
GENERAL NOTICE

NOTICE 476 OF 2004

DEPARTMENT OF TRANSPORT

MERCHANT SHIPPING ACT, 1951 (ACT NO 57 OF 1951)

MERCHANT SHIPPING (MARITIME SECURITY) REGULATIONS, 2004

The Minister of Transport intends, in terms of section 356 of the Merchant Shipping Act, 1951 (Act No 57 of 1951), to make the regulations in the Schedule.

Written comment on the proposed regulations may be submitted to the Director General: Transport, for the attention of ANDREW MASWANGANYE on or before 8 March 2004. (Note: late submissions will not be considered). Submissions may be either:

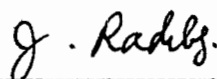
Hand delivered to: Room 3081
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JEFF RADEBE

ACTING MINISTER OF TRANSPORT

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*Regulation
No.*

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PART 1**PRELIMINARY***Division 1—Title and commencement***Title and commencement**

1. (1) These regulations are called the Merchant Shipping (Maritime Security) Regulations, 2004.

(2) These regulations commence as follows:

- (a) on the date these regulations are published in the *Gazette* — Part 1; Part 3, Divisions 3 and 4; Part 4, Divisions 3, 4 and 5 (except regulations 75 and 76); Part 6; Part 9 and Part 10;
- (b) on 1 July 2004 — the remainder.

*Division 2—Purpose of regulations***Purpose of regulations**

2. (1) The purpose of these regulations is to safeguard against unlawful interference with maritime transport.

(2) To achieve this purpose, these regulations establish a regulatory framework centred around the development of security plans for ships and other maritime transport operations.

(3) The implementation of this framework will enable the Republic to meet its obligations under Chapter XI-2 of the Safety Convention and the ISPS Code.

*Division 3—Definitions***Definitions**

3. (1) In these regulations the expression "**the Act**" means the Merchant Shipping Act, 1951 (Act No. 57 of 1951), and unless the context indicates otherwise, any expression given a meaning by the Act has the meaning so given, and—

"**authorised officer**" means a person mentioned in regulation 97;

"**baggage**" means—

- (a) possessions of a passenger or crew member—
 - (i) that are carried, or intended to be carried, on board a ship; and
 - (ii) to which the passenger or crew member will have general access while on board the ship; and
- (b) possessions of a visitor to a ship—
 - (i) that are taken, or intended to be taken, on board the ship; and
 - (ii) to which the visitor will have general access while on board the ship;

"cargo" means goods, other than baggage or stores, that are transported, or intended to be transported, by ship;

"cargo ship" means any ship that is not a passenger ship, and includes—

- (a) an oil tanker;
- (b) a chemical tanker;
- (c) a gas carrier;
- (d) a bulk carrier; and
- (e) a high-speed craft;

"confidentiality requirement" has the meaning given by regulation 31(2);

"contact details", for a person, includes the person's business address, mailing address, fixed-line telephone number, mobile telephone number, fax number and email address;

"control direction" has the meaning given by regulation 93(2);

"Convention State" means a state (other than the Republic) that is a party to the Safety Convention;

"declaration of security" means an agreement reached between a ship and another party (a ship or person), that identifies the security measures that each party will implement in specified circumstances;

"employee", in relation to a maritime industry participant, means an individual—

- (a) employed by the maritime industry participant; or
- (b) engaged under a contract for services between the individual and the maritime industry participant;

"enforcement order" means an order made under regulation 106;

"engage in conduct" means—

- (a) do an act; or
- (b) omit to perform an act;

"foreign regulated ship" has the meaning given by regulation 11;

"foreign ship" means a ship that is not a South African ship;

"interim ISSC" means an interim ISSC given under regulation 82;

"ISPS Code" means the International Ship and Port Facility Security (ISPS) Code (as amended from time to time) as mentioned in Chapter XI-2 of the Safety Convention;

"ISSC" means an international ship security certificate within the meaning of the ISPS Code;

"ISSC verified" has the meaning given by regulations 79(1) and (3);

"maritime industry participant" means—

- (a) a port operator;
- (b) a port facility operator;
- (c) the ship operator for a South African regulated ship;
- (d) the ship operator for a foreign regulated ship;
- (e) a contractor who provides services to a person mentioned in paragraphs (a) to (d);
or
- (f) a port service provider;

"maritime security level" means—

- (a) maritime security level 1;
- (b) maritime security level 2; or
- (c) maritime security level 3;

"maritime security level 1" means the maritime security level in force in terms of regulation 16;

"maritime security level 2" means the maritime security level in force under regulation 17;

"maritime security level 3" means the maritime security level in force under regulation 17;

"maritime security plan" means a plan prepared for the purposes of Part 3;

"mobile offshore drilling unit" means a ship capable of engaging in drilling operations for the purpose of exploring or exploiting resources beneath the seabed;

"Nicoc" means the National Intelligence Co-ordinating Committee within the meaning of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994);

"organ of state" means an organ of state within the meaning of the Constitution;

"passenger" includes an intending passenger;

"passenger ship" includes a high-speed passenger craft;

"port" has the meaning given by regulation 6;

"port facility" means an area of land or water, or land and water, within a security regulated port (including any buildings, installations or equipment in or on the area) used either wholly or partly in connection with the loading or unloading of ships;

"port facility operator" means a person who operates a port facility;

"port operator" has the meaning given by regulation 8;

"port service provider" means—

- (a) a lighter or barge operator;
- (b) a line handling operator;
- (c) a pilot boat operator;
- (d) a tug operator;
- (e) a person who provides one or more of the following port services:
 - (i) offshore provisioning of ships;
 - (ii) offshore transshipment of persons or goods;
 - (iii) offshore ship repair;

"pre-arrival information" has the meaning given by regulation 86(3);

"security officer" means a person designated by a maritime industry participant to implement and maintain—

- (a) the participant's maritime security plan; or
- (b) the ship security plan for a ship operated by the participant;

"security compliance information" has the meaning given by regulation 103(1);

"security direction" has the meaning given by regulation 29(2);

"security regulated port" has the meaning given by regulation 7;

"security regulated ship" has the meaning given by regulation 9;

"security zone" means an area described in a maritime or ship security plan as an area in or in relation to which additional security measures have been, or will be, implemented, as set out in the plan;

"ship enforcement order" has the meaning given by regulation 111(2);

"ship operator" means—

- (a) unless paragraph (b) applies, the owner of a security regulated ship; or
- (b) if, under an agreement between the owner of a security regulated ship and another person, the other person is to be the ship operator for the security regulated ship for the purposes of these regulations, that other person;

"ship/port interface" means the interaction that occurs when a security regulated ship is directly and immediately affected by activities involving—

- (a) the movement of persons or goods; or
- (b) the provision of port services to or from the ship;

"ship security plan" means a plan prepared for the purposes of Part 4;

"ship security record"—

- (a) for a South African regulated ship, means—
 - (i) a document made for the purposes of keeping records required by regulation 84(1); and

- (ii) any information included in such a document; and
- (b) for a foreign regulated ship, means—
 - (i) the security plan for the ship as mentioned in Part A of the ISPS Code;
 - (ii) the ISSC, or approved ISSC equivalent, for the ship; and
 - (iii) any other document or information of a kind required by Part A of the ISPS Code to be kept on the ship;

"South African continental waters" means—

- (a) South African waters;
- (b) the waters of the exclusive economic zone of the Republic; and
- (c) the waters beyond the outer limits of the exclusive economic zone of the Republic but over the continental shelf of the Republic;

"South African regulated ship" has the meaning given by regulation 10(1);

"South African ship" includes an unregistered ship having South African nationality;

"South African waters" means the internal and territorial waters of the Republic;

"stores" means items that are to be carried on board a ship for use, sale or consumption on the ship;

"unlawful interference with maritime transport" has the meaning given by regulation 5;

"valid ISSC", for a ship at a particular time, means an ISSC for the ship that is in force at that time.

(2) An expression used in these regulations and in the ISPS Code has in these regulations the same meaning as in the ISPS Code, unless the context indicated otherwise.

(3) For the purposes of these regulations, a ship of a kind mentioned in regulation 10(1) is taken to be used for maritime transport if it is being used as a ship of that particular kind.

Division 4—Application

Regulations not to apply to certain state ships etc

4. (1) Unless the context indicates otherwise, these regulations do not apply to, or in relation to—

- (a) a warship or other ship operated for naval, military, customs or law enforcement purposes by an organ of state or by a foreign state;
- (b) a ship (other than a ship covered by paragraph (a)) that is—
 - (i) owned or operated by an organ of state or by a foreign state; and
 - (ii) being used wholly for non-commercial activities;

(c) a security regulated port, or a part of a port, at any time that the port, or the part of the port, is under the exclusive control of the South African National Defence Force.

(2) A reference in these regulations to a maritime industry participant does not include a reference to—

- (a) the South African National Defence Force;
- (b) the South African Revenue Service;
- (c) the South African Police Service; or
- (d) any other organ of state determined in writing by the Minister.

Division 5—Unlawful interference with maritime transport

Meaning of unlawful interference with maritime transport

5. (1) Any of the following done without lawful authority is an ***unlawful interference with maritime transport***:

- (a) committing an act, or causing any interference or damage, that puts the safe operation of a port, or the safety of any person or property at the port, at risk;
- (b) taking control of a ship by force, or threat of force, or any other form of intimidation;
- (c) destroying a ship that is being used for maritime transport;
- (d) causing damage to a ship that is being used for maritime transport that puts the safety of the ship, or any person or property on board or off the ship, at risk;
- (e) doing on board a ship that is being used for maritime transport anything that puts the safety of the ship, or any person or property on board or off the ship, at risk;
- (f) placing, or causing to be placed, on board a ship that is being used for maritime transport anything that puts the safety of the ship, or any person or property on board or off the ship, at risk;
- (g) putting the safety of ships at risk by interfering with, damaging or destroying navigational aids, communication systems or security systems;
- (h) putting the safety of ships at risk by communicating false information.

(2) However, ***unlawful interference with maritime transport*** does not include lawful advocacy, protest, dissent or industrial action that does not result in, or contribute to, an action of a kind mentioned in subregulation (1)(a) to (h).

*Division 6—Security regulated ports and port operators***Meaning of port**

6. (1) A **port** is an area of water, or land and water (including any buildings, installations or equipment situated in or on that land or water) intended for use either wholly or partly in connection with the movement, loading, unloading, maintenance or provisioning of ships.

(2) A **port** includes—

- (a) areas of water, between the land of the port and the open waters outside the port, intended for use by ships to gain access to loading, unloading or other land-based facilities;
- (b) areas of open water intended for anchoring or otherwise holding ships before they enter areas of water described in paragraph (a); and
- (c) areas of open water between the areas of water described in paragraphs (a) and (b).

Security regulated ports

7. A **security regulated port** comprises the areas of a port in the Republic that are described in Annex 1.

Port operators

8. The **port operator** for a security regulated port is the person designated in Annex 1 as the port operator for the security regulated port.

*Division 7—Security regulated ships***Meaning of security regulated ship**

9. Each of the following is a **security regulated ship**:

- (a) a South African regulated ship;
- (b) a foreign regulated ship.

Meaning of South African regulated ship

10. (1) A ship is a **South African regulated ship** if the ship is one of the following:

- (a) a foreign-going South African ship that is—

- (i) a passenger ship;
 - (ii) a cargo ship of 500 or more gross tonnage; or
 - (iii) a mobile offshore drilling unit (other than a unit that is attached to the seabed);
- (b) a mobile offshore drilling unit that is attached to the seabed within South African continental waters;
- (c) a fixed or floating platform that is attached to the seabed within South African continental waters.
- (2) To avoid doubt, a fixed platform mentioned in subregulation (1)(c) is taken to be a ship for the purposes of these regulations.

Meaning of *foreign regulated ship*

11. A ship is a *foreign regulated ship* if the ship—
- (a) is a foreign ship; and
 - (b) is one of the following:
 - (i) a passenger ship;
 - (ii) a cargo ship of 500 or more gross tonnage;
 - (iii) a mobile offshore drilling unit (other than a unit that is attached to the seabed); and
 - (c) is in South African waters; and
 - (d) is in, or is intending to proceed to, a port in the Republic.

Division 8—General defences

Ship master's decisions

12. A person does not commit an offence in terms of these regulations if—
- (a) a physical element of the offence exists (whether directly or indirectly) because the master engaged in conduct in the operation or control of the ship; and
 - (b) without the existence of that physical element the person would not commit the offence; and
 - (c) the master engaged in the conduct to protect the safety or security of—
 - (i) the ship;
 - (ii) the ship's cargo;
 - (iii) a person (whether on board the ship or not);
 - (iv) another ship; or
 - (v) a port, or a port facility or other installation within a port; and

- (d) the conduct was reasonable in the circumstances.

Complying with security directions

13. If—

- (a) a person is required to comply with a security direction; and
- (b) compliance with the direction would mean that the person commits an offence in terms of, or otherwise contravenes a requirement of, the Act or these regulations,

the person, in complying with the security direction, is taken not to have committed the offence or contravened the requirement.

Complying with control directions

14. If—

- (a) a person is required to comply with a control direction; and
- (b) compliance with the direction would mean that the person commits an offence in terms of, or otherwise contravenes a requirement of, the Act or these regulations,

the person, in complying with the control direction, is taken not to have committed the offence or contravened the requirement.

Division 9—Communicating with ship operators

Communicating with ship operators

15. For the purposes of these regulations, a person may give a notice or direction to, or otherwise communicate with, a ship operator for a ship by giving the notice or direction to, or otherwise communicating with, the shipping agent for the ship.

PART 2**MARITIME SECURITY LEVELS AND SECURITY DIRECTIONS***Division 1—Maritime security levels 1, 2 and 3***Default security level (maritime security level 1)**

16. Unless a declaration under regulation 17 provides otherwise, maritime security level 1 is in force for each—

- (a) security regulated port;
- (b) South African regulated ship;
- (c) area within a security regulated port; and
- (d) maritime industry participant.

Director-General may declare maritime security level 2 or 3

17. (1) The Director-General may, by writing, declare that maritime security level 2 or maritime security level 3 is in force for one or more of the following as specified in the declaration:

- (a) a security regulated port;
- (b) a South African regulated ship;
- (c) an area within a security regulated port;
- (d) a maritime industry participant;
- (e) operations conducted by a maritime industry participant within, or in connection with, a security regulated port.

(2) The Director-General may also, by writing, declare that maritime security level 2 or maritime security level 3 is in force for a foreign regulated ship.

(3) However, the Director-General must not make a declaration under subregulation (1) or (2) unless it is appropriate for a higher level of security to be put into place for the port, ship, area or participant concerned because a heightened risk of unlawful interference with maritime transport has been identified.

Requirement for consultation

18. Before making a declaration under regulation 17(1) or (2), the Director-General must consult Nicoc.

When maritime security level in force

19. (1) If a declaration is made under regulation 17(1) or (2), the maritime security level declared in the declaration is in force for the port, ship, area, participant or operations covered by the declaration until either of the following occurs:

- (a) the period (if any) specified in the declaration expires;
- (b) the declaration is revoked in writing by the Director-General.

Maritime security level declaration for port covers all port operations

20. If the Director-General declares that a maritime security level is in force for a security regulated port, that maritime security level is in force for each of the following within the port:

- (a) every area and security regulated ship;
- (b) any operations conducted by a maritime industry participant.

Security levels and complying with plans

21. (1) For the purposes of regulation 41, if—

- (a) a maritime industry participant is required to comply with a maritime security plan; and
- (b) the Director-General makes a declaration under regulation 17(1); and
- (c) the effect of the declaration is that maritime security level 2 or 3 is in force for—
 - (i) the participant;
 - (ii) an area controlled by the participant; or
 - (iii) particular operations of the participant,

the participant does not comply with the plan unless the participant implements the measures set out in the plan for the participant, area or operations, as the case requires, for that maritime security level.

(2) For the purposes of regulation 59, if—

- (a) a ship security plan is in force for a South African regulated ship; and
- (b) the Director-General makes a declaration under regulation 17(1); and
- (c) the effect of the declaration is that maritime security level 2 or 3 is in force for the ship,

the ship security plan for the ship is not complied with unless the measures set out in the plan for that maritime security level are implemented.

Maritime security level 1, 2 or 3 applies with security directions

22. To avoid doubt, if maritime security level 1, 2 or 3 (the *existing security level*) is in force for—

- (a) a security regulated port;
- (b) a South African regulated ship;
- (c) an area within a security regulated port;
- (d) a maritime industry participant; or
- (e) the operations of a maritime industry participant,

and a security direction is given to, or in relation to, the port, ship, area, participant or operation, the existing security level continues in force.

Division 2—Notifying maritime security level 2 and 3 declarations and revocations**Notifying declarations covering security regulated ports**

23. (1) If the Director-General declares that a maritime security level is in force for a security regulated port, the Director-General must, as soon as practicable, notify—

- (a) the port operator; and
- (b) each maritime industry participant who is required to have a maritime security plan and who—
 - (i) controls an area within the boundaries of the security regulated port; or
 - (ii) operates within the boundaries of the security regulated port.

(2) If the Director-General gives a port operator notice of a declaration under subregulation (1), the port operator must, as soon as practicable, give notice of the declaration to—

- (a) every maritime industry participant who is covered by the port operator's maritime security plan and who—
 - (i) controls an area within the boundaries of the security regulated port; or
 - (ii) operates within the boundaries of the security regulated port; and
- (b) the master of every security regulated ship that is within the port or about to enter the port.

(3) If a port operator fails to comply with subregulation (3), the port operator commits an offence punishable upon conviction by a fine or by imprisonment for a period not exceeding 12 months.

- (4) Subregulation (3) does not apply if the port operator has a reasonable excuse.

Notifying declarations covering security regulated ships

24. If the Director-General declares that a maritime security level is in force for a South African regulated ship or a foreign regulated ship, the Director-General must, as soon as practicable, notify—

- (a) the ship operator for the ship; or
 - (b) the master of the ship,
- and also—
- (c) the Authority; and
 - (d) if the ship is in a security regulated port, the port operator.

Notifying declarations covering areas within security regulated ports

25. If the Director-General declares that a maritime security level is in force for an area within a security regulated port, the Director-General must, as soon as practicable, notify—

- (a) the maritime industry participant who controls the area; and
- (b) if the maritime industry participant is not the port operator, also the port operator.

Notifying declarations covering maritime industry participants

26. If the Director-General declares that a maritime security level is in force for a maritime industry participant or for particular operations of a maritime industry participant, the Director-General must, as soon as practicable, notify—

- (a) the participant; and
- (b) if the participant conducts operations covered by the declaration within a security regulated port and is not the port operator, also the port operator.

Notifying revocations

27. (1) If—

- (a) the Director-General has notified a person in terms of regulation 23, 24, 25 or 26 that a maritime security level is in force; and
 - (b) the Director-General revokes the declaration concerned,
- the Director-General must, as soon as practicable, notify the person of the revocation.

(2) If—

- (a) a port operator has notified a person in terms of regulation 23(2) that a maritime security level is in force; and
- (b) the Director-General revokes the declaration concerned,

the port operator must, as soon as practicable, notify the person of the revocation.

(3) If a port operator fails to comply with subregulation (2), the port operator commits an offence punishable upon conviction by a fine or by imprisonment for a period not exceeding 12 months.

(4) Subregulation (3) does not apply if the port operator has a reasonable excuse.

Communicating declarations and revocations

28. (1) The Director-General may notify a person of a declaration under regulation 17(1) or (2) by facsimile or e-mail.

(2) A port operator required to give notice of a declaration in terms of regulation 23(2) may do so by facsimile or e-mail.

(3) The Director-General may also notify a person of the revocation of a declaration under regulation 27(1) by facsimile or e-mail.

(4) A port operator required to notify a person of the revocation of a declaration under regulation 27(2) may do so by facsimile or e-mail.

Division 3—Security directions

Director-General may give security directions

29. (1) The Director-General may direct that additional security measures be implemented or complied with.

(2) A direction under subregulation (1) is a *security direction*.

(3) However, the Director-General must not give a security direction unless it is appropriate to do so because an unlawful interference with maritime transport is probable or imminent.

(4) A security direction has no effect until the Director-General commits the direction to writing.

Requirement for consultation

30. (1) Before giving a security direction, the Director-General must consult Nicoc.

(2) If it is reasonable and practicable to do so, the Director-General must also consult the following about giving a security direction that relates to the movement of ships within, or in or out of, a security regulated port:

- (a) maritime industry participants who will be affected by the direction;
- (b) organs of state whose operations in the port will be affected by the direction;

- (c) persons, other than those mentioned in paragraph (a) or (b), who need to implement, or comply with, the direction.

Confidentiality requirements

31. (1) A security direction may include restrictions in relation to the disclosure of the direction.

- (2) Such restrictions are *confidentiality requirements*.

Persons to whom security directions may be given

32. (1) The Director-General may give a security direction to one or more of the following:

- (a) a maritime industry participant or an employee of a maritime industry participant;
- (b) passengers;
- (c) persons, other than persons mentioned in paragraphs (a) and (b), who are within the boundaries of a security regulated port.

(2) For the purposes of giving a security direction to persons mentioned in subregulation (1)(b) or (c), the Director-General is taken to have given a direction to the persons if the direction is clearly displayed at a place where the direction is to be complied with by those persons.

(3) The Director-General may, in a security direction given to the port operator for a security regulated port, require the port operator to communicate all or a part of the direction to specified maritime industry participants who operate within the port.

(4) If the Director-General gives a port operator a direction under subregulation (1) that requires the port operator to communicate all or a part of the direction to specified maritime industry participants who operate within the port, the port operator must, as soon as practicable, communicate the direction, or the part of the direction, to the specified maritime industry participants.

(5) If a port operator fails to comply with subregulation (4), the port operator commits an offence punishable upon conviction by a fine or by imprisonment for a period not exceeding 12 months.

- (6) Subregulation (5) does not apply if the port operator has a reasonable excuse.

(7) If a direction is given to a maritime industry participant by a port operator as mentioned in subregulation (3), the direction is taken to have been given to the participant by the Director-General.

Director-General may give security directions to security regulated ships

33. (1) The Director-General may give a security direction to a security regulated ship by giving the direction to—

- (a) the ship operator for the ship; or
- (b) the master of the ship.

(2) If the Director-General gives a ship operator a direction under subregulation (1), the ship operator must, as soon as practicable, communicate the direction to the master of the ship covered by the direction.

(3) If a ship operator fails to comply with subregulation (2), the ship operator commits an offence punishable upon conviction by a fine or by imprisonment for a period not exceeding 12 months.

(4) Subregulation (3) does not apply if the ship operator has a reasonable excuse.

(5) If a direction is given to a master by a ship operator as mentioned in subregulation (2), the direction is taken to have been given to the master by the Director-General.

When security direction in force

34. (1) A security direction comes into force at the time specified in the direction.

(2) However—

- (a) if—
 - (i) there is no time specified; or
 - (ii) the specified time is before the time when the direction is given,
the direction comes into force 24 hours after it is given; or
 - (b) if the specified time is later than the beginning of the seventh day after the direction is given, the direction comes into force at the start of that day.
- (3) A security direction remains in force until either of the following occurs:
- (a) the direction is revoked in writing by the Director-General;
 - (b) the direction has been in force for a continuous period of 3 months.

Revoking security directions

35. (1) The Director-General must revoke a security direction if the unlawful interference with maritime transport in relation to which the direction was given is no longer probable or imminent.

(2) If—

- (a) the Director-General gives a security direction to a person (including a direction given to the ship operator for, or the master of, a security regulated ship under regulation 33); and
- (b) the Director-General revokes the direction; and
- (c) the direction has not been displayed in terms of regulation 32(2);

the Director-General must notify the person of the revocation.

(3) If the Director-General has displayed a security direction in terms of regulation 32(2) and the Director-General revokes the direction, the Director-General must remove the displayed direction.

