
GENERAL NOTICE

NOTICE 140 OF 2009

DEPARTMENT OF TRANSPORT

PUBLICATION FOR PUBLIC COMMENTS: MARITIME TRANSPORT SECURITY BILL, 2009

The Minister of Transport is hereby publishing the abovementioned draft Bill for public comments. Interested persons are requested to submit written comments on the draft Bill by not later than 01 April 2009.

Comments should be posted to the Director-General, Department of Transport for the attention of Mr. B Maphelela at:

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REPUBLIC OF SOUTH AFRICA

DRAFT MARITIME TRANSPORT SECURITY BILL

*(As introduced in the National Assembly (proposed section 75); explanatory
summary of Bill published in Government Gazette No. XX of XX 200X)*
(The English text is the official text of the Bill)

(MINISTER OF TRANSPORT)

[B —2008]

BILL

**To safeguard against unlawful interference with maritime transport; and
to provide for incidental matters**

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

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CHAPTER 1

INTERPRETATION, PURPOSE AND APPLICATION OF ACT

Definitions

1. (1) In this Act, unless the context indicates otherwise—

"approved ISSC equivalent" has the meaning given by section 102(2);

"cargo ship" means any self-propelled ship that is not a passenger ship, a fishing vessel or a pleasure craft;

"cleared" has the meaning given by section 139(3);

"cleared area" means an area that, under regulations made under Chapter 9 or 10, may be entered only by persons, goods, vehicles and ships that have received clearance;

"confidentiality requirements" has the meaning given by section 42(2);

"continental shelf" means the continental shelf referred to in section 8 of the Maritime Zones Act, 1994 (Act No. 15 of 1994);

"contravene" includes fail or refuse to comply with;

"control direction" has the meaning given by section 212(2);

"crew"¹—

(a) of a ship, includes anyone employed or engaged in any capacity on board the ship on the business of the ship; and

¹ Shore-based personnel who are employed temporarily on a ship or a facility are not crew.

(b) of an offshore facility, includes anyone employed or engaged in any capacity on the facility on the business of the facility;

"critical installation" has the meaning given by section 124(3);

"customs officer" means an officer as defined in section 1 of the Customs and Excise Act, 1964 (Act No. 91 of 1964);

"declaration of security" means—

- (a) an arrangement reached between a ship and another party (a ship or person); or
- (b) an arrangement reached between an offshore facility operator and another party (a ship or person),

that identifies the security activities and measures that each party will undertake or implement in specified circumstances;

"Department" means the Department of Transport;

"designated authority" has the meaning given by section 218(2);

"Director-General" means the Director-General of the Department;

"employee", of a maritime industry participant, means an individual employed by the maritime industry participant;

"enforcement action" means—

- (a) action by a maritime security inspector, a law enforcement officer, a maritime security guard or a screening officer under Chapter 10;
- (b) issuing an infringement notice under regulations made under section 206(1);
- (c) making an enforcement order under Part 2 of Chapter 13;
- (d) giving a control direction under Part 3 of Chapter 13; or

(e) granting an interdict under Part 4 of Chapter 13;

"enforcement order" means has the meaning given by section 207(2);

"engage in conduct" means do an act or omit to perform an act;

"exclusive economic zone" means the exclusive economic zone referred to in section 7 of the Maritime Zones Act, 1994 (Act No. 15 of 1994);

"fishing vessel" means a fishing, sealing or whaling boat as defined in section 2(1) of the Merchant Shipping Act, 1951 (Act No. 57 of 1951):

"foreign country" means any country (whether or not an independent sovereign state) outside the Republic;

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

"foreign ship regulated as an offshore facility" has the meaning given by section 22(4);

"FPSO" (short for Floating Production, Storage and Offtake) means a self-propelled ship that is—

- (a) constructed or adapted to accept petroleum, directly or indirectly, from a sub-sea well or pipeline;
- (b) capable of storing the petroleum and delivering it to another ship or pipeline;
- (c) capable of modifying the petroleum while in storage on the ship to suit it for transport or to fit it for the commercial requirements of consignees; and
- (d) designed to be disconnected from its mooring during bad weather, operational emergencies, or for the purpose of maintenance or survey,

but does not include a facility that is designed to remain permanently moored for the production life of the related petroleum field;

