
GENERAL NOTICE

NOTICE 423 OF 2005

SOUTHAFRICAN MARITIME SAFETY AUTHORITY

DRAFT MERCHANT SHIPPING AMENDMENT BILL AND MERCHANT SHIPPING (SEAFARER ACCIDENT INSURANCE) REGULATIONS: PUBLICATION FOR COMMENT

The South African Maritime Safety Authority (SAMSA) publishes for public comment the proposed Bill and regulations set out in the accompanying Schedule. Written submissions should reach SAMSA on or before **23 May 2005** (Note: late submissions may be disregarded). These should be addressed to the Chief Executive Officer (for the attention of Mr C Briesch) and may be either:

- hand-delivered to SAMSA, Block **E** Hatfield Gardens, 333 Grosvenor *Street*, Hatfield, Pretoria; or
- mailed to SAMSA, **PO** Box 131 86 Hatfield 0028; or
- faxed to **(012)** 342 3160; or
- e-mailed to cbriesch@samsa.org.za.

Telephonic enquiries should be directed to Mr C Briesch at **(012)** 342 3049. Attention is invited to the explanatory notes following the Bill (in **Part A**) and the regulations (in **Part B**) in the Schedule.

SCHEDULE

PART A

DRAFT MERCHANT SHIPPING AMENDMENT BILL

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate **omissions** from existing enactments.
- _____ Words underlined with a solid line indicate insertions **in** existing enactments.
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BILL

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

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

PART B**DRAFT MERCHANT SHIPPING (SEAFARER ACCIDENT INSURANCE) REGULATIONS****Title and commencement**

1. (1) These regulations are called the Merchant Shipping (Seafarer Accident Insurance) Regulations, **2005**.

(2) These regulations commence on <<date>>.

Purpose of regulations

2. These regulations supplement Chapter IVA [Financial security for **loss of** life and personal injury] of the Act.

Interpretation

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 given meaning, and—

"**medical expenses**" means the reasonable and **customary** charges levied by a medical practitioner or other registered health practitioner, and includes the cost of necessary medical or surgical treatment, services **or** supplies and hospital, nursing, counselling and ambulance services;

"**permanent total disablement**", in relation to a seaman, means the permanent inability **of** the seaman to perform any work of the kind at which he or she was employed or engaged at the time **of** the accident;

"**temporary partial disablement**", in relation to a seaman, means the temporary partial inability **of** the seaman to perform the whole of the work at which he or she was employed or engaged at the time **of** the accident, until such time that —

- (a) the **seaman** has recovered; or
- (b) the seaman is declared temporarily or permanently and totally disabled;

"**temporary total disablement**", in relation to a seaman, means the temporary total inability of the seaman to perform the whole **of** the work at which he or she was employed or engaged at the time of the accident **or** to resume work at a rate of earnings not less than that at which he or she was employed or engaged at the time of the accident, until such time that —

- (a) the seaman **has** recovered; **or**
- (b) the seaman is declared permanently and totally disabled.

(2) **For** these regulations, strict compliance with the **form** prescribed in the Annex **is** not required and substantial compliance is sufficient.

Relevant insurance certificates

4. For paragraph (b) of the definition of "relevant insurance certificate" in section 189A(1) of the Act, each of the following is taken to be a relevant insurance certificate in relation to the ship concerned:

- (a) a document that evidences the registration, in terms of section 80 of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), of the employer of the seamen belonging to the ship;
- (b) a document that evidences the approval of an equivalent arrangement under section 189N of the Act.

Ships to which Chapter IVA does not apply

5. For section 189B(2)(b) of the Act, the following class of ships is prescribed

Vessels owned by any person who holds a valid subsistence fishing permit issued under the Marine Living Resources Act, 1998 (Act No. 18 of 1998), when used for fishing operations covered by the permit.

Minimum benefits

6. The insurance or other financial security to be maintained in terms of section 189C of the Act must provide minimum benefits in accordance with the items of the following table:

Item	Event (not later than 24 months after accident)	Minimum benefit	Additional requirements
1	Death	R100,000 lump sum, less the sum of any benefits received under items 2, 3 and 4	Death is to be presumed within seven days after the accident, if— (a) having regard to an affidavit by a person acquainted with the facts of the matter, it is probable that the seaman has died as a result of the accident; and (b) the Authority has confirmed that the relevant statutory casualty report has been lodged. Payable not later than 14 days after death or presumed death, as the case may be. If any of these time periods cannot be complied with, the Authority is to be notified in writing stating the reasons for the non-compliance.
		Actual funeral expenses up to a maximum of R6,000	

