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## GENERAL NOTICES

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### NOTICE 1695 OF 2007

#### DEPARTMENT OF TRANSPORT

#### **MERCHANT SHIPPING (CONSOLIDATED MARITIME LABOUR CONVENTION) REGULATIONS, 200x: FOR COMMENT**

The Minister of Transport, publishes for public comment the proposed Regulations set out in the accompanying Schedule. Written submissions should reach the Department of Transport **on or before 4 January 2008** (Note: late submissions may be disregarded). These should be addressed to the Chief Director: Maritime Regulation (for the attention of Ms N Sobekwa ) and may be either:

- hand-delivered to Department of Transport at 159 Forum Building, Pretoria; or
- mailed to Private Bag X 193, 0001; or
- faxed to (012) 309 3124; or
- e-mailed to [mabuelat@dot.gov.za](mailto:mabuelat@dot.gov.za)

Telephonic enquiries should be directed to Mr T. Mabuela at (012) 309 3070 or Mr N. Campbell at (041) 585 0051. Attention is invited to the explanatory note following the regulations.

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**PART 1****INTRODUCTORY****Title and commencement**

1. These regulations are called the Merchant Shipping (Consolidated Maritime Labour Convention) Regulations, 200x. These regulations commence on the day they are published in the Gazette.

**Objects of regulations**

2. These regulations give effect to Consolidated Maritime Labour Convention 2006.

**Interpretation**

3. In these regulations any word or expression given a meaning in the Act has the meaning so given and, unless the context indicates otherwise—

“**authorized person**” means a person authorized by the Authority to perform some or all functions and duties of the Authority.

“**convention**” means the Consolidated Maritime Labour Convention, 2006;

“**Declaration of Maritime Labour Compliance**” means the Declaration of Maritime Labour Compliance referred to in regulation 5.1.3 of the convention;

“**Maritime Labour Certificate**” means the Maritime Labour Certificate referred to in regulation 5.1.3 of the convention;

“**seafarer**” means any person who is employed or engaged or works on any capacity on board a ship to which the convention applies;

“**ship**” means a ship other than one that navigates exclusively in inland waters or within port limits;

“**shipowner**” means the owner of the ship or any organization or person, such as a manager or bareboat charterer who has assumed the responsibility for the operation of the ship;

“**tons**” in relation to a ship, means its gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex 1 of the International Convention on Tonnage measurement of Ships, 1965.

### **Application**

4. (1) Subject to subregulation (2) these regulations apply to all South African ships of 500 tons or more ordinarily engaged in commercial activities, wherever they may be;

(2) These regulations do not apply to—

(a) fishing vessels;

(b) vessels operating solely within port limits; and

(c) vessels of less than 25GT.

## **PART 2**

### **DUTY TO HOLD AND HAVE ONBOARD DOCUMENTATION**

#### **Duty to hold certificates**

5. (1) No person may operate a ship unless—

- (a) the ship has been issued with a valid Maritime Labour Certificate;
  - (b) the ship has been issued with a valid Declaration of Maritime Labour Compliance.
- (2) For the purpose of this regulation a Maritime Labour Certificate is not valid if between the second and third anniversary of the issue of the certificate, it has not been endorsed.

**Duty to carry documentation**

6. Every shipowner must ensure that—

- (a) the original Maritime Labour Certificate is onboard;
- (b) the original Declaration of Labour Compliance is onboard and attached to the Maritime Labour Certificate;
- (c) the Consolidated Maritime Labour Convention is on board; and
- (d) a procedure for the masters to deal with onboard complaints relating to matters dealt with by the convention is on board.

**PART 3**

**ISSUE OF DOCUMENTATION**

**Maritime Labour Certificate**

7. If the Authority is satisfied that the operator of a South African ship complies with the convention and after inspection of the ship and audit of the shipowner, may issue the ship with a Maritime Labour Certificate valid for a period not exceeding five years.

**Declaration of Maritime Labour Compliance**

8. (1) Prior to the application for the issue of a Maritime Labour Certificate the shipowner shall make application to the Authority for the completion of Part I of the declaration.

