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GENERAL NOTICE

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GENERAL NOTICE

NOTICE 695 OF 2009

DEPARTMENT OF TRANSPORT

**PUBLICATION FOR COMMENTS: MERCHANT SHIPPING AMENDMENT
BILL, 2009.**

The Minister of Transport hereby publishes the above draft Bill for public comment. Interested persons are requested to submit written comments on the above Bill by no later than 10 July 2009.

Comments should be posted to the Director General, Department of Transport for the attention of Adv. Adam Masombuka at;
The Department of Transport
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REPUBLIC OF SOUTH AFRICA

MERCHANT SHIPPING AMENDMENT BILL

(As introduced in the National Assembly as a section 75 Bill)

(The English text is the official text of this Bill)

(MINISTER OF TRANSPORT)

[B —2009]

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

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

BILL

To amend the Merchant Shipping Act, 1951, so as to provide for a definition; to provide for insurance or other financial security in respect of loss of life and personal injury suffered by seafarers; to delete obsolete provisions and expressions; to make administrative changes in relation to certain shipping enquiries and exercise of certain powers; to make mandatory the appointment of certain ship safety personnel; to amend provision relating to limitation of liability for maritime claims and for related matters.

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

Amendment of section 2 of Act 57 of 1951, as amended by section 3 of Act 30 of 1959, section 31 of Act 69 of 1962, section 1 of Act 40 of 1963, section 1 of Act 13 of 1965, section 1 of Act 42 of 1969, section 1 of Act 24 of 1974, section 1 of Act 5 of 1976, section 1 of Act 3 of 1981, section 1 of Act 3 of 1982, section 1 of Act 25 of 1985, section 1 of Act 18 of 1992, section 1 of Act 16 of 1995, section 1 of Act 49 of 1996, section 1 of Act 23 of 1997, section 2 of Act 5 of 1998, section 1 of Act 57 of 1998, and section 60 of Act 58 of 1998. Amendment of section 261 of act 57of 1951, as amended by section 33 of Act 30 of 1959, section 7 of act 25 of 1985, section 4 of act 16 of Act 1995 and section 11 of Act 23 of 1997.

1. Section 2 of the Merchant Shipping Act, 1951 (hereinafter referred to as the principal Act), is amended by the substitution for subsection (1) for the definition of "small vessels" of the following definition:

“ ‘small vessel’ means a vessel of less than twenty-five gross tons and of **[more than]** three or more metres in length overall.”.

Amendment of section 4 of Act 57 of 1951, as amended by section 2 of Act 42 of 1969 and section 2 of Act 5 of 1976 and substituted by section 60 of Act 58 of 1998

2. Section 4 of the principal Act is amended by deletion of paragraph (c).

Repeal of section 5 of Act 57 of 1951, as substituted by section 5 of Act 30 of 1959 and amended by section 3 of Act 25 of 1985, section 3 of Act 23 of 1997 and section 2 of Act 5 of 1998

3. Section 5 of the principal Act is repealed.

Amendment of section 18 of Act 57 of 1951, as amended by section 2 of Act 5 of 1998 and section 60 of Act 58 of 1998

4. Section 18 of the principal Act is amended—

(a) by the substitution for subsection (1) of the following subsection:

“(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, ~~he~~ the Minister may by notice in the *Gazette* direct that ships registered in that country shall 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~~ any space (in this section referred to as excluded space) shown by the certificate of registry or other national papers of any ship registered in such other country, as deducted from ~~the tonnage~~ [on account of being occupied by seamen or apprentice-officers and appropriated to their use,] shall, [for the purpose of determining her tonnage] if a similar deduction in the case of a South African ship depends on compliance with any conditions or the compliance being evidenced in any manner, be presumed to [have been certified by a surveyor under subsection (2) of section two hundred and sixty-two to comply with those of the provisions of this Act which apply to such a space in the case of a South African ship] to comply with those conditions to be so evidenced, unless a surveyor certifies to the Authority that the construction and equipment of the ship as respects the excluded space do not meet the standard which would be required if the ship were a South African ship.”; and

(b) by the substitution for subsections (3) and (4) of the following subsections, respectively:

“(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~~ its certificate of registry or other national papers, materially differs from that which would be ~~her~~ its tonnage if measured under this Act, or as to whether the construction and the equipment of any ship so registered as regards ~~the said~~ any excluded 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] the~~ ship, as so denoted, materially differs from that which would be ~~[her] its~~ tonnage if measured under this Act or that ~~[her] its~~ construction and equipment as regards ~~[the said] any~~ excluded 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, it 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 shall, for all or any of the purposes of this Act or of the Ship Registration Act, 1998 (Act No. 58 of 1998), be surveyed in accordance with this Act.”.

