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MERCHANT SHIPPING ACT, 1951 (ACT No. 57 OF 1951)

MERCHANT SHIPPING (MARITIME SECURITY) REGULATIONS, 2004

The Minister of Transport has, under section 356 of the Merchant Shipping Act, 1951 (Act No. 57 of 1951), made the regulations in the Schedule.

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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 10 and Part 11;
- (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 a security plan should make an appropriate contribution towards the achievement of the maritime security outcomes.

(4) The *maritime security outcomes* are as follows:

- (a) the Republic's obligations under Chapter XI-2 of the Safety Convention and the ISPS Code, including those with regard to the welfare of seafarers, are met;
- (b) the vulnerability to unlawful interference of South African ships, ports and other ships within the Republic is reduced without undue disruption of trade;
- (c) the risk that maritime transport is used to facilitate unlawful activities is reduced;
- (d) security information is communicated effectively among maritime industry participants and organs of state with maritime transport security responsibilities.

(5) It is not the purpose of these regulations to prevent lawful advocacy, protest, dissent or industrial action that does not compromise maritime security.

*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(1);

"**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 unrestricted 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 unrestricted access while on board the ship;

"**bulk carrier**" has the same meaning as in regulation XI-2/1.1 of the Safety Convention;

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

"**cargo ship**" means any mechanically propelled ship, including a high-speed craft, that is not a passenger ship, a pleasure vessel or a fishing, sealing or whaling boat;

"**chemical tanker**" has the same meaning as in regulation XI-2/1.2 of the Safety Convention;

"**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 119;

"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;

"gas carrier" has the same meaning as in regulation XI-2/1.3 of the Safety Convention;

"high-speed craft" has the same meaning as in regulation XI-2/1.4 of the Safety Convention;

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

"ISPS Code" means the International Ship and Port Facility Security (ISPS) Code 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;

"MRCC" means the maritime rescue co-ordination centre designated under section 11 of the South African Maritime and Aeronautical Search and Rescue Act, 2002 (Act No. 44 of 2002);

"maritime transport security incident" has the meaning given by regulation 103;

"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 outcomes" has the meaning given by regulation 2(4);

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

"mobile offshore drilling unit" has the same meaning as in regulation XI-2/1.5 of the Safety Convention;

"Nicoc" means the National Intelligence Co-ordinating Committee as defined in section 1 of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994);

"oil tanker" has the same meaning as in regulation XI-2/1.6 of the Safety Convention;

"organ of state" has the same meaning as in section 239 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

"passenger" includes an intending passenger;

"passenger ship" includes a passenger ship that is a high-speed craft, but does not include a pleasure vessel;

"pleasure vessel" means a ship that is used, or intended to be used, solely for sport or recreation;

"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), that —

- (a) is used either wholly or partly in connection with the loading or unloading of security regulated ships; and
- (b) is identified as a port facility in the map that in, terms of regulation 46(2), must accompany the maritime security plan for the security regulated port;

"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 operator;
- (b) a barge operator;
- (c) a line handling boat operator;
- (d) a pilotage service operator;
- (e) a tug operator;
- (f) a ship repair service operator; or
- (g) an operator of any of the following marine services:
 - (i) offshore ship supply;
 - (ii) offshore transshipment of goods or persons;

"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 116(1);

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

"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;

"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 124(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) a record of a kind required by regulation 85(1)(b); and
 - (ii) any information included in such a record;

"ship to ship activity" means any activity, not related to a security regulated port, that involves the transfer of goods or persons from one ship to another;

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

"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) For the purposes of these regulations, a ship of a kind mentioned in regulation 10 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 and places

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 Convention 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 by the Minister by notice in the *Gazette*.

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 a ship at risk by interfering with, damaging or destroying navigational aids, communication systems or security systems;
- (h) putting the safety of a ship 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 area of a port in the Republic that is 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 that 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. A ship is a *South African regulated ship* if the ship —

- (a) is a South African ship;
- (b) is foreign-going; and
- (c) is one of the following:
 - (i) a passenger ship;
 - (ii) a cargo ship of 500 gross tonnage or more;
 - (iii) a mobile offshore drilling unit (other than a unit that is attached to the seabed).

