonable excuse, does anything to obstruct or injure any of the equipment of any ship wherever registered, or obstructs, impedes or

molests any of the crew in the navigation and management of the ship or otherwise in the execution of their duties about the ship, commits an offence.

### **Penalties in respect of offences regarding prohibitions in Part 6**

**388.** (1) A person who commits an offence in terms of a section referred to in Column 1 of Table 4 hereunder, shall be liable, upon conviction, to a penalty not exceeding the penalty indicated in Column 2 of Table 4 hereunder, for that particular offence.

(2) A person who is guilty of an offence under this Act which is not provided for in this Part shall on conviction be liable to a fine, or to imprisonment for a period not exceeding three months.

**TABLE 4**

<b>Section in terms of which offence is committed</b>	<b>Penalty</b>
383 and 384(a), (b), (e), (f), (g) or (h)	Fine or imprisonment for a period not exceeding 12 months
383, 384(c) and 387	Fine or imprisonment for a period not exceeding two years
384(d)	Fine or imprisonment for a period not exceeding three years

## ***Part 8***

### ***Offences in General***

#### **Offences not expressly mentioned**

**389.** Any person who contravenes any provision of this Act or who fails to comply with any provision hereof with which it was his or her duty to comply and for which no provision is made in Parts A to H, commits an offence.

#### **Penalties for offences**

**390.** A person who is guilty of an offence under this Act for which no penalty is specially provided under this Chapter shall on conviction be liable to a fine, or to imprisonment for a period not exceeding three months.

#### **Determination of fines**

**391.** (1) When the monetary value of a fine is determined for purposes of this Chapter, the fine may be determined on sliding scale based on the size of the vessel.

(2) The Authority shall review the monetary values of fines prescribed by regulations on an annual basis and may make an adjustment upwards by no more than the Annual Consumer Price Inflation rate published by Statistics South Africa and such adjustments shall be effected by publication in the *Gazette*.



**CHAPTER 9****PROCEEDINGS BY AUTHORITY AND LEGAL PROCEEDINGS*****Division 1******Jurisdiction*****Jurisdiction of Authority in respect of administrative penalty on admission of guilt**

**392.** (1) If any person—

- (a) admits to the Authority that he or she has contravened a provision of this Act or failed to comply with any such provision with which it was his or her duty to comply, which contravention or failure constitutes an offence;
- (b) agrees to abide by the decision of the Authority; and
- (c) deposits with the Authority such sum as may be required of him or her, but not exceeding the maximum fine which may be imposed upon a conviction for the contravention or failure in question,

the Authority may, after such enquiry as it considers necessary, determine the matter summarily and may, without legal proceedings, order by way of penalty the whole or any part of the said deposit to be forfeited.

(2) In the event where the Authority makes a determination or an order by imposing a penalty under subsection (1), the aggrieved party has a right of appeal to the Minister within a period of three months from the date of such determination or order, if:

- (a) in the case of a small vessel penalty exceeds R2 000,

(b) in the case of a vessel larger than a small vessel exceeds R10 000

(3) The imposition of a penalty under subsection (1) must not be considered to be a conviction of a criminal offence, but no prosecution for the relative offence must thereafter be competent.

(4) Nothing in this section must in any way affect liability to forfeiture of ships, shares therein or goods.

### **Jurisdiction of Authority in respect of release from forfeiture or mitigation of penalties**

**393.** The Authority may—

- (a) direct that any ship or any share in a ship or any goods detained, seized or forfeited under this Act, be released or delivered to the owner thereof; or
- (b) mitigate or remit any penalty incurred under this Act, not being a sentence imposed after conviction by a court of law,

on such conditions as to it appear proper: Provided that if the owner of any ship, share or goods referred to in paragraph (a) accepts such conditions he or she must not thereafter be entitled to institute or maintain any action or other proceedings for damages on account of the detention, seizure or forfeiture.

**Jurisdiction in respect of offences committed outside the Republic**

**394.** (1) If a person being a South African citizen, is charged with having committed an offence on board a South African ship, wherever she may be, any court in the Republic which would have had jurisdiction to try the offence if it had been committed within the court's territorial jurisdiction, must have jurisdiction to try the offence.

(2) If a person is charged with having committed an offence on board a ship, at any place outside the Republic any court in the Republic which would have had jurisdiction to try the offence if it had been committed within the court's territorial jurisdiction, must have jurisdiction to try the offence if:

- (a) The flag state of the vessel on which the alleged offence occurred or the state in whose territory the alleged offence occurred declines to exercise its jurisdiction, or fails to do so upon reasonable notice;
- (b) the offence carries a potential prison sentence of ten or more years if convicted by a court in the Republic;
- (c) the accused is arrested in the Republic, or is extradited to the Republic;
- (d) the crime was committed by or against a South African citizen, or while the vessel was on a voyage where her next port of call was in the Republic; and
- (e) the institution of the prosecution is authorised in writing by the National Director of Public Prosecutions.

(3) If a South African citizen—

- (a) is charged with having committed an offence on board a South African ship during a voyage to a port in a treaty country other than the Republic, or on

board a South African ship in a port in a treaty country other than the Republic; or

- (b) who is a seafarer belonging to a South African ship which is in a port in a treaty country other than the Republic, is charged with having committed an offence in that treaty country,

and he or she is found within the area of jurisdiction of any court in that treaty country which, according to the laws in force in that treaty country, would have had jurisdiction to try the offence if the act or omission which under the laws in force in the Republic constitutes the offence were also punishable under the criminal law in force in that treaty country, and if the act had been committed or the omission had occurred on board a ship registered in that treaty country or within the said area, that court must have jurisdiction to try the offence, provided the Minister has generally or in the particular case requested that the courts of that treaty country must exercise such jurisdiction.

(4) The Minister may by notice in the *Gazette* declare that the provisions of subsection (2) must apply in respect of the courts of any foreign country mentioned in that notice as if that foreign country were a treaty country and thereupon the said provisions must apply in respect of the courts of that foreign country as if it were a treaty country.

(5) In this section the expression "offence" means any act or omission which is punishable under the criminal law in force in the Republic.

## **Jurisdiction of magistrates' courts to impose punishment**

**395.** Notwithstanding anything to the contrary contained in any other law, a magistrate's court must have jurisdiction to impose any punishment prescribed by this Act: Provided that this section must not apply in respect of any compensation referred to in section 414 or to any forfeiture under section 413 and 399 respectively.

### ***Division 2***

#### ***Conveyance of accused persons, witnesses and deserters and return of offenders***

### **Conveyance of accused persons and witnesses to the Republic**

**396.** (1) Whenever any complaint is made to any consular representative of the Republic or of any other treaty country—

- (a) that any offence against property or person has been committed at any place, either ashore or afloat, outside any treaty country by any master or seafarer who at the time when the offence was committed, or within three months before that time, was employed in any South African ship; or
- (b) that any offence on the high seas has been committed by any master or seafarer belonging to any South African ship,

that consular representative may inquire into the case and may, if in his or her opinion reasonable grounds of suspicion exist against the alleged offender, take any steps in his or her power for the purpose of placing the master or seafarer under the

necessary restraint and of sending him or her as soon as practicable in safe custody to the Republic.

(2) Upon arrival in the Republic the alleged offender must be handed over to a member of the South African Police Service who must take him or her to a police station or charge office.

(3) The alleged offender must thereafter be detained until a warrant is obtained for his or her further detention upon a charge of an offence or until the offender is released by reason that no charge is to be brought against him or her, and unless so released the offender must as soon as possible be brought before a judicial officer upon a charge of an offence: Provided that he or she must not be so detained for a longer period than 48 hours unless a warrant for his or her further detention is obtained.

(4) The expense of imprisoning any such alleged offender and of conveying the offender and the witnesses to a port in the Republic in any manner other than in the ship to which they respectively belong, must be paid out of moneys provided by Parliament for that purpose.

### **Conveyance of deserter on board ship**

**397.** Whenever any seafarer of a South African ship or other treaty ship is convicted by any court of the Republic, or any seafarer of a South African ship is convicted by a court of a treaty country other than the Republic, of desertion or absence without leave or other breach of discipline, the court must, if the voyage has not yet been completed, and if the master or any ship's officer or the owner or his or her agent so requires, instead of imposing upon him or her any fine or sentence of

imprisonment, cause him or her to be conveyed on board for the purpose of proceeding on the voyage: Provided that the court may decline to exercise this power in any particular case, if for any reason it thinks it advisable so to decline.

### **Imprisoned seafarers may be sent back on board**

**398.** If a seafarer of a South African ship or other treaty ship is undergoing a sentence of imprisonment in the Republic, or if a seafarer of a South African ship is undergoing a sentence of imprisonment in a treaty country other than the Republic, for the offence desertion or absence without leave or other breach of discipline, any person who is a judicial officer of a court within whose area of jurisdiction the place of imprisonment is situated may, during his or her imprisonment, and before his or her employment is at an end, and on the application of the master or owner or agent of the ship, and notwithstanding that the period of imprisonment has not concluded, cause the seafarer to be conveyed on board his or her ship for the purpose of proceeding on the voyage, and the seafarer must not thereafter be required to serve the remaining portion of the period of imprisonment.

### ***Division 3***

#### ***Forfeiture of ships, shares in ships and goods and detention of ships***

#### **Forfeiture of ships, shares in ships and goods**

**399.** All ships, shares or interests in ships or goods which are dealt with contrary to the provisions of this Act, may be seized—

- (a) under Part 1 of Chapter 3,
- (b) by means of which any offence under this Act is committed,
- (c) in connection with which or concerning which any false statement is made or any forged document or any document containing any false statement is produced or used for any purpose of this Act; or
- (d) in connection with which an offence is committed under section 225 or 382 read with section 388,

must be liable for forfeiture.

### **Method of detaining vessel or share in ship or goods**

**400.** (1) A proper officer may cause to be detained a vessel or share in a ship or any goods which by this Act is declared to be liable to detention.

(2) The detention must be effected by the service of a notice of detention in accordance with the provisions of this section.

(3) A notice of detention must be in the prescribed form, must be signed by the proper officer, must declare that the vessel or share or goods are thereby detained, and must set forth the grounds of detention.

(4) A notice of detention of a vessel or share in a ship must be served upon the master of the vessel, and a notice of detention of goods must be served upon the person in whose physical possession they are, and thereupon the vessel or share or goods must be considered to be detained for the purposes of this Act.

(5) A copy of every notice of detention must forthwith be transmitted by the officer who issued it to the Authority.



(6) Whenever the Authority directs the proper officer to release a detained vessel or share in a ship or any detained goods, the proper officer must issue a notice declaring that vessel or share or those goods are released.

(7) A notice of release must be in the prescribed form and must be signed by the proper officer.

(8) A notice of release of a vessel or a share in a ship must be served upon the master of the vessel, and a notice of release of goods must be served upon the person in whose possession they are, and thereupon the vessel or share or goods must be considered to be released.