(2) On completion of Part I of the declaration the Authority shall forward to the shipowner the declaration for the completion of Part II. On completion Part II is returned to the Authority for certification.

**Interim Maritime Labour Certificate**

9. (1) The authority may, on request, issue an interim Certificate of Labour Compliance when—

- a. a ship is on a delivery voyage;
- b. a ship is transferred to the south African register;  
and
- c. a shipowner assumes responsibility for the  
operation of a ship from another shipowner.

(2) A certificate issued in terms of this regulation is valid for a period not exceeding six months.

#### **Intermediate audit**

10. (1) The Authority must carry out an intermediate audit of each ship to ensure compliance with the conditions for the continued validity of the Maritime Labour Certificate.

(2) The audit must be undertaken between the second and third anniversary of the date of issue of the certificate.

(3) The Authority may undertake inspections at any time that it thinks fit.

#### **Renewal of certificate**

11. Before the renewal of the Maritime Labour Certificate the Authority must carry out a renewal audit of the ship during the six month period exceeding the expiry date of the certificate.

#### **Powers of audit, inspection, suspension of service and detention**

12. (1) For the purpose of ensuring compliance with these regulations—

(a) The Authority may instruct an authorized person to conduct an audit to a shipowner or any ship regarding compliance with the convention.

(b) The Authority may, after considering the report of an authorized person and is satisfied that a shipowner or ship, despite holding a Declaration of Maritime Compliance or a Maritime Labour Certificate, operates a vessel in contravention of the convention, the Authority may suspend both the certificate and declaration until such time as the convention is complied with.

(c) Where a service is to be suspended under paragraph (b), the Authority must serve on the shipowner or ship a notice stating that the operation of the service specified in the notice must be suspended and giving reasons for the suspension.

(2) For the purpose of ensuring compliance with these regulations—

(a) The Authority may instruct an authorized person to inspect any shipowner or ship, which inspection may include an audit regarding compliance with the convention.

(b) The Authority may, after considering the report of an authorized person, and is satisfied that there is a failure to comply with the convention, the Authority may cause the ship to be detained.

(3) An authorized person performing functions in terms of this regulation, who is not a surveyor, has all the powers conferred upon a surveyor by section 9 of the Act.

#### **Suspension or cancellation of Declarations of Maritime Labour Compliance and Maritime Labour Certificates.**

13. (1) (a) The Authority may, by notice in writing, suspend or cancel any Declarations of Maritime Compliance and Maritime Labour Certificates issued by it or at its request under these regulations where any audit of a shipowner or ship has revealed or where it believes on reasonable grounds that—

(i) the certificate or declaration was issued on false or erroneous information; or

(ii) since any audit required by these regulations, the ownership of the ship has changed without notification to the Authority.

(b) A notice must set out the grounds for suspending or canceling the certificate.

(c) A notice must not be given unless the holder of the Declarations of Maritime Labour Compliance and Maritime Labour Certificates has been given the opportunity to make representations.

(2) The Authority may require that any Declarations of Maritime Labour Compliance and Maritime Labour Certificates issued by it or at its request under these regulations that has expired or has been suspended or cancelled, be surrendered as directed.

(3) No person may—

(a) Intentionally, alter a Declarations of Maritime Labour Compliance or a Maritime Labour Certificate;

(b) In connection with any audit conducted pursuant to these regulations, knowingly or recklessly furnish false information;

- (c) With intent to deceive, use, lend or allow to be used by another the Declarations of Maritime Labour Compliance and Maritime Labour Certificate;
- (d) Fail to surrender a Declarations of Maritime Labour Compliance and Maritime Labour Certificate required to be surrendered under subregulation (2); or
- (e) Forge any Declarations of Maritime Compliance and Maritime Labour Certificate.

#### **Issue of certificates on behalf of other governments**

**14.** (1) The Authority may, at the request of the government of a State, other than the Republic, to which the convention applies—

- (a) Audit the systems of shipowners and ships registered in that State; and
  - (b) If satisfied that the requirements of the convention are complied with and that the audit has been satisfactorily completed in accordance with these regulations, issue to the ship a Maritime Labour Certificate or endorse such certificates after an intermediate audit.
- (2) A certificate issued under subregulation (1) must—
- (a) Contain a statement that it has been so issued; and
  - (b) Correspond to the appropriate form of certificate set out in the Appendix 1 to these regulations.
- (3) A certificate issued under this regulation has the same effect as if it were issued by the relevant government and not by the Authority.