Item	Event (not later than 24 months after accident)	Minimum benefit	Additional requirements
2	Permanent total disablement	R100,000 lump sum, less the sum of any benefits received under items 3 and 4	Payable upon declaration of disablement by a medical practitioner.
3	Temporary total disablement	R600 per week up to a maximum period of 104 weeks	Payable upon declaration of disablement by a medical practitioner. Benefits may be excluded in respect of disablement that lasts for three days or less.
4	Temporary partial disablement	R400 per week up to a maximum period of 104 weeks	
5	Medical aid	Actual medical expenses up to a maximum of R15,000	

Restrictions on termination and modification of insurance or other financial security

7. (1) Insurance or other financial security is taken not to meet the requirements of these regulations if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate mentioned in section 189D(1) of the Act, before 60 days have elapsed from the date on which written notice of its termination is given to the proper officer, unless within that period the certificate has been surrendered to that officer or a copy of a new certificate has been lodged with that officer, in accordance with section 189D(2) of the Act.

(2) No modification of insurance or other financial security maintained in terms of section 189C of the Act that results in a change in the information required to be recorded on the certificate mentioned in section 189D(1) of the Act is to be effective before 30 days have elapsed from the date on which written notice of the modification is given to the proper officer, unless within that period an authenticated copy of the updated certificate has been lodged with that officer, in accordance with section 189(D)(2) of the Act.

Restriction on payment of benefits

8. (1) If an accident is attributable to the wilful misconduct of the seaman, some or all of the benefits specified in regulation 6, except medical aid, may be excluded in terms of the insurance or other financial security maintained in terms of section 189C of the Act, unless—

- (a) the accident results in permanent total disablement; or
- (b) the seaman dies as a result of the accident leaving one or more dependants.

(2) For subregulation(1), "wilful misconduct" includes the following:

ANNEX**(Regulation 10)****CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN TERMS
OF SECTION 189D OF MERCHANT SHIPPING ACT, 1951**

Name of ship	Official number or letters	Home port	Name and principal place of business of owner

This is to certify that there is in force in relation to the above-named ship a policy of insurance **or** other financial security satisfying the requirements of section **189C** of the Merchant Shipping Act, 1951.

Type of security

Number of seamen covered by security

Duration of security

Name and principal place of business of insurer(s) and/or guarantor(s):

Name

.....

Principal place of business

.....

This certificate is valid until

Issued by

(Full designation of insurer(s) and/or guarantor(s))

at on

(Place)

(Date)

.....
(Signature and designation of authorised issuing official)

Explanatory notes:

1. If the total amount of security has been provided by more than one source, the amount provided by each of them must be indicated.
2. If security is provided in several forms, these must be identified.
3. The entry "Duration of security" must state the date on which the security takes effect and the date on which it expires. The period of validity of the certificate may not be longer than the period of validity of the insurance of other security.

EXPLANATORY NOTE

(This note is not part of the regulations)

1 These regulations **are** enabled by section 356 of the Merchant Shipping Act, 1951 (Act No. 57 of 1951) ("the Act").

2 The regulations supplement Chapter **IVA** of the Act, which requires shipowners of commercially operated vessels to maintain insurance or other financial security in accordance with the regulations. This insurance or security is meant to pay compensation to seafarers who suffer loss of life or personal injury as a result of workplace accidents. Shipowners do not have to maintain this insurance or security if they have **an** approved equivalent arrangement in place (e.g. cover under the Compensation for Occupational Injuries and Diseases Act, 1993 (CODA)).

3 The regulations prescribe the minimum benefits and other requirements that Chapter **IVA** insurance or security must meet. Regulation 6 sets out the minimum benefit arrangement, providing for a death/funeral benefit, a permanent total disability benefit, temporary disability benefits, and medical aid. The monetary value of benefits has been informed generally by the amount of compensation available under CODA in similar cases. Questions of termination and modification of cover are also dealt with (regulation **7**), **as** are questions relating to the effect of wilful misconduct on entitlement to benefits (regulation **8**) and the availability of certain policy defences (regulation 9).

4 The regulations also deal with several other matters that are required to be prescribed under Chapter **IVA**. These cover the documents that are taken to be relevant insurance certificates (regulation **4**); the vessels (other than pleasure vessels) to which Chapter **IVA** does not apply (regulation **5**); the form of insurance certificate (regulation 10 and the Annex); and the manner and time in which an insurance certificate must be lodged with the proper officer (regulation 11).