#### **Procedure in forfeiture of ship, a share in a ship or goods**

**401.** (1) Whenever under section 399, a ship or a share in a ship is or any goods are liable to forfeiture, the Authority may direct the proper officer to issue a notice of forfeiture of that ship or share or those goods in pursuance of that provision.

(2) A notice of forfeiture must—

- (a) be in the prescribed form;
- (b) be signed by the proper officer;
- (c) set forth the grounds on which, and refer to the provisions of this Act under which, the forfeiture is claimed;
- (d) state that unless the ship or share is or the goods are released in accordance with the provisions of subsection (8) or under an order of court, the ship, share or goods will be forfeited; and

(e) be served, in the case of a ship or share in a ship, upon the master of the ship, and, in the case of goods, upon the owner or if he or she is not within the Republic or his or her address is not known, upon the person in whose physical possession they are.

(3) The owner or any other person interested in any ship, share in a ship or goods in respect of which a notice of forfeiture has been issued, who objects to the forfeiture thereof, must, within the period of 30 days from the date upon which the notice of forfeiture was served, or within such further period as may be fixed by the court under subsection (7), give notice in writing to the Authority or to the proper officer who issued the notice, that he or she claims the release of the ship, share or goods.

(4) If notice is not given by the owner or interested person in terms of subsection (3), no legal proceedings must be instituted by the owner against the State, the Minister, the Authority, the Authority or any other officer for the release of the ship, share or goods or based merely upon the detention, seizure or forfeiture thereof.

(5) When notice has been given in terms of subsection (3), the person giving such notice may, within the period of 90 days from the date on which it was delivered to the Authority, or within such further period as may be fixed by the court under subsection (7), but not earlier than 30 days from the date upon which the said notice was so delivered, institute proceedings in a court of competent jurisdiction for the release of the ship, share or goods.

(6) If—

(a) notice is not given in terms of subsection (3) ;

- (b) such notice having been given, proceedings are not instituted in terms of subsection (5);
- (c) such proceedings having been instituted, the court dismisses the claim for release, the ship, share or goods must be forfeited and become the property of the State—
  - (i) upon expiry of the period of 30 days from the date upon which the notice of forfeiture was served, or upon expiry of such further period as may be fixed by the court under subsection (7);
  - (ii) upon expiry of the period of 90 days from the said date, or upon expiry of such further period as may be fixed by the court under subsection (7); or
  - (iii) upon dismissal by the court of the claim for release, respectively.

(7) A court having jurisdiction to try a claim for the release of the ship, share or goods, may, before or after the expiry of the period referred to in subsection (3) or (5), extend such period, if it thinks that the interests of justice so require.

(8) The Authority may at any time before the forfeiture has become effective in terms of subsection (6) direct that a notice of forfeiture be withdrawn, and thereupon the provisions of sections 399(6), (7) and (8) must, with the changes required by context, apply.

### **Seizure of a ship, a share in a ship or goods detained or liable to forfeiture**

**402.** (1) The Authority or proper officer may, if the Authority or proper officer considers it expedient to do so, in order that any ship, share in a ship or

goods in respect of which a notice of detention or of forfeiture has been served in terms of section 400 or 401, or in respect of which it is intended to cause such a notice to be so served, may be secured against damage, destruction, concealment, removal or rescue, cause that ship or share or those goods, to be seized by a person authorised for the purpose.

(2) The seizure of a ship or goods must be effected by the physical taking possession thereof, and the seizure of a share in a ship must be effected by the physical taking possession of that ship.

(3) The person effecting seizure of any ship, share in a ship or goods must, upon demand, exhibit his or her written authority to do so, and, if at the time of seizure a notice of detention or forfeiture has not yet been served, must serve upon the person in whose possession the ship or goods are seized a notice setting forth that it is intended to cause a notice of detention or forfeiture to be served and the grounds on which that intention is based.

### **No clearance to be granted to detained ship**

**403.** Whenever in terms of this Act a ship—

(a) must be or has been detained, a customs officer must refuse to grant a clearance to that ship.

(b) may be detained under this Act, a customs officer may refuse to grant clearance to that ship

### **Detention of foreign ship that has occasioned damage**

**404.** (1) Whenever injury has in any part of the world been caused to property belonging to the Government of the Republic or the Government of any other treaty country or to a South African citizen or a citizen of any treaty country (other than the Republic) by a foreign ship, and at any time that ship is found within the Republic or the territorial waters thereof, a High Court may, upon the application of any person who alleges that the injury was caused by the misconduct or want of skill of the master or any member of the crew of the ship, issue an order directed to any proper officer or other officer named, requiring that officer to detain the ship until such time as the owner, master or consignee thereof has satisfied any claim in respect of the injury, or has given security to the satisfaction of the court, to pay all costs and damages that may be awarded in any legal proceedings that may be instituted in respect of the injury.

(2) Any proper officer or other officer to whom the order of the High Court referred to in subsection (1), is directed must detain the ship accordingly.

(3) Whenever it appears that, before an application can be made under this section, the ship in respect of which the application is to be made will have departed from the Republic or the territorial waters thereof, any proper officer may detain the ship for such time as will allow the application to be made and the result thereof to be communicated to the officer detaining the ship, and that officer must not be liable for any costs or damages in respect of the detention unless the same is proved to have been made without reasonable grounds.

(4) In any legal proceedings in relation to any such injury aforesaid, the person giving security must be made defendant and must be stated to be the owner of the ship that has occasioned the damage.

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## **Notice to be given to consular representative of proceedings taken in respect of foreign ships**

**405.** If any foreign ship is detained under this Act, or if any proceedings are taken under this Act against the master or owner of any foreign ship, notice must forthwith be served on the consular representative of the country in which the ship is registered at or nearest to the port where the ship is for the time being, and such notice must specify the grounds on which the ship has been detained or the proceedings have been taken.

### ***Division 4***

#### ***Special evidential provisions***

##### **Mode of making declaration**

**406.** Declarations required by this Act must be made in the Republic before a proper officer or commissioner of oaths, and outside the Republic before a proper officer or any person who by the law of the place where it is made is authorised to administer an oath, and may be made on behalf of a corporate body by the secretary or any other officer of that body authorised by it for the purpose.

##### **Power to dispense with declarations and other evidence**

**407.** When in terms of this Act any person is required to make a declaration, or any documentary or oral evidence is required to be produced to the proper officer,

and it is shown to the satisfaction of that officer that for reasonable cause that person is unable to make the declaration, or that the evidence cannot be produced, the said officer may, with the approval of the Authority and on the production of such other evidence, and subject to such terms as he or she may think fit, dispense with the declaration or evidence.

### **Admissibility of documents in evidence**

**408.** (1) Any document that is admissible in evidence in terms of this Act, is on mere production thereof admissible in evidence in any proceedings which, on the face of it, is evidence of the particulars stated therein in pursuance of this Act or in pursuance of any duty under this Act and of the fact that it was signed by the person by whom it purports to be signed.

(2) The Registrar may, subject to Chapter 3 of this Act, supply a copy of or extract from any entry in the Register or any document forming part of or associated with the Register, and certify them in writing, signed by him or her.

(3) The person to whose custody a document referred to in subsection (1), other than a copy or extract referred to in subsection (2), is entrusted, must against payment of the relevant charge, supply a copy of or extract from the document, certified in writing and signed by him or her, to any person applying for such a copy or extract.

(4) A document purporting to be a copy or extract supplied in terms of subsection (2) or (3) is admissible in evidence.

(5) A copy of or extract from any such document must also be admissible in evidence and is, on the face of it, evidence of the particulars stated in

such copy or extract, if it purports to be signed and certified as a true copy or extract by the officer to whose custody the original document has been entrusted and that officer must, upon payment of the prescribed fee, furnish a copy or extract so certified to any person applying for it.

### **Evidence as to agreement with crew**

**409.** In any legal or other proceedings a seafarer may bring forward evidence to prove the contents of any agreement with the crew, without producing or giving notice to produce the agreement or any copy thereof.

## ***Division 5***

### ***Presumptions***

#### **Presumption in case of collision**

**410.** If any damage to person or property arises from the non-observance by any ship of any of the collision regulations, the damage must be considered to have been caused by the person in charge of the deck of the ship at the time, unless it is proved that the circumstances of the case made a departure from the regulations necessary.



***Division 6******Acts done by courts and functionaries of the Republic and other treaty countries*****Acts done by courts and functionaries of the Republic in relation to treaty ships other than South African ships**

**411.** Whenever any law enacted before or after the coming into operation of this section and in force in any treaty country other than the Republic provides that any court or functionary of the Republic may or must exercise any authority or perform any act in relation to ships registered or entitled to be registered in that treaty country, their owners, masters, seafarers, such court or functionary may exercise any such authority or perform any such act, and all things done by such court or functionary under this section must have the same effect as if that law had been enacted in the Republic.

**Acts done by courts and functionaries of other treaty countries in relation to South African ships**

**412.** (1) Every provision of this Act which purports to require any court or functionary of any treaty country other than the Republic or any person other than a South African citizen to exercise any authority or perform any act outside the Republic in relation to South African ships, their owners, masters or seafarers must be construed as being permissive only and to mean that any such court or

functionary or person is thereby empowered so to exercise such authority or perform such act.

(2) If a court or functionary of any treaty country other than the Republic exercises any authority or performs an act in relation to a ship registered or entitled to be registered in the Republic, her owner, master or seafarers, which by any statutory enactment in force in that treaty country such court or functionary is empowered to exercise or perform, all things done outside the Republic by such court or functionary in accordance with the said enactment must have the same effect as if they had been done in accordance with an Act of the Parliament of the Republic, provided the Minister has generally or in the particular case requested that the courts or functionaries of that treaty country must exercise such authority or perform such act or has in manner prescribed by regulation recognised the exercise of the authority or the performance of the act or adopted any decision made in the exercise of the authority.

### ***Division 7***

#### ***Prescription***

#### **Prescription**

**413.** (1) The period of extinctive prescription in respect of legal proceedings to enforce any claim or lien against a ship or its owners in respect of any damage to or loss of another ship, its cargo or freight, or any goods on board such other ship, or damage for loss of life or personal injury suffered by any person on board such other ship, caused by the fault of the former ship, whether such ship

be wholly or partly in fault, must be two years and must begin to run on the date when the damage or loss or injury was caused.

(2) The period of extinctive prescription in respect of legal proceedings under this Act to enforce any contribution in respect of an overpaid proportion of any damages for loss of life or personal injury must be one year and must begin to run on the date of payment.

(3) Any court having jurisdiction to try proceedings referred to in subsection (1) or (2) must, before or after the expiry of such period, if it satisfied that owing to the absence of the defendant ship from the Republic and its territorial waters and from the country to which the plaintiff's ship belongs or in which the plaintiff resides or carries on business and its territorial waters, the plaintiff has not during such period had a reasonable opportunity of arresting the defendant ship, extend such period sufficiently to give him or her such reasonable opportunity.