Communicating security directions

36. (1) The Director-General may give, or communicate, a security direction to a maritime industry participant by facsimile or e-mail, or orally.

(2) A port or ship operator required to communicate a security direction in terms of regulation 32(3) or 33(2), respectively, may do so by facsimile or e-mail, or orally.

(3) The Director-General may also notify a person of the revocation of a security direction in terms of regulation 35(2) by facsimile or e-mail, or orally.

Offence (failing to comply with security directions)

37. (1) A person commits an offence if—

- (a) a security direction is given to, or communicated to, the person; and
- (b) the direction is in force; and
- (c) the person fails, without reasonable excuse, to comply with the direction; and
- (d) the failure is not a failure to comply with confidentiality requirements.

(2) An offence in terms of subregulation (1) is punishable upon conviction by a fine or by imprisonment for a period not exceeding 12 months.

Offence (failing to comply with confidentiality requirements)

38. (1) A person (including the ship operator for, or the master of, a security regulated ship when a direction has been given to the ship under regulation 33) commits an offence if—

- (a) a security direction is given to the person; and
- (b) the person fails to comply with confidentiality requirements in the direction; and
- (c) the failure is not due to a disclosure made to a court or to another body or person that has the power to require the production of documents or the answering of questions.

(2) An offence in terms of subregulation (1) is punishable upon conviction by a fine or by imprisonment for a period not exceeding 12 months.

PART 3**MARITIME SECURITY PLANS*****Division 1—Maritime industry participants required to have maritime security plans*****Who must have maritime security plans**

39. (1) Each of the following maritime industry participants must have a maritime security plan:

- (a) a port operator;
- (b) a port facility operator;
- (c) a port service provider that operates within a security regulated port;
- (d) a port service provider that operates outside a security regulated port for the purpose of ship/port interface between a security regulated ship and a security regulated port.

(2) However, a port service provider of a kind mentioned in subregulation (1)(c) or (d) need not have a maritime security plan if—

- (a) the activities of the port service provider are covered by a maritime security plan (the covering plan within the meaning of regulation 42(3)) for another maritime industry participant; and
- (b) the port service provider has agreed in writing to those activities being covered by the covering plan.

Offence (operating without maritime security plan)

40. (1) A maritime industry participant commits an offence if—

- (a) the participant is required by regulation 39 to have a maritime security plan; and
- (b) the participant operates as a participant of that kind; and
- (c) there is no maritime security plan in force for the participant.

(2) An offence in terms of subregulation (1) is punishable upon conviction by a fine or by imprisonment for a period not exceeding 12 months.

Offence (failing to comply with maritime security plan)

41. (1) A maritime industry participant commits an offence if—

- (a) the participant is required by regulation 39 to have a maritime security plan; and
- (b) there is a maritime security plan for the participant in force; and

(c) the participant fails, without reasonable excuse, to comply with the plan.

(2) An offence in terms of subregulation (1) is punishable upon conviction by a fine or by imprisonment for a period not exceeding 12 months.

Division 2—Complying with other plans

Complying with maritime security plans of other participants

42. (1) A maritime industry participant must not engage in conduct that hinders or obstructs compliance with the maritime security plan of another maritime industry participant.

(2) If—

- (a) a maritime security plan (the *covering plan*) for a maritime industry participant covers the activities of another maritime industry participant; and
- (b) the other participant—
 - (i) is not required to have a maritime security plan; and
 - (ii) has been given the relevant parts of the covering plan,

the other maritime industry participant must take all reasonable steps to comply with the covering plan.

(3) If—

- (a) a maritime security plan (the *covering plan*) for a maritime industry participant covers the activities of another maritime industry participant; and
- (b) the other participant—
 - (i) is required to have a maritime security plan; and
 - (ii) has been given the relevant parts of the covering plan; and
 - (iii) has agreed in writing to those activities being covered by the covering plan,

the other maritime industry participant must take all reasonable steps to comply with the covering plan.

(4) If a maritime industry participant contravenes subregulation (1), (2) or (3), the participant does not commit an offence but may be subject to an enforcement order.

South African regulated ships must not hinder or obstruct compliance with maritime security plans

43. (1) The operations of a South African regulated ship must not hinder or obstruct compliance with a maritime security plan.

(2) If the operations of a South African regulated ship hinder or obstruct compliance with a maritime security plan, either or both of the following may be subject to an enforcement order:

- (a) the ship operator for the ship;
- (b) the master of the ship.

Division 3—Content and form of maritime security plans

Content of maritime security plans

44. (1) A maritime security plan for a maritime industry participant must—
- (a) include a security assessment for the participant's operation;
 - (b) set out the security measures to be implemented by the participant for maritime security levels 1, 2 and 3;
 - (c) include contact details for the participant's security officer;
 - (d) make provision for the use of declarations of security; and
 - (e) demonstrate that the implementation of the plan will make an appropriate contribution towards reducing the risk of unlawful interference with maritime transport.
- (2) The security assessment mentioned in subregulation (1)(a) must—
- (a) take into account any documents required in writing by the Director-General to be taken into account; and
 - (b) address the matters required by Annex 2 to be addressed.

Additional requirements for maritime security plans

45. (1) Annex 2 prescribes specific matters that must be addressed in one or more of the following:
- (a) each maritime security plan;
 - (b) each maritime security plan for a particular kind of maritime industry participant;
 - (c) each maritime security plan for a particular class of a particular kind of maritime industry participant.
- (2) Annex 2 also prescribes specific matters that must be complied with in relation to a plan of a kind mentioned in subregulation (1).

Form of maritime security plan

46. (1) A maritime security plan must be—
- (a) in writing; and
 - (b) prepared in accordance with the requirements set out in Annex 2.

(2) A maritime security plan must be accompanied by—

- (a) a map that shows any security zones established, or proposed to be established, by the participant within the area covered by the plan; and
- (b) if the participant proposes changes to established security zones, a map that shows the proposed changes.

(3) The map that accompanies a maritime security plan must be prepared in accordance with the requirements set out in Annex 2.

Division 4—Approving, revising and cancelling maritime security plans

Providing maritime security plans for approval

47. A maritime security plan for a maritime industry participant must be given to the Director-General for approval.

Approving maritime security plans

48. (1) If the Director-General is satisfied that the plan adequately addresses the relevant requirements under Division 3, the Director-General must—

- (a) approve the plan; and
- (b) give the participant written notice of the approval.

(2) If the Director-General is not satisfied that the plan adequately addresses the relevant requirements under Division 3, the Director-General must—

- (a) refuse to approve the plan; and
- (b) give the participant written notice of the refusal including reasons for the refusal.

(3) In determining whether the plan adequately addresses the relevant requirements under Division 3, the Director-General may take account of existing circumstances as they relate to maritime transport security.

(4) If—

- (a) a maritime industry participant gives the Director-General a maritime security plan; and
- (b) the Director-General does not approve, or refuse to approve, the plan within the period of 90 days after the plan was given,

the Director-General is taken to have refused to approve the plan.

When maritime security plan in force

49. (1) If the Director-General approves the maritime security plan, the plan comes into force at the time specified in the notice of approval.

- (2) However, if—
- (a) the time specified in the notice of approval is earlier than the time at which the notice was given; or
 - (b) no time is specified in the notice as the time when the plan comes into force, the plan comes into force when the notice is given.
- (3) The plan remains in force until—
- (a) the plan is replaced in terms of regulation 51(2); or
 - (b) the approval of the plan is cancelled under this Division.

Director-General may direct variations of maritime security plans

50. (1) If—
- (a) a maritime security plan for a maritime industry participant is in force; and
 - (b) the Director-General is no longer satisfied that the plan adequately addresses the relevant requirements under Division 3,
- the Director-General may, by written notice given to the participant, direct the participant to vary the plan.
- (2) However, the Director-General must not give a direction under subregulation (1) unless the Director-General is satisfied that the plan, as varied, would adequately address the relevant requirements under Division 3.
- (3) In the notice, the Director-General must—
- (a) set out the variation; and
 - (b) specify the period within which the participant must give the Director-General the plan as varied.
- (4) If the participant does not give the Director-General the plan—
- (a) varied in accordance with the direction; and
 - (b) within the specified period, or within any further period allowed by the Director-General,
- the Director-General must, by written notice given to the participant, cancel the approval of the plan.

Participants may revise maritime security plans

51. (1) If—
- (a) a maritime industry participant has given the Director-General a maritime security plan; and

- (b) the participant gives the Director-General another maritime security plan (the *revised plan*),

regulations 48 and 49 apply in relation to the revised plan.

- (2) If a revised plan for a maritime industry participant comes into force, it replaces any other plan for the participant in force at that time.

Director-General may direct participants to revise maritime security plans

52. If—

- (a) a maritime security plan for a maritime industry participant (the *existing plan*) is in force; and
- (b) the Director-General is no longer satisfied that the existing plan adequately addresses the relevant requirements under Division 3—
- (i) because there is a change in the circumstances that relate to maritime transport security; or
- (ii) because there is a change in the circumstances that could impact on maritime transport security; or
- (iii) for some other reason,

the Director-General may, by written notice given to the participant, direct the participant to give the Director-General a revised plan under regulation 51.

- (2) The notice must specify the period within which the revised plan must be given.

(3) If the participant does not give the Director-General the revised plan within the specified period, or within any further period allowed by the Director-General, the Director-General must, by written notice given to the participant, cancel the approval of the existing plan.

Maritime security plans must be revised every 5 years

53. If—

- (a) a maritime security plan for a maritime industry participant (the *existing plan*) has been in force for a period of 5 years; and
- (b) the Director-General has not approved a revised plan for the participant under regulation 51 within that period,

the approval of the existing plan is cancelled by force of this regulation.

Cancelling inadequate maritime security plans

54. If—

- (a) a maritime security plan for a maritime industry participant is in force; and

- (b) the Director-General is no longer satisfied that the plan adequately addresses the relevant requirements under Division 3; and
- (c) the Director-General is satisfied that it is not appropriate to direct the participant to—
 - (i) vary the plan under regulation 50; or
 - (ii) revise the plan under regulation 52,

the Director-General must, by written notice given to the participant, cancel the approval of the plan.

Cancelling for failure to comply with maritime security plans

55. If—

- (a) a maritime security plan for a maritime industry participant is in force; and
- (b) the participant has failed to comply with the plan; and
- (c) the Director-General is satisfied that it is not appropriate to make an enforcement order in relation to the participant,

the Director-General may, by written notice given to the participant, cancel the approval of the plan.

Cancelling maritime security plans on request

56. If—

- (a) a maritime security plan for a maritime industry participant is in force; and
- (b) the participant makes a written request to the Director-General for the approval of the plan to be cancelled,

the Director-General must, by written notice given to the participant, cancel the approval of the plan.

PART 4

SHIP SECURITY PLANS AND ISSCs *etc*

Division 1—Ships required to have security plans

Which ships must have security plans

57. A South African regulated ship must have a ship security plan.

Offence (operating without ship security plan)

58. (1) The ship operator for a South African regulated ship commits an offence if—

- (a) the ship is being used for maritime transport; and
- (b) there is no ship security plan in force for the ship.

(2) An offence in terms of subregulation (1) is punishable upon conviction by a fine or by imprisonment for a period not exceeding 12 months.

Offence (failing to comply with ship security plan)

59. (1) The ship operator for a South African regulated ship commits an offence if—

- (a) the ship is being used for maritime transport; and
- (b) there is a ship security plan for the ship in force; and
- (c) the ship is not operated in accordance with the plan.

(2) Subregulation (1) does not apply if the ship operator has a reasonable excuse.

(3) An offence in terms of subregulation (1) is punishable upon conviction by a fine or by imprisonment for a period not exceeding 12 months.

Division 2—Complying with other plans**Complying with ship security plans of other ships**

60. (1) The operations of a South African regulated ship must not hinder or obstruct compliance with the ship security plan of another ship.

(2) If the operations of a South African regulated ship (the *first regulated ship*) hinder or obstruct compliance with the ship security plan of another ship, either or both of the following may be subject to an enforcement order:

- (a) the ship operator for the first regulated ship;
- (b) the master of the first regulated ship.

Maritime industry participants must not hinder or obstruct compliance with ship security plans

61. (1) A maritime industry participant must not engage in conduct that hinders or obstructs compliance with the ship security plan of a ship.

(2) If a maritime industry participant contravenes subregulation (1), the participant does not commit an offence but may be subject to an enforcement order.

*Division 3—Content and form of ship security plans***Content of ship security plans**

62. (1) A ship security plan for a South African regulated ship must—

- (a) include a security assessment for the ship;
- (b) set out the security measures to be implemented on, or in connection with, the ship for maritime security levels 1, 2 and 3;
- (c) include contact details for the ship's security officer;
- (d) make provision for the use of declarations of security; and
- (e) demonstrate that the implementation of the plan will make an appropriate contribution towards reducing the risk of unlawful interference with maritime transport.

(2) The security assessment mentioned in subregulation (1)(a) must—

- (a) take into account any documents required in writing by the Authority to be taken into account; and
- (b) address the matters required by Annex 2 to be addressed.

Additional requirements for ship security plans

63. (1) Annex 2 prescribes specific matters that must be addressed in one or more of the following:

- (a) each ship security plan;
- (b) each ship security plan for a particular kind of ship;
- (c) each ship security plan for a particular class of a particular kind of ship.

(2) Annex 2 also prescribes specific matters that must be complied with in relation to a plan of a kind mentioned in subregulation (1).

Form of ship security plan

64. A ship security plan must be—

- (a) in writing; and
- (b) prepared in accordance with the requirements set out in Annex 2.

*Division 4—Approving, revising and cancelling ship security plans***Providing ship security plans for approval**

65. A ship security plan for a South African regulated ship must be given to the Authority for approval.

Approving ship security plans

66. (1) If the Authority is satisfied that the plan adequately addresses the relevant requirements under Division 3, the Authority must—

- (a) approve the plan; and
- (b) give the ship operator written notice of the approval.

(2) If the Authority is not satisfied that the plan adequately addresses the relevant requirements under Division 3, the Authority must—

- (a) refuse to approve the plan; and
- (b) give the ship operator written notice of the refusal including reasons for the refusal.

(3) In determining whether a plan adequately addresses the relevant requirements under Division 3, the Authority may take account of existing circumstances as they relate to maritime transport security.

(4) If—

- (a) the ship operator for a South African regulated ship gives the Authority a ship security plan for the ship; and
- (b) the Authority does not approve, or refuse to approve, the plan within the period of 90 days after the plan was given,

the Authority is taken to have refused to approve the plan.

When ship security plan in force

67. (1) If the Authority approves the ship security plan, the plan comes into force at the time specified in the notice of approval.

(2) However, if—

- (a) the time specified in the notice is earlier than the time at which the notice was given; or
- (b) no time is specified in the notice as the time when the plan comes into force,

the plan comes into force when the notice is given.

(3) The plan remains in force until—

- (a) the plan is replaced in terms of regulation 69(2); or

- (b) the approval of the plan is cancelled under this Division.

Authority may direct variations of ship security plans

68. (1) If—

- (a) a ship security plan for a South African regulated ship is in force; and
- (b) the Authority is no longer satisfied that the plan adequately addresses the relevant requirements under Division 3,

the Authority may, by written notice given to the ship operator for the ship, direct the ship operator to vary the plan.

(2) However, the Authority must not give a direction under subregulation (1) unless the Authority is satisfied that the plan, as varied, would adequately address the relevant requirements under Division 3.

(3) In the notice, the Authority must—

- (a) set out the variation; and
- (b) specify the period within which the ship operator must give the Authority the plan as varied.

(4) If the ship operator does not give the Authority the plan—

- (a) varied in accordance with the direction; and
 - (b) within the specified period, or within any further period allowed by the Authority,
- the Authority must, by written notice given to the ship operator, cancel the approval of the plan.

Ship operator may revise ship security plan

69. (1) If—

- (a) the ship operator for a South African regulated ship has given the Authority a ship security plan for the ship; and
- (b) the ship operator for the ship gives the Authority another plan for the ship (the *revised plan*),

regulations 66 and 67 apply in relation to the revised plan.

(2) If a revised plan for a South African regulated ship comes into force, it replaces any other plan for the ship in force at that time.

Authority may direct ship operator to revise ship security plan

70. (1) If—

- (a) a ship security plan for a South African regulated ship (the *existing plan*) is in force; and

(b) the Authority is no longer satisfied that the existing plan adequately addresses the relevant requirements under Division 3—

- (i) because there is a change in the circumstances that relate to maritime transport security; or
- (ii) because there is a change in circumstances that could impact on maritime transport security,

the Authority may, by written notice to the ship operator for the ship, direct the ship operator to give the Authority a revised plan under regulation 69.

(2) The notice must specify the period within which the revised plan must be given.

(3) If the ship operator does not give the Authority the revised plan within the specified period, or within any further period allowed by the Authority, the Authority must, by written notice given to the ship operator, cancel the approval of the plan.

Ship security plans must be revised every 5 years

71. If—

- (a) a ship security plan for a South African regulated ship (the *existing plan*) has been in force for a period of 5 years; and
- (b) the Authority has not approved a revised plan for the ship under regulation 69 within that period,

the approval of the existing plan is cancelled by force of this regulation.

Cancelling inadequate ship security plans

72. If—

- (a) a ship security plan for a South African regulated ship is in force; and
- (b) the Authority is no longer satisfied that the plan adequately addresses the relevant requirements under Division 3; and
- (c) the Authority is satisfied that it is not appropriate to direct the ship operator for the ship to—
 - (i) vary the plan under regulation 68; or
 - (ii) revise the plan under regulation 70,

the Authority must, by written notice given to the ship operator, cancel the approval of the plan.

Cancelling for failure to comply with ship security plan

73. If—

- (a) a ship security plan for a South African regulated ship is in force; and

- (b) the ship operator has failed to comply with the plan,
the Authority may, by written notice given to the ship operator, cancel the approval of the plan.

Cancelling ship security plans on request

74. If—

- (a) a ship security plan for a South African regulated ship is in force; and
(b) the ship operator for the ship makes a written request to the Authority for the approval of the plan to be cancelled,

the Authority must, by written notice given to the ship operator, cancel the approval of the plan.

Division 5—International ship security certificates

Which ships must have ISSCs

75. A South African regulated ship must have an ISSC.

Offence (operating without ISSC)

76. (1) The ship operator for a South African regulated ship commits an offence if—

- (a) the ship is being used for maritime transport; and
(b) there is no ISSC or interim ISSC in force for the ship.

(2) Subregulation (1) does not apply if the ship operator has a reasonable excuse.

(3) An offence in terms of subregulation (1) is punishable upon conviction by a fine or by imprisonment for a period not exceeding 12 months.

Applying for ISSC

77. (1) The ship operator for a South African regulated ship may apply to the Authority for an ISSC for the ship.

(2) The application must be in accordance with any requirements determined in writing by the Authority.

Conditions for giving ISSC

78. (1) The Authority must give a ship operator an ISSC for a South African regulated ship if—

- (a) the ship operator has applied for an ISSC for the ship; and
- (b) there is a ship security plan in force for the ship; and
- (c) the ship is ISSC verified.

(2) The form of the ISSC must be in accordance with the form set out in Appendix 1 to Part A of the ISPS Code.

ISSC verification

79. (1) A South Africa regulated ship is *ISSC verified* if—

- (a) an authorised officer has inspected the ship; and
- (b) the authorised officer has verified that the ship—
 - (i) is fitted with a ship security alert system in accordance with regulation 115; and
 - (ii) otherwise meets the requirements determined in writing by the Authority; and
- (c) the period, determined in writing by the Authority, within which the ship must be next inspected has not ended.

(2) In making a determination under subregulation (1), the Authority must have regard to the obligations set out in Chapter XI-2 of the Safety Convention and the ISPS Code.

(3) If—

- (a) there is an ISSC in force for a South African regulated ship; and
- (b) an authorised officer inspects the ship; and
- (c) the authorised officer finds that the ship does not meet the requirements under subregulation (1)(b); and
- (d) the ship does not meet those requirements within any period allowed in writing by the authorised officer,

the ship is no longer *ISSC verified*.

When ISSC in force

80. If the Authority gives an ISSC to the ship operator for a South African regulated ship, the ISSC comes into force when it is given and remains in force until any of the following occurs:

- (a) the Authority cancels the ISSC;
- (b) the ship operator is no longer the ship operator for the ship;

- (c) the period of 5 years after the ISSC is given expires.

Cancelling ISSCs

81. The Authority must, by written notice to the ship operator for a South African regulated ship, cancel the ISSC for the ship if either of the following occurs:

- (a) there is no longer a ship security plan in force for the ship;
- (b) the ship is no longer ISSC verified.

Interim ISSCs

82. (1) If—

- (a) the ship operator for a South African regulated ship has applied to the Authority for an ISSC for the ship; and
- (b) there is a ship security plan in force for the ship; and
- (c) the ship is not ISSC verified; and
- (d) the Authority reasonably believes that, were the ship to be inspected as mentioned in regulation 79(1), the ship would be ISSC verified,

the Authority may give the ship operator an interim ISSC for the ship.

(2) If—

- (a) the Authority has given a ship operator an ISSC for a South African regulated ship; and
 - (b) while the ISSC is in force, another ship operator becomes the ship operator for the ship,
- the Authority may give the other ship operator an interim ISSC for the ship.

(3) The form of the interim ISSC must be in accordance with the form set out in Appendix 2 to Part A of the ISPS Code.

(4) An interim ISSC is in force for the period, not exceeding 6 months, specified in the interim ISSC.

Offence (false or misleading statements in relation to having ISSC)

83. (1) The master of a South African regulated ship commits an offence if—

- (a) he or she—
 - (i) makes a statement (whether orally, in a document or in any other way) that, to his or her knowledge—
 - (aa) is false or misleading in a material particular; or
 - (bb) omits any matter or thing without which the statement is misleading in a material particular; or

- (ii) recklessly makes a statement (whether orally, in a document or in any other way) that—
 - (aa) is false or misleading in a material particular; or
 - (bb) omits any matter or thing without which the statement is misleading in a material particular; and
 - (b) the statement is made in connection with whether an ISSC or interim ISSC is in force for the ship; and
 - (c) any of the following applies:
 - (i) the statement is made to a maritime industry participant;
 - (ii) the statement is made to a person who is authorised by a Convention State to request information about, or in connection with, whether a valid ISSC or interim ISSC is in force for the ship;
 - (iii) the statement is made to a person who is exercising powers or performing functions under, or in connection with, a law of the Republic;
 - (iv) the statement is made in compliance with or purported compliance with a law of the Republic.
- (2) An offence in terms of subregulation (1) is punishable upon conviction by a fine or by imprisonment for a period not exceeding 12 months.

Division 6—Ship security records

Ship security records

84. (1) A South African regulated ship must keep a record of the following information in relation to the ship:

- (a) the approved ship security plan for the ship;
- (b) whether the ship possesses a valid ISSC;
- (c) the period of validity, and the name of the issuing authority, of the ISSCs possessed by the ship;
- (d) the security level at which the ship is operating;
- (e) the security levels at which the ship operated at ports, and specific periods during which the ship operated at those levels, while conducting ship/port interfaces;
- (f) any special or additional security measures that were implemented by the ship in any port where it conducted ship/port interface;
- (g) whether appropriate ship security procedures were maintained during any ship to ship activity;
- (h) if ship security procedures mentioned in paragraph (g) were maintained, the procedures and the specific periods during which those procedures were maintained.

(2) Ship security records must be kept on board the ship and must be made available for inspection at the request of the government of a port state, in the circumstances described in regulation XI-2/9 of the Safety Convention, if the port state is a Convention State.