Amendment of section 72A of Act 57 of 1951, as inserted by section 3 of Act 3 of 1981 and as amended by section 60 of Act 58 of 1998

5. Section 72A of the principal Act is amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) No vessel of less than three metres in length overall shall go to sea from any port in or from anywhere else on the coast of the Republic.”; and

(b) by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) prescribe the purpose for and the area in which a vessel of less than three metres in length overall may be used; and”.

Amendment of section 73 of Act 57 of 1951, as amended by section 15 of Act 30 of 1959, section 37 of Act 69 of 1962, section 11 of Act 40 of 1963, section 4 of Act 5 of 1976, section 1 of Act 1989, section 2 of Act 5 of 1998 and section 5 of Act 57 of 1998

6. Section 73 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) Subject to the provisions of this section, the owner and the master of every South African ship operating at a port in the Republic or going to sea from any port whatsoever shall ensure that there ~~[is] are~~ employed on board that ship, in their appropriate capacities, the number of officers and other persons, duly certificated or deem to be certificated under this Act as prescribed by regulation[, or deemed to be so certificated].”.

Amendment of section 124 of Act 57 of 1951, as amended by section 19 of Act 30 of 1959 and section 13 of Act 3 of 1982

7. Section 124 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

"(1) When settlement of the wages of a seaman of a South African ship is required to be and is completed before a proper officer, the said [seaman] seafarer shall sign in the presence of the proper officer a release, in the prescribed form, of all claims in respect of the period of service concerned. The release shall also be signed by the proper officer and shall operate as a mutual discharge and settlement of all relative demands between the parties concerned, but shall not debar a claim under any law relating to [workmen's] compensation for occupational injuries and diseases."

Amendment of section 140 of Act 57 of 1951, as amended by section 21 of Act 30 of 1959 and section 5 of Act 3 of 1981

8. Section 140 of the principal Act is amended—

(a) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:

"Nothing in this section shall deprive any [seaman] seafarer of any compensation to which he may be entitled in terms of the [Workmen's Compensation Act, 1941 (Act No. 30 of 1941)] Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993)—"; and

(b) by the substitution for subsection (6) of the following subsection:

"(6) A [seaman] seafarer shall not be entitled to receive any compensation under the [Workmen's Compensation Act, 1941 (Act No. 30 of 1941)] Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), 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 shall, 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 from the [accident fund established under that Act] Compensation Commissioner an amount equal to the compensation that would, but for the provisions of this section, have been payable to the [seaman] seafarer under that Act in respect of that period."

Amendment of section 169 of Act 57 of 1951

9. Section 169 of the principal Act is amended by the substitution for subsections (5), (6) and (7) of the following subsections, respectively:

"(5) Nothing contained in this section shall deprive any person of any benefit to which he or she may be entitled under

Chapter VIII of the [Workmen's Compensation Act, 1941 (Act No. 30 of 1941)] Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), and to which this section does not entitle him or her.

(6) A [seaman] seafarer shall not be entitled to receive the same benefit under this section and also under the [Workmen's Compensation Act, 1941 (Act No. 30 of 1941)] Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993); but his or her employer who has incurred any expense under this section which the [Workmen's] Compensation Commissioner would, but for the provisions of this section, have been liable to defray, shall, 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 that expense from the [Workmen's] Compensation Commissioner.

(7) In this section the expression ['seaman'] "seafarer" includes every person employed or engaged in any capacity on board any ship [but in the case of a ship which is a fishing boat, 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]."