Meaning of *foreign regulated ship*

11. A ship is a *foreign regulated ship* if the ship —

- (a) is a foreign ship;
- (b) is one of the following:
 - (i) a passenger ship;
 - (ii) a cargo ship of 500 gross tonnage or more;
 - (iii) a mobile offshore drilling unit (other than a unit that is attached to the seabed);
- (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;

- (b) without the existence of that physical element the person would not commit the offence;
- (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, in 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, in 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 may not make a declaration under subregulation (1) or (2) unless the Director-General reasonably believes that 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 about the proposed declaration.

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) A port operator who, without reasonable excuse, fails to comply with subregulation (2) commits an offence punishable upon conviction by a fine or by imprisonment for a period not exceeding 12 months.

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 —

- (i) the Authority; and
- (ii) 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, 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, 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) A port operator who, without reasonable excuse, fails to comply with subregulation (2) commits an offence punishable upon conviction by a fine or by imprisonment for a period not exceeding 12 months.

Manner of notifying declarations and revocations

28. (1) This regulation applies to notifying declarations, or revocations of declarations, under this Division.

(2) The Director-General or port operator must notify a declaration or revocation —

- (a) orally (for example, by telephone or radio communication);
- (b) in writing; or
- (c) by electronic transmission (for example, 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 may not give a security direction unless the Director-General reasonably believes that 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 about the proposed direction.

(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 must 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) A port operator who, without reasonable excuse, fails to comply with subregulation (4) commits an offence punishable upon conviction by a fine or by imprisonment for a period not exceeding 12 months.

(6) 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) A ship operator who, without reasonable excuse, fails to comply with subregulation (2) commits an offence punishable upon conviction by a fine or by imprisonment for a period not exceeding 12 months.

(4) 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 three 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.

Manner of giving, communicating and revoking security directions

36. (1) Subject to regulations 32(2) and 35(3), the Director-General must give a security direction, or notify a person of the revocation of a security direction under regulation 35(2)—

- (a) orally (for example, by telephone or radio communication); or
- (b) in writing; or
- (c) by electronic transmission (for example, by facsimile or e-mail).

(2) A port or ship operator required to communicate a security direction under regulation 32(3) or 33(2), respectively, must do so using any of the means mentioned in subregulation (1).

Offence (failing to comply with security directions)

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

- (a) a security direction is given or communicated to the person; and
- (b) the direction is in force; and
- (c) the person, without reasonable excuse, fails 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, without reasonable excuse, fails 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 may 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 may not hinder or obstruct compliance with maritime security plans

43. (1) The operations of a South African regulated ship may 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;
- (e) take into account any documents required in writing by the Director-General to be taken into account; and
- (f) demonstrate that the implementation of the plan will make an appropriate contribution towards the achievement of the maritime security outcomes.

(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 map of the area covered by the plan.

(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 of this Part, 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 of this Part, 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 of this Part, 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 of this Part,

the Director-General may, by written notice given to the participant, direct the participant to vary the plan.

(2) However, the Director-General may 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 of this Part.

(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 of this Part —
 - (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,

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 five years

53. If —

- (a) a maritime security plan for a maritime industry participant (the *existing plan*) has been in force for a period of five 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 of this Part; 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***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 may 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 may not hinder or obstruct compliance with ship security plans

61. (1) A maritime industry participant may 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;
- (e) take into account any documents required in writing by the Authority to be taken into account; and
- (f) demonstrate that the implementation of the plan will make an appropriate contribution towards the achievement of the maritime security outcomes.

(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 of this Part, 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 of this Part, 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 of this Part, 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 of this Part,

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 may 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 of this Part.

(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 of this Part —
 - (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 five 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 five 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 of this Part; 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 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 expired.