### ***Division 8***

#### ***Service of documents***

#### **Service of documents**

**414.** Where for the purposes of this Act any document is to be served on any person, that document may be served—

- (a) in any case by delivering a copy thereof personally to the person on whom the document is to be served, or by sending such copy to him or her, in accordance with the regulations, by registered post, enclosed in an envelope upon which is written his or her name and address, or by leaving such copy

- for him or her with an 18 years old or more years member of his or her household at his or her dwelling, or, if no person belonging to his or her household can be found there, then by affixing such copy to the principal outer door of the said dwelling or of any place where he or she actually resides or was last known to reside or by electronic mail to an electronic address provided by the person concerned; or
- (b) if the document is to be served on the master of a ship or on a person belonging to a ship, by leaving a copy thereof for him or her on board that ship with the person being or appearing to be in command or charge of the ship or by electronic mail to an electronic address provided by the person concerned; and
- (c) if the document is to be served on the master of a ship, and there is no master, and the ship is within the Republic or the territorial waters thereof, by serving it on the owner of the ship, if he or she is within the Republic, or on an agent of the owner residing in the Republic, or if no such agent is known or can be found, by affixing a copy thereof to the mast of the ship.

### ***Division 9***

#### ***Satisfying award of compensation by court***

#### **Appropriation of wages to satisfy award of compensation in offences against discipline**

**415.** When a seafarer has been convicted of desertion as defined by section 137 or of absence without leave as defined by section 138 or of contravening any of the provisions of section 133(1), (2) or (3), and the court trying the case has made an

award of compensation under section 300 of the Criminal Procedure Act, any wages that have accrued or that may thereafter accrue to him or her may be applied to the satisfaction of the award.

## CHAPTER 10 REGULATIONS

### *Part 1*

#### *Regulations Regarding Ship Registration*

#### **Matters regarding registration of ships to be prescribed**

**416.** (1) The Minister may make regulations on any matter arising from or relating to the registration of ships, including but not limited to—

- (a) the persons by whom, the manner in which and the period within which applications in connection with registration and the issue of any certificate or pass are to be made;
- (b) the information and evidence to be provided in connection with the applications contemplated in paragraph (a) and any supplementary information and evidence that may be required by any specified authority;
- (c) the restriction and regulation of the names of ships registered or to be registered;
- (d) conditions relating to persons who qualify to own ships;
- (e) the marking of ships registered or to be registered;

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- (f) the survey and inspection of ships registered or to be registered and the recording of their tonnage as ascertained or re-ascertained in terms of this Act;
  - (g) the limitation of the age or tonnage of a ship;
  - (h) the period for which the registration of a ship is to remain effective without renewal;
  - (i) the refusal, suspension and closure of registration in specified circumstances;
  - (j) matters arising out of the expiration, suspension and closure of registration, including the removal of marks and the surrender and cancellation of certificates;
  - (k) the registration of ships on bareboat charter to South African nationals;
  - (l) the registration of registered ships on bareboat charter to persons other than South African nationals or South African residents;
  - (m) the re-registration of ships entitled to be registered, which have been abandoned or whose registration in terms of this Act, or in terms of any law repealed by this Act, has been closed;
  - (n) the keeping of the Register and copies of the Register, or a part or parts of the Register;
  - (o) the entries to be made in the Register;
  - (p) the manner in which and the period within which documents and information are to be lodged, including provisions empowering the Registrar—
    - (i) to direct a person who has lodged, or is seeking to lodge, any document or information to do anything that is necessary to ensure that it is in accordance with the requirements of this Act; or

- (ii) to treat any document or information as not having been lodged until it is in accordance with the requirements of this Act;
- (q) the registration, whether by way of entry in the Register or otherwise, of documents and information;
- (r) the verification of information and documents required for the purposes of this Act;
- (s) the qualifications required of, and other requirements relating to, registered agents;
- (t) the retention or return by the Registrar of documents lodged in accordance with this Act;
- (u) the selection and change of home ports for registered ships;
- (v) the matters to be recorded or endorsed on registration certificates, provisional registration certificates and temporary passes;
- (w) the making of any declaration or the doing of anything required or permitted by this Act to be made or done in the name and on behalf of a person incapable of making such a declaration or doing any such thing by reason of minority, mental disorder or defect, or other cause;
- (x) the manner in which instruments, notices and other documents in terms of this Act may be given to, or served on, persons;
- (y) the payment of fees and expenses to persons required in terms of this Act to attend and give evidence or make declarations before the Registrar or other persons;
- (z) the conduct of any matter relating to the Registration Office;
- (za) the declaration of specified documents, or of documents included in specified classes of documents, to be admissible in evidence; and

(zb) the form of any instrument, notice or other document permitted or required to be issued, furnished, lodged or registered for the purposes of this Act.

(2) The regulations may—

- (a) make different provision for different classes or descriptions of ships and for different circumstances;
- (b) without prejudice to the generality of paragraph (a), make provision for the granting of exemptions or dispensations by the Authority from specified requirements of the regulations, subject to any condition that it may consider fit to impose;
- (c) make provision for the registration of any class or description of ships to be such as to exclude the application of Schedule 1 and may regulate the transfer, transmission or mortgaging of ships of the class or description so excluded;
- (d) prohibit the registration of any class or description of ships; and
- (e) make the incidental or supplementary provisions that appear to the Minister to be necessary or expedient, including provisions authorising investigations and conferring powers of inspection.

### **Fees to be imposed for purposes of Chapter 3**

**417.** The Authority may, for the purposes of Chapter 3 of this Act, impose fees under section 44 of the South African Maritime Safety Authority Act, in respect of—

- (a) applications in terms of this Act;
- (b) the lodging and registration of documents or information;



- (c) the registration and re-registration of ships based on the net tonnage of the ship with the minimum and maximum fee to be imposed;
- (d) the issue of registration certificates, provisional registration certificates, temporary passes and certificates contemplated in section 31(5);
- (e) the supplying of copies of or extracts from entries in the Register or documents forming part of or associated with the Register; and
- (f) the inspection of ships.

### **Matters regarding registration of ships to be prescribed**

**418.** (1) The Minister may make regulations on any matter arising from or relating to the licensing of ships, including but not limited to—

- (a) the persons by whom, the manner in which and the period within which applications in connection with the licensing and the issue of any licence are to be made;
- (b) the information and evidence to be provided in connection with the applications contemplated in paragraph (a) and any supplementary information and evidence that may be required by the Authority;
- (c) the keeping of a register;
- (d) the manner in which and the period within which documents and information are to be lodged;
- (e) the verification of information and documents required for the purposes of this Act;
- (f) the matters to be recorded or endorsed on the licences; and
- (g) the payment of fees;

- (2) The regulations may—
- (a) make different provision for different classes or descriptions of ships and for different circumstances;
  - (b) without prejudice to the generality of paragraph (a), make provision for the granting of exemptions or dispensations by the Authority from specified requirements of the regulations, subject to any condition that it may consider fit to impose;
  - (c) prohibit the licensing of any class or description of ships; and
  - (d) make the incidental or supplementary provisions that appear to the Minister to be necessary or expedient, including provisions authorising investigations and conferring powers of inspection.

## ***Part 2***

### ***Regulations Regarding Seafarers***

#### **Matters regarding training certification and manning, to be prescribed**

- 419.** (1) The Minister may make regulations on any matter arising from or relating to training certification and manning, including but not limited to—
- (a) The manner and extent to which a ship may be manned;
  - (b) requiring ships to carry such number of qualified officers of any description and such number of other seafarers of any description as may be prescribed;
  - (c) the classes of South African ships on which cadets may be employed as such, the maximum number of cadets which may be employed as such on different classes of South African ships;

- (d) prescribing the qualifications which any person employed on board a ship in a particular capacity is required to hold;
- (e) prescribing standards of competence to be attained and other conditions to be satisfied by officers and other seafarers of any description in order to be qualified for the purposes of Part 4 of Chapter 4;
- (f) Prescribing what proportion of several classes of seafarers comprising the crew of a South African ship must be South African citizens;
- (g) prescribing medical fitness requirements for officers and seafarers and the medical examination of persons engaged to serve in ships, including the particulars to be contained in medical certificates;
- (h) the age and qualifications of the candidates, including the service at sea and other service which they must have performed and the training which they must have undergone;
- (i) prescribing the period of training required of seafarers prior to any training at sea;
- (j) the fees to be paid by candidates for examination;
- (k) the standards required for passing and the manner in which the attainment of any standard or the satisfaction of any other condition is to be evidenced;
- (l) the scope and conduct of any examinations and re-examinations, the conditions for admission to them and the appointment and remuneration of examiners;
- (m) the qualifications of examiners and the conditions under which they are appointed, including the remuneration to be paid to them;
- (n) as to the approval by specified persons of seafarer training institutions and training courses;

- (o) the issue, form and recording of certificates and other documents, and different provisions may be made or enabled to be made for different circumstances;
- (p) regulating the recognition of certificates of competency or service granted by other competent authorities;
- (q) the inspection of certificates which in terms of this Act any person employed on board a ship in any particular capacity is required to hold;
- (r) prescribing the circumstances under which a certified copy of a certificate may be issued;
- (s) regarding the procedure to be followed in the event of a certificate issued under Chapter 4 being mislaid, lost or destroyed;
- (t) prescribing when a certificate may be cancelled or suspended and the right of appeal against the cancellation or suspension of a certificate; and
- (u) any other matter regarding manning, training or certification which is required or permitted to be prescribed in terms of Chapter 4 of the Act, and, in general, for the better achievement of the objects of Chapter 4 of the Act.

(2) In making regulations under this section, the Minister must have due regard to the STCW Convention and STCW- F Convention.

(3) Regulations under this section may make different provisions for different descriptions of ship or for ships of the same description in different circumstances.

**Matters regarding crew agreement to be prescribed**

**420.** The Minister may prescribe matters arising from or relating to crew agreements, including but not limited to, the following—

- (a) the minimum terms of a crew agreement;
- (b) any additional requirements for a crew agreement relating to a foreign-going South African ship;
- (c) any additional requirements for a crew agreement relating to a coasting ship or a fishing vessel registered in the Republic;
- (d) the right of a seafarer to review, and seek advice on, a crew agreement before signing it;
- (e) the information or documents in relation to the conditions of employment of seafarers that the owner of the ship is required to give or make available to and the manner and form, including electronic form, in which the prescribed information or documents must be given or made available;
- (f) any amendment to a crew agreement;
- (g) the termination of a crew agreement;
- (h) keeping records of a crew agreement and retaining such records;
- (i) the manner and form of display of a crew agreement;
- (j) the period within and person to whom an expired crew agreement must be handed over by an owner or master of a vessel; and
- (k) any other matter regarding crew agreements which is required or permitted to be prescribed in terms of Chapter 4 of the Act, and, in general, for the better achievement of the objects of Chapter 4 of the Act.

**Matters regarding wages to be prescribed**

**421.** The Minister may prescribe matters arising from or relating to wages, including but not limited to the circumstance under which the master of a South African ship is to give facilities to seafarers for remitting wages.