Insertion of Chapter IVA in Act 57 of 1951

10. The principal Act is amended by the insertion after Chapter IV of the following Chapter:

"CHAPTER IVA FINANCIAL SECURITY FOR LOSS OF LIFE AND PERSONAL INJURY

Definitions

189A. In this Chapter, unless the context indicates otherwise—

'relevant insurance certificate', in relation to a ship, means—

- (a) a certificate of the kind referred to section 189D; 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;

'seafarer' includes—

- (a) a master and an apprentice officer; and
 (b) any other person prescribed for the purposes of the provision in which the expression occurs.

Ships to which this Chapter applies

189B. (1) Subject to subsection (2), this Chapter applies to a ship—

- (a) that is registered or licensed in the Republic, or required to be so registered or licensed; or
- (b) in respect of which a local general safety certificate is required in terms of section 203(8).

(2) This Chapter 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.

Owner to maintain insurance or other financial security

189C. (1) The owner of a ship shall maintain insurance or other financial security in accordance with the regulations to provide compensation in the event that a seafarer belonging to the ship suffers loss of life or personal injury while engaged on the business of the ship.

(2) To avoid doubt, the regulations may prescribe when a seafarer shall be taken, for the purposes of subsection (1), to belong to a ship and to be engaged on the business of the ship.

(3) 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 this section shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

Insurance certificates

189D. (1) The insurance or other financial security referred to in section 189C shall 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; or

- (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 shall lodge with the proper officer, in the prescribed manner and time, an authenticated copy of each certificate issued in terms of subsection (1) in relation to the ship.

(3) If a copy of a certificate is not lodged in accordance with subsection (2), the owner shall, in respect of each day on which the copy is not so lodged (including the day of a conviction in terms of this subsection or any subsequent day), be guilty of an offence and liable on conviction to a fine not exceeding R1000.

(4) A certificate issued in terms of this section, and any document embodying insurance or other financial security that is required to be evidenced by such a certificate, shall be admissible in evidence.

Insurance certificates to be carried on ships

189E. (1) If a ship enters or leaves, or attempts to enter or leave, a port in the Republic without carrying on board a relevant insurance certificate that is in force in relation to the ship, the master and the owner of the ship shall each be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years.

(2) If a ship, being a ship that is, or is required to be, registered or licensed in the Republic, enters or leaves, or attempts to enter or leave, a port outside the Republic without carrying on board a relevant insurance certificate that is in force in relation to the ship, the master and the owner of the ship shall each be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years.

(3) If, otherwise than in circumstances to which subsection (1) or (2) applies, at any time a relevant insurance certificate is in force in relation to a ship and is not carried on board the ship, the master and the owner of the ship shall each be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

(4) The proper officer 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 and, if the master or other person refuses or fails to produce such a certificate to the officer, he or she shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months.

(5) If the proper officer 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 is not carrying on board a relevant insurance certificate that is in force in

relation to the ship, the officer may detain the ship until such time as such a certificate is obtained or produced to the officer, as the case requires.

(6) This section commences 90 days after the commencement of section 189C.

Additional liability of owner

189F. (1) In this section 'relevant incident' means any occurrence in respect of which an insurance or other financial security in terms of section 189C is required to pay compensation but in respect of which compensation is not available, or fully available, because—

(a) the person providing the insurance or other financial security 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 as required by section 189C.

(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, at the time of the first occurrence shall be liable to pay so much of any benefit that would have been payable under an insurance or other financial security in terms of section 189C as remains unpaid because of the incident.

(3) To avoid doubt, section 261 shall not apply to a liability in terms of this section.

Other benefits to reduce compensation

189G. (1) A person shall not be entitled to receive the same benefit under this Chapter and also under—

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

(b) another provision of this Act; or

(c) any other statutory entitlement prescribed for the purposes of this paragraph.

(2) A person paying a benefit in terms of this Chapter shall be entitled to recover from any other person providing the same benefit under a provision contemplated 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

189H. (1) Nothing in this Chapter shall affect any liability for damages in respect of loss or life or personal injury.

(2) However, in awarding damages a court shall take account of compensation paid in terms of this Chapter.