(2) In making a determination under subregulation (1), the Authority must take account of 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 five 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—

- (a) there is no longer a ship security plan in force for the ship; or
- (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 six 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 has 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;
- (i) training, drills and exercises;
- (j) security threats and maritime transport security incidents;
- (k) breaches of security;
- (l) changes to security levels;

- (m) communications relating to the direct security of the ship (such as specific threats to the ship or to port facilities used in connection with the loading or unloading of the ship);
- (n) ship security plan audits and reviews by internal auditors;
- (o) periodic review of ship security assessments;
- (p) periodic ship security plan reviews;
- (q) implementation of any amendments to the ship security plan;
- (r) inspection, testing, calibration and maintenance of security equipment (including the ship security alert system);
- (s) other practical security-related information in accordance with regulation XI-2/9.2.1 of the Safety Convention.

(2) Ship security records must be made available for inspection in accordance with these regulations.

(3) Ship security records in relation to the following matters must be made available for inspection at the request of a person who is authorised by a Convention State to inspect the records:

- (a) whether the ship has a valid ISSC;
- (b) the period of validity, and the name of the issuing authority, of the ISSCs possessed by the ship;
- (c) the security level at which the ship is operating;
- (d) the security level at which the ship operated in any of the last 10 ports of call where it conducted ship/port interface;
- (e) any special or additional security measures that were implemented by the ship in the last 10 ports of call;
- (f) any ship security procedures maintained by the ship in the last 10 ports of call where it conducted ship to ship activities;
- (g) the name of the person responsible for appointing—
 - (i) the master and the ship's crew; and
 - (ii) other persons employed or engaged in any capacity on board the ship and on the business of the ship;
- (h) the name of the person who decides how the ship is to be employed;
- (i) if the ship is employed under the terms of a charter party or of charter parties, the names of the parties to the charter arrangements;
- (j) other practical security-related information (except details of the ship security plan for the ship) in accordance with regulation XI-2/9.2.1 of the Safety Convention.

(4) Ship security records must be kept on board the ship for a period of seven 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 has on board a record of the following information in relation to the ship:
 - (i) confirmation that a valid ISSC, or approved ISSC equivalent under subregulation (3), is on board the ship;
 - (ii) the name of the authority that issued the ship's ISSC or approved ISSC equivalent;
 - (iii) the date when the ISSC or approved ISSC equivalent expires;
 - (iv) the security level at which the ship is operating;
 - (v) the security level at which the ship operated in the last 10 ports of call where the ship conducted ship/port interface;
 - (vi) whether the ship implemented any special or additional security measures in the last 10 ports of call;
 - (vii) whether appropriate security-related procedures were maintained in the last 10 ports of call where the ship conducted ship to ship activities;
 - (viii) the name of the person responsible for appointing —
 - (aa) the master and ship's crew; and
 - (bb) other persons employed or engaged in any capacity on board the ship and on the business of the ship;
 - (ix) the name of the person who decides how the ship is to be employed;
 - (x) if the ship is employed under the terms of one or more charter parties, the names of the parties to the charter arrangements; and
 - (xi) other practical security-related information (except details of the ship security plan for the ship) in accordance with regulation XI-2/9.2.1 of the Safety Convention;
- (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 of this Part.

(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 of this Part.

Foreign regulated ships must allow inspections

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 of this Part.

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 of this Part.

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 of this Part.

Complying with maritime and ship security plans

91. (1) The operations of a foreign regulated ship may 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 may 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 of this Part.

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, without reasonable excuse, fails 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, without reasonable excuse, fails 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, without reasonable excuse, fails 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, without reasonable excuse, fails 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 may 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 —

- (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; or
- (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 must implement, or comply with, the direction.

Manner of giving control directions

95. The Authority must give a control direction to the ship operator for, or the master of, a foreign regulated ship —

- (a) orally (for example, by telephone or radio communication);
- (b) in writing; or
- (c) by electronic transmission (for example, by facsimile or e-mail).

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, without reasonable excuse, fails 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, without reasonable excuse, fails 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. (1) Each of the following is an *authorised officer*:

- (a) a surveyor;
- (b) a proper officer;
- (c) a member, designated in writing by the Director-General, of any of the following organs of state:
 - (i) the Department of Transport;
 - (ii) the National Intelligence Agency;
 - (iii) the South African National Defence force;
 - (iv) the South African Police Service.