(3) Ship security records must be kept for a period of 7 years beginning on—

- (a) in the case of a document, the date of the document or, if the document consists of a series of entries, the date when the latest entry is made on the document; or
- (b) in the case of information, the date when the information was obtained or, if the information is part of a document that consists of a series of entries, the date when the latest entry is made on the document.

PART 5

FOREIGN REGULATED SHIPS

Division 1—Obligations on foreign regulated ships

Foreign regulated ships must have ISSCs

85. (1) The ship operator for a foreign regulated ship must—

- (a) have a valid ISSC, or an approved ISSC equivalent, for the ship; and
- (b) ensure that the ship carries the required ship security records.

(2) If the ship operator for a foreign regulated ship contravenes subregulation (1), the ship operator or the master of the ship may be given a control direction under Division 2.

(3) An *approved ISSC equivalent* is a kind of certification approved in writing by the Authority as an alternative to an ISSC.

Foreign regulated ships must provide pre-arrival information

86. (1) The master of a foreign regulated ship, or a ship intending to enter South African waters that would, once it had done so, be a foreign regulated ship, must provide pre-arrival information in accordance with the requirements determined in writing by the Director-General.

(2) Without limiting subregulation (1), the Director-General may determine—

- (a) the person or persons to whom pre-arrival information must be given;
- (b) the circumstances in which pre-arrival information must be given; and
- (c) the form and manner in which pre-arrival information must be given.

(3) *Pre-arrival information* is information that—

- (a) must be provided by a ship before the ship enters one or more of the following:
 - (i) South African waters;
 - (ii) a security regulated port;
 - (iii) a port that is not a security regulated port; and
 - (b) is of a kind that can be requested, under regulation XI-2/9 of the Safety Convention, by a port state from a foreign flagged ship.
- (4) If the master of a ship contravenes subregulation (1), the master or the ship operator for the ship may be given a control direction under Division 2.

Foreign regulated ships must allow inspections *etc*

87. (1) The master of a foreign regulated ship must allow an authorised officer to board and inspect the ship in accordance with Part 6.
- (2) The master of a foreign regulated ship must provide an authorised officer with any ship security records kept on the ship when requested by the authorised officer to do so.
- (3) If the master of a ship contravenes subregulation (1) or (2), the master or the ship operator for the ship may be given a control direction under Division 2.

Foreign regulated ships must comply with security levels

88. (1) This regulation sets out security measures that must be implemented by a foreign regulated ship.
- (2) Unless subregulations (3) to (7) provide otherwise, the ship must, at all times, implement ISPS level 1 measures.
- (3) If maritime security level 2 is in force for the ship because the ship is in a security regulated port where maritime security level 2 is in force, the ship must implement ISPS level 2 measures.
- (4) If maritime security level 3 is in force for the ship because the ship is in a security regulated port where maritime security level 3 is in force, the ship must implement ISPS level 3 measures.
- (5) If the Director-General declares under regulation 17(2) that maritime security level 2 is in force for the ship, the ship must implement ISPS level 2 measures.
- (6) If the Director-General declares under regulation 17(2) that maritime security level 3 is in force for the ship, the ship must implement ISPS level 3 measures.
- (7) If—
- (a) the ship is registered in another country (the *flag state*); and
 - (b) the ship is directed by the flag state to implement a higher level of security than would otherwise apply in terms of this regulation,
- the ship must comply with the direction.

(8) If a foreign regulated ship does not implement security measures in accordance with subregulations (2) to (7), the ship operator for, or the master of, the ship may be given a control direction under Division 2.

Meaning of ISPS level 1, 2 and 3 measures

89. (1) *ISPS level 1 measures* are the measures that should, under the ISPS Code, be implemented when maritime security level 1 is in force.

(2) *ISPS level 2 measures* are the measures that should, under the ISPS Code, be implemented when maritime security level 2 is in force.

(3) *ISPS level 3 measures* are the measures that should, under the ISPS Code, be implemented when maritime security level 3 is in force.

Foreign regulated ships must comply with security directions

90. (1) If the Director-General gives a security direction to a foreign regulated ship under regulation 33, the ship must comply with the direction.

(2) If a foreign regulated ship does not comply with a security direction, the ship operator for, or the master of, the ship may be given a control direction under Division 2.

Complying with maritime and ship security plans

91. (1) The operations of a foreign regulated ship must not hinder or obstruct compliance with the maritime security plan of a maritime industry participant in a way that compromises the security of the operations of the participant.

(2) The operations of a foreign regulated ship must not hinder or obstruct compliance with the ship security plan of a South African regulated ship in a way that compromises the security of the South African regulated ship.

(3) If the operations of a foreign regulated ship compromise the security of—

- (a) the operations of a maritime industry participant; or
- (b) a ship,

as mentioned in subregulation (1) or (2), the ship operator for, or the master of, the foreign regulated ship may be given a control direction under Division 2.

Acknowledging level notifications and directions

92. (1) The master of a foreign regulated ship commits an offence if—

- (a) the master is notified by the Director-General or a port operator that maritime security level 2 of 3 is in force for the ship; and

- (b) the master fails, without reasonable excuse, to acknowledge the notification to the Director-General.
- (2) The master of a foreign regulated ship commits an offence if—
 - (a) the master is given—
 - (i) a security direction by the Director-General that relates to the operation of the ship; or
 - (ii) a control direction by the Authority that relates to the ship; and
 - (b) the master fails, without reasonable excuse, to acknowledge the direction—
 - (i) in the case of a security direction, to the Director-General; or
 - (ii) in the case of a control direction, to the Authority.
- (3) The ship operator for a foreign regulated ship commits an offence if—
 - (a) the ship operator is notified by the Director-General that maritime security level 2 or 3 is in force for the ship; and
 - (b) the ship operator fails, without reasonable excuse, to acknowledge the notification to the Director-General.
- (4) The ship operator for a foreign regulated ship commits an offence if—
 - (a) the ship operator is given—
 - (i) a security direction by the Director-General that relates to the operations of the ship; or
 - (ii) a control direction by the Authority that relates to the ship; and
 - (b) the ship operator fails, without reasonable excuse, to acknowledge the direction—
 - (i) in the case of a security direction, to the Director-General; or
 - (ii) in the case of a control direction, to the Authority.
- (5) An offence in terms of subregulation (1), (2), (3) or (4) is punishable upon conviction by a fine or by imprisonment for a period not exceeding 12 months.

Division 2—Control directions

Authority may give control directions

93. (1) The Authority may give a direction to—
- (a) the ship operator for a foreign regulated ship; or
 - (b) the master of the ship,
- requiring the ship operator or master to take specified action, or refrain from taking specified action, in relation to the ship.
- (2) A direction under subregulation (1) is a ***control direction***.

- (3) However, the Authority must not give a control direction unless the direction is—
- (a) necessary for ensuring compliance with Division 1 of this Part; or
 - (b) a measure of a kind that can be imposed, under regulation XI-2/9 of the Safety Convention, by a port state on a foreign flagged ship.
- (4) The action that a ship operator or master may be directed to take under subregulation (1) includes the following:
- (a) removing the ship from South African waters;
 - (b) removing the ship from a security regulated port;
 - (c) moving the ship within a security regulated port;
 - (d) holding the ship in a particular position for a specified period or until a specified event occurs;
 - (e) taking particular actions, or ensuring that particular actions are taken, on board the ship;
 - (f) allowing an authorised officer on board the ship to inspect the ship or ship security records carried by the ship.
- (5) If a ship operator or master is directed to take the action mentioned in subregulation (4)(d), the ship concerned is taken to be detained in terms of the Act.
- (6) A control direction has no effect until the Authority commits the direction to writing.

Requirement for consultation

94. If it is reasonable and practicable to do so, the Authority must consult with the following about giving a control direction that relates to the movement of ships within, or in or out of, a security regulated port:

- (a) maritime industry participants who will be affected by the direction;
- (b) organs of state whose operations in the port will be affected by the direction;
- (c) persons, other than those mentioned in paragraph (a) or (b), who need to implement, or comply with, the direction.

Communicating control directions

95. The Authority may give, or communicate, a control direction to the ship operator for, or the master of, a foreign regulated ship by facsimile or e-mail, or orally.

Offence (failing to comply with control direction)

96. (1) A ship operator for a foreign regulated ship commits an offence if—
- (a) a control direction that relates to the ship is in force; and
 - (b) the ship operator fails, without reasonable excuse, to comply with the direction.

(2) The master of a foreign regulated ship commits an offence if—

- (a) a control direction that relates to the ship is in force; and
- (b) the master fails, without reasonable excuse, to comply with the direction.

(3) An offence in terms of subregulation (1) or (2) is punishable upon conviction by a fine or by imprisonment for a period not exceeding 12 months.

PART 6

POWERS OF OFFICIALS

Authorised officers

97. Each of the following is an *authorised officer*:

- (a) a surveyor;
- (b) a member of the South African Police Service;
- (c) a member of the South African Revenue Service;
- (d) a member of the South African National Defence Force;
- (e) a member of the National Intelligence Agency
- (f) a person (other than a person covered by paragraphs (a) to (e)) designated in writing by the Director-General.

Authorised officers' powers (ISSC verifications)

98. An authorised officer may inspect—

- (a) a South African regulated ship; and
- (b) the ship security records for the ship; and
- (c) any other document relating to the security of the ship,

for the purpose of determining whether the ship meets the requirements necessary for ISSC verification.

Authorised officers' powers (ships)

99. (1) An authorised officer may exercise the powers set out in subregulation (2) for the following purposes:

- (a) determining whether a person or a ship is complying with these regulations;
- (b) investigating a possible contravention of these regulations.

(2) For the purposes set out in subregulation (1), an authorised officer may do one or more of the following:

- (a) board and inspect a security regulated ship (including any restricted access area on the ship);
- (b) inspect and photograph equipment on the ship;
- (c) observe and record operating procedures for the ship (whether carried out by the crew or some other person);
- (d) discuss those procedures with a person carrying them out or with another maritime industry participant;
- (e) inspect, photograph or copy one or more of the following:
 - (i) the ship's ISSC;
 - (ii) a ship security record for the ship;
 - (iii) a document or record held on the ship that relates to a crew member, a passenger, or anyone else on board the ship, or an item of cargo;
 - (iv) in the case of a South African regulated ship, any other document that relates to the security of the ship;
- (f) operate equipment on a security regulated ship for the purpose of gaining access to a document or record relating to the ship.

(3) However, an authorised officer must not exercise a power under subregulation (2) in relation to a foreign regulated ship whose flag state is a Convention State, unless the power is of a kind that can be exercised, under Chapter XI-2 of the Safety Convention and the ISPS Code, by a port state in relation to a foreign flagged ship.

When powers may be exercised (ships)

100. An authorised officer may exercise a power mentioned in regulation 98 or 99 in relation to a ship—

- (a) if the power is exercised within a security regulated port, at any time and without notice; or
- (b) otherwise, after giving the ship operator for, or the master of, the ship concerned reasonable notice.

Authorised officers' powers (participants)

101. (1) An authorised officer may exercise the powers set out in subregulation (2) for the following purposes:

- (a) determining whether a person or ship is complying with these regulations;
- (b) investigating a possible contravention of these regulations.

(2) For the purposes set out in subregulation (1), an authorised officer may do one or more of the following:

- (a) enter and inspect—
 - (i) any area, building (other than a residence), vehicle or vessel under the control of a maritime industry participant; or
 - (ii) if a maritime industry participant operates from a residence or a part of a residence, the residence or the part of the residence from which the participant operates;
- (b) inspect equipment in a place, vehicle or vessel mentioned in paragraph (a);
- (c) observe the operating procedures of a maritime industry participant;
- (d) discuss those procedures with an employee of the maritime industry participant or with another maritime industry participant;
- (e) inspect, photograph or copy a document or record made or kept by a maritime industry participant;
- (f) operate equipment at a place mentioned in paragraph (a) for the purpose of gaining access to a document or record made or kept by a maritime industry participant.

When powers may be exercised (participants)

102. An authorised officer may exercise a power mentioned in regulation 101—

- (a) if the power is exercised within a security regulated port, at any time and without notice; or
- (b) otherwise, after giving the maritime industry participant concerned reasonable notice.

PART 7

INFORMATION-GATHERING

Director-General may require security compliance information

103. (1) Information that relates to compliance, or failure to comply, with these regulations is *security compliance information*.

(2) If the Director-General believes on reasonable grounds that a maritime industry participant has security compliance information, the Director-General may, by written notice given to the participant, require the participant to give the information to the Director-General or to another specified person.

(3) The information must be given within the period and in the form and manner specified in the notice. The period must not be less than 14 days.

(4) Without limiting subregulation (3), the Director-General may specify in the notice any one or more of the following ways for the participant to give the information:

- (a) orally;

- (b) in writing;
- (c) by electronic transmission.

(5) If a person fails to comply with a notice under subregulation (2), the person commits an offence punishable upon conviction by a fine or by imprisonment for a period not exceeding 12 months.

- (6) Subregulation (5) does not apply if the person has a reasonable excuse.

Self-incrimination

104. (1) A person is not excused from giving security compliance information in terms of regulation 103 on the ground that the information might tend to incriminate the person or expose the person to a penalty.

- (2) However—

- (a) the information; and
- (b) the giving of the information; and
- (c) any information, document or thing obtained as a direct or indirect consequence of giving the information,

are not admissible in evidence against the person in criminal proceedings, or any other proceedings for the recovery of a penalty, other than proceedings in terms of regulation 105.

Offence (false or misleading information)

105. (1) A person commits an offence if—

- (a) the person—
 - (i) gives security compliance information that, to the person's knowledge—
 - (aa) is false or misleading in a material particular; or
 - (bb) omits any matter or thing without which the information is misleading in a material particular; or
 - (ii) recklessly gives security compliance information that—
 - (aa) is false or misleading in a material particular; or
 - (bb) omits any matter or thing without which the information is misleading in a material particular; and
- (b) any of the following subparagraphs applies:
 - (i) the information is given to an organ of state;
 - (ii) the information is given to a person who is exercising powers or performing functions under, or in connection with, a law of the Republic;
 - (iii) the information is given in compliance or purported compliance with a law of the Republic.

(2) In the application of subregulation (1) to a body corporate, but without affecting the liability of any person other than the body corporate—

- (a) security compliance information given by a person acting on behalf of the body corporate is taken to have been given by the body corporate; and
- (b) the knowledge or state of mind, as the case requires, of any person employed by or concerned in the management of the body corporate is taken to be knowledge or the state of mind of the body corporate.

(3) An offence in terms of subregulation (1) is punishable upon conviction by a fine or by imprisonment for a period not exceeding 12 months.

PART 8

ENFORCEMENT ORDERS

Division 1—Enforcement orders for maritime industry participants

Director-General may make enforcement orders

106. (1) The Director-General may make a written order (an *enforcement order*) under this regulation—

- (a) prohibiting or restricting specified activities by the maritime industry participant named in the enforcement order; or
- (b) requiring the maritime industry participant named in the enforcement order to take specified action.

(2) The Director-General may only make an enforcement order under this regulation if he or she reasonably believes that—

- (a) the maritime industry participant named in the enforcement order has contravened these regulations; and
- (b) it is necessary to make the order to safeguard against unlawful interference with maritime transport.

(3) The enforcement order must—

- (a) bear a clear and direct relationship to the contravention; and
- (b) be proportionate to the contravention.

Commencement and duration of enforcement orders

107. (1) An enforcement order comes into force—

- (a) if a commencement time that is after the day on which the order is given to the maritime industry participant concerned is specified in the order, at that time; or
 - (b) otherwise, at the beginning of the seventh day after it is given to the maritime industry participant concerned.
- (2) The order remains in force—
- (a) for the period (if any) specified in the order; or
 - (b) until it is revoked in writing by the Director-General.

Reviewing enforcement orders

108. (1) The Director-General must—

- (a) at intervals of not more than 3 months, review the enforcement order; and
 - (b) after each review, confirm, vary or revoke the order by instrument in writing.
- (2) The Director-General must revoke the order unless he or she is satisfied that the order is still needed to safeguard against unlawful interference with maritime transport.
- (3) The Director-General must not vary the order unless he or she is satisfied that the order as varied—
- (a) adequately safeguards against unlawful interference with maritime transport; and
 - (b) meets the requirements set out in regulation 106(2) and (3).
- (4) If an order is varied, the order continues in force as varied.

Notifying enforcement orders

109. (1) As soon as practicable after making or reviewing an enforcement order, the Director-General must cause the maritime industry participant named in the order to be informed of the making of the order, or the decision on the review, as the case requires.

(2) For the purposes of subregulation (1), the Director-General may cause a maritime industry participant to be informed by facsimile or e-mail, or orally.

(3) Failure to comply with this regulation does not affect the validity of the order.

Offence (failing to comply with enforcement order)

110. (1) A maritime industry participant commits an offence if—

- (a) the participant is subject to an enforcement order; and
- (b) the participant fails, without reasonable excuse, to comply with the order.

(2) An offence in terms of subregulation (1) is punishable upon conviction by a fine or by imprisonment for a period not exceeding 12 months.

*Division 2—Ship enforcement orders for South African regulated ships***Ship enforcement orders (South African regulated ships)**

111. (1) The Authority may give a direction to—

- (a) the ship operator for a South African regulated ship; or
- (b) the master of the ship,

requiring the ship operator or master to take specified action, or refrain from taking specified action, in relation to the ship.

(2) A direction under subregulation (1) is a *ship enforcement order*.

(3) The Authority may only give a ship enforcement order if it reasonably believes that—

- (a) the South African regulated ship named in the ship enforcement order has operated in contravention of these regulations; and
- (b) the ship enforcement order is necessary to safeguard against unlawful interference with maritime transport.

(4) The ship enforcement order must—

- (a) bear a clear and direct relationship to the contravention; and
- (b) be proportionate to the contravention.

(5) The action that a ship operator or master may be directed to take under subregulation (1) includes the following:

- (a) removing the ship from specified waters;
- (b) removing the ship from a security regulated port;
- (c) moving the ship within a security regulated port;
- (d) holding the ship in a particular position for a specified period or until a specified event occurs;
- (e) taking particular action, or ensuring that particular actions are taken, on board the ship;
- (f) allowing an authorised officer on board the ship to inspect the ship or ship security records carried by the ship.

(6) If a ship operator or master is directed to take the action mentioned in subregulation (5)(d), the ship concerned is taken to be detained in terms of the Act.

(7) A ship enforcement order has no effect unless the Authority commits the direction to writing.

Requirement for consultation

112. If it is reasonable and practicable to do so, the Authority must consult with the following about giving a ship enforcement order that relates to the movement of ships within, or in or out of, a security regulated port:

- (a) maritime industry participants who will be affected by the direction;
- (b) organs of state whose operations in the port will be affected by the direction;
- (c) persons, other than those mentioned in paragraph (a) or (b), who need to implement, or comply with, the direction.

Communicating ship enforcement orders

113. The Authority may give, or communicate, a ship enforcement order to the ship operator for, or the master of, a South African regulated ship by facsimile or e-mail, or orally.

Offence (failing to comply with ship enforcement order)

114. (1) The ship operator for a South African regulated ship commits an offence if—

- (a) a ship enforcement order is in force in relation to the ship; and
- (b) the ship operator fails, without reasonable, to comply with the order.

(2) The master of a South African regulated ship commits an offence if—

- (a) a ship enforcement order is in force in relation to the ship; and
- (b) the master fails, without reasonable excuse, to comply with the order.

(3) An offence in terms of subregulation (1) or (2) is punishable upon conviction by a fine or by imprisonment for a period not exceeding 12 months.

PART 9

MISCELLANEOUS

Ship security alert system

115. (1) A South African regulated ship must be provided with a ship security alert system—

- (a) for a ship constructed on or after 1 July 2004, before the ship is registered or licensed in the Republic;
- (b) for a passenger ship (including a high-speed passenger craft) constructed before 1 July 2004, not later than the first survey of the ship's radio installation after 1 July 2004;
- (c) for an oil tanker, chemical tanker, gas carrier, bulk carrier or a cargo high speed craft, of 500 or more of gross tonnage, constructed before 1 July 2004, not later than the first survey of the ship's radio installation after 1 July 2004;

- (d) for any other cargo ship of 500 or more gross tonnage or mobile offshore drilling unit constructed before 1 July 2004, not later than the first survey of the ship's radio installation after 1 July 2006; and
 - (e) for a fixed or floating platform, not later than 1 July 2006.
- (2) A ship security alert system—
- (a) must be capable of transmitting a ship-to-shore security alert identifying the ship, giving its location and indicating that the security of the ship is, or was, under threat; and
 - (b) must otherwise comply with regulation XI-2/6 of the Safety Convention.

PART 10

ADMINISTRATIVE ARRANGEMENTS AND FEES

Alternative security agreements

116. (1) If the Republic has entered into an alternative security agreement in accordance with regulation XI-2/11 of the Safety Convention, the Director-General must supervise the operation of the alternative security arrangement.

(2) To avoid doubt, an alternative security agreement may, according to its terms, vary or replace these regulations in relation to the matters covered by the agreement.

(3) The Director-General must review each alternative security agreement—

- (a) periodically—
 - (i) at an interval specified in writing by the Minister; or
 - (ii) if the Minister does not specify an interval, at an interval specified by the alternative security agreement under review; or
- (b) if the Minister or the agreement does not specify an interval, every 5 years.

(4) The review must take into account—

- (a) the experience gained from the operation of the agreement;
- (b) any changes in the circumstances that relate to maritime transport security; and
- (c) any changes in circumstances that could impact on maritime transport security.

Exemptions

117. (1) The Minister may grant exemption, on such terms (if any) as the Minister may specify, from all or any of the provisions of these regulations (as may be specified in the exemption) for classes of cases or individual cases and may, after reasonable notice, alter or cancel any exemption so granted.

(2) However, the Minister must not grant an exemption if to do so would be inconsistent with the obligations set out in Chapter XI-2 of the Safety Convention and the ISPS Code.

Powers and functions of Director-General

118. (1) The Director-General may, by writing, authorise an SMS employee, or acting SMS employee, in the Department of Transport to exercise all or any of the Director-General's powers and functions in terms of these regulations.

(2) The Director-General may at any time, in writing, vary or revoke an authorisation.

(3) To avoid doubt, the giving of an authorisation under subregulation (1) does not prevent the exercise of a power or function by the Director-General personally.

Director-General may establish co-ordinating structures

119. (1) For the purposes of promoting efficient administration of these regulations, the Director-General may, by writing—

- (a) establish any co-ordinating structures the Director-General thinks fit; and
- (b) determine the membership and functions of any established structure.

(2) Before establishing a structure, the Director-General must consult—

- (a) the Minister;
- (b) Nicoc;
- (c) the Authority; and
- (d) any other organ of state or person required in writing by the Minister to be consulted.

Fees (Director-General's functions)

120. (1) Annex 3 prescribes—

- (a) the fees payable to the Director-General; and
- (b) the circumstances, and the manner, in which the fees are to be paid.

(2) If Annex 3 prescribes a fee for the doing of an act or thing, the Director-General may refuse to do the act or thing unless—

- (a) the fee is paid; or
- (b) arrangements for its payment have been made to the satisfaction of the Director-General.

ANNEX 1

(Regulations 7 and 8)

SECURITY REGULATED PORTS AND PORT OPERATORS

Each of the following areas within the specified port in the Republic is declared to be a security regulated port:

ANNEX 2

(Regulations 44, 45, 46, 62, 63 and 64)

SECURITY PLANS

PART 1—PRELIMINARY

Definitions

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

"CSO" or "**company security officer**" has the meaning given by item 5;

"**maritime transport security incident**" means any unlawful interference, or threatened unlawful interference, with maritime transport;

"PFSO" or "**port facility security officer**" has the meaning given by item 3;

"PSO" or "**port security officer**" has the meaning given by item 2;

"PSPSO" or "**port service provider security officer**" has the meaning given by item 4;

"**security plan audit**" means an examination of security measures or procedures to determine if a maritime security plan or a ship security plan has been implemented correctly;

"**security plan review**" means an evaluation of security measures or procedures to determine if a maritime security plan or a ship security plan is effective and adequate;

"**shore-based personnel**", in relation to a South African regulated ship, means persons (other than crew) employed by the ship operator for the ship;

"SSO" or "**ship security officer**" has the meaning given by item 6.