Recovery of compensation paid from third parties

189I. (1) If loss of life or personal injury in respect of which compensation is payable in terms of this Chapter was caused in circumstances resulting in some person other than the owner of the ship concerned (in this section referred to as '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 term of this Chapter

(2) In an action referred to in subsection (1), the amount recoverable shall not exceed the amount of damages (if any) that in the opinion of the court would, but for section 189H (2), have been awarded to the seafarer concerned

Certain dealings with compensation prohibited

189J. (1) Despite anything to the contrary in any law, compensation in terms of this Chapter shall 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;

(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 Chapter may pay 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 189C, made voluntary payments to a seafarer.

Cession or relinquishment of benefits void

189K. 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 benefits in terms of this Chapter shall be void.

Compensation not to form part of deceased seafarer's estate

189L. Compensation in terms of this Chapter for loss of life shall not form part of the deceased seafarer's estate.

Threats and compulsion

189M. 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 benefits in terms of this Chapter shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

Equivalent arrangements

189N. (1) If the owner of a ship makes arrangements to provide compensation for loss of life and personal injury that, in the opinion of the Authority, is not less favourable to seafarers than that provided for in terms of this Chapter, the Authority may, subject to such conditions as it may determine, approve the arrangements.

(2) If the Authority has approved the arrangements referred to in subsection (1)—

(a) the seafarers concerned shall be entitled to compensation for loss of life and personal injury in accordance with the arrangements; and

(b) the owner concerned shall not be required to maintain insurance or other financial security in terms of this Chapter.

(3) The Authority may at any time withdraw the approval or amend the conditions referred to in subsection (1)."

Amendment of section 226 of Act 57 of 1951, as amended by section 20 of Act 42 of 1969

11. Section 226 of the principal Act is amended by the substitution for subsection (3) of the following subsection:

“(3) When any such information is provided concerning any ship, the owner of the ship shall send a copy thereof to the Authority: Provided that the owner shall 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 [him] the Authority.”

Amendment of section 249 of Act 57 of 1951, as amended by section 32 of Act 30 of 1959

12. Section 249 of the principal Act is amended by the substitution for subsection (2) of the following subsection:

“(2) Any person in charge of a radio station which is under the control of the [Postmaster-General] Independent Communications Authority of South Africa or which is carried on under licence issued by the [Postmaster-General] Independent Communications Authority of South Africa, shall 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 shall transmit the message in such manner as may be required by the Authority. Compliance with this subsection shall be deemed to be a condition of every licence granted by the [Postmaster-General] Independent Communications Authority of South Africa under the [Radio Act 3 of 1952, or any amendment thereto] Telecommunications Act, 1996 (Act No. 103 of 1996). Nothing in this subsection shall interfere with the transmission by radio of any signal which by regulation has been declared to be a signal of distress.”.

Amendment of section 259 of Act 57 of 1951, as substituted by section 15 of Act 18 of 1992 and amended by section 10 of Act 23 of 1997 and section 60 of Act 58 of 1998

13. Section 259 of the principal Act is amended—

(a) by the substitution for the words following paragraph (f) of subsection (1) of the following words:

“shall within 24 hours after the [ship has arrived in a port or, if the event occurred in a port, within 24 hours after the event occurred, but before the ship departs from that port] occurrence of the event but before the ship departs from any port at which it happens to be within that period , report the event to the nearest proper officer in the form prescribed, stating the nature of the event and of the probable cause thereof, the name of the ship, her official number, the port to which she belongs, the place where the event occurred and the place where the ship then is, and giving all other available relevant information: Provided that any event resulting in loss of life or serious injury shall forthwith be so reported by the fastest means of communication available.”.

- (b) by the substitution for paragraph (a) of subsection (1A) of the following paragraph:

“(1A) (a) The duty to report an event referred in subsection (1) (c) extends to the employer of any stevedore, shore contractor or incidental person who was involved in the event.”;

- (c) by the substitution in paragraph (b) of subsection (1A) for the definitions “incidental persons” and “shore contractor” of the following definitions, respectively:

“ ‘**incidental [persons] person**’ means **[persons] any person** other than the master **[and] a member of the crew, [and stevedores and shore contractors] a stevedore or a shore contractor** on board a vessel in the course and scope of their duties;

‘**shore contractor**’ means a person temporarily employed to **[effect] carry out** general or specific repairs, alterations, renovations, improvements, painting, maintenance of vessel or machinery, tank or hatch cleaning **[and] or related [tasks] activities**, on or in a vessel.”;