**Matters regarding allotment notes to be prescribed**

**422.** The Minister may prescribe matters arising from or relating to allotment notes, including but not limited to, the following—

- (a) limit the circumstances in which an allotment note may be made;
- (b) limit, the part of the wages that may be allotted and the number of persons to whom it may be allotted and may prescribe the method by which that part is to be calculated;
- (c) identify the category of persons to whom allotments may be made;
- (d) provide for the times and the intervals at which payment under an allotment note is to be made; and
- (e) provide for any evidentiary matters in proceedings before the court.

**Matters regarding crew accommodation to be prescribed**

**423.** (1) The Minister may make regulations arising from or relating to accommodation to be provided for seafarers on prescribed ships.

(2) Without limiting subsection (1), the regulations may prescribe different requirements for male and female seafarers and make provision for the following—

- (a) the minimum amount of space to be provided for each seafarer;
- (b) regarding the circumstances under which the Authority may vary the requirements to provide the accommodation on board a ship necessary to accommodate the numbers of officers or other persons;
- (c) the maximum number of seafarers to be accommodated in a specified part of a vessel;
- (d) the part of a vessel in which the whole or a part of the accommodation is to be provided;
- (e) the requirements for the construction, furnishing and equipment of the accommodation, including heating, lighting and ventilation;
- (f) the maximum levels of noise, vibration and other ambient factors;
- (g) the maintenance and repair of the accommodation;
- (h) the prohibition or restriction of the use of accommodation for a purpose other than that specified;
- (i) the provision of hot and cold fresh water;
- (j) the provision of bedding, mess utensils, towels and other articles for personal use;
- (k) the submission of plans and specifications relating to the provision or alteration of accommodation;
- (l) circumstances when accommodation must be provided to master and seafarers when they are not on board ship.

- (m) mechanisms for making and dealing with complaints about accommodation and duties of master of ship.

### **Regulations relating to provision of food and water**

**424.** (1) The Minister may make regulations arising from or relating to the provision of food and drinking water on board prescribed ships.

(2) Without limiting subsection (1), the regulations may make provision for the following—

- (a) the quantity and quality of food and drinking water to be carried and made available on board prescribed ships;
- (b) measuring instruments for determining quantities of provisions served;
- (c) provision of a refrigerating chamber;
- (d) mechanisms for making and dealing with complaints about the quantity and quality of food and drinking water and duties of the master of the ship; and
- (e) circumstances when provisions must be provided to master and seafarers when they are not on board ship.

### **Matters regarding alcohol and drugs to be prescribed**

**425.** The Minister may prescribe matters arising from or relating to alcohol and drugs, including but not limited to, the following—

- (a) The permissible blood alcohol level of a seafarer;
- (b) any drug which may not be present in the blood of a seafarer;
- (c) the authorisation of persons—



- (i) to conduct alcohol tests and drug tests; and
- (ii) to operate devices equipment for that purpose;
- (d) the conduct of alcohol tests and drug tests, including random tests and tests with notice;
- (e) the devices used in conducting alcohol tests and drug tests, including the calibration, inspection and testing of those devices;
- (f) the approval of persons to conduct analyses in connection with such tests;
- (g) the procedure for the handling and analysis of samples;
- (h) the confidentiality of test results;
- (i) the storage and destruction of samples; and
- (j) the issuing of a certificate by the person referred to in paragraph (c) and the evidentiary value of such certificate in any proceedings relating to Part 11 of Chapter 4.

### **General matters regarding seafarers to be prescribed**

**426.** The Minister may prescribe general matters relating to seafarers, including but not limited to, the following—

- (a) regarding the holder of a certificate who is unfit to perform his or her duties as a result of ill health or mental or physical defect;
- (b) as to the relief, maintenance and return to a proper return port of shipwrecked seafarers and seafarers found otherwise in distress in any place outside the Republic;

- (c) as to the licensing and conduct and inspection of houses in which seafarers are lodged, the charges that may be made in such houses for food and lodging, and the payment of fees for such licences;
- (d) providing for the care and treatment of sick seafarers (including masters) in hospitals, and for the recovery of expenses in connection therewith;
- (e) providing for the maintenance by the master in respect of every seafarer on his or her ship of a card on which must be made a copy of every entry made in respect of the seafarer in the official logbook in terms of section 143;
- (f) providing for all matters regarding seafarers' identity documents; and
- (g) providing for the vaccinations and inoculation such as those against smallpox, yellow fever and typhoid fever of seafarers including masters and cadets at the expense of the owner of the ship on which they serve.

### ***Part 3***

#### ***Regulations Regarding Safety of Life at Sea***

##### **General matters regarding safety of life at sea to be prescribed**

**427.** (1) The Minister may prescribe general matters relating to safety of life at sea and safety of navigation, including but not limited to, the following—

- (a) the manner in which a ship must be inspected, surveyed and measured for any purpose under this Act, and the particulars and statements which must be contained in the report or certificate of a surveyor;
- (b) the accommodation for passengers to be provided on board a South African ship;

- (c) the class or classes of ships on which qualified and approved medical practitioners must be employed as such;
- (d) radio and other navigational aids;
- (e) adjusting and maintenance of navigational equipment, including compasses;
- (f) employment, certification and requirements for radio officers and operators;
- (g) electromagnetic compatibility of equipment on or in the vicinity of the bridge;
- (h) nautical chart equipment of mobile offshore drilling units;
- (i) record-keeping and voyage data recorders on ships;
- (j) automatic tracking of ships;
- (k) life-saving appliances, fire safety systems and fire-fighting equipment on ships and the life-saving appliances to comply with the specifications determined by the South African Bureau of Standards mentioned in the Standards Act and circumstances under which those life-saving appliances are considered to comply;
- (l) boat and fire drills and testing drills, including nature, frequency and recording thereof;
- (m) notices and diagrams, as well as the exhibition thereof, related to location and operation of life-saving and fire-fighting equipment;
- (n) watch-keeping requirements;
- (o) safe navigation, and requirements for navigation in particular conditions such as where ice is reported;
- (p) the design, manufacture, construction, installation, operation, use, handling, alteration, repair, maintenance and conveyance of machinery and safety equipment on vessels;
- (q) construction and equipment of mobile offshore drilling units;

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- (r) special purpose ships;
  - (s) the safety equipment and other facilities to be provided or installed on vessels by employers, owners and users, the persons to whom they are to be provided and the circumstances in which they are to be provided or installed and the application thereof;
  - (t) safety measures to be taken in relation to vessels by employers, employees, owners and users;
  - (u) performance of work on vessels in hazardous or potentially hazardous conditions or circumstances;
  - (v) safe carriage of solid bulk cargoes, packaged irradiated nuclear fuel, plutonium and high-level radioactive wastes and timber deck cargoes;
  - (w) cargo stowage and securing;
  - (x) ships using gases or other low-flashpoint fuels;
  - (y) carriage of cargoes and persons by offshore supply vessels;
  - (z) intact stability;
  - (za) first aid and medical equipment to be kept available on vessels by owners, employers and users, the places where such equipment are to be kept, the requirements with which such equipment must comply, the inspection of such equipment, the application of first aid and the qualifications which persons applying first aid must possess;
  - (zb) safety management and the compilation by employers of safety directives in respect of vessels, the matters to be dealt with in such directives and the manner in which such directives must be brought to the attention of employees and other persons at a workplace;

- (zc) the class or classes of ships on which supplies of antiscorbutics, medicines and appliances for the treatment and prevention of diseases and accidents likely to occur at sea and of first aid equipment are to be carried;
- (zd) scales according to which supplies of antiscorbutics, medicines and appliances for the treatment and prevention of diseases and accidents likely to occur at sea and of first aid equipment are to be carried on board a ship of a prescribed class; and
- (ze) precautions to be taken in connection with the design and construction of ships and in respect of other matters to prevent the entrance of vermin and contaminants into ships;
- (zf) ventilation to be provided when coal is loaded or carried in a ship as cargo or ballast;
- (zg) dissemination of information concerning dangers to navigation;
- (zh) what signals are to be regarded as signals of distress, and the circumstances in and the purposes for which such signals are to be used;
- (zi) signalling lamps;
- (zj) class or quantity of goods which may be carried in ships, and the manner in which such goods may be so carried;
- (zk) requirements and precautions regarding the carriage of ballast;
- (zl) conditions governing the installation, working and use of any anchors, chains, cables, and loading and discharging gear and any other machinery on board or in connection with ships, and the strength and quality thereof, and the precautions to be taken to prevent persons being injured thereby or by falling articles;

- (zm) standards of seaworthiness to be observed in respect of vessels to which the Safety Convention does not apply, and regarding the marking and inspection of such vessels and the lifesaving appliances and first aid apparatus with which such vessels must be equipped;
- (zn) requiring ships, vessels or other craft which are not by this Act required to comply with any of its provisions, to comply with such of the said provisions as may be specified, subject to such exemptions, restrictions or modifications as may be prescribed;
- (zo) the design, construction, operation, use and maintenance of dynamically supported craft and any other matter which may be reasonably necessary for the safe and orderly operation of such craft;
- (zp) international ship security; and
- (zq) any other matter regarding safety of life at sea which is required or permitted to be prescribed in terms of Chapter 5 of the Act, and, in general, for the better achievement of the objects of Chapter 5 of the Act.

(2) In making regulations under this section, the Minister must have due regard to the Safety Convention and any regulation or code issued thereunder.

### **Matters regarding the carriage of grain to be prescribed**

**428.** The Minister may prescribe matters regarding the safe carriage of grain in bulk, including but not limited to—

- (a) requirements regarding the trimming of grain;
- (b) intact stability requirements;
- (c) longitudinal divisions and saucers;

- (d) requirements for securing grain;
- (e) effects of feeders and trunks, if fitted;
- (f) combination arrangements when loading lower holds and between-deck spaces;
- (g) issuing of authorisation by the Authority when a ship is loaded in accordance with Part 6 of Chapter 5; and
- (h) sufficient grain loading information to enable the master to determine the heeling moments due to grain shift; and
- (i) any other matter relating to the carriage of grain.

#### **Matters regarding the carriage of maritime dangerous goods to be prescribed**

**429.** The Minister may prescribe matters regarding maritime dangerous goods, including but not limited to—

- (a) the safe packing and stowage requirements of specific dangerous goods or categories of dangerous goods which must include any precautions necessary in their relation to other cargo;
- (b) the classification of dangerous goods;
- (c) the packing requirements of dangerous goods;
- (d) the marking and labelling of each receptacle containing dangerous goods;
- (e) documents that must be carried in the required format by a ship carrying dangerous goods;
- (f) accreditation of certain persons involved in the conveyance of dangerous goods;
- (g) the type of explosives which may be carried in passenger ships; and

- (h) any other matter relating to the carriage of maritime dangerous goods and vessels carrying dangerous goods.

### **Nuclear Ships**

**430.** The Minister may prescribe matters regarding nuclear ships, including but not limited to—

- (a) requirements for the approval of the design, construction and standards of inspection and assembly of the reactor installation;
- (b) the suitability of the reactor installation for service on board a ship;
- (c) radiation safety measures;
- (d) the safety assessment that needs to be undertaken by any nuclear ship which intends to enter the Republic;
- (e) the development and approval of an operating manual;
- (f) the extent and frequency of surveys;
- (g) the manner of application for and inspections and surveys required for issue of a nuclear passenger ship safety certificate and a nuclear cargo ship safety certificate; and
- (h) any other matter relating to nuclear ships.