"FSU" (short for Floating Storage Unit) means a self-propelled ship that is—

- (a) constructed or adapted to accept petroleum, directly or indirectly, from a sub-sea well or pipeline;
- (b) capable of storing the petroleum and delivering it to another ship or pipeline, but which is not capable of modifying the petroleum while in storage on the ship; and
- (c) designed to be disconnected from its mooring during bad weather, operational emergencies, or for the purpose of maintenance or survey,

but does not include a facility that is designed to remain permanently moored for the production life of the related petroleum field;

"goods" means anything that may be taken or placed on board a ship or on an offshore facility, including personal belongings, baggage, cargo and stores;

"gross tonnage", of a ship, means its gross tonnage calculated in accordance with the International Convention on Tonnage Measurement of Ships done at London on 23 June 1969, as amended from time to time;

"high-speed craft" means a craft capable of a maximum speed in metres per second equal to or exceeding $3.7 \times \text{displ}^{0.1667}$, where "displ" is the displacement corresponding to the design waterline in cubic metres;

"High Court" means the High Court of the Republic;

"inland waters" means the inland waters of the Republic other than waters of the sea;

"interim SoC" means an interim SoC issued under section 76;

"interim ISSC"—

- (a) for a security regulated ship, means an interim ISSC issued under section 101; and
- (b) for a ship regulated as an offshore facility, means an interim ISSC issued under section 116;

"internal waters" means the internal waters referred to in section 3 of the Maritime Zones Act, 1994 (Act No. 15 of 1994);

"international voyage", in relation to a ship, means a voyage in the course of which the ship travels between—

- (a) a port in the Republic and a port outside the Republic²;
- (b) a port in the Republic and a place in the waters of the sea above the continental shelf of a foreign country;
- (c) a port outside the Republic and a place in the waters of the sea above the continental shelf of the Republic;
- (d) a place in the waters of the sea above the continental shelf of the Republic and a place in the waters of the sea above the continental shelf of a foreign country;
- (e) ports outside the Republic; or
- (f) places beyond the continental shelf of the Republic,

whether or not the ship travels between two or more ports in the Republic in the course of the voyage;

² A voyage between the Republic and the Prince Edward Islands is not international voyage.

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

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

"ISSC verified"—

- (a) in relation to a security regulated ship, has the meaning given by section 98(1) and (2); and
- (b) in relation to a ship regulated as an offshore facility, has the meaning given by section 113(1) and (2);

"law enforcement officer" has the meaning given by section 167;

"maritime industry participant" means—

- (a) a port operator;
- (b) a port facility operator;
- (c) the ship operator for a security regulated ship;
- (d) an offshore industry participant;
- (e) a contractor who provides services to a person mentioned in paragraphs (a) to (c); or
- (f) a person who—
 - (i) conducts a maritime-related enterprise; and
 - (ii) is prescribed in the regulations for the purposes of this definition;

"Maritime Transport Security Advisory Committee" means the committee established in terms of section 14;

"maritime transport security coordination centre" has the meaning given by section 16;

"maritime transport security coordination plan" means a plan prepared for the purposes of Part 1 of Chapter 2;

"maritime security guard" has the meaning given by section 179(1);

"maritime security identification scheme" has the meaning given by section 150(2);

"maritime security identity card" means a maritime security identity card within the meaning of a maritime security identification scheme;

"maritime security inspector" means a person appointed under section 153(1);

"maritime security (MARSEC) direction" has the meaning given by section 41(2);

"maritime security (MARSEC) level" means—

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

"maritime transport security outcomes" has the meaning given by section 2(2);

"maritime security plan" means a plan prepared for the purposes of Chapter 5;

"maritime security zone" means—

- (a) a port security zone;
- (b) a ship security zone;

(c) an on-board security zone; or

(d) an offshore security zone;