(2) A member mentioned in subregulation (1)(c) may be designated by name or by reference to a position or rank.

(3) An authorised officer may be accompanied by any person reasonably required to assist in exercising the authorised officer's powers.

Authorised officers' powers (ISSC verifications)

98. An authorised officer may inspect —

- (a) a South African regulated ship;
- (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 purpose of determining whether a person or a ship is complying with these regulations.

(2) For the purpose 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 or approved ISSC equivalent;
 - (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 may 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 regulation XI-2/9 of the Safety Convention, 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 purpose determining whether a person or ship is complying with these regulations.

(2) For the purpose 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

REPORTING MARITIME TRANSPORT SECURITY INCIDENTS

*Division 1—Meaning of maritime transport security incident***Meaning of maritime transport security incident**

103. Each of the following is a *maritime transport security incident*:

- (a) a threat of unlawful interference with maritime transport;
- (b) an unlawful interference with maritime transport.

*Division 2—Certain people must report incidents***Port operators**

104. (1) A port operator commits an offence if—

- (a) the port operator becomes aware of a maritime transport security incident; and
- (b) the port operator fails to report the incident as required by regulation 110 as soon as possible.

(2) Subregulation (1) does not apply in relation to a report that must be made to a particular person if—

- (a) the port operator reasonably believes that the person is already aware of the incident; or
- (b) the port 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.

Ship masters

105. (1) The master of a security regulated ship commits an offence if—

- (a) the master becomes aware of a maritime transport security incident; and
- (b) the master fails to report the incident as required by regulation 111 as soon as possible.

(2) Subregulation (1) does not apply in relation to a report that must be made to a particular person if—

- (a) the master reasonably believes that the person is already aware of the incident; or
- (b) the master 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.

Ship operators

106. (1) A ship operator for a security regulated ship commits an offence if—

- (a) the ship operator becomes aware of a maritime transport security incident; and
- (b) the ship operator fails to report the incident as required by regulation 112 as soon as possible.

(2) Subregulation (1) does not apply in relation to a report that must be made to a particular person if—

- (a) the ship operator reasonably believes that the person is already aware of the incident; or
- (b) 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.

Port facility operators

107. (1) A port facility operator commits an offence if—

- (a) the port facility operator becomes aware of a maritime transport security incident; and
- (b) the port facility operator fails to report the incident as required by regulation 113 as soon as possible.

(2) Subregulation (1) does not apply in relation to a report that must be made to a particular person if—

- (a) the port facility operator reasonably believes that the person is already aware of the incident; or
- (b) the port facility 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.

Persons with incident reporting responsibilities

108. (1) A person with incident reporting responsibilities commits an offence if—

- (a) the person becomes aware of a maritime transport security incident; and
- (b) the person fails to report the incident as required by regulation 114 as soon as possible.

(2) Subregulation (1) does not apply in relation to a report that must be made to a particular person (the *person to be notified*) if—

- (a) the person with incident reporting responsibilities reasonably believes that the person to be notified is already aware of the incident; or
- (b) the person with incident reporting responsibilities 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.

(4) Each of the following is a *person with incident reporting responsibilities*:

- (a) an authorised officer;
- (b) a maritime industry participant other than a participant who is —
 - (i) a port operator;
 - (ii) a port facility operator;
 - (iii) a ship operator; or
 - (iv) an employee (within the definition of *employee* in regulation 3) of a maritime industry participant.

Employees

109. (1) An employee of a maritime industry participant commits an offence if —

- (a) the employee becomes aware of a maritime transport security incident; and
- (b) the employee, without reasonable excuse, fails to report the incident to the maritime industry participant as soon as possible.

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

Division 3—Reporting requirements

Reporting by port operators

110. (1) A port operator must report maritime transport security incidents in accordance with this regulation.