### **Matters regarding management for the safe operation of ships to be prescribed**

**431.** The Minister may prescribe matters regarding the safe operation of ships and for pollution prevention, including but not limited to—

- (a) the applicability of Part 16 of Chapter 5 to a ship or class of ship;



- (b) the requirements for the safe operation of ships;
- (c) the manner and form of application for a safety management certificate and the inspection and issue of such certificate; and
- (d) any other matter relating to the safe operation of ships.

#### **Matters relating to high-speed craft to be prescribed**

**432.** The Minister may prescribe matters regarding the safety measures for high-speed craft, including but not limited to—

- (a) the certification of high speed craft;
- (b) the surveys conducted for purposes of certification of high-speed craft; and
- (c) any other matter relating to the safety measures for high-speed craft.

#### **Special measures to enhance maritime safety to be prescribed**

**433.** The Minister may prescribe matters regarding the Special measures to enhance maritime safety, including but not limited to—

- (a) enhanced surveys;
- (b) ship identity number;
- (c) continuous synopsis record; and
- (d) any other matter relating to maritime safety.

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**Additional safety measures for bulk carriers to be prescribed**

**434.** The Minister may prescribe additional safety measures for bulk carriers, including but not limited to—

- (a) safe loading and unloading of bulk carriers;
- (b) damage stability requirements applicable to bulk carriers
- (c) structural strength of bulk carriers
- (d) structural and other requirements for bulk carriers
- (e) survey of the cargo hold structure of bulk carriers
- (f) information on compliance with requirements for bulk carriers
- (g) requirements for bulk carriers not being capable of complying with certain requirements due to the design configuration of their cargo holds
- (h) solid bulk cargo density declaration
- (i) loading instrument
- (j) hold, ballast and dry space water level detectors
- (k) availability of pumping systems; and

any other matter relating to safety measures for bulk carriers.

**Matters regarding vessels less than three metres in length to be prescribed**

**435.** The Minister may prescribe matters relating to vessels less than three metres in length, including but not limited to, the following—

- (a) prescribe the purpose for and the area in which a vessel of less than three metres in length may be used; and

- (b) prescribe the conditions subject to which any such vessel may so be used.

#### ***Part 4***

### ***Regulations Regarding Investigation of Allegations and Marine Casualty and Marine Incident Investigations***

#### **General matters regarding investigations of allegations marine safety investigations, formal enquiries and appeals to be prescribed**

**436.** The Minister may prescribe general matters arising from or relating to allegations, marine safety investigations conducted by the marine accident and incident investigation unit or the Courts of Marine Enquiry, Maritime Courts and Courts of Survey, including but not limited to, the following:

- (a) Preservation of evidence;
- (b) application of international standards and guidelines relating to marine safety investigations;
- (c) the purpose of marine safety investigations;
- (d) safeguarding the independence of the marine accident and incident investigation unit;
- (e) powers and duties of the marine accident and incident investigation unit; and
- (f) rules to be followed in respect of—
  - (i) the convening of courts of marine enquiry, maritime courts and courts of survey;
  - (ii) the appointment of the members of such courts and technical advisors;and

- (iii) the noting and prosecution of appeals from courts of marine enquiry of maritime courts to High Courts, and prescribing the procedure to be followed by courts of marine enquiry, maritime courts and courts of survey.

### ***Part 5***

#### ***Regulations Regarding Marine Traffic***

##### **Matters regarding aids to navigation to be prescribed**

**437.** The Minister may prescribe general matters arising from or relating to aids to navigation, including but not limited to, the following:

- (a) The establishment, maintenance, repair removal, discontinuance, positioning, variance, or inspection of aids to navigation;
- (b) removing obstructions to aids to navigation, and giving directions in respect of the removal of aids to navigation;
- (c) offences related to interference with aids to navigation;
- (d) protection of aids to navigation; and
- (e) marking of navigational hazards.

**Matters regarding marine traffic to be prescribed**

**438.** (1) The Minister may prescribe matters arising from or relating to marine traffic, including but not limited to, the following—

- (a) regulating marine traffic in the territorial and sheltered waters, including the prescribing of ship reporting procedures, sea lanes and traffic separation schemes for ships in general or for any class of ship or for ships carrying nuclear or other dangerous or noxious substances;
- (b) providing for the protection of offshore installations;
- (c) prescribing measures to be taken on or in respect of offshore installations, including the equipment to be installed and maintained thereon, in the interests of the safety of navigation and the establishment of safety zones in respect thereof;
- (d) the information to be provided and the procedures and practices to be followed by vessels that are entering, leaving or proceeding within different maritime zones or a vessel traffic service zone determined by the Authority in terms of Chapter 7; and
- (e) regulating or prohibiting the navigation, anchoring, mooring or berthing of vessels for the purposes of promoting the safe and efficient navigation of vessels and protecting the public interest and the environment.

(2) Regulations made under subsection (1) may—

- (a) prescribe for any contravention thereof or failure to comply therewith a penalty of a fine or imprisonment for a period not exceeding two years; and
- (b) be applicable outside the Republic.

**Part 6****Regulations Regarding Ship Security****Matters regarding ship security to be prescribed**

**439.** The Minister may prescribe matters relating to ship security, including but not limited to—

- (a) security levels and security directions to be determined;
- (b) security-level information to be provided to ships registered in South Africa;
- (c) security regulated ports and port operators;
- (d) information to be provided to ships;
- (e) compliance with security levels by ship;
- (f) maritime security plans;
- (g) ship security plans and records and international ship security certificates;
- (h) reporting of maritime transport security incidents;
- (i) ship security alert system;
- (j) control and compliance measures;
- (k) communication of information;
- (l) record; and
- (m) surveys.

***Part 7***

***Regulations Regarding Small Vessels and Inland Waters***

**Matters regarding small vessels and inland waters to be prescribed**

**440.** The Minister may prescribe matters relating to small vessels and inland waters, including but not limited to safety and security of maritime facilities and aids to navigation in inland waters.

***Part 8***

***Regulations Regarding International Conventions***

**Matters regarding international conventions to be prescribed**

**441.** (1) The Minister may make such notifications, declarations and regulations as may be necessary to give effect, after the commencement of this Act, subject to such exemptions, restrictions and modifications as may be desirable, to the provisions of —

- (a) the Safety Convention;
- (b) the International Collision Regulations Convention;
- (c) the Load Line Convention;
- (d) the Tonnage Convention;
- (e) the STCW Convention;
- (f) the STCW-F Convention;
- (g) the Maritime Labour Convention;

- (h) the Work in Fishing Convention; and
- (i) any international convention not mentioned in paragraphs (a) to (h) that enters into force in the Republic after commencement of this Act in terms of section 231 of the Constitution.

(2) The regulations made under subsection (1) may include other and more extensive provisions than those contained in the Conventions contemplated in that subsection, provided they relate to the same or similar matters as are dealt with in those Conventions.

(3) The Minister may by regulation apply, subject to such exemptions, restrictions and modifications as may be desirable, any of the regulations made under subsection (1), to ships to which and in circumstances in which the provisions of the conventions mentioned in that subsection do not apply.

(4) Any regulation made under subsection (1) may make provision in terms of any document which the Minister or any person considers relevant, without stating the text thereof, by mere reference to the number, title and year of issue of that document or to any other particulars by which that document is sufficiently identified.

(5) A reference in the regulations to any document contemplated in subsection (4) must, unless expressly stated otherwise, be a reference to that document as revised or reissued.



**Part 9****General Provisions Regarding Regulations****General matters to be prescribed**

**442.** (1) The Minister may prescribe general matters arising from or relating to this Act and not provided for in this Chapter, including but not limited to, the following—

- (a) for and in connection with, including the approval of, the books, forms and other documents to be used for the convenient and effective carrying out of the provisions of this Act, and of the particulars which must be contained therein;
- (b) prescribing the powers and duties of officers or other persons employed in the administration of this Act;
- (c) prescribing the services rendered or work done in pursuance of this Act for which fees must be paid, the amount of such fees, and when and by whom such fees must be paid;
- (d) the duties of owners, masters and employers;
- (e) regarding the appointment and functions of safety officers, safety appointees and safety committees and the election, training and functions of safety representatives; and
- (f) prescribing such other matters as are necessary or useful to be prescribed for carrying out the purposes of this Act.

(2) The provisions of section 28 of the Standards Act, must not affect the operation of this Chapter.

(3) (a) A regulation made under this Chapter which incorporates another document, does not have to include the text of that document and may incorporate that document by mere reference to the number, title and year of issue of that document or to any other particulars by which that document is sufficiently identified;

(b) references in the regulations to any such document must, unless expressly stated otherwise, be references to that document as revised or reissued; and

(c) a copy of the complete text of each such document, as revised or reissued, must be kept at such places in the Republic as the Authority directs and must be available for public inspection after a date stated in the regulations.

(4) Any regulation made under this Chapter may prescribe penalties for contravention thereof or failure to comply therewith, of a fine, or imprisonment for a period not exceeding one year: Provided that if by any such regulation a penalty is prescribed for any act or omission for which a different penalty is prescribed under Chapter 9, the provisions of that Chapter must prevail.

(5) Different regulations may be made under this Chapter in respect of ships falling within different classes or categories or of different tonnage or in respect of ships built before or after a date stated in the regulations.

### Procedure for making regulations

**443.** (1) The Minister may make regulations to facilitate the implementation of this Act, including regulations—

- (a) that must or may be prescribed in terms of this Act;
- (b) to provide for other procedural or administrative matters that are necessary to implement the provisions of this Act.

(2) The Minister may not make a regulation unless the he or she has published a draft of the regulation in the *Gazette* together with a notice inviting submissions in relation to the regulation within a specified period.

(3) The period allowed for making submissions referred to in subsection (2) must be at least 30 days.

(4) If a Minister intends, whether or not as a result of a consultation process, to make a regulation in a materially different form from the draft regulation published in terms of subsection (2), the Minister must, before making the regulation, repeat the process referred to in subsection (2).

(5) This section does not prevent the Minister from engaging in consultations in addition to those required in terms of this section.

## CHAPTER 11

### GENERAL PROVISIONS

#### **Prohibition of use of vessels of less than three metres in length**

**444.** (1) No vessel of less than three metres in length must go to sea from any port in or from anywhere else on the coast of the Republic.

(2) Notwithstanding the provisions of subsection (1), a vessel of less than three metres may go to sea as contemplated in the subsection subject to such conditions as may be prescribed.