- (d) by the substitution for subsection (2) of the following subsections:

“(2) **[Subsections] Subsection (1) [and (A1)]** shall, subject to subsection (3), 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 **[subsections] subsection (1) [and (A1)]** has occurred anywhere, and it shall apply to a ship not registered or licensed in [a country other than] the Republic only while the ship 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.”;

- (e) by the substitution for paragraph (b) of subsection (4) of the following paragraph:

“(b) The owner or master of any ship concerned **[and] or** any employee or user who learns about an event **[referred to in] which an employer is under a duty to report in terms of subsection (1A)**, shall forthwith notify the employer concerned, if known to him or her, of such event.”; and

- (f) by the substitution for subsection (5) of the following subsection:

“(5) No person shall disturb or remove anything from the scene of an accident required to be reported in terms of this section unless permitted by the proper officer[, or if a person has been appointed under section 264 to hold a preliminary enquiry into the accident, by that person].”.

14. **Amendment of section 261 of Act 57 of 1951, as amended by section 33 of Act 30 of 1959, section 7 of Act 25 of 1985, section 4 of Act 16 of 1995, and section 11 of Act 23 of 1997**

1. Section 261 of the Merchant Shipping Act, 1951 (hereinafter called the principal Act), is amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) The owner of a ship, whether or not registered in the Republic or **[not] elsewhere**, shall 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, is caused **[without his actual fault or privity]**—

(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 **[206,67 special drawing rights for each ton of the ship's tonnage]** an amount determined by the Minister by notice in the Gazette and, until the time that the amount is so determined, shall not be liable for such damages to an aggregate amount exceeding—

(i) two 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, two million special drawing rights together with the following additional amount:

for each ton from 2 001 to 30 000 tons, 800 special drawing rights;

for each ton from 30 001 to 70 000 tons, 600 special drawing rights;

for each ton over 70 000 tons, 400 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 **[66,67 special drawing rights for each ton of**

the ship's tonnage] an amount determined by the Minister by notice in the Gazette and, until the time that the amount is so determined, shall not be liable for such damages to an aggregate amount exceeding—

(i) one 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 special drawing rights together with the following additional amount:

for each ton from 2 001 to 30 000 tons, 400 special drawing rights;

for each ton from 30 001 to 70 000 tons, 300 special drawing rights;

for each ton over 70 000 tons, 200 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 **[206,67 special drawing rights for each ton of the ship's tonnage]** the amount worked out in accordance with paragraph (a): Provided that **[in such a case claims for damages in respect of loss of life or personal injury shall, to the extent of an aggregate amount equivalent to 140 special drawing rights for each ton of the ship's tonnage, have priority over claims for damages in respect of loss of or damage to property or rights, and, as regards the balance of the aggregate amount equivalent to 206,67 special drawing rights for each ton of the ship's tonnage, the unsatisfied portion of the first-mentioned claims shall rank *pari passu* with the last-mentioned claims]**—

(i) the amount by which the amount worked out in accordance with paragraph (a) exceeds the amount worked out in accordance with

paragraph (b) shall 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) shall 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 shall not exceed the amount worked out in accordance with paragraph (b) for those claims; and

(iv) all claims shall be paid in accordance with the appropriate ranking of the claims set out in section 11 of the Admiralty Jurisdiction Regulation Act, 1983 (Act No. 105 of 1983).";

(b) by the insertion after subsection (1) of the following subsections:

"(1A) 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.

(1B) To avoid doubt, the liability limits in terms of subsection (1) shall apply only in respect of claims arising after the commencement of the provision establishing the applicable limits.";

(c) by the deletion of subsection (2);

(d) by the insertion after subsection (3) of the following paragraph, the existing subsection becoming paragraph (a):

"(b) The provisions of this section shall so apply only in respect of claims falling within the definition of 'maritime claim' in section 1 of the Admiralty Jurisdiction Regulation Act, 1983 (Act No. 105 of 1983).";

(e) by the substitution for subsection (4) of the following subsection:

"(4) (a) (i) The amounts mentioned in subsection (1) shall be converted into South African currency or any other currency that may be applicable on the basis of the value of [such] the currency on the date of the [judgment or the date agreed upon by the parties] occasion on which the claim arose.