(2) An incident that relates to the port of the port operator must be reported to —

- (a) the MRCC; and
- (b) the South African Police Service; and
- (c) if it relates to a part of the port that is controlled by another person, that other person; and
- (d) if it relates to operations conducted within the port (other than those conducted by the port operator), the person who conducts those operations; and
- (e) if it relates to a security regulated ship within the port, the ship operator for, or the master of, the ship.

(3) However, the port operator is not required to report under subregulation (2) (c), (d) or (e) if the incident —

- (a) relates to the port in general; and
- (b) is not specifically directed at —

- (i) in the case of an incident covered by subregulation (2)(c), the part of the port controlled by that other person; or
 - (ii) in the case of an incident covered by subregulation (2)(d), those operations; or
 - (iii) in the case of an incident covered by subregulations (2)(e), that ship.
- (4) An incident that relates to the port of another port operator must be reported to that other port operator.
- (5) An incident that relates to a security regulated ship must be reported to—
- (a) the ship operator for the ship; or
 - (b) the master of the ship.

Reporting by ship masters

111. (1) The master of a security regulated ship must report maritime transport security incidents in accordance with this regulation.

- (2) An incident that relates to the master's ship must be reported to—
- (a) the MRCC; and
 - (b) the South African Police Service; and
 - (c) if the ship is within a security regulated port, the port operator for the port; and
 - (d) if the ship is using a port facility within a security regulated port, the port facility operator for the port facility.
- (3) An incident that relates to a security regulated port (including a port facility within the port) must be reported to the port operator for the port.
- (4) An incident that relates to another security regulated ship must be reported to —
- (a) the ship operator for the ship; or
 - (b) the master of the ship.

Reporting by ship operators

112. (1) The ship operator for a security regulated ship must report maritime transport security incidents in accordance with this regulation.

- (2) An incident that relates to a security regulated ship of the ship operator must be reported to —
- (a) the MRCC; and
 - (b) the South African Police Service; and
 - (c) if the ship is within a security regulated port, the port operator for the port; and
 - (d) if the ship is using a port facility within a security regulated port, the port facility operator for the port facility.
- (3) An incident that relates to a port must be reported to the port operator for the port.

- (4) An incident that relates to another security regulated ship must be reported to —
- (a) the ship operator for the ship; or
 - (b) the master of the ship.

Reporting by port facility operators

113. (1) A port facility operator for a port facility within a security regulated port must report maritime transport security incidents in accordance with this regulation.

(2) An incident that relates to the port facility operator's port facility must be reported to —

- (a) the MRCC; and
- (b) the South African Police Service; and
- (c) the port operator.

(3) An incident that relates to the port (apart from the port facility of the port facility operator) must be reported to the port operator.

(4) An incident that relates to another port must be reported to the port operator for that other port.

(5) An incident that relates to a security regulated ship must be reported to —

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

Reporting by persons with incident reporting responsibilities

114. (1) A person with incident reporting responsibilities must report maritime transport security incidents in accordance with this regulation.

(2) Each incident must be reported to the MRCC.

(3) An incident that relates to a security regulated port must be reported to the port operator for the port.

(4) An incident that relates to a security regulated ship must be reported to —

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

Division 4—Form and content of reports

How reports to be made

115. (1) The Director-General may publish a notice in the *Gazette* setting out either or both of the following:

- (a) information that must be included in a report required by this Part;

(b) the way in which the report must be made.

(2) If —

(a) a person reports a maritime transport security incident; and

(b) the report does not comply with any requirements that are in force under subregulation (1) when the report is made,

the report is taken, for the purposes of this Part, not to have been made.

PART 8

INFORMATION-GATHERING

Director-General may require security compliance information

116. (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 another specified person.

(3) The information must be given within the period and in the form and manner specified in the notice. The period may 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 (for example, by telephone or radio communication);

(b) in writing;

(c) by electronic transmission (for example, by facsimile or e-mail).

(5) A person who, without reasonable excuse, fails to comply with a notice under subregulation (2) commits an offence punishable upon conviction by a fine or by imprisonment for a period not exceeding 12 months.