#### **Indemnification of State and Authority and certain persons in employ of State and Authority**

**445.** Notwithstanding anything to the contrary in any law contained, the State and the Authority and their officers and employees acting in the performance of their duties must not be liable for—

- (a) any loss or damage caused by the death of, or injury to, any person while conveyed in any vessel owned, operated or chartered by the State through its Department of Transport or by the Authority, or while entering or embarking upon or being in such vessel for the purpose of being conveyed in it, or while being in or alighting from such vessel after having been conveyed in it, if that person was so conveyed or to be so conveyed otherwise than in the

performance of his or her duties as an officer or employee of the State or the Authority and otherwise than for reward; or

- (b) any loss of or damage to any goods conveyed in such a vessel otherwise than in the interests of the State or the Authority and otherwise than for reward.

### **Delegation of powers**

**446.** The Minister may delegate any power conferred upon him or her by this Act, other than the power to make regulations, to one or more persons in the service the Department, an organ of state or the Authority, but must not thereby be divested of any power so delegated and may amend or withdraw any decision of any such person or Authority.

### **Transitional provisions**

**447.** (1) Notwithstanding the repeal of the Merchant Shipping Act, in terms of the provisions of section 449—

- (a) any valid certificate of competency, service or training issued or considered to have been issued under the Merchant Shipping Act, must continue in force as if issued under this Act, but must be valid only for the purpose for which, and the extent to which, it would have been valid in accordance with the provisions of the abovementioned Act;
- (b) any licence issued in terms of section 68 of the Merchant Shipping Act, must continue in force as if issued under this Act, but must be valid only for the

purpose for which, and the extent to which, it would have been valid in accordance with the provisions of the abovementioned Act;

- (c) a notice, designation or certificate issued in terms of the Merchant Shipping Act, in respect of any matter dealt with in that Act, is considered to have been issued in terms of this Act but must be valid only for the purpose for which, and the extent to which, it would have been valid in accordance with the provisions of the abovementioned Act;
- (d) any regulation made in terms of the Merchant Shipping Act, in respect of any matter which may have been prescribed in terms of that Act, is considered to have been made in terms of this Act and remains in force until repealed by the Minister.
- (e) a specification, code of conduct, code of practice, standard or document which is in force in terms of the Merchant Shipping Act, is considered to be a specification, code of conduct, code of practice, standard or document made in terms of this Act and remains in force until repealed by the Minister.
- (f) a safety officer, safety appointee, safety committee and safety representative appointed and elected in terms of the Merchant Shipping Act, must remain in office for the unexpired term of his or her appointment or election.

(2) Notwithstanding the repeal of the Marine Traffic Act, in terms of the provisions of section 449, any regulation made in terms of that Act in respect of any matter which may have been prescribed in terms of that Act, is considered to have been made in terms of this Act and remains in force until repealed by the Minister.

(3) Notwithstanding the repeal of the Ship Registration Act, in terms of the provisions of section 449—

- (a) the Registrar and Deputy Registrars appointed by the Minister under section 9 of the Ship Registration Act, continue in office until their appointment expires or is withdrawn by the Minister and the provisions of section 18 of this Act commences when the appointment expires or is withdrawn.
- (b) any regulation made in terms of that Act in respect of any matter which may have been prescribed in terms of that Act, is considered to have been made in terms of this Act and remains in force until repealed by the Minister;
- (c) every ship entitled to be registered that was, immediately before the date of commencement of this Act, registered in terms of the Ship Registration Act is considered to be registered in terms of this Act;
- (d) any entry or record in respect of a ship entitled to be registered, that immediately before the before the date of commencement of this Act, appeared in a register book kept at a South African port in terms of the Ship Registration Act, is considered to be an entry or record in the Register in respect of that ship and to have been made on the date on which and at the time when it was made in terms of the Ship Registration Act;
- (e) any—
  - (i) instrument or other document, other than a certificate of mortgage or certificate of sale granted in terms of the Ship Registration Act and in effect immediately before the date of commencement of this Act; and
  - (ii) endorsement, memorandum or other note made in terms of the Ship Registration Act on any such instrument or document and in effect immediately before the date of commencement of this Act,continue to have effect on and after that date as if it had been made in terms of the corresponding provision of this Act: Provided that the Registrar may

refuse to accept instrument, document, endorsement, memorandum or note for purposes of this Act, if he or she is of the opinion that—

- (aa) the instrument or document does not sufficiently comply with the requirements of this Act; or
  - (bb) it would be inappropriate to accept the instrument or document for the purposes of this Act,
- (f) an application made in terms of the Ship Registration Act, submitted before the date of commencement of this Act but not finalised is considered to be an application submitted in terms of this Act if the Registrar is satisfied that the requirements of this Act in respect of an application of the same kind are substantially similar to the requirements of the Ship Registration Act;
- (g) the Registrar may recall the certificate of registry issued in terms of the Ship Registration Act in respect of a ship for the purpose of the issue of a registration certificate in terms of this Act;
- (h) each register kept at a South African port in terms of the Ship Registration Act is considered to be part of the Register to be kept in terms of this Act, and any documents retained in terms of that Act that are associated with the register book kept in terms thereof must be retained by the Registrar;
- (i) the Registrar may, by notice in the prescribed form served on the registered agent of a ship considered to be registered, or if there is no registered agent entered in the Register in respect of that ship, the registered owner of that ship, require him or her to—
  - (i) verify, in the manner determined in the notice, any matter or particular appearing in the Register under the Ship Registration Act;



- (ii) furnish the information and documents relating to the ship and its owner determined in the notice that would be submitted in connection with or in support of an application for registration, or to do that verification as well as to furnish that information and documents, within a determined period, but not less than 30 days after the date of service of the notice;
- (j) the Authority may, by notice in the prescribed form, to the Registrar, direct that the registration of the ship be closed if a person contemplated in paragraph (h) fails to furnish information or document or to verify a matter unless it has reason to believe that the ship may still be entitled to be registered;
- (k) where no entry or amendment of an entry has been made in respect of a ship in the Register for the prescribed period, the Registrar may, by notice in the *Gazette* containing the prescribed content, determine that, unless the Registrar is contacted by the registered owner, the registered agent, or another person having knowledge of the whereabouts of either the ship or the registered owner or registered agent, the Registrar must close the registration of the Ship; and
- (l) the Registrar must, if he or she has reason to suspect that a ship regarded as registered on date of commencement of this Act, was not on that date entitled to be registered, serve notice of that fact on the owner and any mortgagee of the ship and he or she may close the registration of that ship if satisfactory evidence that the ship should remain registered is not submitted to him or her within three months from the date on which the notice was served.

(4) At commencement of this Act, any person—

(a) who is building a vessel; or

(b) on whose account a vessel is being built,

which vessel, when completed, must be registered or licensed in the Republic, must, within 60 days after the commencement of this Act, furnish to the proper officer at the port where the vessel will be registered or licensed or to the Authority such written particulars of the vessel as may be prescribed.

(5) The Minister may by regulation make provision for any matter arising from, consequential to or otherwise connected with the operation of this section and any regulations so made may have retrospective effect to the date of commencement of this Act.

(6) Any regulation made under subsection (4) may make provision in terms of any document which the Minister or any person considers relevant, without stating the text thereof, by mere reference to the number, title and year of issue of that document or to any other particulars by which that document is sufficiently identified.

### **International conventions to have force of law**

**448.** (1) The international conventions referred to in subsection (2) must—

(a) at date of commencement of this Act—

(i) if incorporated into the law of the Republic in terms of section 356*bis* of the Merchant Shipping Act, continue to have the force of law, subject to regulations made by the Minister in terms of section 356(2) of that Act;

- (ii) if given effect to in terms of section 356(2) of the Merchant Shipping Act, continue to have such effect, subject to such exemptions, restrictions and modifications as may have been determined by the Minister under that section;
  - (iii) if acceded to by the Republic, but not yet given effect to as contemplated in section 132(4) of the Constitution read with section 356(2) of the Merchant Shipping Act, have the force of law when it is effected by the Minister as contemplated in section 441 of this Act; and
- (b) after date of commencement of this Act, if any international convention is modified by an amendment made under the enabling clause or article of that international convention, the Minister must, as soon as practicable after the entry into force of that amendment, give effect to by—
- (i) amending any relevant section of this Act, if applicable; and
  - (ii) promulgating new or amending existing regulations as contemplated in section 441 of this Act.

(2) The international conventions contemplated in subsection (1)

are—

- (a) International Collision Regulations Convention;
- (b) Load Line Convention;
- (c) Maritime Labour Convention;
- (d) Safety Convention;
- (e) STCW Convention;
- (f) STCW-F Convention;
- (g) Tonnage Convention; and
- (h) Work in Fishing Convention.

(3) The Minister must ensure that a copy of the complete text of each an international convention referred to in subsection (2), as revised or amended, is kept at such places as he or she may determine, and in particular, is published on the official website of the Department of Transport, and he or she may direct the Authority to keep such copies at such places as it considers necessary and such copies must be available for public inspection.

(4) If the provisions of this Act, regulations made in terms hereof or any technical standard issued by the Authority differ in any way to the provisions of an international convention, the provisions of this Act and regulations or the technical standard must apply provided that the technical standards issued by the Authority are not lower than the minimum technical standards established by that international convention.

(5) In interpreting an international convention —

- (a) a reference to the Administration must, in relation to a ship of South African nationality, be construed as a reference to the Authority or any officer or organisation acting on its authority; and
- (b) in the event of an inconsistency between different texts of a notice, certificate or regulation made by the Minister in terms of Chapter 10 or considered to have been made by the Minister in terms thereof, the English text prevails.

### **Amendment and repeal of law**

**449.** The laws mentioned in Schedule 3 are hereby amended or repealed to the extent set out in that Schedule.

**Short title and commencement**

**450.** (1) This Act must be called the Merchant Shipping Act, 2019, and must come into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) The President may fix different dates in respect of different sections, parts or Chapters of this Act and the dates so fixed may differ in respect of different classes of ships.

## MEMORANDUM OF OBJECTS OF THE MERCHANT SHIPPING BILL, 2020

### 1. Background and purpose

Cabinet approved the Comprehensive Maritime Transport Policy (CMTP) in 2017 and it is an overarching policy to guide the integrated governance, regulation and development broadly of the ocean economy and in particular of maritime transportation in South Africa. There are several policy statements in the CMTP that need to be captured in legislation in order to achieve the necessary outcomes identified therein. Not all of the policy statements in the CMTP require legislation to give effect to it and not all of the policy statements in the CMTP are absorbed into the Merchant Shipping Bill. The Merchant Shipping Bill is but one in a suite of laws to be drafted or amended to give effect to the vision of government to revive the maritime transport sector and enhance its contribution to the growth and radical transformation of the South African economy. Since the Merchant Shipping Act, 1951 was first enacted, over 60 years ago, it has been amended in a piecemeal fashion over 32 times, inter alia to align with Republic's evolving international obligations. The Department has recognised that this approach has compromised the coherence of the Merchant Shipping Act, 1951 and accordingly has overhauled it to ensure inter alia that it aligns with IMO conventions ratified by the Republic, the Constitution of the Republic of South Africa, 1996, and the CMTP.