(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), [in respect of which a judgment is given] one special drawing right shall 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 [date on which the judgment is given] relevant date under paragraph (a);
or
- (ii) if no sum has been so fixed for that [day] date, the last [day before that day] preceding date for which a sum has been so fixed.

(c) A certificate given by or on behalf of the National Treasury stating—

- (i) that a particular sum in South African currency has been [so] fixed as mentioned in paragraph (b) for a particular [day] date; or
- (ii) that no sum has been so fixed for that [day] date and that a particular sum in South African currency has been so fixed for a [day] date which is the last

[day] preceding date for which a sum has been so fixed, [before the particular day]

shall be prima facie proof of those matters for the purposes of subsection (1); and a document purporting to be a such a certificate shall, in any proceedings, be admissible in evidence and, in the absence of evidence to the contrary, be deemed to be such a certificate."; and

(f) by the addition of the following subsection:

"(5) For the purposes of this section, 'owner', in relation to a ship, includes any charterer of the ship, any person interested in or in possession of the ship, and any manager or operator of the ship."

Amendment of section 262 of Act 57 of 1951, as amended by section 51 of Act 69 of 1962, section 8 of Act 25 of 1985 and section 2 of Act 5 of 1998

15. Section 262 of the principal Act is amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) For the purpose of section [two hundred and sixty-one] 261, the tonnage of a ship shall be [her] its gross [register] tonnage.";

(b) by the deletion of subsection (2); and

(c) by the substitution for paragraph (c) of subsection (3) of the following paragraph:

"(c) (i) in the case of a foreign ship registered in a country which is a party to the Tonnage Convention, according to the International Convention on the Tonnage Measurements of Ships, 1969;
(ii) in the case of [a] any other foreign ship, according to the law of the Republic, if capable of being so measured."

16. **Amendment of section 263 of Act 57 of 1951, as amended by section 8 of Act 3 of 1981**

Section 263 of the principal Act is amended by the deletion of subsection (2).

17. Amendment of section 268 of Act 57 of 1951

Section 268 of the principal Act is amended by the substitution for subsection (6) of the following subsection:

“(6) If for any reason a majority of the members of the court (of, if the court consists of only two members, both members) are not agreed upon any matter of fact upon which a decision is necessary in order that the investigation may be completed, the presiding officer shall report that fact to the [Authority] Minister, and thereupon the Minister may refer the matter back to the court for reconsideration or may discharge the members of the court and, if he thinks fit, appoint another court of marine enquiry to hold the formal investigation.”.

Amendment of section 277 of Act 57 of 1951

18. Section 277 of the principal Act is amended by the substitution for subsection (3) of the following subsection:

“(3) If for any reason a majority of the members of the court (or, if the court consists of only two members, both members) are not agreed upon the question what the decision upon the appeal should be, the presiding officer shall report the fact to the [Authority] Minister, and thereupon the Minister 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.”.

Amendment of section 282 of Act 57 of 1951, as amended by section 2 of Act 5 of 1998

19. Section 282 of the principal Act is amended—

(a) by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) If the Authority is of opinion that an appeal to a court of survey involves a question of construction or design or of scientific difficulty or an important principle, it may request the Minister refer the appeal to one or more experts approved by the Minister and selected by agreement between the Authority and the appellant, or, in default of any such agreement, by the Minister, and thereupon the appeal shall be determined by such experts instead of by the court.

(2) The [Authority] Minister, if the appellant in any appeal so requests and gives security to the satisfaction of the [Authority] Minister to pay any relative costs, shall refer the appeal to one or more experts selected in terms of subsection (1).”;

(b) by the substitution for subsection (5) of the following subsection:

(3) If an appeal is referred under subsection (1) to more experts than one, the [Authority] Minister shall appoint one of them as presiding officer.”.