### **PART 4**

## **OFFENCES**

#### **Offences and penalties**

**15.** (1) A shipowner and/or a ship that contravenes regulations 5 and 6 shall be guilty of an offence and is liable on conviction to a fine or imprisonment for a period not exceeding 12 months.

(2) A master who contravenes regulations 5 and 6 commits an offence and is liable on conviction to a fine or imprisonment for a period not exceeding 12 months.

(3) Any person who contravenes regulation 13 commits an offence and is liable on conviction to a fine or imprisonment for a period not exceeding 12 months.

**ANNEXURE I****Maritime Labour Certificate**

*(Note: This Certificate shall have a Declaration of Maritime Labour Compliance attached)*

Issued under the provisions of Article V and Title 5 of the *Maritime Labour Convention, 2006* (referred to below as “the Convention”) under the authority of the Government of:

.....  
(full designation of the State whose flag the ship is entitled to fly)  
by .....

(full designation and address of the competent person or organization  
duly authorized under the provisions of the Convention)

**Particulars of the ship**

Name of ship

.....

Distinctive number or letters

.....

Port of registry

.....

Date of registry

.....

Gross tonnage \*

.....

IMO number

.....

Type of ship

.....

Name and address of the shipowner (as defined in Article II, paragraph 1(j), of the Convention)

.....

.....

This is to certify:

1. That this ship has been inspected and verified to be in compliance with the requirements of the Convention, and the provisions of the attached Declaration of Maritime Labour Compliance.
2. That the seafarers' working and living conditions specified in Appendix A5-I of the Convention were found to correspond to the abovementioned country's national requirements implementing the Convention. These national requirements are summarized in the Declaration of Maritime Labour Compliance, Part I.



This Certificate is valid until ..... subject to inspections in accordance with Standards A5.1.3 and A5.1.4 of the Convention.

This Certificate is valid only when the Declaration of Maritime Labour Compliance issued at ..... on ..... is attached.

Completion date of the inspection on which this Certificate is based was .....

Issued at ..... on .....

Signature of the duly authorized official issuing the Certificate

(Seal or stamp of issuing authority, as appropriate)

*Endorsements for mandatory intermediate inspection and any additional inspection (if required)*

This is to certify that the ship was inspected in accordance with Standards A5.1.3 and A5.1.4 of the Convention and that the seafarers' working and living conditions specified in Appendix A5-I of the Convention were found to correspond to the abovementioned country's national requirements implementing the Convention.

*Intermediate inspection:* Signed .....

(to be completed between the second and third anniversary dates)

(signature of authorized official)

.....  
Place .....

Date .....

(Seal or stamp of the authority, as appropriate)

*Additional endorsements (if required)*

This is to certify that the ship was the subject of an additional inspection for the purpose of verifying that the ship continued to be in compliance with the national requirements implementing the Convention, as required by Standard A3.1, paragraph 3, of the Convention (re-registration or substantial alteration of accommodation) or for other reasons.

*Additional inspection:* Signed .....

(if required) (signature of authorized official)

.....  
Place .....

Date .....

(Seal or stamp of the authority, as appropriate)

*Additional inspection:* Signed .....

(if required) (signature of authorized official)

.....  
Place .....

Date .....

(Seal or stamp of the authority, as appropriate)

*Additional inspection:* Signed .....  
(if required) (signature of authorized official)

.....  
Place .....

Date .....

(Seal or stamp of the authority, as appropriate)

## ANNEX II

## Maritime Labour Convention, 2006

## Declaration of Maritime Labour Compliance – Part I

(Note: This must be attached to the ship's Maritime Labour Certificate)

Issued under the authority of: ..... (insert name of competent authority as defined in Article II, paragraph 1(a), of the Convention)

In respect to the provisions of the Maritime Labour Convention, 2006, the following referenced ship:

Name of ship	IMO number	Gross tonnage

is maintained in accordance with Standard A5.1.3 of the Convention.