Port security officers

2. (1) Before requesting the Director-General to approve a maritime security plan, a port operator for a security regulated port must designate, in writing, a person as security officer (*port security officer* or *PSO*).

(2) A PSO may be designated by name or by reference to a position.

(3) The duties and responsibilities of a PSO include—

- (a) conducting an initial security survey of the port and facilitating the completion of the security assessment for the port operator's maritime security plan;
- (b) ensuring the development, submission and maintenance of the maritime security plan for the port operator;
- (c) implementing the maritime security plan;

- (d) undertaking regular security inspections of the port to ensure the effectiveness and adequacy of security measures;
 - (e) facilitating security plan reviews;
 - (f) recommending and incorporating modifications to the maritime security plan in order to—
 - (i) correct deficiencies in the plan; or
 - (ii) update the plan to take into account changes to the port;
 - (g) enhancing security awareness and vigilance of port personnel, including conducting drills and exercises;
 - (h) ensuring that standards for personnel with, or who have been assigned, security duties and responsibilities are met and that adequate training is provided to such personnel;
 - (i) reporting to the relevant authorities, and maintaining records of, occurrences that threaten the security of the port;
 - (j) liaising with ship, port service provider and port facility security officers;
 - (k) coordinating with security, police, fire, ambulance, medical, search and rescue services, as appropriate;
 - (l) ensuring that security equipment is properly operated, inspected, tested, calibrated and maintained;
 - (m) when requested by an SSO, assisting in confirming the identity of persons intending to board a ship;
 - (n) providing advice to the Authority and the Director-General on the operational and safety aspects of the implementation of security and control directions; and
 - (o) communicating and coordinating the implementation of security and control directions.
- (4) A port operator must ensure that a PSO—
- (a) has the knowledge and ability to perform the duties of a PSO;
 - (b) is given the training set out in the maritime security plan for the port operator;
 - (c) is a suitable person to access and handle security information; and
 - (d) has the authority to act on instructions received from the Director-General.

Port facility security officers

3. (1) Before requesting the Director-General to approve a maritime security plan, a port facility operator must designate, in writing, a person as security officer (*port facility security officer* or *PFSO*) for the port facility.

(2) A PFSO may be designated by name or by reference to a position.

(3) The duties and responsibilities of a PFSO include—

- (a) ensuring the development, submission, implementation, revision and maintenance of the maritime security plan for the port facility operator;

- (b) liaising with ship, company, port, port service provider and other port facility security officers;
- (c) performing—
 - (i) the duties and responsibilities in section 17.2 of Part A of the ISPS Code; and
 - (ii) any additional duties and responsibilities set out in the maritime security plan.
- (4) A port facility operator must ensure that a PFSOC
 - (a) has the knowledge and ability to perform the duties of a PFSO;
 - (b) is given the training set out in the maritime security plan for the port facility operator;
 - (c) is a suitable person to access and handle security information; and
 - (d) has the authority to act on instructions received from the Director-General.

Port service provider security officers

4. (1) Before requesting the Director-General to approve a maritime security plan, a port service provider must designate, in writing, a person as security officer (*port service provider security officer* or *PSPSO*).

- (2) A PSPSO may be designated by name or by reference to a position.
- (3) The duties and responsibilities of a PSPSO include—
 - (a) conducting an initial security survey of the activities of the port service provider and facilitating the completion of the security assessment for the provider's maritime security plan;
 - (b) ensuring the development and maintenance of the maritime security plan for the port service provider;
 - (c) implementing the maritime security plan;
 - (d) undertaking regular security inspections of the area under the control of the port service provider to ensure the effectiveness and adequacy of security measures;
 - (e) recommending and incorporating modifications to the maritime security plan in order to—
 - (i) correct deficiencies in the plan; or
 - (ii) update the plan to take into account changes to the port service provider;
 - (f) enhancing security awareness and vigilance of the port service provider's personnel;
 - (g) ensuring that standards for personnel with, or who have been assigned, security duties and responsibilities are met and that adequate training is provided to such personnel;
 - (h) reporting to the relevant authorities, and maintaining records of, occurrences that threaten the security of the port service provider;
 - (i) liaising with ship, port, port facility and other port service provider security officers;
 - (j) coordinating with security, police, fire, ambulance, medical, search and rescue services, as appropriate;

- (k) ensuring that security equipment is properly operated, inspected, tested, calibrated and maintained; and
 - (l) when requested by an SSO, assisting in confirming the identity of persons intending to board a ship.
- (4) A port service provider must ensure that a PSPSO—
- (a) has the knowledge and ability to perform the duties of a PSPSO;
 - (b) is given the training set out in the maritime security plan for the port service provider;
 - (c) is a suitable person to access and handle security information; and
 - (d) has the authority to act on instructions received from the Director-General.

Company security officers

5. (1) Before requesting the Authority to approve a ship security plan, the ship operator for a South African regulated ship must designate, in writing, a person within the ship operator's organisation as security officer (*company security officer* or *CSO*) for the ship.

(2) A CSO may be designated by name or by reference to a position.

(3) The duties and responsibilities of a CSO include—

- (a) answering any questions about the ship security plan, and acting as contact officer, during the approval process;
 - (b) implementing and maintaining the ship security plan for the ship;
 - (c) liaising with the SSO for the ship and with port, port service provider and port facility security officers; and
 - (d) performing—
 - (i) the duties and responsibilities in section 11.2 of Part A of the ISPS Code; and
 - (ii) any additional duties and responsibilities set out in the ship security plan.
- (4) The ship operator must ensure that a CSO—
- (a) has the knowledge and ability to perform the duties of a CSO;
 - (b) is given the training set out in the ship security plan;
 - (c) is a suitable person to access and handle security information; and
 - (d) has the authority to act on instructions received from the Authority or Director-General.

Ship security officers

6. (1) The ship operator for a South African regulated ship must designate, in writing, the master, or another crew member, of the ship as security officer (*ship security officer* or *SSO*).

(2) An SSO may be designated by name or by reference to a position.

- (3) The duties and responsibilities of an SSO include—
- (a) maintaining the ship security plan for the ship;
 - (b) liaising with the CSO for the ship and with ship, port, port facility and port service provider security officers; and
 - (c) performing—
 - (i) the duties and responsibilities in section 12.2 of Part A of the ISPS Code; and
 - (ii) any additional duties and responsibilities set out in the ship security plan.
- (4) The ship operator must ensure that an SSO—
- (a) has the knowledge and ability to perform the duties of an SSO;
 - (b) is given the training set out in the ship security plan;
 - (c) is a suitable person to access and handle security information; and
 - (d) has the authority to act on instructions received from the Authority, Director-General or ship operator.
- (5) An SSO who is not the master of the ship is accountable to the master of the ship.

Delegation by security officers

7. (1) A PSO, PFSO, PSPSO, CSO or SSO may delegate, in writing, some or all of his or her powers (except this power of delegation), functions and duties.
- (2) A delegation under this item—
- (a) may only be made to a person who has the knowledge and ability to exercise or perform the powers, functions or duties to be delegated; and
 - (b) must specify the delegate by name.

Shore-based personnel and crew

8. The ship operator for a South African regulated ship must ensure that shore-based personnel and crew identified in the ship security plan as having security duties and responsibilities—
- (a) have the knowledge and ability to perform their security-related duties and responsibilities; and
 - (b) are given the training set out in the plan.

Declarations of security

9. (1) A declaration of security must be signed and dated by the master of, or SSO for, the ship and—

- (a) if the other party to the agreement is also a ship, the master of, or SSO for, that other ship; or
- (b) if the other party to the agreement is a port operator, the PSO; or
- (c) if the other party to the agreement is a port facility operator, the PFSO; or
- (d) if the other party to the agreement is a port service provider, the PSPSO.

(2) A declaration of security must set out—

- (a) contact details for the parties and signatories to the agreement;
- (b) the period for which the declaration is valid; and
- (c) the maritime security level in force for each party.

(3) A copy of the declaration of security must be kept by a party to the agreement for a period of 7 years beginning on the day after the declaration ceases to be valid.

Security plan audits and reviews

10. (1) A security plan audit or review must be conducted in accordance with the schedule, requirements and procedures set out in the maritime or ship security plan.

(2) A security plan review must be conducted as soon as practicable after a maritime transport security incident.

(3) The records of each security plan audit or review must be kept for a period of 7 years beginning on the day after the audit or review is concluded.

PART 2—MARITIME SECURITY PLANS

Division 1—Preliminary

Common requirements for security assessments

11. A security assessment for a maritime security plan must include the following matters:

- (a) the date when the assessment was completed or reviewed;
- (b) the scope of the assessment, including assets, infrastructure and operations assessed;
- (c) a summary of how the assessment was conducted, including details of the risk management process adopted;
- (d) the skills and expertise of the key persons who completed or participated in the assessment.

Common requirements for security plan audits and reviews

12. A maritime security plan for a port operator, port facility operator or port service provider must set out—

- (a) a schedule of security plan audits by internal and external auditors;
- (b) the circumstances, in addition to the occurrence of a maritime transport security incident, following which a security plan review must be conducted;
- (c) the procedures for conducting a security plan audit, including a process for selecting auditors who are independent of the matters being audited; and
- (d) the procedures for conducting a security plan review, including a process for consultation during the review.

Port operator to give information

13. A port operator required to have a maritime security plan must give to each port facility operator and port service provider conducting operations within the security regulated port—

- (a) the information set out in item 17 (including contact details for the PSO);
- (b) the measures to be used by the port operator to inform persons of the location of security zones established within the boundaries of the security regulated port; and
- (c) the measures to confirm the identity of persons who are authorised to have access to security zones established within the boundaries of the security regulated port.

Port facility operator to give information

14. (1) A port facility operator required to have a maritime security plan must give the port operator of, and each port service provider conducting operations within, the security regulated port—

- (a) the information set out in item 28 (including contact details for the PFSO);
- (b) the measures to be used by the port facility operator to inform persons of the location of any security zones established within the boundaries of the port facility; and
- (c) the measures to confirm the identity of persons who are authorised to have access to the port facility, to ships moored at the facility and to any security zones established within the boundaries of the port facility.

(2) A port facility operator required to have a maritime security plan must also give to the port operator details of the boundaries of the facility.

Port service provider to give information

15. A port service provider required to have a maritime security plan must give to the port operator of the security regulated port in which the provider conducts operations and to each port facility operator conducting operations within the security regulated port—

- (a) the information set out in item 40 (including contact details for the PSPSO);
- (b) the boundaries of the area under the control of the port service provider;
- (c) details of the vessels operated by the provider (including the name, identification number, type, date, port of registry, and construction year of each vessel);
- (d) the measures to be used by the port service provider to inform persons of the location of any security zones established within the boundaries of the land under the control of the port service provider; and
- (e) the measures to confirm the identity of persons who are authorised to have access to the land under the control of the port service provider, to any security zones established within the boundaries of that land and to vessels operated by the provider.

Division 2—Port operators***Subdivision 1—Matters to be dealt with in plan*****General**

16. A maritime security plan for a port operator must cover all matters of ship/port interface—

- (a) that are to be conducted within the security regulated port; and
- (b) that are not covered by a maritime security plan for any other maritime industry participant that conducts operations within, or in connection with, the security regulated port.

Port operator details

17. A maritime security plan for a port operator must be accompanied by a document setting out the following information:

- (a) name of the port operator;
- (b) contact details for the port operator;
- (c) name of the Chief Executive Officer of the port operator;
- (d) name of the port for which the port operator has been designated;
- (e) name of the port's harbour master;
- (f) contact details for the harbour master;
- (g) name or position of the person who is to be the PSO for the port;

- (h) a single 24-hour fixed-line or mobile telephone number for the PSO.

Security assessments

18. In addition to the matters required by item 11, the security assessment that must be included in a maritime security plan for a port operator must include the following matters:

- (a) a statement outlining the risk context or threat situation for the port;
- (b) identification and evaluation of strategically important assets, infrastructure and operations that need to be protected;
- (c) identification of possible risks or threats to assets, infrastructure and operations, and the likelihood and consequences of their occurrence;
- (d) identification of existing security measures, procedures and operations;
- (e) identification of gaps in port-wide security arrangements, including gaps arising from port infrastructure, human factors, policies and procedures;
- (f) identification, selection and prioritisation of possible risk treatments (for example, counter-measures and procedural changes that need to be implemented) and their effectiveness in reducing risk levels and vulnerabilities.

Port security officer qualifications and responsibilities

19. A maritime security plan for a port operator must set out—

- (a) the knowledge, skills and other requirements for the PSO;
- (b) the training or qualifications that satisfy the requirements mentioned in paragraph (a); and
- (c) the training that must be given to the PSO.

Other personnel with security role

20. (1) A maritime security plan for a port operator must identify, by reference to their positions, port personnel with, or who have been assigned, security duties and responsibilities in addition to those of the PSO.

(2) The security duties and responsibilities of personnel so identified must be set out in the plan, together with—

- (a) the knowledge, skills and other requirements for the security-related aspects of their positions;
- (b) the training or qualifications that satisfy the requirements mentioned in paragraph (a); and
- (c) the training that must be given to such personnel.

Matters that must be in plan

21. A maritime security plan for a port operator must address, in addition to the matters required by item 12, the following matters:

- (a) measures to prevent unauthorised access to any security zones established in the security regulated port;
- (b) procedures for responding to security threats or breaches of security, including procedures for maintaining critical operations in the port;
- (c) procedures for responding to any security directions given by the Director-General;
- (d) procedures for evacuation of the port in case of security threats or breaches of security;
- (e) procedures for drills and exercises associated with the plan;
- (f) procedures for interfacing with ship security activities;
- (g) procedures for modifying the plan to correct deficiencies or to update the plan to take into account changes to the port;
- (h) procedures for reporting occurrences that threaten the security of the port;
- (i) measures to ensure the security of the information contained in the plan;
- (j) procedures in case the ship security alert system of a ship is activated while in the security regulated port;
- (k) procedures for ensuring that the security of the port will be maintained in exceptional circumstances such as the presence of a ship in distress or of a ship seeking a place of refuge.

Security of port in exceptional circumstances

21A. A maritime security plan for a port operator must give sufficient guidance on how the security of the port will be maintained in exceptional circumstances such as the presence in the port of a ship in distress or of a ship that has been allowed to use the port as a place of refuge.

Consultation and communication

22. (1) A maritime security plan for a port operator must set out a mechanism for consultation—

- (a) between the port operator and each of the maritime industry participants conducting operations within the security regulated port, for the purpose of coordinating their security-related activities; and
- (b) between the port operator and its employees (or their representatives) regarding security measures and procedures to be implemented.

(2) A maritime security plan for a port operator must set out how the port operator will give notice in terms of regulations 23(2) and 27(2).

Maritime security level 1

23. A maritime security plan for a port operator must set out, in relation to maritime security level 1—

- (a) the security measures, identified in the security assessment for the operation, for implementation at that level;
- (b) the measures that have been implemented;
- (c) a schedule for implementing the measures that have not been implemented; and
- (d) any interim measures that will be implemented until the measures mentioned in paragraph (c) are fully implemented.

Maritime security levels 2 and 3

24. A maritime security plan for a port operator must set out, in relation to maritime security levels 2 and 3, the additional security measures that the operator will implement if the Director-General declares that maritime security level 2 of 3 is in force for the port.

Declarations of security

25. A maritime security plan for a port operator must provide for—

- (a) the circumstances in which the operator will request a declaration of security with a ship;
- (b) the procedures for negotiating the security measures and responsibilities of the operator and of the ship in those circumstances; and
- (c) how security measures identified in a declaration will be implemented to ensure compliance by the operator and the ship with their security plans and with the declaration.

*Subdivision 2—Form of plan***Map of port**

26. The map that must accompany a maritime security plan for a port operator in terms of regulation 46(2) must—

- (a) cover the whole security regulated port; and
- (b) be of a size and scale that clearly shows the boundaries of the port and the location of any security zones established, or that the operator wishes to establish or change, within the area covered by the plan.

Protection of plan

27. A port operator must ensure that the maritime security plan for the operator is protected against unauthorised access, amendment and disclosure.

Division 3—Port facility operators***Subdivision 1—Matters to be dealt with in plan*****Port facility operator details**

28. A maritime security plan for a port facility operator must be accompanied by a document setting out the following information:

- (a) name of the port facility operator;
- (b) contact details for the port facility operator;
- (c) name of the Chief Executive Officer of the port facility operator;
- (d) name and location of the port facility;
- (e) name of the port in which the facility is located;
- (f) name or position of the person who is to be the PFSO for the facility;
- (g) a single 24-hour fixed-line or mobile telephone number for the PFSO.

Details of other maritime industry participants

29. A maritime security plan for a port facility operator must be accompanied by a document setting out the name of, and contact details for—

- (a) the PSO of the security regulated port in which the facility is located; and
- (b) each port service provider conducting operations within the facility.

Security assessments

30. (1) In addition to the matters required by item 11, a security assessment for a port facility operator's operation must include the following matters:

- (a) a statement outlining the risk context or threat situation for the port facility;
- (b) identification and evaluation of important assets, infrastructure and operations that need to be protected;
- (c) identification of possible risks or threats to assets, infrastructure and operations, and the likelihood and consequences of their occurrence;

- (d) identification of existing security measures, procedures and operations;
 - (e) identification of weaknesses (including human factors) in the infrastructure, policies and procedures;
 - (f) identification, selection and prioritisation of possible risk treatments (for example, counter-measures and procedural changes that need to be implemented) and their effectiveness in reducing risk levels and vulnerabilities.
- (2) A security assessment for a port facility operator's operation must consider—
- (a) the types of ships, and the types of cargoes transported by ships, served by the port facility; and
 - (b) any special risks or threats associated with such ships and cargoes.

PFSO qualifications and responsibilities

31. A maritime security plan for a port facility operator must set out—
- (a) the knowledge, skills and other requirements for the PFSO;
 - (b) the training or qualifications that satisfy the requirements mentioned in paragraph (a); and
 - (c) the training that must be given to the PFSO.

Other personnel with security role

32. (1) A maritime security plan for a port facility operator must identify, by reference to their positions, port facility personnel with, or who have been assigned, security duties and responsibilities in addition to those of the PFSO.
- (2) The security duties and responsibilities of personnel so identified must be set out in the plan, together with—
- (a) the knowledge, skills and other requirements for the security-related aspects of their positions;
 - (b) the training or qualifications that satisfy the requirements mentioned in paragraph (a); and
 - (c) the training that must be given to such personnel.

Matters that must be in plan

33. A maritime security plan for a port facility operator must address, in addition to the matters required by item 12, the following matters:
- (a) measures to prevent unauthorised carriage or possession of weapons or prohibited items in the facility or on board ships being loaded or unloaded at the facility;
 - (b) measures to prevent unauthorised access to the port facility, to ships moored at the facility and to any security zones established within the boundaries of the facility;

- (c) procedures for responding to security threats or breaches of security, including procedures for maintaining critical operations in the port facility or ship/port interface;
- (d) procedures for responding to any security directions given by the Director-General;
- (e) procedures for evacuation of the port facility in case of security threats or breaches of security;
- (f) procedures for drills and exercises associated with the plan;
- (g) procedures for interfacing with ship security activities;
- (h) procedures for modifying the plan to correct deficiencies or to update the plan to take into account changes to the port facility;
- (i) procedures for reporting occurrences that threaten the security of the port facility;
- (j) measures to ensure the security of the information contained in the plan;
- (k) measures to ensure security of cargo and of cargo handling equipment at the facility;
- (l) procedures in case the ship security alert system of a ship is activated while in the security regulated port;
- (m) procedures for facilitating—
 - (i) shore leave or relief of crew; and
 - (ii) access by visitors (including representatives of seafarer's welfare and of labour organisations).

Consultation

34. A maritime security plan for a port facility operator must set out, for the purpose of coordinating security-related activities, a mechanism for consultation—

- (a) between the port facility operator and the port operator;
- (b) between the port facility operator and each port service provider conducting operations within the security regulated port, and any other stakeholder, who may be affected by the implementation of the plan; and
- (c) between the port facility operator and its employees (or their representatives) regarding security measures and procedures to be implemented.

Maritime security level 1

35. A maritime security plan for a port facility operator must set out, in relation to maritime security level 1—

- (a) the security measures, identified in the security assessment for the operation, for implementation at that level;
- (b) the measures that have been implemented;
- (c) a schedule for implementing the measures that have not been implemented; and

- (d) any interim measures that will be implemented until the measures mentioned in paragraph (c) are fully implemented.

Maritime security levels 2 and 3

36. A maritime security plan for a port facility operator must set out, in relation to maritime security levels 2 and 3, the additional security measures that the operator will implement if the Director-General declares that maritime security level 2 of 3 is in force for the port.

Declarations of security

37. A maritime security plan for a port facility operator must provide for—

- (a) the circumstances in which the operator will request a declaration of security with a ship;
- (b) the procedures for negotiating the security measures and responsibilities of the operator and of the ship in those circumstances; and
- (c) how security measures identified in a declaration will be implemented to ensure compliance by the operator and the ship with their security plans and with the declaration.

Subdivision 2—Form of plan

Map of port facility

38. The map that must accompany a maritime security plan for a port facility operator in terms of regulation 46(2) must be of a size and scale that clearly shows—

- (a) the boundaries of the port facility; and
- (b) the location of any security zones established, or that the operator wishes to establish or change, within the area covered by the plan.

Protection of plan

39. A port facility operator must ensure that the maritime security plan for the operator is protected against unauthorised access, amendment and disclosure.

Division 4—Port service providers***Subdivision 1—Matters to be dealt with in plan*****Port service provider details**

40. A maritime security plan for a port service provider must be accompanied by a document setting out the following information:

- (a) name of the port service provider;
- (b) contact details for the port service provider;
- (c) name of the Chief Executive Officer of the port service provider;
- (d) name of each security regulated port in which the port service provider is located or operates;
- (e) name or position of the person who is to be the PSPSO for the port service provider;
- (f) a single 24-hour fixed-line or mobile telephone number for the PSPSO.

Details of other maritime industry participants

41. A maritime security plan for a port service provider must be accompanied by a document setting out the name of, and contact details for—

- (a) each PSO of the security regulated port in which the port service provider is located or operates; and
- (b) each port operator for, and port facility operator and port service provider conducting operations within, the security regulated port in which the port service provider is located or operates.

Security assessments

42. In addition to the matters required by item 11, a security assessment for the operation of a port service provider must include the following matters:

- (a) a statement outlining the risk context or threat situation for the port service provider;
- (b) identification and evaluation of important assets, infrastructure and operations that need to be protected;
- (c) identification of possible risks or threats to assets, infrastructure and operations, and the likelihood and consequences of their occurrence;
- (d) identification of existing security measures, procedures and operations;
- (e) identification of weaknesses (including human factors) in the infrastructure, policies and procedures;

- (f) identification, selection and prioritisation of possible risk treatments (for example, counter-measures and procedural changes that need to be implemented) and their effectiveness in reducing risk levels and vulnerabilities.

PSPSO qualifications and responsibilities

43. A maritime security plan for a port service provider must set out—

- (a) the knowledge, skills and other requirements for the PSPSO;
- (b) the training or qualifications that satisfy the requirements mentioned in paragraph (a); and
- (c) the training that must be given to the PSPSO.

Other personnel with security role

44. (1) A maritime security plan for a port service provider must identify, by reference to their positions, port service personnel with, or who have been assigned, security duties and responsibilities in addition to those of the PSPSO.