"maritime transport security incident" has the meaning given by section 191;

"MARSEC level 1" means MARSEC level 1 as in force in terms of section 26;

"MARSEC level 2" means MARSEC level 2 as in force under section 27;

"MARSEC level 3" means MARSEC level 3 as in force under section 27;

"master", in relation to a ship, means the person who has command or charge of the ship;

"Minister" means the Minister of Transport;

"MODU" (short for Mobile Offshore Drilling Unit) means a self-propelled ship capable of engaging in drilling operations for the exploration or exploitation of subsea resources;

"National Ports Authority" means the Authority as defined in section 1 of the National Ports Act, 2005 (Act No. 12 of 2005);

"offshore area" has the meaning given by section 23(6);

"offshore facility" has the meaning given by section 23;

"offshore facility operator" means a person designated under section 25;

"offshore industry participant" means—

(a) an offshore facility operator;

(b) a contractor who provides services to an offshore facility operator; or

(c) a person who—

- (i) conducts an enterprise connected with a security regulated offshore facility; and
- (ii) is prescribed in the regulations for the purposes of this definition;

"offshore security zone" means an offshore security zone (of a type prescribed under section 136) established under section 135(1);

"on-board security zone" means an on-board security zone (of a type prescribed under section 131) established under section 131(1);

"operational area"—

- (a) on a security regulated ship, has the meaning given by section 159(4); and
- (b) on a security regulated offshore facility, has the meaning given by section 161(4);

"organ of state" has the meaning it has in section 239 of the Constitution of the Republic of South Africa, 1996;

"passenger" means a passenger travelling by maritime transport, and includes an intending passenger;

"passenger ship" has the meaning it has in section 2(1) of the Merchant Shipping Act, 1951 (Act No. 57 of 1951), but does not include a ship that is not self-propelled;

"person with incident reporting responsibilities" has the meaning given by section 196(1);

"petroleum" has the meaning it has in section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);

"pleasure craft" means a vessel that is used solely for sport or recreation as defined in section 2(1) of the Merchant Shipping Act, 1951 (Act No. 57 of 1951);

"port" has the meaning given by section 17;

"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 is—

- (a) used either wholly or partly in connection with the loading or unloading of security regulated ships; and
- (b) identified as a port facility in the map that, in terms of section 57, must accompany the maritime security plan for the security regulated port;

"port facility operator" means—

- (a) the owner of the port facility; or
- (b) if the owner is not responsible for the management of the port facility—
 - (i) the manager of the port facility; or
 - (ii) any other person who is, for the time being, responsible for the management of the port facility;

"port operator" means a person designated under section 19(1);

"port security advisory committee" means a committee established under section 15;

"port security zone" means a port security zone (of a type prescribed under section 124) established under section 123(1);

"pre-arrival information" has the meaning given by section 200(3);

"Prince Edward Islands" means the territory referred to in section 1 of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948);

"private living area"—

(a) on a security regulated ship, has the meaning given by section 159(3);
and

(b) on a security regulated offshore facility, has the meaning given by section 161(3);

"prohibited item" means an item that—

(a) could be used for unlawful interference with maritime transport; and
(b) is prescribed in the regulations for the purposes of this definition;

"receive clearance" has the meaning given by section 139(2);

"recognised security organisation" has the meaning given by section 220(2);

"regulated foreign ship" has the meaning given by section 22;

"regulated South African ship" has the meaning given by section 21;

"review application" has the meaning given by section 222(2);

"SAMSA officer" means an officer as defined in section 1 of the South African Maritime Safety Authority Act, 1998 (Act No. 5 of 1998);

"screened" has the meaning given by section 139(1);

"screening officer" has the meaning given by section 187(1);

"screening point" means a place where screening happens;

"Seafarers' Identity Documents Convention" means the Seafarers' Identity Documents Convention (Revised) 2003 (No. 185), done at Geneva on 19 June 2003, as amended from time to time;

"seafarers' identity document" has the meaning it has in the Seafarers' Identity Documents Convention;

"security compliance information" has the meaning given by section 201(1);