### 2. Objects of Bill

The Bill seeks to:

- (a) provide for the powers and duties of the Minister and the South African Maritime Safety Authority in the administration of this Act,
- (b) provide for the registration and licensing of ships in the Republic;
- (c) provide for the application of the labour laws to seafarers, the conditions of employment of seafarers and the health and well-being of seafarers on board a vessel;
- (d) promote the safety of life at sea and to establish inspection and enforcement mechanisms including those for marine casualties and crimes committed on ships;
- (e) provide for the regulation of marine traffic and for legal proceedings and jurisdictional matters,

- (f) recognise and incorporate international conventions to which the Republic is bound in terms of the provisions of the Constitution and its incorporation into domestic law in terms of laws repealed by this Act.

### **3. Discussions**

#### **CHAPTER 1**

##### **INTERPRETATION**

This chapter assigns technical meaning to words of a technical nature referred to in the Bill and in order to avoid possible mis-interpretations of some phrases or context in this Act guidance on the interpretational approach to this bill is provided.

#### **CHAPTER 2**

##### **ADMINISTRATION**

This chapter provides for the powers of the Minister to make regulations; for the incorporation of any international convention defined in this Act and generally for the effective administration and achievement of the objects of this Act; delegate any duty; monitor the impact of any international convention and technical standard; monitor the impact of any mechanisms, programs or interventions to promote ship ownership criteria for designation of a national shipping company; measures to promote export of certain strategic minerals using South African ships; establishing the Shipping information Centre; conclude bi-lateral agreements; and appoint advisory panel and committee. The Authority is also empowered to appoint officers and surveyors; and to issue technical standards. In order to streamline and ensure highest maritime safety standards, the chapter provides for the condition of technical standards for maritime transport to be issued by the Authority; acquire as appropriate systems, equipment; marine and aerial surveillance crafts to promote the implementation of this Act.

#### **CHAPTER 3**

##### **SHIP REGISTRATION, TONNAGE, LICENSING OF VESSELS AND NOTIFICATIONS OF INTENTION TO BUILD VESSELS**

Part A of this chapter provides for Ship Registration of a South African ship and the meaning of a South African-owned ship. There are also special provisions under which the national flag

can be used and the requirements for declaration of ship's nationality before clearance. The creation of the South African Ship Registration Office and the appointment of the Registrar and Deputy Registrars of Ships including the powers and duties of Registrar and the appointment of staff.

The Chapter also provides for the requirements for the inspection and tonnage measurement of ship before registration and the illegality of refusal of registration of a ship and the consequences thereof. Dual registration of a South African ship is prohibited under this chapter. The Minister has power to disallow proposed name for ship. There are also special circumstances when the ship may be granted or not granted provisional certificate for ship becoming entitled to be registered while abroad. The South African Ships Register is also established under this chapter.

Under this chapter there is also provision for private law matters connected with liability of person with beneficial interest on the ship including requirements for Registered agent and as well as ship lost or ceasing to be entitled to be registered. There are also provisions for circumstances that may arise resulting in forfeiture and detention of ships and how the Authority will cooperate with officials in investigations under this section.

Part B provides for the measurement of Tonnage of the ship prior registration as well as the recognition of tonnage of ships of other countries

Part C under this chapter provides for Licensing of Vessels and prohibition on coastwise traffic and certain vessels to be licensed; the issuing and period of validity of coastal ship licence including the conditions for the renewal of coastal ship licence and cancellation of a coastal ship licence. The Chapter provides for special measures to support South African ship ownership for coastwise traffic. This provision is critical as an enabler and support to domestic ship ownership.

Part D provides for notification that must be made to the Authority of Intention to Build Vessel. This provision is critical in making sure that vessels to be built comply with the maritime safety standards.

## **CHAPTER 4**

### **SEAFARERS**



**Part A**, provides for application of Chapter 4 and Part B provides for application of Labour *application of Labour Laws to Seafarers*.

**Part C** provides for Cadets including prohibition on number of cadets to be engaged that may be engaged in South African ship.

**Part D** provides for Manning, training and certification of seafarers by incorporating the provisions of the International Convention of Standards of Training, certification and Watchkeeping for seafarers. This ensures that our legislation is on par with the rest of the world.

**Part E** provide for the employment of seafarers including Medical examination of crew prior to engagement. The chapter also aligns our legislation with the international best practice for instruments required for engagement of seafarers before joining the ship and prohibition of work by children and circumstances under which the employment of young person is regulated.

**Part F** and **G**, provide for rights to wages and provisions and when such are to commence payment of Wages to seafarers. There are also provisions for entitlement of seafarers to leave. The right to leave is important to seafarers taking into account the long hours of work and extended absence from their families.

**Part H** provide for the discharge of seafarer whose service terminates elsewhere other than at proper return port *or* discharge of seafarer on change of ownership and circumstances seafarers may be left behind and care that must be given to wages and other property of seafarer left behind.

**Part I** and **J** and **K** provides for the management procedure following the death of seafarer or if seafarer is lost and Distressed Seafarers: Repatriation and Relief Costs respectively and as well as crew accommodation and health of seafarers. In order to deal with discipline on board ship, there are specific provisions for a code of conduct applicable to all seafarers including the master and how their conduct including misconduct will be regulated.

**Part M** and **Q** provides for the carrying of documentation that must always be available for inspection by authorities in South Africa and abroad including the application and issue of seafarers Identity document by the Authority. The Chapter in Part R provides for financial

security for loss of life and personal injury by imposing of an obligation to owner to maintain insurance to cover these losses and the obligation to carry licenses for inspection.

## **CHAPTER 5**

### **MARITIME SAFETY**

This Chapter entrenches the zero tolerance of unseaworthy vessels along South Africa coast and provide for only certificated ship permitted to go to sea and that all these ships must have been issued with safety certificates prior going to sea. The chapter incorporates international rules and best practice in relation to inspections, survey of ships and cargo. There are also provisions for Local safety certificates for vessels including fishing vessels operating the domestic waters including. There are also specific provisions for the measurement of load line for all ships using provisions contained in the international load line convention.

The chapter further provides for maritime security for ports and ships by incorporating the provisions of Convention on Safety of Life at Sea codes and international practices to enhance maritime security. Under this chapter there are also provisions for division of loss in case of collision and damages for personal injury and the limitation of owner's liability.

## **CHAPTER 6**

### **MARINE CASUALTY AND MARINE INCIDENT INVESTIGATIONS**

This chapter provides for marine casualty investigations in relation to the general powers of officers, marine safety investigators, courts and persons appointed in terms of this Chapter. It also provides for different levels of investigations following a casualty incident. In order to deal with the question of independence of investigations, a Marine accident and incident investigation unit is established.

## **CHAPTER 7**

### **MARINE TRAFFIC**

This chapter provide for entry and departure of ships on South African waters including, ships and wreckage not to be sunk or abandoned and suppression of illicit traffic in drugs on board foreign ships in territorial waters and certain prohibitions in respect of offshore installations. The Minister has the power to determine safety zone for offshore installation. The Minister has the power to guarantee and or suspend navigation passage under stated circumstances.

Under this chapter the Authority has overall responsibility to ensure the regulation and maintenance of Aids to navigation. The Chapter determines the vesting of aid to navigation and the Authority's obligation to determine the standards of aids to navigation and as well as vessel traffic service regulation including the auditing of vessel traffic service authorities including training providers.

## **CHAPTER 8**

### **OFFENCES AND PENALTIES**

This chapter provide for offences and penalties.

## **CHAPTER 9**

### **PROCEEDINGS BY AUTHORITY AND LEGAL PROCEEDINGS**

This chapter provides for the jurisdiction of Authority in respect of administrative penalty on admission of guilt; release from forfeiture or mitigation of penalties; offences committed outside the Republic and magistrates' courts to impose punishment. The chapter also provides for cases where persons have to be transported of accused persons and witnesses to the Republic including deserter on board ship. Division 3 of the chapter provides for the forfeiture of ships including procedure thereof, shares in ships and goods and method of detaining vessel or share in ship or goods.

## **CHAPTER 10**

### **REGULATIONS**

This chapter provide for list of all matter requiring regulations and these include matters related to the registration of ships as provided in the relevant chapter. Matters regarding manning, training and certification to be prescribed including crew; Matters regarding wages to be prescribed; Matters regarding crew accommodation to be prescribed; General matters regarding safety of life at sea; Matters regarding the carriage of grain; Matters regarding the carriage of maritime dangerous goods; Matters regarding Nuclear Ships; Matters regarding management for the safe operation of ships; Matters relating to high-speed craft; Special measures to enhance maritime safety and additional safety measures for bulk carriers; General matters regarding investigations of allegations marine safety investigations, formal enquiries and appeals; Matters regarding aids to navigation; Matters regarding marine traffic;

Matters regarding ship security and Matters regarding small vessels and inland waters; and Matters regarding international conventions.

## **CHAPTER 11**

### **GENERAL PROVISIONS**

This chapter provides for prohibition of use of vessels of less than three metres in length; the indemnification of State and Authority and certain persons in employ of State and Authority; Delegation of powers, Transitional provisions for a structured implementation of the legislation; The chapter also provides for the incorporation of International conventions to have force of law in South Africa.

#### **4. Consultation**

The draft Merchant Shipping Bill was presented and discussed in stakeholders meetings convened nationally by the Department throughout 2018-2019. The Bill was tabled and approved by the Director Generals Cluster of International Cooperation, Trade and Security Cluster and the Economic Cluster.

#### **5. Financial implications**

There will be financial implications for the approval of the Bill for public comments and these will be limited to the cost of publication for public comments. There are funds set aside to cover the cost of publication. The cost of implementation is provided for under the relevant provisions of the South African Maritime Safety Authority Act and the South African Maritime Safety Levies Act. Other interventions may require to be funded indirectly through the broader financing by existing programs set aside for industry development.

#### **6. Parliamentary procedure**

The Department is of the opinion that this Bill must be dealt with in terms of Section 75 of the Constitution since it contains no provision to which the procedure set out in Section 74 and 76 of the Constitution applies.

## SCHEDULE 1

### PRIVATE LAW PROVISIONS FOR REGISTERED SHIPS

#### Definitions

1. In this Schedule—
  - (a) **'bill of sale'** means a bill of sale referred to in item 3;
  - (b) **'ship'** means a registered ship; and
  - (c) **'Register'** means South African Ships Register established by section 40 of this Act.

#### General

- 2.1 No record of any interest in a ship or in a share in a ship, other than by way of ownership or mortgage, may be made in the Register and, subject to this Act and to any rights and powers appearing in the Register to be vested in any other person, the right of an owner of a ship or of a share in a ship to dispose of the ship or share is not affected by this Act.
- 2.2 Subject to sub item 2.1, any beneficial interest may be enforced by or against the owner or mortgagee of a ship or of a share in a ship in respect of his or her interest in the ship or share in the same manner as in the case of any other movable property, or as permitted by law.