Self-incrimination

117. (1) A person is not excused from giving security compliance information in terms of regulation 116 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 118.

Offence (false or misleading information)

118. (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) the information is given —
 - (i) to an organ of state;
 - (ii) to a person who is exercising powers or performing functions under, or in connection with, a law of the Republic; or
 - (iii) 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 9

ENFORCEMENT ORDERS

Division 1—Enforcement orders for maritime industry participants

Director-General may make enforcement orders

119. (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

120. (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

121. (1) The Director-General must —

- (a) at intervals of not more than three 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 may 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 119(2) and (3).

(4) If an order is varied, the order continues in force as varied.

Notifying enforcement orders

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

(2) The notice must be given —

- (a) orally (for example, by telephone or radio communication);
- (b) in writing; or
- (c) by electronic transmission (for example, by facsimile or e-mail).

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

Offence (failing to comply with enforcement order)

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

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

Authority may give ship enforcement orders

124. (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 —

- (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; or
- (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

125. 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 must implement, or comply with, the direction.

Manner of giving ship enforcement orders

126. The Authority must give a ship enforcement order to the ship operator for, or the master of, a South African regulated ship —

- (a) orally (for example, by telephone or radio communication);
- (b) in writing; or
- (c) by electronic transmission (for example, by facsimile or e-mail).

Offence (failing to comply with ship enforcement order)

127. (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, without reasonable excuse, fails 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, without reasonable excuse, fails 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 10

MISCELLANEOUS

Ship security alert system

128. (1) A South African regulated ship must be provided with a ship security alert system as follows:

- (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 gross tonnage or more, 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 gross tonnage or more 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.

(2) The 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;
- (b) must be of a type approved by the Authority; and
- (c) must otherwise comply with regulation XI-2/6 of the Safety Convention.

Alternative security agreements

129. (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 implementation and 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 five 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.

Equivalent security arrangements

130. (1) The Authority may allow a South African regulated ship, or South African regulated ships of a specified class, to implement other security measures equivalent to those prescribed by these regulations if the other measures are at least as effective as the prescribed measures.

(2) The Director-General may allow —

- (a) a security regulated port or group of security regulated ports; or
- (b) a port facility or group of port facilities,

to implement other security measures equivalent to those prescribed by these regulations if the other measures are at least as effective as the prescribed measures.

(3) In deciding whether to allow equivalent security measures under this regulation, the Authority or the Director-General, as the case may be, must take account of the obligations set out in Chapter XI-2 of the Safety Convention and the ISPS Code.

PART 11

ADMINISTRATIVE ARRANGEMENTS AND FEES

Powers and functions of Director-General

131. (1) The Director-General may, in writing, authorise an SMS employee, or acting SMS employee, in the Department of Transport to exercise 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) 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

132. (1) For the purpose of promoting the efficient administration of these regulations, the Director-General may, in 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)

133. (1) Annex 3 prescribes —

- (a) the fees payable to the Director-General for services in terms of these regulations; and
 - (b) the circumstances and manner in which the fees are to be paid.
- (2) If Annex 3 prescribes a fee for a service, the Director-General may refuse the service unless —
- (a) the fee is paid; or
 - (b) an arrangement for its payment has been made to the satisfaction of the Director-General.

ANNEX 1

(Regulations 7 and 8)

SECURITY REGULATED PORTS AND PORT OPERATORS

The items in this Annex describe the areas of the ports in the Republic that make up security regulated ports and designate the port operator for each of the security regulated ports.

Item	Security regulated port	Area	Port operator
1	Cape Town	The whole area in which Transnet Limited has jurisdiction at Table Bay harbour.	The National Ports Authority of South Africa, a division of Transnet Limited
2	Mossel Bay	The whole area in which Transnet Limited has jurisdiction at Mossel Bay harbour.	
3	Port Elizabeth	The whole area in which Transnet Limited has jurisdiction at Port Elizabeth harbour.	
4	East London	The whole area in which Transnet Limited has jurisdiction at East London harbour.	
5	Durban	The whole area in which Transnet Limited has jurisdiction at Durban harbour, including the adjacent SAPREF single buoy mooring facility controlled by Shell and BP SA Petroleum Refineries (Pty) Ltd.	
6	Saldanha Bay	The whole area in which Transnet Limited has jurisdiction at Saldanha Bay harbour.	
7	Richards Bay	The whole area in which Transnet Limited has jurisdiction at Richards Bay harbour.	