(2) The security duties and responsibilities of personnel so identified must be set out in the plan, together with—

- (a) the knowledge, skills and other requirements for the security-related aspects of their positions;
- (b) the training or qualifications that satisfy the requirements mentioned in paragraph (a); and
- (c) the training that must be given to such personnel.

Matters that must be in plan

45. A maritime security plan for a port service provider must address, in addition to the matters required by item 12, the following matters:

- (a) measures to prevent the introduction of unauthorised weapons or prohibited items into each security regulated port in which the port service provider is located or operates, or on board ships being served by the provider;
- (b) measures to prevent unauthorised access to the land under the control of the port service provider, to any security zones established within the boundaries of that land and to vessels operated by the provider;
- (c) procedures for responding to security threats or breaches of security, including procedures for maintaining critical operations of the port service provider;
- (d) procedures for responding to any security directions given by the Director-General;
- (e) procedures for evacuation in case of security threats or breaches of security;
- (f) procedures for drills and exercises associated with the plan;
- (g) procedures for interfacing with ship security activities;

- (h) procedures for modifying the plan to correct deficiencies or to update the plan to take into account changes to the port service provider;
- (i) procedures for reporting occurrences that threaten the security of the port service provider;
- (j) measures to ensure the security of the information contained in the plan;
- (k) measures to ensure security of passengers, cargo and cargo handling equipment under the control of the port service provider;
- (l) procedures in case the ship security alert system of a ship is activated while in the security regulated port.

Consultation

46. A maritime security plan for a port service provider must set out, for the purpose of coordinating security-related activities, a mechanism for consultation—

- (a) between the provider and each port operator for the security regulated port in which the port service provider is located or operates;
- (b) between the provider and each port facility operator and port service provider conducting operations within the security regulated port in which the port service provider is located or operates;
- (c) between the provider and any other stakeholder who may be affected by the implementation of the plan; and
- (d) between the provider and its employees (or their representatives), regarding security measures and procedures to be implemented.

Maritime security level 1

47. A maritime security plan for a port service provider must set out, in relation to maritime security level 1—

- (a) the security measures, identified in the security assessment for the operation, for implementation at that level;
- (b) the measures that have been implemented;
- (c) a schedule for implementing the measures that have not been implemented; and
- (d) any interim measures that will be implemented until the measures mentioned in paragraph (c) are fully implemented.

Maritime security levels 2 and 3

48. A maritime security plan for a port service provider must set out, in relation to maritime security levels 2 and 3—

- (a) the security measures identified in the security assessment for the operation, for implementation at those levels; and
- (b) the additional security measures that the provider will implement if the Director-General declares that maritime security level 2 or 3 is in force for the port.

Declarations of security

49. A maritime security plan for a port service provider must provide for—

- (a) the circumstances in which the provider will request a declaration of security with a ship;
- (b) the procedures for negotiating the security measures and responsibilities of the provider and of the ship in those circumstances; and
- (c) how security measures identified in a declaration will be implemented to ensure compliance by the provider and the ship with their security plans and with the declaration.

Subdivision 2—Form of plan

Map of port service provider

50. The map that must accompany a maritime security plan for a port service provider in terms of regulation 46(2) must be of a size and scale that clearly shows—

- (a) the boundaries of the area under the control of the port service provider; and
- (b) the location of any security zones established, or that the provider wishes to establish or change, within the area covered by the plan.

Protection of plan

51. A port service provider must ensure that the maritime security plan for the provider is protected against unauthorised access, amendment and disclosure.

PART 3—SHIP SECURITY PLANS AND ISSCs

Division 1—Matters to be dealt with in ship security plan

Identification of ship

52. A ship security plan must be accompanied by a document setting out the following information about the ship:

- (a) name of the ship;
- (b) the ship's official number;
- (c) the ship's IMO ship identification number (if any);
- (d) any other distinctive numbers or letters that identify the ship;
- (e) type of ship;
- (f) radio call sign;
- (g) date and port of registry;
- (h) year built;
- (i) deadweight tonnage;
- (j) gross registered tonnage;
- (k) length and breadth of ship;
- (l) draft forward and aft (full load);
- (m) number of crew;
- (n) number of passenger berths;
- (o) whether the ship is a foreign-going or coasting ship.

Security assessments

53. A ship security assessment for a South African regulated ship must include the following matters:

- (a) the date when the assessment was completed or reviewed;
- (b) the scope of the assessment, including assets, infrastructure and operations assessed;
- (c) a summary of how the assessment was conducted, including details of the risk management process adopted;
- (d) the skills and experience of the key persons who completed or participated in the assessment;
- (e) the results of the examination and evaluation of the existing shipboard protective measures, procedures and operations;
- (f) a statement outlining the risk context or threat situation for the ship, including consideration of trading routes;
- (g) identification and evaluation of key shipboard operations that need to be protected;
- (h) identification of possible risks or threats to the key shipboard operations and the likelihood and consequences of their occurrence;
- (i) identification of existing security measures, procedures and operations;
- (j) identification of weaknesses (including human factors) in the infrastructure, policies and procedures;

- (k) identification, selection and prioritisation of possible risk treatments (for example, counter-measures and procedural changes that need to be implemented) and their effectiveness in reducing risk levels and vulnerabilities.

Ship operator, CSO and SSO

54. (1) A ship security plan must be accompanied by a document setting out the following information:

- (a) the name of the ship operator;
- (b) the name of the Chief Executive Officer of the ship operator;
- (c) the name or position of the person who is to be the CSO for the ship;
- (d) a single 24-hour fixed-line or mobile telephone number for the CSO;
- (e) the name or position of the person who is to be the SSO for the ship.

(2) A ship security plan may set out duties and responsibilities of a CSO or SSO that are in addition to the duties and responsibilities of a CSO and SSO in sections 11.2 and 12.2, respectively, of Part A of the ISPS Code.

(3) A ship security plan must set out how the CSO will communicate with the master of the ship if the Director-General or a maritime industry participant acting on behalf of the Director-General—

- (a) gives notice that a maritime security level is in force for the ship; or
- (b) gives a security direction to the ship.

Shore-based personnel and crew with security role

55. (1) A ship security plan must identify, by reference to their positions, shore-based personnel and crew with, or who have been assigned, security duties and responsibilities.

(2) The security duties and responsibilities of personnel and crew so identified must be set out in the plan, together with—

- (a) the knowledge, skills and other requirements for the security-related aspects of their positions; and
- (b) the training or qualifications that satisfy the requirements mentioned in paragraph (a).

Training

56. A ship security plan must set out the training that a CSO, SSO, and shore-based personnel and crew mentioned in item 55 must receive.

Matters that must be in plan

57. A ship security plan must address the following matters:

- (a) measures to prevent unauthorised carriage or possession of weapons or prohibited items on board the ship;
- (b) identification of on-board security zones;
- (c) measures to prevent unauthorised access to the ship and any on-board security zones;
- (d) procedures for responding to security threats or breaches of security, including procedures for maintaining critical operations of ship/port interface;
- (e) procedures for responding to any security directions given by the Director-General or to directions given by a port state;
- (f) procedures for evacuation of the ship in case of security threats or breaches of security;
- (g) procedures for drills and exercises associated with the plan;
- (h) procedures for interfacing with port, port service and port facility security activities;
- (i) procedures for modifying the plan to correct deficiencies or to update the plan to take into account changes to the ship;
- (j) procedures for reporting occurrences that threaten the security of the ship;
- (k) measures to ensure the security of the information contained in the plan.

Maritime security level 1

58. A ship security plan must set out, in relation to maritime security level 1—

- (a) the security measures identified in the ship security assessment for implementation at that level;
- (b) the measures that have been implemented;
- (c) a schedule for implementing the measures that have not been implemented; and
- (d) any interim measures that will be implemented until the measures mentioned in paragraph (c) are fully implemented.

Maritime security levels 2 and 3

59. A ship security plan must set out, in relation to maritime security levels 2 and 3—

- (a) the security measures identified in the ship security assessment for implementation at those levels; and
- (b) the additional security measures that the ship will implement if the Director-General declares that maritime security level 2 or 3 is in force for the ship.

Declarations of security

60. A ship security plan must provide for—

- (a) the circumstances in which the ship will request a declaration of security with another ship or person;
- (b) the procedures for negotiating the security measures and responsibilities of the ship and of the other ship or person in those circumstances; and
- (c) how security measures identified in a declaration will be implemented to ensure compliance by the parties with their security plans and with the declaration.

Security of ship in non-ISPS Code compliant ports

61. (1) This item applies if it is envisaged by the ship operator that a South African regulated ship may call at ports or locations that are not port facilities or are port facilities the operators of which are not required to have, or do not have, security plans.

(2) A ship security plan must outline specific measures that will be implemented if the ship calls at ports or locations described in subitem (1) so that any risks associated with those ports or locations are not transferred to the ship.

Security of ship in exceptional circumstances

62. A ship security plan must give sufficient guidance on how the security of the ship will be maintained in exceptional circumstances such as search and rescue operations, humanitarian crises, extreme weather conditions and other emergencies.

Pre-entry information

63. (1) A ship security plan for a South African regulated ship that is a foreign-going ship must set out the procedures for giving pre-entry information in accordance with subitems (2) and (3).

(2) A South African regulated ship that is a foreign-going ship must be ready to give the following information (*pre-entry information*) not later than 48 hours before the ship enters South African waters in the course of a voyage:

- (a) the security levels at which the ship operated at ports, and specific periods during which the ship operated at those levels, while conducting ship/port interface;
- (b) any special or additional security measures that were implemented by the ship in any port where it conducted ship/port interface;
- (c) whether appropriate ship security procedures were maintained during any ship to ship activity;
- (d) if ship security procedures mentioned in paragraph (c) were maintained, the procedures and the specific periods during which those procedures were maintained.

(3) The information described in subitem (2) must be given in relation to the last 10 port calls by the ship.

Maritime transport security incidents

64. A ship security plan must set out procedures for—

- (a) reporting maritime transport security incidents to the Authority; and
- (b) responding to security threats and breaches of security, including provisions for maintaining critical operations of the ship or ship/port interface.

Security equipment

65. A ship security plan must—

- (a) include a list of the security equipment on board the ship;
- (b) describe the measures to ensure the inspection, testing, calibration and maintenance of security equipment;
- (c) set out the frequency for testing and calibration of security equipment; and
- (d) set out procedures to ensure that only correctly calibrated security equipment is used on board the ship.

On-board systems

66. (1) A ship security plan must include information about the following systems on board the ship:

- (a) external and internal communications systems;
- (b) surveillance, identification, monitoring and reporting systems;
- (c) tracking and positional systems.

(2) If a ship is provided with a ship security alert system, the ship security plan must—

- (a) describe the operational characteristics of the system;
- (b) describe the ship security alert that will be transmitted from the system;
- (c) describe the performance standards to which the system must conform, being standards not inferior to those adopted by the International Maritime Organisation; and
- (d) set out the procedures, instructions and guidance for using, testing, activating, de-activating and resetting the system, and for preventing false alarms.

Ship security records

67. A ship security plan must set out—

- (a) the ship security records that are required to be kept on, by and for the ship in accordance with regulation 84;
- (b) a plan for keeping and preserving ship security records; and
- (c) the procedures for making those records available for inspection by a port state in accordance with regulation 84(3).

Security plan audits and reviews

68. A ship security plan must set out—

- (a) a schedule of security plan audits by internal and external auditors;
- (b) the circumstances, in addition to the occurrence of a maritime transport security incident, following which a security plan review must be conducted;
- (c) the procedures for conducting a security plan audit, including a process for selecting auditors who are independent of the matters being audited; and
- (d) the procedures for conducting a security plan review, including a process for consultation during the review.

Division 2—Form of plan**Statement about authority of master**

69. A ship security plan must include a statement to the following effect:

"The master of the ship has the overriding authority and responsibility to make decisions with respect to the safety and security of the ship and to request the assistance of the ship operator or of any contracting government to the SOLAS Convention, as may be necessary."

Protection of plan

70. The ship operator for a South African regulated ship must ensure that the ship security plan for the ship is protected against unauthorised access, amendment and disclosure.

ANNEX 3
(Regulation 120)
FEEs

The following fees are payable to the Director-General:

EXPLANATORY NOTE

(This note is not part of the regulations)

THE DRAFT MERCHANT SHIPPING (MARITIME SECURITY) REGULATIONS, 2004

OUTLINE

These Regulations are enabled by section 356 of the Merchant Shipping Act, 1951. Their purpose is to enhance maritime transport security by:

- establishing a maritime transport security regulatory framework, and providing for adequate flexibility within this framework to reflect a changing threat environment;
- implementing the mandatory requirements in Chapter XI-2 of the International Convention for the Safety of Life at Sea (SOLAS), 1974, and the related International Ship and Port Facility Security (ISPS) Code, to ensure that South Africa remains in step with the international maritime transport security regime;
- ensuring that identified South African ports, and port facilities within them, operate with approved maritime security plans;
- ensuring that certain types of South African and other ships operate with approved ship security plans;
- issuing International Ship Security Certificates (ISSCs) to South African and certain other ships that have been security verified so that these ships will be able to enter ports in other SOLAS Contracting Countries; and
- establishing control mechanisms to impose control directions on foreign ships that are not compliant with the relevant maritime security requirements in these Regulations.

The Regulations have 10 parts:

Part 1—Preliminary: This Part includes the objects of the Regulations, their application and definitions. A detailed definition of the meaning of *unlawful interference with maritime transport* is included to clarify the application of the Regulations. Other detailed definitions include those of *security regulated ports*, *port operators* and *security regulated ships*. The Regulations will not apply to naval, military, customs, law enforcement, and other non-commercial government operated ships.

Part 2—Maritime security levels and security directions: This Part outlines the application of maritime security levels, security directions, and a system for notification. Maritime security level 1 will be the default level. Maritime security level 2 and maritime security level 3 will be declared by the Director-General when it is appropriate for a higher level of security to be put in place. In addition, in a security direction, which can be issued at security level 1, 2 or 3, the Director-General may direct maritime industry participants to comply with additional security measures when an unlawful interference with maritime transport is probable or imminent. The notification system ensures that those maritime industry participants and other persons who need to know about essential security level and security direction information are contacted.

Part 3—Maritime security plans: This Part requires certain maritime industry participants to have maritime security plans in force which must include security measures to be implemented at security levels 1, 2 and 3. Annex 2 of the Regulations provides additional detail on the content and form of these plans. The plans will be approved by the Director-General if adequate, may be cancelled by the Director-General in certain circumstances, and will be reviewed over time to maintain relevance.

Part 4—Ship security plans and ISSCs: This Part requires certain South African and other ships to have ship security plans in force which must include security measures and activities to be undertaken at security levels 1, 2 and 3. Annex 2 of the Regulations provides additional detail on the content and form of these plans. The plans will be approved by SAMSA if adequate, may be cancelled by SAMSA in certain circumstances, and will be reviewed over time to maintain relevance. Ships will be required to have ISSCs that will be issued upon ISSC verification. Division 5 of Part 4 sets out the requirements in relation to obtaining this certification.

Part 5—Foreign regulated ships: This Part requires certain foreign ships to provide pre-arrival information and their ISSCs to demonstrate their compliance with the Regulations. Foreign ships are also obliged to comply with the existing security levels. Ship operators of foreign regulated ships and masters of such ships are required to acknowledge communications regarding security levels and security directions. Part 5 includes compliance checking and control directions that foreign regulated ships may be subject to in the event of non-compliance with the Regulations.

Part 6—Powers of officials: This Part deals with authorised officers, who may exercise powers for the purpose of checking compliance with these Regulations and/or preventing unlawful interference with maritime transport.

Part 7—Information-gathering: This Part enables the Director-General to collect security compliance information from maritime industry participants. The collection of information is essential for the Director-General to deal with, and to resolve, compliance concerns before they become serious and compromise maritime security.

Part 8—Enforcement orders: This Part provides enforcement options in circumstances where contraventions of the Regulations have occurred or are suspected to have occurred. These enforcement options are:

- enforcement orders; and
- ship enforcement orders.

This Part gives the relevant regulator (i.e. the Director-General or SAMSA) the option to enforce compliance with the Regulations, instead of or in addition to referring matters to the prosecuting authorities. Prosecutions are resource intensive and while prosecution is an appropriate remedy for serious breaches of maritime security, the fundamental purpose of maritime security regulation is to encourage and effect compliance.

Part 9—Miscellaneous

This Part deals with security alert systems. It requires certain South African regulated ships to be fitted with a ship security alert system complying with SOLAS regulation XI-2/6.

Part 10—Administrative arrangements and fees: This Part deals with several administrative matters including alternative security agreements, exemptions, the exercise of the Director-General's powers and functions, and fees.

NOTES ON REGULATIONS

PART 1—PRELIMINARY

Division 1—Title and commencement

Regulation 1 Title and commencement

This regulation provides that the Regulations, once made, will be known as the *Merchant Shipping (Maritime Security) Regulations, 2004*.

It also provides that the Regulations commence in 2 stages:

- 1 the day the Regulations are published in the *Gazette*; and
- 2 1 July 2004.

The provisions commencing on publication in the *Gazette* are those that establish definitions, various processes (for example, the declaration of security regulated ports, the approval and cancellation of plans, the approval of training and equipment, ISSC verification and certification), and described the powers of authorised officers.

The provisions commencing on 1 July 2004 are, for example, those that create an obligation on maritime industry participants to comply with security plans, provide for some powers of officials and for the enforcement of provisions. This day is the day on which the Republic's obligations under the maritime security amendments to SOLAS enter into force.

The two stage commencement allows maritime industry participants time to familiarise themselves with their obligations and to have their plans prepared, approved and in place before the obligations and associated penalties come into force.

Division 2—Purpose of regulations

Regulation 2 Purpose of regulations

This regulation describes the purposes of the Regulations. The main purpose of the Regulations is to establish a regulatory framework that will safeguard maritime transport against unlawful interference. In particular, the framework is aimed at protecting ships, ports and port facilities within South Africa, and South African ships operating outside South Africa. The Regulations establish certain security requirements for maritime activities, requiring persons involved in these activities to meet certain obligations. For example, a particular obligation is the requirement of certain maritime industry participants to prepare and comply with security plans.

The implementation of this framework will enable South Africa to meet its obligations under the maritime security amendments to SOLAS.

Division 3—Definitions

Regulation 3 Definitions

This regulation defines certain terms used in the Regulations (these are in addition to the terms defined in section 2 of the Merchant Shipping Act, 1951). The definitions appear in

alphabetical order in the Regulations. The definitions are best read in conjunction with the relevant parts of the Regulations. A number of key definitions are included here.

Declaration of security means an agreement reached between a ship and other party (ship or a person) that identifies the security measures to be implemented by each party in specified circumstances.

Foreign regulated ship means a foreign ship that is:

- a passenger ship; or
- a cargo ship of 500 or more gross tonnes; or
- a mobile offshore drilling unit.

However, a ship is a foreign regulated ship only when it is in South African waters and is in, or proceeding to, a South African port.

ISSC means an International Ship Security Certificate, a document issued to a ship operator upon verification that the ship meets particular security requirements. Ship operators of regulated South African regulated ships will apply to the Authority for an ISSC. Ship operators of foreign regulated ships will need to present a valid ISSC issued for or on behalf of their flag state at any time while in South African waters and, in some cases, South African continental waters.

Maritime industry participant is defined to include persons who must have regard to maritime security matters as part of their business activities. A maritime industry participant includes:

- a port operator;
- a port facility operator;
- the ship operator for a South African regulated ship;
- the ship operator for a foreign regulated ship;
- a contractor who provides services to persons mentioned above;
- a port service provider.

Maritime security levels means the security levels, as advised by the Director-General, that will inform maritime industry participants which measures in their security plans need to be implemented at any given time. Maritime security level 1 will be in place unless the Director-General advises otherwise.

Maritime security plan is defined as a plan prepared for the purposes of Part 3. The plan includes a security assessment and details of measures to be implemented at each of the three maritime security levels. The maritime security plan is the key mechanism that maritime industry participants will use to guide their management of risks and implementation of security measures within their areas of responsibility.

Port facility operator means a person who operates a port facility, being an area within a security regulated port used wholly or partly for the loading or unloading of ships.

Port operator is defined as a person declared in Annex 1 to be the operator of a security regulated port.

Port service provider means:

- a lighter or barge operator;

- a line handling operator;
- a pilot boat operator;
- a tug operator;
- a person who provides certain offshore services, namely provisioning of ships, transshipment of goods or persons, and ship repair.

Security officer means a person designated by a maritime industry participant to implement and maintain:

- the participant's maritime security plan; or
- the ship security plan for a ship operated by the participant.

Security regulated port is defined as those areas of a South African port that are declared and described in Annex 1.

Security regulated ship includes South African regulated ships and foreign regulated ships that are subject to the security regulatory framework set out in these Regulations.

Ship operator means the owner of a security regulated ship, or a person who has an agreement with the owner of a security regulated ship to be the ship operator for the ship for the purposes of these Regulations, for example ship a management company or bareboat charterer.

Ship security records include:

- the ISSC for the ship;
- details of the ship's previous ten port calls and the security level at which the ship operated at those calls; and
- certain parts of the ship security plan, consistent with the ISPS Code.

South African continental waters means:

- South African waters;
- the waters of South Africa's exclusive economic zone; and
- the waters beyond the outer limits of South Africa's exclusive economic zone but over South Africa's continental shelf.

South African regulated ship means:

- any of the following foreign-going ships having South African nationality:
 - passenger ships;
 - cargo ships of 500 or more gross tonnes;
 - mobile offshore drilling units (not on location); and
- mobile offshore drilling units in South African continental waters;
- fixed or floating platforms in South African continental waters.

South African waters means South Africa's internal and territorial waters.

Division 4—Application**Regulation 4 Regulations not to apply to certain ships etc.**

This regulation provides that the Regulations do not apply to warships, naval auxiliaries and other ships owned or operated by the Government or a foreign state and used only on Government non-commercial service.

The Regulations also do not apply to ports and port facilities operated exclusively by the South African National Defence Force.

Division 5—Unlawful interference with maritime transport**Regulation 5 Meaning of unlawful interference with maritime transport**

This regulation defines the term *unlawful interference with maritime transport*. The term is central to the application and understanding of the Regulations and their purpose. It defines the kinds of activities that constitute unlawful interference with maritime transport and therefore the kinds of activities that the Regulations are aimed at safeguarding against. It covers conduct that threatens the safe operation of ports and ships and that may cause harm to passengers, crew, port personnel and the general public or damage to property (whether on board or off a ship).

Division 6—Security regulated ports and port operators**Regulation 6 Meaning of port**

This regulation defines the term *port* as an area of water, or land and water (including any buildings, installations or equipment situated in or on that land or water) intended for use either wholly or partly in connection with the movement, loading, unloading, maintenance or provisioning of ships.

To further clarify this meaning, a port may include:

- areas of water, located between the land of the port and the open waters outside the port, that are intended for use by ships to gain access to loading, unloading or other land-based port facilities; this includes, for example, the channels and approaches through which ships move from the open water to a berth;
- areas of open water intended for anchoring or otherwise holding ships before they enter areas of water described in paragraph (a);
- areas of open water between the areas of water described in paragraphs (a) and (b), for example an area such as a roadstead where a ship loads or unloads cargo or passengers brought from a land-based port facility by smaller vessels.

The definition has been used to comprehensively cover the meaning and intention of the term *port facility* as used in Chapter XI-2 of SOLAS. In Chapter XI-2 the definition of a port facility refers to a *location* where ship-port interfaces take place rather than an entity controlling, or having responsibility for, such interfaces. The definition refers to areas where direct ship-port interfaces take place as well as indirect interfaces, such as anchorages, waiting berths and seaward approaches.