"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 regulated offshore facility" has the meaning given by section 24;

"security regulated port" has the meaning given by section 18(1);

"security regulated ship" has the meaning given by section 20;

"ship" means any kind of vessel used, or capable of being used, for maritime navigation, however propelled or moved, and includes—

- (a) a barge, lighter or other floating vessel;
- (b) a structure that is able to float or be floated and is able to move or be moved as an entity from one place to another;
- (c) a hovercraft or other thing deriving full or partial support in the atmosphere from the reaction of air against the surface of the water over which it operates;
- (d) a submarine or other submersible;
- (e) a high-speed craft; and
- (f) a MODU;

"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 this Act, that other person;

"ship regulated as an offshore facility" means each of the following:

- (a) a South African ship regulated as an offshore facility;
- (b) a foreign ship regulated as an offshore facility;

"ship security plan" means a plan prepared for the purposes of Chapter 6;

"ship security record", for a particular kind of security regulated ship or ship regulated as an offshore facility, means a document or information relating to maritime transport security prescribed in the regulations as a document or information to be kept on, by or for a ship of that kind;

"ship security zone" means a ship security zone (of a type prescribed under section 128) declared under section 127(1) or (2);

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

"SMS employee" means an employee in the senior management service within the meaning of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

"SoC" means a statement of compliance issued under section 72;

"SoC verified" has the meaning given by section 73(1) and (2);

"SOLAS Convention" means the International Convention for the Safety of Life at Sea, done at London on 1 November 1974, as amended from time to time;

"SOLAS Convention state" means a contracting state to the SOLAS Convention, other than the Republic;

"South African Maritime Safety Authority" means the Authority as defined in section 1 of the South African Maritime Safety Authority Act, 1998 (Act No. 5 of 1998);

"South African ship" has the meaning it has in section 1 of the Ship Registration Act, 1998 (Act No. 12 of 1998);

"South African ship regulated as an offshore facility" has the meaning given by section 21(4);

"South African waters" means—

- (a) the territorial waters of the Republic;
- (b) the internal waters of the Republic; and
- (c) inland waters prescribed in the regulations for the purposes of this definition;

"territorial waters" means the territorial waters referred to in section 4 of the Maritime Zones Act, 1994 (Act No. 15 of 1994);

"the Republic", when used in a geographical sense, includes—

- (a) the Prince Edward Islands; and
- (b) South African waters;

"this Act" includes the regulations;

"threaten", to do an act, means to make a statement, or do anything else—

(a) that shows an intention to do the act; or

(b) from which an intention to do the act could reasonably be inferred;

"unlawful interference with maritime transport" has the meaning given by section 3;

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

"weapon" means—

(a) a firearm of any kind;

(b) a thing prescribed by the regulations to be a weapon;

(c) a device that, except for the absence of, or a defect in, a part of the device, would be a weapon of a kind mentioned in paragraph (a) or (b); or

(d) a device that is reasonably capable of being converted into a weapon of a kind mentioned in paragraph (a) or (b).

(2) For the purposes of this Act, section 10(3) of the Interpretation Act, 1957 (Act No. 33 of 1957) is deemed to read as follows:

Where a law confers a power to make any instrument (including rules, regulations or by-laws), the power shall, unless the contrary intention appears, be construed as including a power exercisable in like manner and subject to the like consent and conditions (if any) to rescind, revoke, amend or vary the instrument.

Purposes of Act

2. (1) The main purpose of this Act is to safeguard against unlawful interference with maritime transport.

(2) To achieve its main purpose, this Act establishes a regulatory scheme for achieving the following maritime transport security outcomes:

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

(3) A main feature of this regulatory scheme is the requirement to develop and implement risk-based and outcome focussed security plans for ships, offshore facilities, ports and other maritime transport operations.

(4) Another purpose of this Act is to give effect to the Seafarers' Identity Documents Convention.

(5) It is not a purpose of this Act to prevent lawful advocacy, protest, dissent or industrial action that does not compromise maritime transport security.