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**" means the person designated in terms of item 5;

"PFSO" or "**port facility security officer**" means the person designated in terms of item 3;

"PSO" or "**port security officer**" means the person designated in terms of item 2;

"PSPSO" or "**port service provider security officer**" means the person designated in terms of item 4;

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

"SSO" or "**ship security officer**" means the person designated in terms of 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, in writing, designate a person as security officer (*port security officer* or *PSO*) for the security regulated port.

(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 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, in writing, designate 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 A/17.2 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 PFSO —

- (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, in writing, designate a person as security officer (*port service provider security officer* or *PSPSO*) for the port service provider.

(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 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, in writing, designate 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 facility and port service provider security officers; and
- (d) performing —
 - (i) the duties and responsibilities in section A/11.2 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, in writing, designate the master, or a crew member, of the ship as security officer (*ship security officer* or *SSO*) for the ship.

(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 A/12.2 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, in writing, delegate 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 (including the master) 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 seven 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 seven 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) details of 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 29 (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 42 (including contact details for the PPSO);
- (b) the boundaries of the area under the control of the port service provider;
- (c) details of the vessels and helicopters operated or used by the provider;
- (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 area 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 area under the control of the port service provider, to any security zones established within the boundaries of that area and to vessels or helicopters operated or used 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. (1) A maritime security plan for a port operator must be accompanied by a document setting out —

- (a) the name of the port operator;
- (b) the contact details for the port operator;
- (c) the name of the Chief Executive Officer of the port operator;
- (d) the name of the port for which the port operator has been designated;
- (e) the name of the port's harbour master;
- (f) the contact details for the harbour master;
- (g) the name or position of the person who is to be the PSO for the port; and
- (h) a single 24-hour fixed-line or mobile telephone number for the PSO.

(2) A port operator must, within two working days after the port operator becomes aware of a change in any of the information given under this item, notify the Director-General, in writing, of the change.

(3) A port operator who, without reasonable excuse, fails to comply with subitem (2) commits an offence punishable upon conviction by a fine or by imprisonment for a period not exceeding six months.

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.

PSO responsibilities and qualifications

19. A maritime security plan for a port operator must set out the duties and responsibilities of the PSO, together with —

- (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 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 —
 - (i) maritime transport security incidents; and
 - (ii) other occurrences that threaten the security of the port facility;
- (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.

Security of port in exceptional circumstances

22. 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 humanitarian crises, the presence in the port of a ship in distress or otherwise allowed refuge, extreme weather conditions and other emergencies.

Consultation and communication

23. (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

24. 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

25. A maritime security plan for a port operator 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 operator will implement if the Director-General declares that maritime security level 2 or 3 is in force for the port.

Declarations of security

26. 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**

27. 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 —
 - (i) the boundaries of the port;
 - (ii) the location and boundaries of any port facilities in the port; and
 - (iii) 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

28. 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**

29. A maritime security plan for a port facility operator must be accompanied by a document setting out —

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

Details of other maritime industry participants

30. 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.

Obligation to keep information current

31. (1) A port facility operator must, within two working days after the port facility operator becomes aware of a change in any of the information given under item 29 or 30, notify the Director-General, in writing, of the change.

(2) A port facility operator who, without reasonable excuse, fails to comply with subitem (1) commits an offence punishable upon conviction by a fine or by imprisonment for a period not exceeding six months.