Substitution of section 286 of Act 57 of 1951, as amended by section 22 of Act 18 of 1992

20. The following section is substituted for section 286 of the principal Act:

“Transmission to Minister of record and decision of court of marine enquiry, maritime court, or court of survey

(1) The presiding officer of a court of marine enquiry, maritime court or court of survey or body of experts to whom an appeal has been referred under section [*two hundred and eighty-two*] 282, or, if an appeal has been referred to only one expert that expert shall, at the conclusion of the investigation or hearing transmit to the [Authority] Minister the notes of evidence and as many copies as the [Authority] Minister may require of the record of the proceedings and the report and decisions; and any member of the court or any one of the experts who dissents from any decision may attach to the record his written reasons for so dissenting, and the presiding officer shall transmit such written reasons with the record.

(2) When the investigation affects a master or member of the crew of a ship other than a South African ship the [Authority] Minister shall transmit a copy of the court's finding or decision, together with the notes of the evidence, to the proper authority in the country where the ship is registered."

Amendment of section 313 of Act 57 of 1951, as substituted by section 27 of Act 18 of 1997

21. Section 313 of the principal Act is amended by the substitution for subsection (3) of the following subsection:

"(3) Every person [who, being the master of a ship involved in a collision, fails to comply with the provisions of section 258(1) 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, shall on conviction be liable to a fine, or imprisonment for a period not exceeding two years."

Amendment of section 325 of Act 57 of 1951, as substituted by section 2 of Act 5 of 1998

22. Section 325 of the principal Act is amended—

(a) by the substitution for the words:

"The [Authority] Minister may—"; and

(b) by the substitution for the words preceding paragraph (b) of the following words:

"on such conditions as to [it] the Minister appear proper: Provided that if the owner of any ship, share or goods referred to in paragraph (a) accepts such conditions he shall not thereafter be entitled to institute or maintain any action or other proceedings for damages on account of the detention, seizure or forfeiture."

Amendment of section 355A of Act 57 of 1951, as inserted by section 31 of Act 18 of 1992

23. Section 355A of the principal Act is amended by the substitution for paragraphs (a) and (b) of subsection (1) of the following subsections, respectively:

"(a) an employer [may] shall appoint a safety officer, a safety appointee and a safety committee in the manner prescribed by regulation;
(b) a group of employees [may] shall from their number elect a safety representative in the manner prescribed by regulation."

Amendment of section 356 of Act 57 of 1951, as amended by section 42 of Act 30 of 1959, section 59 of Act 40 of 1963, section 11 of Act 5 of 1976, section 6 of Act 24 of 1974, section 19 of Act 3 of 1982, section 9 of Act 25 of 1985, section 32 of Act 18 of 1992, section 7 of Act 16 of 1995, section 15 of Act 23 of 1997, section 2 of Act 5 of 1998, section 27 of Act 57 of 1998 and section 60 of Act 58 of 1998

24. Section 356 of the principal Act is amended—

(a) by the insertion after paragraph (xxii) of subsection (1) of the following paragraph:

"(xxiiA) prescribing the minimum benefits to be provided and the other requirements to be met by the insurance or other financial security to be maintained in terms of section 189C;";

(b) by the substitution for paragraph (xliG) of subsection (1) of the following paragraph:

"(xliG) as to the duties of owners, masters [and] employers and employees;"; and

(c) by the insertion after paragraph (xliG) of subsection (1) of the following paragraph:

"(xliH) providing for the granting by the Minister or another specified person, on such terms (if any) as the Minister or other person may specify, of exemptions from specified provisions of the regulations for classes of cases or individual cases, and for the alteration or cancellation of exemptions so granted;"; and

Short title and commencement

25. (1) This Act is called the Merchant Shipping Amendment Act, 200X.
 (2) This Act commences on the day fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE MERCHANT SHIPPING AMENDMENT BILL