Meaning of unlawful interference with maritime transport

3. (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) committing an act, or causing any interference or damage, that puts the safe operation of an offshore facility, or the safety of any person or property at the offshore facility, at risk;
- (c) taking control of a ship or offshore facility by force, or threat of force, or any other form of intimidation;
- (d) destroying a ship or offshore facility;
- (e) causing damage to a ship that puts the safety of the ship, or any person or property on board or off the ship, at risk;
- (f) doing on board a ship anything that puts the safety of the ship, or any person or property on board or off the ship, at risk;

- (g) placing, or causing to be placed, on board a ship anything that puts the safety of the ship, or any person or property on board or off the ship, at risk;
- (h) putting the safety of ships at risk by interfering with, damaging or destroying navigational aids, communication systems or security systems;
- (i) putting the safety of ships at risk by communicating false information.

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

Extension to Prince Edward Islands

4. This Act extends to the Prince Edward Islands.

Application to ships, ports and offshore facilities

5. (1) Unless the context indicates otherwise, this Act applies to, and in relation to—
- (a) ships and ports in the Republic;
 - (b) South African ships outside the Republic;
 - (c) offshore facilities; and

(d) foreign ships outside the Republic when in the vicinity of an offshore facility and engaged in any activity in relation to the facility.

(2) This Act does not apply so as to require or authorise—

(a) any person outside the Republic to contravene the law of a foreign country; or

(b) any South African ship outside the Republic to be operated in contravention of that law.

Act binds State

6. (1) This Act binds the State and all organs of state.

(2) Nothing in this Act makes the State, or an organ of state, liable to be prosecuted for an offence.

(3) Subsection (2) does not affect any liability of any servant or agent of the State or of an organ of state to be prosecuted for an offence.

Act does not apply to certain State ships and facilities

7. (1) Unless, and to the extent that, the Minister by notice in the *Gazette* determines otherwise, this Act does 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; and
- (ii) being used wholly for non-commercial activities; or
- (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) In making a determination under subsection (1), the Minister must act consistently with the Republic's obligations under international law.

CHAPTER 2

MARITIME TRANSPORT SECURITY PLANNING AND COORDINATION

Part 1—Maritime transport security coordination plan

Developing maritime transport security coordination plan

8. (1) The Director-General must develop for the Minister's approval, by a date specified by the Minister by notice in the *Gazette* and at least once every three years thereafter, a maritime transport security coordination plan to provide a framework for coordinated planning and action for achieving the purposes of this Act.

(2) In developing a maritime transport security coordination plan, the Director-General—

(a) must consult—

- (i) the Maritime Transport Security Advisory Committee; and
- (ii) any organ of state, or person, required in writing by the Minister to be consulted; and

(b) may consult any other organ of state, or person, the Director-General considers appropriate.

(3) A maritime transport security coordination plan applies for a period of three years after the Minister approves it, but the Director-General may, if it is appropriate in the circumstances, develop a new plan for the Minister's approval even though the period has not ended.

(4) The Minister may, at any time, direct the Director-General to develop a new maritime transport security coordination plan for the Minister's approval or to amend the current plan in the way the Minister directs.

(5) The Minister may approve a maritime transport security coordination plan that is submitted for approval or require the Director-General to amend the plan in the way the Minister directs.

Content of maritime transport security coordination plan

9. (1) A maritime transport security coordination plan must include—

- (a) a statement of the specific objectives sought to be achieved by the plan and assignment of responsibilities for achieving them;
- (b) a statement of the risk context for ships, ports, offshore facilities and other maritime operations covered by this Act;
- (c) appropriate security policy statements for ships, ports, offshore facilities and other maritime operations covered by this Act;
- (d) identification of security resources;
- (e) procedures and techniques to be used in deterring, and responding to, maritime transport security incidents including, in particular, activations of ship security alert systems;

- (f) a system of surveillance and notice designed to safeguard against maritime transport security incidents and ensure earliest possible notice of such incidents to the appropriate organs of state;
- (g) criteria for deciding priorities for spending on activities for achieving the purposes of this Act;
- (h) appropriate performance indicators for deciding whether, and to what extent, the objectives of the plan have been achieved; and
- (i) any matter required in writing by the Minister to be included in the plan.