Security assessments

32. (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 take into account —

- (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 responsibilities and qualifications

33. A maritime security plan for a port facility operator must set out the duties and responsibilities of the PFSO, together with —

- (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

34. (1) A maritime security plan for a port facility operator must identify, by reference to their positions, port facility personnel with 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

35. 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 —
 - (i) maritime transport security incidents; and
 - (ii) other 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

36. 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

37. 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

38. A maritime security plan for a port facility operator 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 operator will implement if the Director-General declares that maritime security level 2 or 3 is in force for the port.

Declarations of security

39. 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

40. 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

41. 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**

42. A maritime security plan for a port service provider must be accompanied by a document setting out —

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

Details of other maritime industry participants

43. 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.

Obligation to keep information current

44. (1) A port service provider must, within two working days after the port service provider becomes aware of a change in any of the information given under item 42 or 43, notify the Director-General, in writing, of the change.

(2) A port service provider who, without reasonable excuse, fails to comply with subitem (1) commits an offence punishable upon conviction by a fine or by imprisonment for a period not exceeding six months.

Security assessments

45. 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 responsibilities and qualifications

46. A maritime security plan for a port service provider must set out the duties and responsibilities of the PSPSO, together with —

- (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

47. (1) A maritime security plan for a port service provider must identify, by reference to their positions, port service personnel with 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

48. 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 or helicopters operated or used 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 —
 - (i) maritime transport security incidents; and
 - (ii) other 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

49. 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

50. 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

51. 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

52. 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**

53. 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

54. 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**

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

- (a) the ship's name;
- (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 tonnage;
- (k) length and breadth of ship;
- (l) summer draft;
- (m) number of crew;
- (n) number of passenger berths.

Security assessments

56. 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

57. (1) A ship security plan must be accompanied by a document setting out—

- (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; and
- (e) the name or position of the person who is to be the SSO for the ship.

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

Obligation to keep information current

58. (1) A ship operator must, within two working days after the ship operator becomes aware of a change in any of the information given under item 55 or 57, notify the Director-General, in writing, of the change.

(2) A ship operator who, without reasonable excuse, fails to comply with subitem (1) commits an offence punishable upon conviction by a fine or by imprisonment for a period not exceeding six months.

Shore-based personnel and crew with security role

59. (1) A ship security plan must identify, by reference to their positions, shore-based personnel and crew (including the master) with security duties and responsibilities in addition to those of the CSO and SSO.

(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

60. A ship security plan must set out the training that a CSO, SSO, and shore-based personnel and crew mentioned in item 59 must receive.

Matters that must be in plan

61. 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 the ship or ship/port interface;
- (e) procedures for—
 - (i) acknowledging, and responding to, directions given by the Director-General or a Convention State; and
 - (ii) acknowledging notifications of the security level in force from the Director-General or a Convention 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 —
 - (i) maritime transport security incidents; and
 - (ii) other 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

62. 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

63. 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

64. 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

65. (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

66. 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

67. (1) A ship security plan for a South African regulated ship must set out the procedures for giving pre-entry information in accordance with subitem (2).

(2) The master of a South African regulated ship that is due to arrive, from a port outside the Republic, at a port in the Republic must give the following information (*pre-entry information*) to the MRCC not later than 96 hours before the ship's expected time of arrival at that port:

- (a) confirmation that a valid ISSC is on board the ship;
- (b) the name of the authority that issued the ship's ISSC;
- (c) the date when the ISSC expires;
- (d) the maritime security level at which the ship is operating;
- (e) the last 10 ports of call where the ship conducted ship/port interface;
- (f) whether the ship operated at a security level different from that in paragraph (d), engaged in ship to ship activity, or implemented any special or additional security measures, in the last 10 ports of call;
- (g) any other information in relation to the ship required in writing by the Director-General to be given.

Security equipment

68. 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

69. (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, deactivating and resetting the system, and for preventing false alarms.

Ship security records

70. 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

71. 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

72. 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

73. 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 133)
FEES

The following fees are payable to the Director-General in terms of regulation 133:

Item	Service	Fee	When payable
1	Approval of maritime security plan	R400 per hour or part thereof, subject to a maximum fee of R1 600. This fee is non-refundable.	Must accompany the maritime security plan submitted for approval