Regulation 7 Security regulated ports

This regulation provides for the declaration of areas of a port to comprise a *security regulated port*. Security regulated ports are those areas of a port that are declared and described in Annex 1. These boundaries indicate where some of the key regulatory obligations for maritime industry participants under these Regulations begin and end.

A security regulated port will include the activities of a port operator, one or more port facility operators and other port service providers. For the purposes of these Regulations, a port facility does not have the same meaning as in Chapter XI-2 of SOLAS. In these Regulations, a port facility will be those areas at which direct and indirect ship-port interfaces take place, including, but not limited to, container terminals, bulk terminals, passenger terminals, common user facilities, and other port service providers falling within the meaning of a maritime industry participant and regulated under these Regulations.

Regulation 8 Port operators

This regulation provides the port operator for a security regulated port to be designated in Annex 1. The port operator should be able to demonstrate that it has responsibility for the relevant waterside and landside areas within a proposed or established security regulated port, for example control of vessel movement and management of port infrastructure.

The person designated as port operator will then be a maritime industry participant and responsible for ensuring that relevant obligations under these Regulations are met.

It is envisaged that the National Ports Authority (NPA) will be designated the port operator for all declared South African security regulated ports falling within NPA's jurisdiction.

Division 7—Security regulated ships**Regulation 9 Meaning of security regulated ship**

This regulation defines the term *security regulated ship* and outlines the types of ships that are included in the regulatory framework established by these Regulations. Security regulated ships comprise South African regulated ships and foreign regulated ships.

Regulation 10 Meaning of South African regulated ship

This regulation defines a *South African regulated ship* as a ship falling into one of the following categories:

- (a) South African foreign-going ships that are:
 - (i) passenger ships; or
 - (ii) cargo ships of 500 or more gross tonnage; or
 - (iii) mobile offshore drilling units (not on location); or
- (b) mobile offshore drilling units that are on location on or above South Africa's continental shelf;
- (c) fixed or floating platforms that are situated on or above South Africa's continental shelf.

Government ships on commercial voyages are included if they fall into one of the categories outlined above.

Categories (b) and (c) include "ships" that are not otherwise subject to Chapter XI-2 of SOLAS. These "ships" are included to ensure broader coverage and better security for maritime operations over which South Africa has jurisdiction.

Regulation 11 Meaning of foreign regulated ship

This regulation defines *foreign regulated ship* to be foreign ships that fall into one or more of the following categories:

- (a) passenger ships;
- (b) cargo ships of 500 or more gross tonnage;
- (c) mobile offshore drilling units,

and are in South African waters and in, or intending to enter, a South African port.

Foreign government ships on commercial voyages are included if they fall into one of the categories outlined above.

Division 8—General defences

This Division allows for a person to be excused from an offence when that person engages in conduct that would otherwise constitute an offence.

Regulation 12 Ship master's decisions

This regulation provides for the excuse to operate where it was necessary and reasonable for the master of a ship to take steps to protect the safety or security of the ship or its cargo, a person on or off the ship, another ship or a port, port facility or other installation within a port.

Regulation 13 Complying with security directions

This regulation provides for the excuse to operate where a person is required to do something in accordance with a security direction that would otherwise be an offence or a contravention of the Regulations or the Merchant Shipping Act, 1951. For example, a security direction may be given requiring a port operator to do something that conflicts with the measures set out in its maritime security plan. In such a case, if the port operator complies with the direction, he or she would not be taken to have committed the offence of not complying with the plan.

Regulation 14 Complying with control directions

This regulation provides for the excuse to operate where a person is required to do something in accordance with a security direction that would otherwise be an offence or a contravention of the Regulations or the Merchant Shipping Act, 1951. For example, a security direction may be given requiring a ship operator to do something that conflicts with the measures set out in a ship security plan for one of its ships. In such a case, if the ship operator complies with the direction, he or she would not be taken to have committed the offence of not complying with the plan.

Division 9—Communicating with ship operators**Regulation 15 Communicating with ship operators**

This regulation provides that, where a person is required to give a notice or direction to a ship operator, the person may give that notice or direction to the shipping agent for the ship. This provision recognises the industry practice of communicating with ship operators and masters through the shipping agent.

PART 2—MARITIME SECURITY LEVELS AND SECURITY DIRECTIONS

A system of three maritime security levels will operate according to the prevailing threat environment, providing direction to maritime industry participants on the security measures that should be implemented. Maritime industry participants will be required in their security plans (plans are covered in Part 3 of the Regulations) to include information on the measures to be implemented at each level and must implement the measures according to the security level. The Director-General may, in certain circumstances, also give specific security directions on particular measures to be implemented.

Division 1—Maritime security levels 1, 2 and 3**Regulation 16 Default security level (maritime security level 1)**

This regulation provides that the default security level is maritime security level 1. This means that, unless the Director General advises otherwise, maritime security level 1 applies at all times to each:

- security regulated port;
- South African regulated ship;
- area within a security regulated port; and
- maritime industry participant.

Regulation 17 Director-General may declare maritime security level 2 or 3

This regulation provides that, where there are grounds for raising the security level to 2 or 3, the Director-General will declare this in writing. A declaration may apply to one or more security regulated ports, South African regulated ships, areas within a security regulated port, maritime industry participants, or operations within or in connection with a security regulated port or ports.

The Director-General may also declare in writing that maritime security level 2 or 3 is in force for a foreign regulated ship. To clarify, this does not mean that, if a foreign regulated ship is operating at a higher security level than the port operator or port facility operator, any of these maritime industry participants will be obliged to match the foreign regulated ship's security level. A declaration of security will be required in such circumstances.

Subregulation (3) notes that the Director-General must only make a declaration of maritime security level 2 or 3 when a heightened risk to maritime transport has been identified and it is appropriate for increased security measures to be implemented for the port, ship, area (within a security regulated port), port facility or participant concerned.

Regulation 18 Requirement for consultation

This regulation requires the Director-General to consult the National Intelligence Coordinating Committee (Nicoc) before raising the security level to level 2 or 3.

Regulation 19 When maritime security level in force

This regulation provides that a security level declaration will remain in place for the port, ship, area or participant concerned until any period specified in the Director-General's declaration expires, or the Director-General revokes the declaration in writing.

Regulation 20 Maritime security level declaration for port covers all port operations

This regulation provides that, where the Director-General makes a declaration for a security regulated port, the declaration applies to each area or security regulated ship and any operations conducted by a maritime industry participant within the boundaries of the security regulated port.

Regulation 21 Security levels and complying with plans

This regulation provides that, where maritime security level 2 or 3 is in force, any affected maritime industry participant, area, port facility and operations of the participant, must comply with the corresponding measures set out in the security plan for that participant, area or operations. Regulation 41 makes it an offence for a maritime industry participant to fail to comply with their security plan.

Similarly, where the declaration affects a South African regulated ship, the corresponding measures set out in the ship security plan must be complied with. Regulation 59 makes it an offence for a ship operator to fail to comply with the security plan.

Regulation 22 Maritime security level 1, 2 or 3 applies with security directions

This regulation provides that, when a security direction is given, the entity to which the direction is given must comply with the requirements of that direction, but all other measures remain in place at the existing security level. For example, if maritime security level 2 is in force and a security direction is given, security level 2 measures remain in force and the specific security direction must also be complied with. Where any conflict occurs between the maritime security level 2 measures and the security direction, the security direction takes precedence.

Division 2—Notifying maritime security level 2 and 3 declarations and revocations**Regulation 23 Notifying declarations covering security regulated ports**

This regulation describes the way in which the Director-General is required to communicate to affected port operators and maritime industry participants the fact that a maritime security level 2 or 3 declaration has been made.

The Director-General must notify the port operator and maritime industry participant with a maritime security plan in force of the declaration as soon as practicable. In turn, the port operator must, as soon as practicable, advise the following persons of the change in the security level:

- maritime industry participants covered by the port operator's plan, or who operate within the boundaries of the port (for example a tug operator or pilot); and
- the master of every security regulated ship within the port or about to enter the port. This will most likely occur when the security regulated ship confirms with the port operator that they are intending to enter a port.

Failure to pass on the level notification is an offence punishable by a fine (R20 000) or by imprisonment for a period not exceeding 12 months, or both. The offence does not apply if the port operator has a reasonable excuse.

Communicating the advice about the security level to be implemented will be critical to ensuring that all relevant maritime industry participants operating in the port and ships in or approaching the port have implemented measures commensurate with the security level, as outlined in each participant's security plan. The level of protection implemented by the measures will reflect the risks faced by each maritime industry participant as outlined in each participant's plan. If one or more participants are not notified of the change in security level, the port may be inadequately protected.

Regulation 24 Notifying declarations covering security regulated ships

This regulation provides that, when a declaration of a maritime security level is made for a security regulated ship, the Director-General must notify either the ship operator of the ship, who must pass it on to the master, or directly the master of the ship. The Director-General must also notify SAMSA and, if the ship is within a security regulated port, the port operator.

Regulation 25 Notifying declarations covering areas within security regulated ports

This regulation provides that declarations of a maritime security level made for an area within a security regulated port must be notified by the Director-General to maritime industry participants controlling those areas, and the port operator.

Regulation 26 Notifying declarations covering maritime industry participants

This regulation provides that declarations of a maritime security level made for maritime industry participants must be notified by the Director-General to both the participant concerned and the port operator of the port in which that participant conducts operations, if the participant is not the port operator.

Regulation 27 Notifying revocations

This regulation provides that, where the Director-General has advised a person that maritime security level 2 or 3 is in force and the declaration is revoked, he or she must, as soon as practicable, notify the person of the revocation.

Similarly, if a port operator has notified a person that security level 2 or 3 is in force, and the Director-General revokes the declaration, the port operator must as soon as practicable advise the person of the revocation. Failure to pass on the revocation notification is an offence punishable by a fine (R20 000) or by imprisonment for a period not exceeding 12 months, or both. The offence does not apply if the port operator has a reasonable excuse.

Adequate lines of communication, when a maritime security level is revoked, are important as maritime industry participants should not have to have security measures in place that are not commensurate with the risks faced at a particular time.

Regulation 28 Communicating declarations and revocations

This regulation provides that the Director-General may notify a security level declaration or revocation by facsimile or e-mail. It also allows a port operator to use the same communication methods as the Director-General.

Division 3—Security directions

Regulation 29 Director-General may give security directions

This regulation provides that the Director-General may direct that additional security measures be implemented or complied with. These directions are known as security directions and must be committed in writing before taking effect. The Director-General may issue security directions only if he or she reasonably believes that an unlawful interference with maritime transport is probable or imminent and that specific measures are appropriate to prevent the unlawful interference from occurring. Security directions are additional to the measures that maritime industry participants must comply with according to their approved plans.

Regulation 30 Requirement for consultation

This regulation requires the Director-General to consult Nicoc before giving a security direction. Subregulation (2) also requires that, where reasonable and practicable, the Director-General must consult certain people about a security direction that relates to the movement of a ship within, or in or out of, a security regulated port. Such a direction could have safety implications, for example it may not be possible for a ship to move safely at low tide or when it is partially loaded. By consulting with operational people at the port, such as maritime industry participants, the harbour master and the port security officer, the Director-General will be made aware of any safety implications of his or her directions.

The Director-General is also required to consult with organs of state whose operations may be affected by the control direction. This recognises that a number of such organs operate in ports, and many of them may have an interest in the movement of ships, for example SARS (customs and excise) must provide clearance before a ship can leave a South African port on an international voyage.

Regulation 31 Confidentiality requirements

This regulation provides that a security direction may include a requirement for confidentiality. This is intended to preserve the effectiveness of security measures that may be compromised if those intending to interfere with maritime security knew the details. Where a person is advised of the requirement for confidentiality, they have an obligation to protect the content of the security direction from unauthorised access or disclosure.

Regulation 32 Persons to whom security directions may be given

This regulation sets out the persons to whom security directions may be given. These may include maritime industry participants and their employees, passengers, and persons who are otherwise within the boundaries of a security regulated port. Where the Director-General issues security directions to passengers and persons other than maritime industry participants, the direction is given if it is clearly displayed at a place where the direction will be complied with.

A security direction given to a port operator may require the operator to communicate all or part of the direction to specified maritime industry participants who operate within the security regulated port. Failure to pass on the direction is an offence punishable by a fine (R20 000) or by imprisonment for a period not exceeding 12 months, or both. The offence does not apply if the port operator has a reasonable excuse.

Regulation 33 Director-General may give security directions to security regulated ships

This regulation provides that security directions may be given to security regulated ships, either to the ship operator of the ship, who must pass it on to the master, or directly to the master of the ship.

Failure by the ship operator to communicate the direction to the master of the ship is an offence punishable by a fine (R20 000) or by imprisonment for a period not exceeding 12 months, or both. The offence does not apply if the ship operator has a reasonable excuse.

Regulation 34 When a security direction is in force

In general, it is envisaged that because security directions are a threat response mechanism they will need to be in place as soon as practicable. In practice, it is recognised that the maritime transport industry may often require time to put the required measures in place. This regulation provides that a security direction comes into force at the time specified in the direction, although if no time is specified or the specified time is before the time when the direction is given, the direction comes into force 24 hours after it is given. Further, if the specified time is 7 days or more after the direction is given, the direction comes into force at the start of that day.

Security directions remain in force until the Director-General revokes them or the direction has been in force for 3 months. This requirement ensures that the security direction is current and appropriate to the circumstances. Any risk to maritime transport that requires increased security measures that go beyond 3 months duration will need to be addressed by changes to maritime security plans.

Regulation 35 Revoking security directions

This regulation provides that a security direction must be revoked if the unlawful interference, which was the subject of the direction, is no longer probable or imminent. The Director-General must notify the person to whom the direction was given of the revocation. Where a direction has been displayed, for example to passengers or other persons, the displayed direction must be removed.

Regulation 36 Communicating security directions

This regulation provides that the Director-General may give, communicate or revoke a security direction by facsimile or email, or orally.

The regulation allows a port or ship operator to use similar communication methods.

Regulation 37 Offence (failing to comply with security directions)

This regulation provides that it is an offence not to comply with a security direction that is in force and given to a person. The offence does not apply if the person has a reasonable excuse.

Penalty: fine (R20 000) or 12 months, or both.

Regulation 38 Offence (failing to comply with confidentiality requirements)

This regulation provides that it is an offence to fail to comply with a confidentiality requirement set out in a security direction. It is not an offence if the disclosure is to a court or to another body or person that has the power to require documents or answers to questions (eg. a court of marine enquiry).

Penalty: fine (R20 000) or 12 months, or both.

PART 3—MARITIME SECURITY PLANS***Division 1—Maritime industry participants required to have maritime security plans*****Regulation 39 Who must have security plans**

This regulation provides that the maritime industry participants who must have a maritime security plan in place are:

- port operators;
- port facility operators;
- port service providers that operate within the boundaries of a security regulated port; and
- port services providers that operate outside a security regulated port for the purpose of ship-port interface between a security regulated ship and a security regulated port.

However, a port service provider is not required to have a plan if the provider has agreed to its activities being covered by another maritime industry participant's plan and its activities are in fact so covered.

Division 6 of Part 1 deals with the identification of port operators of security regulated ports. Port facility operators required to have maritime security plans are those port facility operators located within security regulated ports.

Regulation 40 Offence (operating without maritime security plan)

This regulation makes it an offence for a maritime industry participant to operate without a maritime security plan in force when one is required, unless the participant has a reasonable excuse.

Penalty: fine (R20 000) or 12 months, or both.

Regulation 41 Offence (failing to comply with maritime security plan)

The purpose of a maritime security plan will be to detail the measures that the maritime industry participant will implement at any given security level. In order to protect against unlawful interference with maritime transport, the participant must ensure that the measures are fully implemented as set out in the plan. Failure to comply with a maritime security plan could potentially result in an opportunity for unlawful interference to occur.

Therefore, this regulation makes it an offence for a maritime industry participant to fail to comply with a plan that is in force for the participant, unless the participant has a reasonable excuse.

Penalty: fine (R20 000) or 12 months, or both.

Division 2—Complying with other plans**Regulation 42 Complying with maritime security plans of other participants**

This regulation provides that maritime industry participants must not hinder or obstruct compliance with the maritime security plan of another maritime industry participant. For example, a maritime industry participant (who is not required to have an approved security plan) must take all reasonable steps to comply with a port facility operator's approved security procedures when operating at the port facility's premises.

Maritime industry participants with security plans in force must not only be given the relevant parts of another maritime industry participant's security plan with which they are required to comply, they are required to agree, in writing, to their activities being covered by another maritime industry participant's security plan. This is intended to create a record of each party's knowledge of the arrangement and their obligations under it.

Where a maritime industry participant does obstruct compliance with another participant's plan, the participant does not commit an offence but may be subject to an enforcement order. The objective of this provision is that the participant ceases the conduct that is obstructing compliance.

Regulation 43 South African regulated ships must not hinder or obstruct compliance with maritime security plans

This regulation provides that the operations of a South African regulated ship must not interfere with or obstruct compliance with a maritime security plan. Where the operations do obstruct compliance, either or both of the ship's operator or master may be subject to an enforcement order.

Obligations on foreign regulated ships are dealt with in Division 1 of Part 5.

Division 3—Content and form of maritime security plans**Regulation 44 Content of maritime security plans**

This regulation provides that a key component of the maritime security plan is the security assessment of the participant's operation. The purpose of the security assessment is to ensure that a risk-based systematic and analytical process is conducted on the likelihood and consequences of a potential unlawful interference with maritime transport.

The security plan, which is to be developed on the basis of the security assessment, will set out the security measures to be implemented at maritime security levels 1, 2 and 3. These measures will be informed by the security assessment and will address the individual circumstances and operational requirements of maritime industry participants.

The plan must demonstrate that implementation will contribute towards reducing the risk of unlawful interference with maritime transport. In particular, a security plan must provide the contact details of the participant's security officer and make provision for the use of declarations of security. A declaration of security may be required for specific situations, such as a ship calling at a port when the ship is operating at a higher level of security than the port.

Security assessments must take into account the obligations set out in the ISPS Code. Moreover, the Director-General may require maritime industry participants to take into account certain documents in completing their security assessments, for example, threat and security environment information. Annex 2 of the Regulations requires other matters to be addressed by the security assessment, for example the basic elements of security assessments and the key matters to be covered in security assessment submissions.

The Director-General will issue guidance material to assist maritime industry participants in the preparation of maritime security plans that should be taken into account when the plan is prepared.

Regulation 45 Additional requirements for maritime security plans

This regulation provides that Annex 2 of the Regulations prescribes specific matters that are to be dealt with in, and addressed in relation to, maritime security plans, whether in all plans, plans for a particular kind of maritime industry participant, or plans for a particular class of a particular kind of maritime industry participant. For example, different security requirements may be determined for operators of bulk liquid facilities and for container terminals.

Regulation 46 Form of maritime security plan

This regulation provides that maritime security plans must be in writing and prepared according to the requirements set out in Annex 2. It also requires a maritime security plan to be accompanied by a map, which must be prepared in accordance with the requirements set out in Annex 2.

Division 4—Approving, revising and cancelling maritime security plans**Regulation 47 Providing maritime security plans for approval**

This regulation states that a maritime industry participant wishing to operate with a maritime security plan may submit the plan to the Director-General for approval. This

provision reflects the procedure to be adopted by a maritime industry participant that operates within a declared security regulated port and is required to have a security plan in force.

Regulation 48 Approving maritime security plans

This regulation provides that the Director-General will approve a plan in writing if he or she is satisfied that the plan addresses the relevant requirements under Division 3. If the Director-General is not satisfied, he or she must refuse to approve the plan and advise the participant in writing of the refusal and give reasons for the refusal.

The Director-General is taken to have refused to approve the plan if a participant has given the Director-General a plan and the Director-General does not provide any written notice of approval, or refusal to approve, within 90 days after the plan was submitted. The participant may seek a review of a decision or deemed decision to refuse to approve a plan.

Regulation 49 When maritime security plan in force

This regulation provides that the plan comes into force (i.e. the operator implements the plan and compliance may be enforced) at a time specified in the notice of approval. If the time specified in the notice is earlier than the time at which the notice is given, or the notice does not specify a time, the plan is deemed to come into force when the notice is given.

The plan remains in force until it is replaced or the approval of the plan is cancelled.

Regulation 50 Director-General may direct variations of maritime security plans

This regulation reflects that, in changing circumstances, the Director-General is able to direct a participant to carry out specific variations to a plan. The Director-General may, by written notice, give a direction to vary where he or she is no longer satisfied that the plan is adequate for the purposes of Division 3. The directed variation should address the requirements under Division 3. The notice must detail what the required variation is, and the timeframe within which the participant must give the Director-General the varied plan. If the participant does not give the Director-General the varied plan within the specified period, or within any further allowed period, the Director-General must cancel the approval of the plan.

Regulation 51 Participants may revise maritime security plans

This regulation provides that maritime industry participants may also provide revised plans to the Director-General for approval on their own initiative. Where the participant wishes to revise the plan, the approval process as described in regulations 48 and 49 applies. The revised plan, once approved, replaces any other plan for the participant in force at that time.

Regulation 52 Director-General may direct participants to revise maritime security plans

This regulation provides that the Director-General may direct the participant in writing to revise the plan (and submit the revised plan for approval) where he or she believes that the plan no longer adequately addresses the relevant requirements under Division 3. The

direction to revise the plan must include a specified time period within which the participant must give the Director-General the revised plan. If the participant does not give the Director-General the revised plan within the specified time period, or within any further period allowed by the Director-General, the Director-General must cancel the approval of the plan in writing. This provision reflects the need to have security plans remain current and responsive to the security environment during the life of the plan.

Regulation 53 Maritime security plans must be revised every 5 years

This regulation requires that plans must be revised every five years, unless the Director-General has approved a revised plan for the participant within that period. If the maritime industry participant does not submit a revised plan for approval (in accordance with the established approval procedures) when the existing plan has been in force for 5 years, the approval of the existing plan is automatically cancelled.

Regulation 54 Cancelling inadequate maritime security plans

This regulation provides that a plan may be cancelled if the Director-General believes that the plan no longer adequately addresses the requirements under Division 3 and that it would not be appropriate to direct either a variation or a revision of a plan. The Director-General must cancel the approval of the plan in writing.

Regulation 55 Cancelling for failure to comply with maritime security plans

This regulation provides that the Director-General may cancel the approval of a plan if the maritime industry participant has failed to comply with the plan.

It is envisaged that this power will be used only in those cases where a lesser measure, such as an enforcement order to rectify the non-compliance, is not complied with.

Regulation 56 Cancelling maritime security plans on request

This regulation provides that a maritime industry participant may request the Director-General in writing to cancel the approval of the participant's plan, for example where a participant of a particular kind ceases to operate as a participant of that kind or where the activities of the participant are to be covered by another participant's maritime security plan.

PART 4—SHIP SECURITY PLANS AND ISSCs *etc*

This Part deals with the requirement for South African regulated ships to have ship security plans, International Ship Security Certificates (ISSCs), and certain ship security records. The responsibilities of foreign regulated ships are dealt with in Part 5.

Division 1—Ships required to have ship security plans

Regulation 57 Which ships must have ship security plans

This regulation provides that South African regulated ships must have ship security plans in place. South African regulated ships are defined in Division 7 of Part 1.

Regulation 58 Offence (operating without a ship security plan)

This regulation makes it an offence for a ship operator to operate a South African regulated ship without a ship security plan in force, unless the operator has a reasonable excuse.

Penalty: fine (R20 000) or 12 months, or both.

Regulation 59 Offence (failing to comply with ship security plan)

This regulation makes it an offence for a ship operator to operate a South African regulated ship not in accordance with the plan, unless the operator has a reasonable excuse.

Penalty: fine (R20 000) or 12 months, or both.

Division 2—Complying with other plans**Regulation 60 Complying with ship security plans of other ships**

This regulation is intended to prevent the operations of a South African regulated ship from interfering with the compliance of a ship security plan of another ship. Where such obstruction does occur, an enforcement order may be sought against the ship operator for, or the master of, the ship causing the obstruction.