## Transfer of ship

- 3.1 Subject to item 4, a ship or a share in a ship is transferred by registration of a bill of sale made in the prescribed form, unless the transfer will result in the ship ceasing to be entitled to be registered.
- 3.2 The transferee under a bill of sale contemplated in sub item 3.1 may not be registered as the owner of the ship or share unless—
- (a) he or she has lodged the prescribed application with the Registrar; and
  - (b) the Registrar is satisfied that the ship continues to be entitled to be registered and that he or she would not refuse to register the ship in terms of this Act.
- 3.3 If an application in terms of sub item 3.2 is granted by the Registrar, the Registrar must register the bill of sale by entering in the Register the name of the transferee as owner of the ship or share and must endorse on the bill of sale that such entry has been made, with the date and time of entry.
- 3.4 Bills of sale lodged in terms of this item must be registered in the order of their lodgement.

## Transmission by operation of law

- 4.1 Where any interest in a ship or a share in a ship is transmitted to a person by any lawful means other than by a transfer in terms of item 3 and the ship continues to be entitled to be registered, that person must make a declaration of transmission in the prescribed form and must lodge that declaration,

together with the evidence of the transmission that may be prescribed, with the Registrar within 14 days of that transmission taking place or within the further period that the Registrar may allow in special circumstances.

- 4.2 If the Registrar is satisfied that the ship continues to be entitled to be registered and that he or she would not refuse to register the ship in terms of this Act, the Registrar must thereupon enter in the Register the name of that person as owner of the ship or share.

#### **Order for sale on transmission where ship ceases to be entitled to be registered**

- 5.1 Where any interest in a ship or share in a ship is transmitted to a person by any lawful means other than by a transfer in terms of item 3, but as a result thereof the ship is no longer entitled to be registered, the Authority may, on application by or on behalf of that person, order a sale of the property so transmitted and direct that the proceeds of the sale, after deducting the expenses of the sale, be paid to that person.
- 5.2 If an application is made to the Authority in terms of sub item 5.1, it must cause notice of that application to be published in the *Gazette* and in the newspapers and be served on the persons that it may determine.
- 5.3 A notice contemplated in sub item 5.2 must be in a form approved by the Authority and must call on all persons who may object to the order being made to lodge their objections in writing with the Authority within the period determined in the notice.

- 
- 5.4 On proof of the publication and service of the notice contemplated in sub item 5.2, and—
- (a) if no objection in writing has been lodged with the Authority within the period mentioned in the notice; and
  - (b) if the Authority is satisfied of the legality of the applicant's claim, it must make the order contemplated in sub item 5.1.
- 5.5 If an objection in writing is lodged with the Authority within the period determined in the notice or if it is not satisfied of the legality of the applicant's claim, it must refuse to make the order.
- 5.6 If the Authority refuses to make an order contemplated in sub item 5.1, the applicant may apply to a court for such an order.
- 5.7 The court may require any evidence in support of the application it considers necessary, and may make the order on the terms and conditions it considers fit, or may refuse to make the order.
- 5.8 Any application contemplated in sub item 5.1 must be made to the Authority within 30 days of the transmission taking place, or within the further period, not exceeding one year, that the Authority may allow, and any application contemplated in sub item 5.6 must be made to the court within 30 days after the refusal by the Authority to make the order, or within the further period, not exceeding one year, that the court may allow.
- 5.9 A ship or a share in a ship is subject to forfeiture under this Act if-
- (a) an application is not made within the period allowed in terms of sub item 5.8; or
  - (b) the court refuses to make the required order.



**Transfer of ship by order of Authority or court**

- 6.1 Where the Authority or a court orders the sale of any ship or share in a ship in terms of this Act, the order must contain a declaration vesting in a named person the right to transfer the ship or share.
- 6.2 The person contemplated in sub item 6.1 is entitled to transfer the ship or share in the same manner and to the same extent as if he or she were the registered owner of the ship or share.
- 6.3 The Registrar must deal with any application relating to the transfer of the ship or share made by the person contemplated in sub item 6.1 as if that person was the registered owner.

**Power of court to prohibit transfer**

- 7.1 A court may, if it considers it necessary, without prejudice to the exercise of any other power, on the application of any interested person, make an order prohibiting any dealing with a ship or a share in a ship for a determined period.
- 7.2 A court may make the order contemplated in sub item 7.1 on the terms and conditions it considers fit, or may refuse to make the order.
- 7.3 When a copy of an order contemplated in sub item 7.1 is served on the Registrar, it is binding on him or her whether or not the Registrar was a party to the proceedings.

## Endorsement of registration certificate on change of ownership

- 8.1 Where a ship or a share in a ship is transferred to a person by a bill of sale or transmitted to a person by any other lawful means, the person who has possession or control of the ship's registration certificate must deliver the certificate to the person to whom the ship or share is transferred or transmitted—
- (a) if the ship is at a South African port at the time of the transfer or transmission, within ten days after the transfer or transmission; or
  - (b) in any other case, as soon as is practicable after the transfer or transmission.
- 8.2 Where a registration certificate is delivered to a person in terms of sub item 8.1, that person must immediately deliver the certificate to the Registrar.
- 8.3 Where a registration certificate is delivered to the Registrar in terms of sub item 8.2, the Registrar must, subject to item 3.2 or 4.2—
- (a) endorse the registration certificate with the particulars of change of ownership of the ship or share; and
  - (b) cause the endorsed certificate to be returned to the registered agent of the ship or to the person that the registered agent directs.

## Mortgage of ship

- 9.1 A ship or a share in a ship may be mortgaged as security for the discharge of an obligation in terms of this Act.

**CONTINUES ON PAGE 642 - PART 6**



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- 9.2 A mortgage contemplated in sub item 9.1 is created by the registration of a mortgage instrument made in the prescribed form.
- 9.3 Subject to sub item 9.4, on lodgement of a prescribed mortgage instrument, the Registrar must register the mortgage instrument by entering its particulars in the Register and must endorse the fact that such entry has been made on the instrument, with the date and time of entry.
- 9.4 The Registrar may not register a subsequent mortgage instrument without the written consent of the existing mortgagees under all prior mortgages of the ship or share in question.
- 9.5 Mortgage instruments lodged in terms of this item must be registered in the order of their lodgement.

### **Priority of mortgages**

10. Where two or more mortgages are registered in respect of the same ship or share in a ship, the priority among the mortgagees is in accordance with the order of registration of the mortgages.

### **Rights of mortgagee**

- 11.1 The mortgagee must have the power to dispose of the ship or share in a ship but where there is more than one mortgagee of the same ship or share, a subsequent mortgagee may not sell the ship or share without the concurrence of every prior mortgagee, except if a court orders such sale.
- 11.2 The mortgagee under a mortgage of a ship or of a share in a ship may recover any amount due under the mortgage in a court and, when giving

judgment or thereafter, the court may direct that the ship or share in question be sold in execution of the judgment.

- 11.3 Except as may be necessary for making a mortgaged ship or any share therein available as security for the mortgage debt, the mortgagee must not, by reason of the mortgage, be considered to be the owner of the ship or share, nor must the mortgagor be considered to have ceased to be the owner thereof.

### **Transfer of mortgage**

- 12.1 A mortgage of a ship or of a share in a ship is transferred by an instrument of transfer made in the prescribed form.
- 12.2 Where a mortgage is transferred as contemplated in sub item 12.1, the transferee must lodge the instrument of transfer, together with the relative mortgage instrument, with the Registrar within 14 days after execution of the instrument of transfer or within the further period that the Registrar may allow in special circumstances.
- 12.3 The Registrar must enter in the Register the name of the transferee as the mortgagee of the ship or share which is the subject of the mortgage and must endorse the fact that such entry has been made on the instrument of transfer, with the date and time of entry.
- 12.4 A transferee of a mortgage in terms of this Act enjoys the same right of preference that was enjoyed by the transferor.

**Transmission of mortgage by operation of law**

- 13.1 Where the interest of a mortgagee in a mortgage of a ship or of a share in a ship is transmitted to a person by any lawful means other than by a transfer in terms of item 12, that person must make a declaration of transmission in the prescribed form and must lodge that declaration, together with the evidence of the transmission that may be prescribed, with the Registrar within 14 days of that transmission taking place or within the further period that the Registrar may allow in special circumstances.
- 13.2 The Registrar must enter in the Register the name of the person contemplated in sub item 13.1 as mortgagee of the ship or share.

**Discharge of mortgage**

- 14.1 In this item, 'mortgagor', in relation to a ship or a share in a ship, includes any person in whom, having regard to any intervening act and circumstances, the interest of the mortgagee would have been vested had the mortgage not been made.
- 14.2 Where a mortgage is discharged, the mortgagor must lodge the mortgage instrument, together with the evidence of the discharge of the mortgage that may be prescribed, with the Registrar within 14 days after the discharge or within the further period that the Registrar may allow in special circumstances.
- 14.3 The Registrar must make an entry in the Register to the effect that the mortgage has been discharged and, on that entry being made, any interest of the mortgagee under the mortgage vests in the mortgagor.

14.4 Where the mortgage instrument cannot, for any reason, be lodged with the Registrar, the mortgagor must make and lodge with the Registrar a declaration setting out the particulars relating to the ship in respect of which the mortgage was given, the mortgage and its discharge and the particulars that may be prescribed for the purposes of this item.

## SCHEDULE 2

### VESSEL TRAFFIC SERVICE ZONES

Number	Column 1	Column 2
1.	Saldanha Bay and approaches	All South African waters contained within-017°50'.9 E  Cape Columbine 32°49'.6 S 33°00'.0 S 017°30'.0 E
2.	Table Bay and approaches	All South African waters contained within-  A. Bok Point 33°34'.0 S 018°18'.4 E B. 33°45'.0 S 018°02'.5 E C. 34°00'.0 S 018°10".0 E
3.	Port Elizabeth and approaches	A1 34°01.7' S 25°47.4' E, a line to St. Croix Island bearing 330° (t) to the shore high water mark. B1 33°54.3' S 25°50.0' E, a line to Cape Recife bearing 270° (t) to the shore high water mark.
4.	Durban and approaches	A radius of 12 nautical miles from 29°50.2' S and 31°05.8' E to the shore high water mark.
5.		A radius of 15 nautical miles from south breakwater position 28°48.86' S and 32°05.85' E to the shore high water mark.
6.	Mossel Bay and	A radius of 6 nautical miles and 12



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	approaches	nautical miles from East Breakwater Light, 34°10.50'S 022°08.82'E to the high water mark
7.	East London and approaches	A radius of 10 nautical miles from South Breakwater Light, 33°01.51'S 027°55.50'E to the high water mark

**SCHEDULE 3**  
**AMENDMENT AND REPEAL OF LAWS**

<b>No. and year of law</b>	<b>Short title</b>	<b>Extent of amendment or repeal</b>
57 of 1951	Merchant Shipping Act	Repeal of the whole
2 of 1981	Marine Traffic Act	Repeal of the whole
58 of 1998	Ship Registration Act	Repeal of the whole
12 of 2005	National Ports Act	Definition of "port" in section 1 is amended by replacing the word "Nqura" with the word "Ngqura"
Notice No 255 of 6 March 2009	Ports Rules	Repeal of Annexure 1