1. This Bill amends the Merchant Shipping Act, 1951 (Act No. 57 of 1951) ("the Act").
2. These are the Bill's main objects:
 - (i) To introduce, through a new Chapter IVA and related amendments, provision for insurance or other financial security for seafarers who suffer death or personal injury as a result of workplace accidents;
 - (ii) To make administrative changes in relation to certain formal shipping enquiries and powers of exemption;
 - (iii) To make mandatory the appointment of certain ship safety personnel;
 - (iv) To delete or replace certain obsolete provisions and expressions.
3. *Clause 1* corrects the definition of "small vessel" in section 2(1) of the Act to cover vessels on the three meter threshold. This introduces consistency with section 72A of the Act, which prohibits the taking to sea of vessels less than three metres in length.
4. *Clause 2* deletes paragraph (c) of section 4 of the Act. The question of exemptions from the regulations is dealt with in *Clause 22(c)*.
5. *Clause 3* repeals section 5 of the Act. This section has become obsolete because the question of the Act's administration is dealt with in the South African Maritime Safety Authority Act, 1998 (Act No. 5 of 1998).
6. *Clause 4* amends section 18 of the Act to introduce consistency with the International Convention on the Tonnage Measurements of Ships, 1969. South Africa is a party to the convention.
7. *Clause 5* amends section 72A of the Act to clarify that length overall (and not tonnage length) is applicable in relation to vessels less than three metres in length.
8. *Clause 6* amends section 73 of the Act to improve the text. The amended text makes it clear that the capacities, number and qualifications of seafarers employed on a South African ship are to be in accordance with the regulations.
9. *Clauses 7 to 9* amend respectively sections 124, 140 and 169 of the Act to replace obsolete references and to introduce language that is consistent with current legislation governing compensation for occupational injuries and diseases. *Clause 9* also extends entitlement to medical and maintenance benefits to all seafarers on a fishing boat, regardless of how they are remunerated.
10. *Clause 10* inserts new Chapter IVA on Financial Security for Loss of Life and Personal Injury, comprising sections 189A to 189N. The Chapter introduces a duty on the owner of a ship to maintain adequate insurance or other financial security for the purpose of compensating seafarers belonging to the ship (or their dependants in the case of death) who suffer death or personal injury as a result of an accident arising out of and in the course of their duties. The purpose of the Chapter is to extend basic benefits to those seafarers who are not covered by other statutory or company risk benefit arrangements (e.g. the Compensation for Occupational Injuries and Diseases Act, 1993). The Chapter does not displace any common law right to damages; moreover, it establishes an additional statutory right to compensation from the shipowner where, for example, the shipowner has failed to maintain insurance or security in terms of the Chapter. The minimum benefits to be provided and the other requirements to be met by insurance or other financial security in terms of the Chapter will be prescribed by regulation. The appropriate regulation-making powers are taken in *Clause 22(a)*.
11. *Clause 11* amends section 226 of the Act to make an editorial correction.
12. *Clause 12* amends section 249 of the Act to replace certain obsolete references and to introduce language that is consistent with current telecommunications legislation.
13. *Clause 13* amends section 259 of the Act to clarify the time frame for making accident reports and to make certain drafting improvements.

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14. *Clause 14* amends section 262 of the Act to introduce consistency with the International Convention on Tonnage Measurement of Ships, 1969.
 15. *Clauses 15 to 18* amend respectively sections 268,277,282 and 286 of the Act to strengthen the Minister of Transport's role in relation to formal shipping enquiries (i.e. courts of marine enquiry, maritime courts and courts of survey). These amendments, together with related changes to the regulations, transfer responsibility for the convening and administration of formal shipping enquiries from the South African Maritime Safety Authority (SAMSA) to the Minister of Transport and the portfolio department, the purpose being to introduce a greater degree of independence in the formal casualty investigation function.
 16. *Clause 19* amends section 313 of the Act to delete an obsolete cross reference.
 17. *Clause 20* amends section 325 of the Act to transfer from SAMSA to the Minister of Transport powers respecting release from forfeiture and mitigation of penalties. Because SAMSA has power under the Act to order forfeiture and impose certain penalties, it is appropriate that questions of release and mitigation are dealt with by another authority.
 18. *Clause 21* amends section 355A of the Act to make mandatory the appointment of certain ship safety personnel in the interests of maritime occupational safety.
 19. *Clause 22* amends section 356 of the Act to enable regulations under new Chapter IVA on Financial Security for Loss of Life and Personal Injury; to enable regulations relating to the occupational safety duties of employees (in addition to those of shipowners, masters and employers); and to remove doubt about certain exemption powers in the regulations.
 20. *Clause 23* is a standard provision dealing with the short title and commencement of the enactment. Commencement is to be on a day proclaimed by the President.
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