Regulation 61 Maritime industry participants must not hinder or obstruct compliance with ship security plans

This regulation is intended to prevent the operations of a maritime industry participant from interfering with the compliance of a ship security plan. Where such obstruction does occur, the participant may be subject to an enforcement order.

Division 3—Content and form of ship security plans**Regulation 62 Content of ship security plans**

This regulation provides that a ship security plan must include a security assessment. The purpose of the security assessment is to ensure that a risk-based systematic and analytical process is conducted on the likelihood and consequences of a potential unlawful interference with maritime transport.

The security plan will set out the security activities or measures to be undertaken or implemented at maritime security levels 1, 2 and 3. These activities or measures will be informed by the security assessment and will address the individual circumstances and operational requirements of the ship. The plan must demonstrate that implementation will contribute towards reducing the risk of unlawful interference with maritime transport.

In particular, a security plan must provide the contact details of the ship's security officer and make provision for the use of declarations of security. A declaration of security may be required for specific situations such as a ship visiting a port that is not a security regulated port or the ship calling at a port when the ship is operating at a higher level of security than the port.

SAMSA may require certain documents to be taken into account in completing security assessments, for example, threat and security environment information. Annex 2 of the Regulations requires other matters to be addressed in the security assessment, for example, the basic elements of security assessments and the key matters to be covered in security assessment submissions.

SAMSA will issue guidance material to assist in the preparation of ship security plans that should be taken into account when the plan is prepared.

Regulation 63 Additional requirements for ship security plans

This regulation provides that Annex 2 of the Regulations prescribes specific matters that are to be dealt with in, and addressed in relation to, ship security plans, whether in all plans, plans for operators of a particular kind of ship, or plans for operators of a particular class of a particular kind of ship. For example, different security requirements may be determined for operators of bulk liquid ships and for container ships.

Regulation 64 Form of ship security plans

This regulation provides that ship security plans must be in writing and prepared in accordance with the requirements set out in Annex 2 of the Regulations.

Division 4—Approving, revising and cancelling ship security plans

Regulation 65 Providing ship security plans for approval

This regulation reflects the process that operators of South African regulated ships wishing to operate their ships will need to prepare a ship security plan and submit it to SAMSA for approval.

Regulation 66 Approving ship security plans

This regulation provides that SAMSA will approve a plan in writing if it is satisfied that the plan addresses the relevant requirements under Division 3. If SAMSA is not satisfied, it must refuse to approve the plan and advise the participant in writing of the refusal and outline reasons for the refusal.

SAMSA is taken to have refused to approve the plan if the ship operator has given SAMSA a plan and SAMSA does not provide any written notice of approval, or refusal to approve, within 90 days after the plan was submitted.

Regulation 67 When ship security plan in force

This regulation provides that once the plan has been approved, it comes into force (ie it is operational and compliance may be enforced) at the time specified in the approval notice. Where the approval notice does not specify a time, or the time specified is earlier than the time the notice was given, the plan is deemed to come into force when the notice is given.

The plan remains in force until it is replaced or the approval of the plan is cancelled.

Regulation 68 Authority may direct variations of ship security plans

This regulation reflects the potential for changing circumstances and the need for SAMSA to be able to direct specific variations to a plan. SAMSA may, by written notice, direct the operator of the ship to vary the plan if SAMSA is no longer satisfied that the plan adequately addresses the requirements set out in Division 3. The notice must set out the required variation and specify the period within which the operator must provide the new plan. If the operator does not provide a new plan in accordance with the notice and within the timeframe specified, or any further time allowed by SAMSA, SAMSA must cancel the approval of the plan.

Regulation 69 Ship operator may revise ship security plan

This regulation provides that ship operators may also provide revised plans to SAMSA for approval on their own initiative. Where the operator wishes to revise the plan, the approval process as described in regulations 66 and 67 applies. The revised plan, once approved, replaces any other plan for the ship in force at that time.

Regulation 70 Authority may direct ship operator to revise ship security plan

This regulation provides that SAMSA may, by written notice, direct the operator of a South African regulated ship to revise the ship security plan if SAMSA believes that the plan is no longer adequate with regard to the requirements set out in Division 3. Where the operator does not provide a revised plan within the specified period, or within any further period allowed by SAMSA, SAMSA must cancel the approval of the plan.

Regulation 71 Ship security plans must be revised every 5 years

This regulation requires that ship security plans must be revised every five years, unless SAMSA has approved a revised plan for the participant within that period. If the ship operator does not submit a revised plan for approval (in accordance with the established approval procedures) when the existing plan has been in force for 5 years, the approval of the existing plan is automatically cancelled.

Regulation 72 Cancelling inadequate ship security plans

This regulation provides that a ship security plan may be cancelled if SAMSA believes that the plan no longer adequately addresses the requirements under Division 3 and that it would not be appropriate to direct either a variation or a revision of a plan.

Regulation 73 Cancelling for failure to comply with ship security plan

This regulation provides that SAMSA may cancel the approval of a ship security plan if the ship operator has failed to comply with the plan.

It is envisaged that this power will be used only in those cases where a lesser measure, such as an enforcement order to rectify the non-compliance, is not complied with.

Regulation 74 Cancelling ship security plans on request

This regulation provides that a ship operator may request SAMSA in writing to cancel the approval of the ship security plan.

Division 5—International Ship Security Certificates**Regulation 75 Which ships must have ISSCs**

This regulation provides that South African regulated ships must have an International Ship Security Certificate (ISSC).

For South African regulated ships, the possession of an ISSC will verify that the ship has implemented its approved security plan.

Regulation 76 Offence (operating without an ISSC)

This regulation makes it an offence for the ship operator of a South African regulated ship to operate the ship without an ISSC or interim ISSC in force, unless there is a reasonable excuse.

Penalty: fine (R20 000) or 12 months, or both.

Regulation 77 Applying for ISSC

This regulation provides that the process to obtain an ISSC is for the operator of a South African regulated ship to apply in accordance with the requirements determined in writing by SAMSA.

Regulation 78 Conditions for giving ISSC

This regulation provides that SAMSA must issue an ISSC to the ship operator of a South African regulated ship if the applicant has a ship security plan in force (which has been approved in accordance with the provisions under Division 4), and the ship has been ISSC verified.

Regulation 79 ISSC verification

ISSC verification forms part of the process for issuing the ISSC. This regulation provides that following application for the ISSC, the ship will be ISSC verified by an authorised officer in accordance with procedures determined in writing by SAMSA. The verification will signify that the ship meets the requirements determined in writing by SAMSA, and an ISSC will be issued. Generally speaking, the authorised officer will inspect the ship to verify that the ship is operating in accordance with the procedures set out in its approved ship security plan.

Subregulation (3) provides that if an ISSC is in force and an authorised officer finds that the ship does not meet SAMSA's requirements for ISSC verification, the ship is no longer ISSC verified. The officer may allow a period of time for the ship to rectify compliance with the requirements for verification.

Regulation 80 When ISSC in force

This regulation provides that an ISSC comes into force when it is issued and will remain in force until:

- cancelled by the Authority; or
- the ship operator is no longer the operator of that ship; or

- five years expire after the ISSC was issued.

Regulation 81 Cancelling ISSCs

This regulation provides that SAMSA must cancel an ISSC if the ship no longer has a security plan in force (i.e. if the security plan has been cancelled), or the ship no longer meets the requirements for ISSC verification.

Regulation 82 Interim ISSCs

This regulation provides that an interim ISSC may be issued by SAMSA if the ship operator has applied for an ISSC, has a security plan in place but has not yet been ISSC verified, and SAMSA believes that the ship would be ISSC verified if it were to be inspected.

To facilitate the transfer of ships from one operator to another, interim ISSCs may be issued to a ship operator who has become the operator of a South African regulated ship that had an ISSC before the transfer of operations.

Interim ISSCs remain in force for a period specified in the interim ISSC but not exceeding 6 months.

Regulation 83 Offence (false or misleading statements in relation to having ISSC)

This regulation makes it an offence for the master of a South African regulated ship to engage in conduct that suggests that an ISSC or interim ISSC is in force for the ship when this is not the case. The offence also applies if the false or misleading conduct is made to another SOLAS Contracting Government.

Penalty: fine (R20 000) or 12 months imprisonment, or both.

Division 6—Ship security records**Regulation 84 Ship security records**

This regulation requires that a South African regulated ship keep certain information. This list is based on SOLAS regulation XI-2/9.2. The information may be requested by a foreign port state to confirm compliance by the ship with the requirements of the ISPS Code.

This regulation requires that the information must be kept on board the ship for 7 years. The information may be considered in any audit or review, and may be used by an authorised officer.

PART 5—FOREIGN REGULATED SHIPS***Division 1—Obligations on foreign regulated ships*****Regulation 85 Foreign regulated ships must have ISSCs**

This regulation requires that the ship operator for a foreign regulated ship must have a valid International Ship Security Certificate (ISSC) or an approved ISSC equivalent for the ship. The ship must also carry the required ship security records.

A valid ISSC will be issued to a foreign ship by or on behalf of its flag state in accordance with that state's acceptance of the ISPS Code. ISSCs may be issued by another flag state or a recognised security organisation (such as classification societies), where for example a foreign state has delegated this function to an RSO or a flag state is not a signatory to SOLAS.

SAMSA may approve in writing a certification to be an approved ISSC equivalent. The provision will facilitate the entry into South African security regulated ports of ships that meet ISPS Code security standards but have not been issued with an ISSC.

The master of a foreign regulated ship must be able to show the ISSC or ISSC equivalent and other ship security records to South African authorities. This is likely to occur during port inspections but may also occur at any time while the ship is in South African territorial waters.

If the ship operator fails to have the required ship security records on board, the master or the ship operator may be given a control direction by SAMSA.

Regulation 86 Foreign regulated ships must provide pre-arrival information

This regulation compels masters of foreign regulated ships to provide certain security information prior to their arrival in South African waters or entry into a port, as part of pre-arrival reporting procedures.

The Director-General will prescribe the requirements for the provision of pre-arrival information including the information to be provided, to whom, when, the circumstances, and the form and manner in which this information is to be given. The Director-General may determine that different pre-arrival information is to be provided before entering different places or areas within South Africa.

If the master fails to comply with this provision, SAMSA may give a control direction to the master or the ship operator.

Regulation 87 Foreign regulated ships must allow inspections *etc*

This regulation provides that the master of a foreign regulated ship must allow an authorised officer to board the ship for inspection in accordance with the powers of an authorised officer set out in Part 6. For clarity this regulation provides that the master must provide the ship security records to an officer when requested to do so. If the master does not allow an officer to inspect the ship, then the master, or the ship operator, may be given a control direction by SAMSA.

Regulation 88 Foreign regulated ships must comply with security levels

This regulation sets out a number of security measures that foreign regulated ships must comply with when in South African waters. The ship must be at security level 1 unless otherwise declared by the Director-General. If the Director-General declares that security level 2 applies to a security regulated port a foreign ship in that port must implement ISPS level 2 measures. ISPS level 2 measures are measures that should, under the ISPS Code, be implemented when maritime security level 2 is in force. The ship specific measures to be implemented by the ship at ISPS level 2 will be contained in the ship's security plan, as approved by its flag state. Similar requirements apply if the Director-General declares that security level 3 applies to a port.

The provision also acknowledges that a ship may have been directed by its flag state to implement a higher security level than would otherwise apply under this regulation. In these circumstances, the ship must comply with the directions received from its flag state.

If a foreign regulated ship does not implement security measures appropriate to the security level declared by the Director-General, the ship operator for the ship or the ship's master may be given a control direction by SAMSA.

Regulation 89 Meaning of ISPS level 1, 2 and 3 measures

This regulation defines that ISPS level 1, 2 and 3 measures applicable at security levels 1, 2 and 3 respectively are those that should be implemented as provided in the ISPS Code. The types of measures to be implemented are described in general terms in the ISPS Code. Foreign regulated ships with ISSCs will have details of specific security measures to be implemented at these security levels in their individual ship security plans.

Regulation 90 Foreign regulated ships must comply with security directions

This regulation provides that if the Director-General gives a security direction to a foreign regulated ship the ship must comply with this direction. If the ship does not comply, the ship operator or master may be given a control direction by SAMSA.

In addition to the control direction, the master of the ship and the ship operator may incur a penalty for failing to comply with a security direction under regulation 33, unless the operator has a reasonable excuse.

Regulation 91 Complying with maritime and ship security plans

This regulation provides that a foreign regulated ship must not operate so as to compromise compliance with a maritime security plan of a maritime industry participant or a ship security plan of a South African regulated ship. If the operations do compromise compliance, the ship operator or the master of the foreign regulated ship may be given a control direction by SAMSA.

Regulation 92 Acknowledging level notifications and directions

This regulation provides that if the master of a foreign regulated ship has received notice that maritime security level 2 or 3 is in place for the ship or a control direction has been given to the ship, and the master does not acknowledge receipt of such notice or direction, the master commits an offence.

Similar offences may also apply to the operator of the foreign regulated ship.

Penalty: fine (R20 000) or 12 months imprisonment, or both.

Division 2—Control directions

Regulation 93 Authority may give control directions

This regulation provides the major regulatory powers over foreign regulated ships. Under this regulation SAMSA may give control directions to the ship operator or master of a foreign regulated ship to either control the movement of the ship or require the master or operator to take specific action or refrain from specific action. SAMSA may only give a control direction if it is required to ensure compliance with the obligation imposed on

foreign regulated ships under these regulations or in respect of a special measure to enhance maritime security as set out in SOLAS Chapter XI-2. For example, if a master fails to provide a valid ISSC for a ship the ship may be denied entry into a South African port.

Control directions include, but are not limited to:

- removing the ship from South African waters;
- removing the ship from a security regulated port;
- moving the ship to another location within the port;
- holding the ship in a certain position for a specified period or until a specified event occurs;
- taking particular actions on board the ship;
- allowing an authorised officer on board the ship to inspect the ship or the ship security records carried by the ship.

Regulation 94 Requirement for consultation

This regulation requires that, where reasonable and practicable, SAMSA must consult with certain people about control directions. SAMSA has broad powers to order the movement of regulated foreign ships under regulation 93. Such an order could have safety implications, for example it may not be possible for a ship to move safely at low tide or when it is partially loaded. By consulting with operational people at the port, such as maritime industry participants, the harbour master and the port security officer, SAMSA will be made aware of any safety implications of its directions.

SAMSA is also required to consult with organs of state whose operations may be affected by the control direction. This recognises that a number of such organs operate in ports, and many of them have an interests in the movement of ships, for example SARS (customs and excise) must provide clearance before a ship can leave a South African port on an international voyage.

Regulation 95 Communicating control directions

This regulation allows SAMSA to communicate a control direction by facsimile or e-mail, or orally.

Regulation 96 Offence (failing to comply with control direction)

This regulation makes it an offence for the master of, or ship operator for, a foreign regulated ship to fail to comply with a control direction, unless there is a reasonable excuse.

Penalty: fine (R20 000) or 12 months imprisonment, or both.

PART 6—POWERS OF OFFICIALS

This Part deals with the powers, functions and responsibilities of certain officials under these Regulations in preventing unlawful interference with maritime transport. It sets out who are authorised officers, their powers and the limits on their powers. The primary role of authorised officers is to conduct ISSC verifications and to audit and investigate the

compliance of maritime industry participants with the Regulations. In order to do this effectively, they require a number of powers, including the power to enter premises and ships and inspect documents.

Regulation 97 Authorised officers

This regulation sets out the categories of persons who are authorised officers for the purposes of the Regulations.

Regulation 98 Authorised officers' powers (ISSC verifications)

This regulation provides that an authorised officer may inspect a South African regulated ship for ISSC verification including the inspection of ship security records and other security related documents on board the ship. The purpose of the inspection is to determine whether the ship has implemented security measures in order to meet the requirements for ISSC verification. Regulation 79 sets out those requirements.

Regulation 99 Authorised officers' powers (ships)

This regulation provides an authorised officer with a number of powers he or she may exercise in determining whether a person or ship is complying with the Regulations and, if non-compliance is suspected, to investigate a possible contravention. These powers are essential to the ability of the Director-General and SAMSA to monitor and investigate compliance with the Regulations and fulfil their role as regulator. This regulation gives authorised officers the ability to board and inspect any part of a security regulated ship, inspect and photograph equipment, observe and record operating procedures (including training drills), discuss operating procedures with crew or other maritime industry participants (eg port service providers) and inspect and copy a range of security related documents.

Regulation 100 When powers may be exercised (ships)

This regulation limits when an authorised officer may exercise his or her powers on board a ship. An authorised officer may exercise his or her powers at any time and without notice if the ship is within the boundaries of a security regulated port. However, if the power is to be exercised outside those boundaries, reasonable notice must be given to the ship operator or the master of the ship.

Regulation 101 Authorised officers' powers (participants)

This regulation provides an authorised officer with a number of powers he or she may exercise in determining whether a person or ship is complying with the Regulations and if non-compliance is suspected to investigate a possible contravention. These powers are essential to the ability of the Director-General and SAMSA to monitor and investigate compliance with the Regulations and fulfil their role as regulator. This regulation gives an authorised officer the ability to enter and inspect any area, building, vehicle or vessel under the control of a maritime industry participant. If a maritime industry participant operates from a residence the officer's powers of entry are limited to that part of the residence that are used for those operations. The officer may also inspect and photograph equipment, observe operating procedures (including training drills), discuss operating procedures with employees or other maritime industry participants (eg port service

providers), inspect and copy documents and operate equipment in order to access a document or record kept by a maritime industry participant.

Regulation 102 When powers may be exercised (participants)

This regulation provides that an authorised officer may exercise his or her powers within the boundaries of a security regulated port at any time and without notice. However, if the power is to be exercised outside those boundaries, reasonable notice must be given to the maritime industry participant.

PART 7—INFORMATION GATHERING

This Part allows the Director-General to obtain security compliance information from maritime industry participants. The collection of security compliance information is important for ensuring that appropriate security measures are implemented and maintained to safeguard against unlawful interference with maritime transport, and that South Africa has met its international obligations.

Regulation 103 Director-General may require security compliance information

This regulation enables the Director-General to require information from maritime industry participants that can be used to assess participants' compliance, or non compliance, with their maritime security plans, ship security plans, or other security-related obligations under these Regulations. Such information is security compliance information. If the Director-General has reasonable grounds to believe that the participant has security compliance information he or she may require the information from a participant. The information must be given within the period and in the form and manner specified in the Director-General's written notice. The time period in which information must be given must not be less than 14 days. The Director-General may specify that the participant provide the information orally, in writing, and/or by electronic transmission.

Failure to comply with the Director-general's notice is an offence unless the participant has a reasonable excuse.

Penalty: fine (R20 000) or 12 months imprisonment, or both.

This regulation will allow the Director-General to assess the health of the security of the maritime industry and will enable the Director-General to recognise possible weaknesses in the maritime security system and rectify problems before the safety of the industry and the public is compromised.

Regulation 104 Self-incrimination

Subregulation (1) clarifies that whenever a person is required to give security compliance information that person cannot be excused from giving the information on the grounds that it might incriminate them or expose them to a penalty.

In acknowledgment that coercive information-gathering powers, where the common law privilege is removed, must be accompanied by appropriate protection for the informant, subregulation (2) provides that the individual giving the information and any information, document or thing obtained directly or indirectly as a result of giving information cannot be admitted as evidence in a criminal proceeding, or any other proceeding for the recovery of a penalty, against the person. This protection does not extend to the giving of false or misleading information or documents as provided under regulation 105. This

regulation reinforces the concept that the processes of gathering compliance information to improve maritime security and those relating to judicial proceedings, particularly criminal proceedings, should be separate to ensure a continued free flow of security compliance information. Giving security compliance information should be encouraged so that issues regarding compliance can be addressed before they compromise maritime transport security or put the general public in danger.

Regulation 105 Offence (false or misleading information)

This regulation makes it an offence to give false or misleading security compliance information.

Penalty: fine (R20 000) or 12 months, or both.

PART 8—ENFORCEMENT ORDERS

An enforcement order is a regulatory instrument that may be issued when the Director-General or SAMSA is of the opinion that a breach of the Regulations has occurred and that specific action is required (or stopped or restricted) in order to safeguard against unlawful interference with maritime transport. Use of an order reflects the policy that rectification of a problem is the preferred outcome to prosecution.

Division 1—Enforcement orders for maritime industry participants

Regulation 106 Director-General may make enforcement orders

This regulation allows the Director-General to make enforcement orders prohibiting or restricting specified activities or requiring specific action by a maritime industry participant named in the enforcement order. The Director-General's power to issue an enforcement order must be based on a reasonable belief that the maritime industry participant has contravened a provision in these Regulations and that the order is necessary to safeguard against unlawful interference with maritime transport.

Regulation 107 Commencement and duration of enforcement orders

This regulation provides that an enforcement order comes into force at the time specified in the order, for example 1:00 am on a particular day, or if there is no specified time, at the beginning of the 7th day after the order is made. The provision for a shorter period will allow for orders to be given in emergency situations. An enforcement order remains in force either for the period specified in the order, or if a period is not specified, until the Director-General revokes the order.

Regulation 108 Reviewing enforcement orders

To ensure enforcement orders remain current and relevant, this regulation provides for their regular review. Under this regulation the Director-General must review enforcement orders at least every 3 months, and after each review, confirm, vary or revoke the order in writing. This reflects the fact that enforcement orders are aimed at rectification of a particular problem and should be monitored to ensure the activities or actions specified in the order continue to address that particular contravention.

An order must be revoked unless the Director-General is satisfied that the order is still required to safeguard against unlawful interference with maritime transport.

The Director-General must not vary the order unless he or she is satisfied that the order as varied adequately safeguards against unlawful interference with maritime transport and the varied order bears a clear and direct relationship to the contravention and remains proportionate to the contravention.

Subregulation (4) clarifies that an order continues in force as varied, and will require a further review after an additional 3 months.

Regulation 109 Notifying enforcement orders

This regulation provides that the Director-General must, as soon as is practicable after making or reviewing an enforcement order, inform the maritime industry participant named in the order of the making or review of the order.

Subregulation (2) provides that failure by the Director-General to comply with subregulation (1) does not affect the validity of an order.

Regulation 110 Offence (failing to comply with enforcement order)

This regulation makes it an offence for a maritime industry participant to fail to comply with an enforcement order, unless the participant has a reasonable excuse.

Penalty: fine (R20 000) or 12 months, or both.

Division 2—Ship enforcement orders for South African regulated ships

This Division details provisions for the issuing of enforcement orders to the ship operator or master of a South African regulated ship. The provisions are similar to the enforcement orders able to be issued to other maritime industry participants in that the conditions which must be satisfied and the circumstances under which an order may be issued are the same but an order is limited to the taking or stopping of specified action in relation to the ship.

Regulation 111 Ship enforcement orders (South African regulated ships)

This regulation allows SAMSA to issue a ship enforcement order to the ship operator for a South African regulated ship or the master of the ship requiring the ship operator or the master to take specified action, or refraining from specified action, in relation to the ship.

SAMSA's power to issue a ship enforcement order is limited to those instances where SAMSA reasonably believes that the ship has contravened a provision in these Regulations and it is necessary to make the order to safeguard against unlawful interference with maritime transport.

A ship enforcement order must bear a clear and direct relationship to the contravention and be proportionate to the contravention. Some of the actions that may be required include removing the ship from specified waters or port, or moving or holding the ship within a port.

These orders are similar to the control directions SAMSA may give to foreign regulated ships in certain circumstances under Division 2 of Part 5.