The undersigned declares, on behalf of the abovementioned competent authority, that:

1. The provisions of the Maritime Labour Convention are fully embodied in the national requirements referred to below;
2. These national requirements are contained in the national provisions referenced below; explanations concerning the content of those provisions are provided where necessary;
3. The details of any substantial equivalencies under Article VI, paragraphs 3 and 4, are provided *<under the corresponding national requirement listed below> <in the section provided for this purpose below> <strike out the statement which is not applicable>*; and
4. Any ship-type specific requirements under national legislation are also referenced under the requirements concerned.

- (a) Minimum age (Regulation 1.1) .....
- (b) Medical certification (Regulation 1.2) .....
- (c) Qualifications of seafarers (Regulation 1.3) .....
- (d) Seafarer employment agreements (Regulation 2.1) .....
- (e) Use of a licensed or certified or regulated private recruitment and placement service (Regulation 1.4) .....
- (f) Hours of work or rest (Regulation 2.3) .....
- (g) Manning levels for the ship (Regulation 2.7) .....
- (h) Accommodation (Regulation 3.1) .....

- (i) On-board recreational facilities (Regulation 3.1) .....  
(j) Food and catering (Regulation 3.2) .....  
(k) Health and safety and accident prevention (Regulation 4.3) .....  
(l) On-board medical care (Regulation 4.1) .....  
(m) On-board complaint procedures (Regulation 5.1.5) .....  
(n) Payment of wages (Regulation 2.2) .....

Name: .....

Title: .....

Signature: .....

Place: .....

Date: .....

**Substantial equivalencies**

*(Note: Strike out the statement which is not applicable)*

The following substantial equivalencies, as provided under the Convention,  
Article VI, paragraphs 3 and 4, except where stated above, are noted: [insert description  
if applicable]

.....  
.....

No equivalencies have been granted

.....

Name: .....

Title: .....

Signature: .....

Place: .....

Date: .....

**Declaration of Maritime Labour Compliance – Part II***Measures adopted to ensure ongoing compliance between inspections*

The following measures have been drawn up by the shipowner, named in the Maritime Labour Certificate to which this Declaration is attached, to ensure ongoing compliance between inspections:

<State below the measures drawn up by the shipowner to ensure compliance with each of the items in Part I>

1. Minimum age (Regulation 1.1)

2. Medical certification (Regulation 1.2)

3. Qualifications of seafarers (Regulation 1.3)

4. Seafarer employment agreements (Regulation 2.1)

5. Use of a licensed or certified or regulated private recruitment and placement service (Regulation 1.4)

6. Hours of work or rest (Regulation 2.3)

7. Manning levels for the ship (Regulation 2.7)

8. Accommodation (Regulation 3.1)

9. On-board recreational facilities (Regulation 3.1)

10. Food and catering (Regulation 3.2)

11. Health and safety and accident prevention (Regulation 4.3)

12. On-board medical care (Regulation 4.1)

13. On-board complaint procedures (Regulation 5.1.5)

14. Payment of wages (Regulation 2.2)

The above measures have been reviewed by <insert name of competent authority or duly recognized organization> and, following inspection of the ship, have been determined as meeting the purposes set out under (b) of paragraph 10 of Standard A5.1.3, regarding measures to ensure initial and ongoing compliance with the requirements set out in Part I of this Declaration.

Name: .....

Title: .....

Company address: .....

.....

.....

Signature: .....

Place: .....

(Seal or stamp of the competent authority)

**EXPLANATORY NOTE***(This note is not part of the regulations)*

1. The purpose of these regulations is to introduce the Consolidated Maritime Labour Convention into domestic legislation.
2. South Africa has indicated that it will ratify the convention.

**EXPLANATORY NOTE***(This note is not part of the regulations)*

1. The purpose of these regulations is to introduce the Consolidated Maritime Labour Convention, 2006, into domestic legislation.
2. These regulations give effect to Consolidated Maritime Labour Convention 2006.
3. It is the intention of the South African Government to ratify the Consolidated Maritime Labour Convention 2006.