Regulation 112 Requirement for consultation

This regulation requires that, where reasonable and practicable, SAMSA must consult with certain people about ship enforcement orders. SAMSA has broad powers to order the movement of South African regulated ships under regulation 111. Such an order could have safety implications, for example it may not be possible for a ship to move safely at low tide or when it is partially loaded. By consulting with operational people at the port, such as maritime industry participants, the harbour master and the port security officer, SAMSA will be made aware of any safety implications of its directions.

SAMSA is also required to consult with organs of state whose operations may be affected by the control direction. This recognises that a number of such organs operate in ports, and many of them have an interests in the movement of ships, for example SARS (customs and excise) must provide clearance before a ship can leave a South African port on an international voyage.

Regulation 113 Communicating ship enforcement orders

This regulation allows SAMSA to communicate a ship enforcement order by facsimile or e-mail, or orally.

Regulation 114 Offence (failing to comply with ship enforcement order)

This regulation makes it an offence for a ship operator or master to fail to comply with a ship enforcement order, unless there is a reasonable excuse.

Penalty: fine (R20 000) or 12 months, or both.

PART 9—MISCELLANEOUS**Regulation 115 Ship security alert system**

This regulation provides that certain types of South African regulated ships must have a ship security alert system. It also specifies the timeframe in which the ship security alert system must be fitted.

The regulation also provides certain functional requirements of a ship security alert system. These requirements are based on SOLAS regulation XI-2/6.

PART 10—ADMINISTRATIVE ARRANGEMENTS AND FEES**Regulation 116 Alternative security agreements**

This regulation recognised the possibility that the Government may enter into an alternative security agreement under the terms of SOLAS. The regulation provides that the Director-General is to supervise the alternative arrangements and to periodically review the operation of the agreement.

The regulation also recognises the possibility of an agreement of this kind varying or replacing these Regulations in relation to the matters covered by the agreement.

Regulation 117 Exemptions

This regulation allows the Minister to grant exemptions from the requirements of these regulations. An exemption may not be inconsistent with the obligations set out in SOLAS Chapter XI-2 and the ISPS Code.

Regulation 118 Powers and functions of Director-General

This regulation provides that the Director-General may authorise a senior management service employee in the Department of Transport to exercise some or all of the Director-Generals powers and functions under these Regulations.

This regulation recognises that the Director-General is unlikely to be able to exercise all his or her powers and functions personally all the time.

Regulation 119 Director-General may establish co-ordinating structures

This regulation provides that the Director-General may establish structures to facilitate efficient administration of these Regulations.

This regulation recognises the need to co-ordinate the activities of the different roleplayers in the security field.

Regulation 120 Fees (Director-General's functions)

This regulation and Annex 3 establish the fees to be paid for functions performed by the Director-General.

SAMSA has power to impose charges under the South African Maritime Safety Authority Act, 1998.

ANNEX 1—SECURITY REGULATED PORTS

This Annex must be read in conjunction with regulations 7 and 8. It describes the areas in South African ports that constitute security regulated ports for the purposes of these Regulations. It also designates the person who is to be the port operator for a described port.

ANNEX 2—SECURITY PLANS**PART 1—PRELIMINARY****Item 1 Definitions**

This item defines many terms used in the Annex.

Item 2 Port security officers

This item requires that the port operator designate a port security officer (PSO) before submitting the port security plan to the Director-General.

Subitem (2) allows the PSO to be designated by name or by reference to a position. Designation by position is more flexible when the person occupying the position changes.

Subitem (3) lists the duties and responsibilities of the PSO. These duties are based on the requirements of section 17.2 of Part A of the ISPS Code and on the role of the port in coordinating security across the security regulated port.

Subitem (4) requires that the port operator ensure that the PSO is able to perform the listed duties.

Item 3 Port facility security officers

This item requires that the port facility operator designate a port facility security officer (PFSO) before submitting the port facility security plan to the Director-General for approval.

Subitem (2) allows the port facility security officer to be designated by name or by reference to a position. Designation by position is more flexible when the person occupying the position changes.

Subitem (3) requires that the port facility security officer perform certain duties, including those listed in section 17.2 of Part A of the ISPS Code.

Subitem (4) requires that the port facility operator ensure that the PFSO is able to perform the listed duties.

Item 4 Port service provider security officers

This item requires that the port service provider designate a port service provider security officer (PSPSO) before submitting the port service provider security plan to the Director-General for approval.

Subitem (2) allows the PSPSO to be designated by name or by reference to a position. Designation by position is more flexible when the person occupying the position changes.

Subitem (3) lists the duties and responsibilities of PSPSO. These duties are based on the requirements of section 17.2 of Part A of the ISPS Code.

Subitem (4) requires that the port service provider ensure that the PSPSO is able to perform the listed duties.

Item 5 Company security officers

This item requires that a ship operator designate a company security officer (CSO) before the ship security plan is submitted to SAMSA for approval.

Subitem (2) allows the CSO to be designated by name or by reference to a position. Designation by position is more flexible when the person occupying the position changes.

Subitem (3) requires that the CSO perform certain duties, including the duties required in section 11.2 of Part A of the ISPS Code.

Subitem (4) requires that the ship operator ensure that the CSO is able to perform the listed duties.

Item 6 Ship security officers

This item requires that the ship operator designate a ship security officer (SSO) for each ship. The SSO may be designated by name or by position. Designation by position may be more flexible on ships where the personnel changes are frequent.

Subitem (3) requires that the SSO perform certain duties, including those listed in section 12.2 of Part A of the ISPS Code.

Subitem (4) requires that the ship operator ensure that the SSO is able to perform the listed duties.

Subitem (5) requires that if the SSO is not the master of the ship, that the SSO is accountable to the master. This requirement preserves the master's overriding accountability for the safety and security of the ship as stated in section 6.1 of Part A of the ISPS Code and also in item 69 of this Annex.

Item 7 Delegation by security officers

This item allows security officers to delegate some or all of their powers (except the power of delegation) to another person who is able to perform the delegated duties. This power of delegation is necessary because it will be difficult for one person to perform all the duties of a security officer, particularly being contactable 24 hours a day. The delegation may also be used when the security officer will be absent from work.

Item 8 Shore-based personnel and crew

This item requires that the ship operator identify personnel and crew other than the security officers, who have security responsibilities, and ensure that those people are able to perform their security duties.

Item 9 Declarations of security

This item requires that a declaration of security be signed by people responsible for security on behalf of the parties to the declaration. The item also ensures that certain security information is included in the declaration, and that the declaration is retained for future audit and security planning processes.

Item 10 Security plan audits and reviews

This item requires that maritime and ship security plans are audited and reviewed in accordance with the requirements of the approved maritime or ship security plan. Failure to do this will be a failure to comply with the maritime or ship security plan, and may be an offence under regulation 41 or 59.

Subitem (2) requires that a review is also conducted after a maritime transport security incident. This will ensure that the relevant maritime industry participant consider the adequacy of the security measures in the plan in light of an incident.

Subitem (3) requires that records of an audit or review be kept for 7 years. These records may be considered in a future audit or review, and may be used by an authorised officer.

PART 2—MARITIME SECURITY PLANS***Division 1—Preliminary*****Item 11 Common requirements for security assessments**

This item provides that all security assessments must include information about when, how and by whom the security assessment was completed or reviewed and what is covered by the security assessment.

Item 12 Common requirements for security plan audits and reviews

This item provides that a maritime security plan for a port operator, port facility operator or port service provider must include information about when a security plan will be audited and reviewed, and the procedures for conducting audits and reviews. It is important that maritime security plans are subject to ongoing independent audit and review to ensure that they remain adequate and relevant.

Items 13, 14 and 15 Port operator, Port facility operator and Port service provider to give information

These items provide that a port operator, port facility operator and port service provider must share certain information with other maritime industry participants within the port. It is important that maritime industry participants who are required to have security plans have access to certain information about each others' maritime security plans to ensure effective implementation of security measures and procedures. Other relevant security information may be shared through the consultation processes required in items 22, 34 and 46.

Division 2—Port operators***Subdivision 1—Matters to be dealt with in the plan*****Item 16 General**

This item requires that the maritime security plan for a port operator must cover all ship/port interfaces within the security regulated port that are not covered by another maritime security plan. In practice, this means that the port operator will be responsible for matters of ship/port interface occurring on the water-side, and for any areas of land within the security regulated port that are not controlled by a port facility operator or a port service provider. The boundaries of the security regulated port are described in Annex 1.

Item 17 Port operator details

This item requires that the maritime security plan be accompanied by certain information that identifies the port operator who owns the plan and their contact details. The information required in this item may change more frequently than the security arrangements in the plan and needs to be updated quickly and easily. The information is not part of the plan because the process required in Part 3 Division 4 for the Director-General to approve changes to maritime security plans is not required for this

information. The information is not about the security measures to be implemented and does not require approval by the Director-General.

Item 18 Security assessments

This item requires that security assessments address several key matters. These requirements are consistent with the ISPS Code and general risk assessment. The matters also reflect the port operator's role in the identification of port-wide gaps in security that require treatment.

Item 19 Port security officer qualifications and responsibilities

This item requires that a port operator ensure that each person employed as a port security officer or delegate of a port security officer meet certain knowledge and skill requirements as established by the port operator. It also requires that a port operator's plan provide suitable training to the port security officer. The Director-General will consider the proposed knowledge and training when deciding whether to approve the plan. Records of training undertaken may be subject to audit by an authorised officer.

Item 20 Other personnel with security role

This item requires that the port operator consider the security responsibilities of employees other than the port security officer and ensure that they have appropriate knowledge and receive training. The Director-General will consider the proposed knowledge and training when deciding whether to approve the plan and the records of this training may be subject to audit by an authorised officer.

Item 21 Matters that must be in plan

This item requires that the port operator address certain matters in their security plan. These matters are analogous to the requirements of the ISPS Code for port facility operators. The measures and procedures for these matters should include those identified in the security assessment.

Item 22 Consultation and communication

This item requires that a port operator consult with the other maritime industry participants within the port and with employees. This will ensure that security measures implemented by the various maritime industry participants in a port complement each other, and promote a strong security culture within the port.

Subitem (2) also requires that a port operator's plan include how they will fulfil their obligations to pass on information about security directions and changes of security level. This information may need to be conveyed quickly and it is important that there be a clearly understood mechanism for communication of security directions across the port.

Item 23 Maritime security level 1

This item requires that the maritime security plan detail the measures to be implemented that are appropriate to the ordinary operating environment of the port. The measures and procedures will vary depending on the types and levels of risks identified in the security assessment.

Paragraph (d) also recognises that not all measures in the plan will be implemented immediately. For example, there may be some delay for items requiring major capital investment. In this situation, the maritime security plan should provide that interim measures are in place until the permanent measures can be fully implemented. The Director-General will consider the schedule for implementation and the appropriateness of the interim measures when making the decision to approve a maritime security plan.

Item 24 Maritime security levels 2 and 3

This item requires that the maritime security plan includes additional security measures that can be implemented during times of heightened risk to maritime transport. This reflects the requirement of the ISPS Code for three security levels. The Director-General has the power to change the security level in regulation 17.

Item 25 Declarations of security

This item requires that the maritime security plan provide for declarations of security (DOS). The ISPS Code provides for DOS as a way for ports and ships to ensure that security is maintained during a ship/port interface. A ship may agree to a DOS with a port operator, or with more than one maritime industry participant within the port, for example a port facility operator and one or more port service providers may also be party to a DOS.

Subdivision 2—Form of plan

Item 26 Map of port

This item requires that a port operator provide a map or maps that meet the requirements in regulation 46(2) and (3).

Item 27 Protection of plan

This item requires that the port operator must protect the maritime security plan from unauthorised access, amendment or disclosure. The value of the preventive security measures and procedures in maritime security plans may be compromised if the plans are disclosed to persons without authority to view or possess them.

Division 3—Port facility operators

Subdivision 1—Matters to be dealt with in plan

Item 28 Port facility operator details

This item requires that the maritime security plan be accompanied by certain information that identifies the port operator who owns the plan and their contact details. The information required in this item may change more frequently than the security arrangements in the plan and needs to be updated quickly and easily. The information is not part of the plan because the process required in Part 3 Division 4 for the Director-General to approve changes to maritime security plans is not required for this information. The information is not about the security measures to be implemented and does not require approval by the Director-General.

Item 29 Details of other maritime industry participants

This item requires that the port facility operator have contact information for the port security officer and the port service providers who conduct operations within the facility. The port facility operator may need to communicate quickly with those listed should a security incident occur.

Item 30 Security assessments

This item requires that security assessments address several key matters. These requirements are consistent with the ISPS code and general risk assessment processes.

This item also requires that the security assessment consider the types of ships and cargoes served by the port facility and any special risks or threats associated with such ships and cargoes to ensure appropriate consideration of risk particular to individual port facilities.

Item 31 PFSO qualifications and responsibilities

This item requires that a port facility operator ensure that the port facility security officer (PFSO) has suitable knowledge and skills to perform their responsibilities and provides suitable training to the PFSO. The Director-General will consider the proposed knowledge and training when deciding whether to approve the plan and the records of this training may be subject to audit by an authorised officer.

Item 32 Other personnel with security role

This item requires that the port facility operator consider the security responsibilities of employees other than the port facility security officer and ensure that they have appropriate knowledge and receive training. The Director-General will consider the proposed knowledge and training when deciding whether to approve the plan and the records of this training may be subject to audit by an authorised officer.

Item 33 Matters that must be in plan

This item requires that the port facility operator address certain matters in their security plan. These matters are based on the requirements of the ISPS Code.

The measures and procedures for these matters should include those identified in the security assessment, including those to take into account special risks or threats associated with the types of ships or their cargoes regularly served by the port.

Item 34 Consultation

This item requires that a port facility operator consult with the other maritime industry participants within the port and with its employees. This will ensure that security measures implemented by the various maritime industry participants in a port complement each other, and promote a strong security culture within the port.

Item 35 Maritime security level 1

This item requires that the maritime security plan detail the measures to be implemented that are appropriate to the ordinary operating environment for the port facility operator.

The measures and procedures will vary depending on the types and levels of risk identified in the security assessment.

This item also recognises that not all measures in the plan will be implemented immediately. For example, there may be some delay for items requiring major capital investment. In this situation, the maritime security plan should provide that interim measures are in place until the permanent measures can be fully implemented. The Director-General will consider the schedule for implementation and the appropriateness of the interim measures when making the decision to approve a maritime security plan.

Item 36 Maritime security levels 2 and 3

This item requires that the maritime security plan include additional security measures that can be implemented during times heightened risk to maritime transport. This reflects the requirement of the ISPS Code for three security levels. The Director-General has the power to change the security level in regulation 17.

Item 37 Declarations of security

This item requires that the maritime security plan provide for declarations of security (DOS). The ISPS Code provides for DOS as a way for ports and ships to ensure that security is maintained during a ship/port interface. A ship may agree to a DOS with a port facility operator, or with more than one maritime industry participant within the port, for example the port operator and one or more port service providers may also be party to a DOS.

Subdivision 2—Form of plan

Item 38 Map of port facility

This item provides more information about the map of the port facility required in regulation 46(2) and (3).

Item 39 Protection of plan

This item requires that the port facility operator must protect the maritime security plan from unauthorised access, amendment or disclosure. Preventive security measures and procedures in maritime security plans may be compromised if the plans are disclosed to persons without authority to view or possess them.

Division 4—Port service providers

Subdivision 1—Matters to be dealt with in plan

Item 40 Port service provider details

This item requires that the maritime security plan be accompanied by certain information that identifies the port service provider who owns the plan and their contact details. The information required in this item may change more frequently than the security arrangements in the plan and needs to be updated quickly and easily. The information is not part of the plan because the process required in Part 3 Division 4 for the Director-General to approve changes to maritime security plans is not required for this

information. The information is not about the security measures to be implemented and does not require approval by the Director-General.

Item 41 Details of other maritime industry participants

This item requires that the port service provider have contact information for the port security officer and the port facility operators within the port. The port service provider may need to communicate quickly with those listed should a security incident occur.

Item 42 Security assessments

This item requires that security assessments address several key matters. These requirements are consistent with the ISPS code and general risk assessment processes.

Item 43 PSPSO qualifications and responsibilities

This item requires that a port service provider ensure that the PSPSO have certain knowledge or skills to perform their responsibilities and provides suitable training to the PSPSO. The Director-General will consider the proposed knowledge and training when deciding whether to approve the plan and the records of this training may be subject to audit by an authorised officer.

Item 44 Other personnel with security role

This item requires that the port facility operator consider the security responsibilities of employees other than the port service provider security officer and ensure that they have appropriate knowledge and receive training. The Director-General will consider the proposed knowledge and training when deciding whether to approve the plan and the records of this training may be subject to audit by an authorised officer.

Item 45 Matters that must be in plan

This item requires that the port service provider address certain matters in their security plan. These matters are based on the requirements of the ISPS code. These measures and procedures for these matters should include those identified in the security assessment.

Item 46 Consultation

This item requires that a port service provider consult with the other maritime industry participants within the port and with employees. This will ensure that security measures implemented by the various maritime industry participants in a port complement each other, and promote a strong security culture within the port.

Item 47 Maritime security level 1

This item requires that the maritime security plan detail the measures to be implemented that are appropriate to the ordinary operating environment for the port service provider. The measures will vary depending on the type and level of risk identified in the security assessment.

This item also recognises that not all measures in the plan will be implemented immediately. For example, there may be some delay for items requiring major capital

investment. In this situation, the maritime security plan should provide that interim measures are in place until the permanent measures can be fully implemented. The Director-General will consider the schedule for implementation and the appropriateness of the interim measures when making the decision to approve a maritime security plan.

Item 48 Maritime security levels 2 and 3

This item requires that the maritime security plan include additional security measures that can be implemented during times heightened risk to maritime transport. This reflects the requirement of the ISPS Code for three security levels. The Director-General has the power to change the security level in regulation 17.

Item 49 Declarations of security

This item requires that the maritime security plan provide for declarations of security (DOS). The ISPS Code provides for DOS as a way for ports and ships to ensure that security is maintained during a ship/port interface. A ship may agree to a DOS with a port service provider, or with more than one maritime industry participant within the port, for example the port operator, a port facility and other port service providers may also be party to a DOS.

Subdivision 2—Form of plan

Item 50 Map of port service provider

This item provides more information about the map of the area under control by a port service provider that is required in regulation 46(2) and (3).

Item 51 Protection of plan

This item requires that the port service provider must protect the maritime security plan from unauthorised access, amendment or disclosure. Preventive security measures and procedures in maritime security plans may be compromised if the plans are disclosed to persons without authority to view or possess them.

PART 4—SHIP SECURITY PLANS AND ISSCS

Division 1—Matters to be dealt with in ship security plan

Item 52 Identification of ship

This item requires that a ship security plan be accompanied by a document that lists information about the ship and its operations. The information required in this item may change and need to be updated quickly and easily. The information is not part of the plan because the process required in Part 4 Division 4 for SAMSA to approve ship security plans is not required for this information. The information is not about the security measures to be implemented and does not require approval by SAMSA.

Item 53 Security assessments

This item provides that all security assessments must include information about when, how and by whom the security assessment was completed or reviewed and what is covered by the security assessment.

This item also requires that security assessments address key matters. The matters listed here are based the requirements of the ISPS Code.

Item 54 Ship operator, CSO and SSO

This item requires that a ship security plan be accompanied by a document that sets out the name of key individuals and contact details for the company security officer.

This item also requires that the ship security plan set out any duties and responsibilities of the CSO and SSO that are in addition to the duties and responsibilities listed in sections 11.2 and 12.2, respectively, of Part A of the ISPS Code.

This item also requires that the ship security plan set out how the CSO will communicate with the master of the ship if the Director-General gives the CSO notice of a change of security level, or a security direction for the ship.

Item 55 Shore-based personnel and crew with security role

This item requires that the ship operator consider the security responsibilities of employees other than the ship and company security officer and ensure that they have appropriate knowledge and receive training. SAMSA will consider the proposed knowledge and training when deciding whether to approve the plan and the records of this training will be subject to audit by an authorised officer.

Item 56 Training

This item requires that a ship operator plan for and provide suitable training to the company, ship security officers and crew and shore based personnel with security responsibilities. SAMSA will consider the proposed knowledge and training when deciding whether to approve the plan and the records of this training will be subject to audit by an authorised officer.

Item 57 Matters that must be in plan

This item requires that the ship operator address certain matters in their security plan. These matters are based on the requirements of the ISPS Code. The measures and procedures for these matters should include those identified in the security assessment.

Item 58 Maritime security level 1

This item requires that the ship security plan detail the measures that will be implemented that are appropriate to the ordinary operating environment for the ship. The types of measures will vary depending on the level of risk identified in the security assessment.

This item also recognises that not all measures in the plan will be implemented immediately. For example, there may be some delay for items requiring major capital investment. In this situation, the ship security plan should provide that alternative measures are in place until the permanent measures can be fully implemented. SAMSA

will consider the schedule for implementation and the appropriateness of the alternative measures when making the decision to approve a ship security plan.

Item 59 Maritime security levels 2 and 3

This item requires that the ship security plan include additional security measures that can be implemented during times of heightened risk to maritime transport. This reflects the requirement of the ISPS Code for three security levels. The Director-General has the power to change the security level in regulation 17.

Item 60 Declarations of security

This item requires that the ship security plan provide for declarations of security (DOS). The ISPS Code provides for DOS as a way for ports and ships to ensure that security is maintained during a ship/port interface. A ship may request a DOS from a port it is visiting, but the port is not required under the ISPS Code to agree to a DOS.

Item 61 Security of ship in non-ISPS Code compliant ports

This item requires that the ship security plan for a ship that may call at non-ISPS Code compliant ports or locations plan for the maintenance of security measures that will protect the ship from any security risks associated with those locations.

Item 62 Security of ship in exceptional circumstances

This item requires that a ship security plan provide for the ongoing security of the ship during exceptional circumstances. Ships are vulnerable to sudden changes of route and activity due, for example, to bad weather, search and rescue obligations and the security of the ship should be maintained at such times.

Item 63 Pre-entry information

This item requires that a ship security plan address how certain ships will provide specified pre-entry information. The pre-entry information is based on the requirements of SOLAS regulation XI-2/9.2.

Item 64 Maritime transport security incidents

This item requires that the ship security plan address how maritime transport security incidents will be reported to SAMSA.

This item also requires that a maritime security plan address procedures for responding to security threats or breaches of security, including maintaining operations. This item ensures that, in an emergency, the appropriate course of action is understood and followed.

Item 65 Security equipment

This item requires that a ship security plan list the security equipment on board the ship and provide for the maintenance of that equipment in a calibrated state.

Item 66 On-board systems

This item requires that a ship security plan provide information about specified systems carried on the ship that may have a security function.

This item also requires, if a ship has a ship security alert system, that the plan address the characteristics and correct use of the alert.

The requirement to have a ship security alert system is set out in regulation 113.

Item 67 Ship security records

This item requires that the ship security plan list the ship security records that must be kept on the ship and plan for preserving those records, and providing them to a port state for inspection. A port state control officer may inspect certain ship security records under SOLAS regulation XI-2/9.

Item 68 Security plan audits and reviews

This item provides that a ship security plan must include information about when the security plan will be audited and reviewed, and the procedure for conducting the audit or review. It is important that ship security plans are subject to ongoing independent audit and review to ensure that they remain adequate and relevant.

Division 2—Form of ship security plan**Item 69 Statement about authority of master**

This item requires that a ship security plan include a statement preserving the authority of the master on the ship. This reflects the obligation on shipping companies in section 6.1 of Part A of the ISPS Code.

Item 70 Protection of plan

This item requires that the ship operator must protect the ship security plan from unauthorised access, amendment or disclosure. Preventive security measures and procedures in ship security plans may be compromised if the plans are disclosed to persons without authority to view or possess them.

ANNEX 3—FEES

This Annex will prescribe the fees payable to the Director-General in respect of the exercise of certain functions by the Director-General.