(2) The plan must also provide—

- (a) an adequate framework for coordinated planning and action across government departments and other organs of state for achieving the purposes of this Act; and
- (b) a way of achieving effective and efficient use of security resources for that purpose.

Maritime transport security coordination plan must be consistent with overall strategic planning for government and take account of international obligations

10. (1) A maritime transport security coordination plan must be consistent with the government's overall strategic planning for the Republic and take the following into account, as appropriate:

- (a) national strategies of government (including planning around these strategies) affecting maritime transport, offshore facilities and maritime security;
- (b) arrangements between organs of state (whether in the national, provincial or local spheres of government) about maritime transport security initiatives;
- (c) any other matter required in writing by the Minister to be taken into account.

(2) A maritime transport security coordination plan must also take into account the Republic's international obligations about maritime transport security, including obligations under the SOLAS Convention and the Seafarers' Identity Documents Convention.

Notifying content of maritime transport security coordination plan

11. The Director-General must inform maritime industry participants of the provisions of the current maritime transport security coordination plan that the Director-General considers necessary for security purposes.

Government action must be consistent with maritime transport security coordination plan

12. Actions by organs of state to safeguard against unlawful interference with maritime transport must, to the greatest extent possible, be consistent with the current maritime transport security coordination plan.

Contributions and grants

13. The Minister may, with the consent of, and on any terms and conditions specified by, the Minister of Finance, out of money appropriated by Parliament for the purpose, make contributions or grants in respect of the cost or expense of actions that in the opinion of the Minister contribute appropriately towards safeguarding against unlawful interference with maritime transport.

Part 2—Maritime transport security advisory and coordinating structures

Maritime Transport Security Advisory Committee

14. (1) The Minister—
- (a) must establish a Maritime Transport Security Advisory Committee; and
 - (b) may request the committee to—

- (i) review a maritime transport security coordination plan and make recommendations to the Minister, or the Director-General, that the committee considers appropriate; or
- (ii) consider any other matter relating to maritime transport security that the Minister, or the Director-General, specifies by notice to the committee.

(2) The committee—

- (a) may advise, consult with, report to, and make recommendations to either or both the Minister or the Director-General about matters relating to national maritime transport security; and
- (b) must meet at the call of—
 - (i) the Minister, who must call at least two meetings each calendar year; or
 - (ii) the majority of the committee.

(3) In formulating policy about matters affecting maritime transport security, the Minister must take account of the information, advice and recommendations of the committee.

(4) The Minister must appoint to the committee—

- (a) the Director-General;
- (b) other persons that the Minister determines; and
- (c) a chairperson of the committee.

(5) In appointing members of the committee, the Minister must consider whether the committee should have members who represent, or have experience relating to, the following:

- (a) the shipping industry;
- (b) the ports industry;
- (c) the offshore industries;
- (d) government departments and other organs of state with responsibilities affecting those industries

(6) Before appointing a person to the committee, the Minister must require the person to have passed an appropriate security background check.

(7) Members of the committee are appointed on the terms and conditions (including travelling allowances and expenses) that the Minister determines.

(8) The Director-General must provide a secretariat service for the committee.

(9) The committee may, subject to any written directions of the Minister, regulate its procedure as it considers appropriate.

Port security advisory committees

15. (1) The Director-General may—

- (a) establish a port security advisory committee for any security regulated port in the Republic; and
- (b) request the committee to do one or more of the following:
 - (i) assist in conducting security assessments for the port;

- (ii) review a proposed maritime security plan for the port and make recommendations to the Director-General that the committee considers appropriate;
- (iii) anything else affecting maritime security in the port that the Director-General specifies by notice to the committee.

(2) A port security advisory committee for a security regulated port—

- (a) may advise, consult with, report to, and make recommendations to the Director-General about matters affecting maritime security in the port; and
- (b) must meet at the call of—
 - (i) the Director-General, who must call at least four meetings each calendar year; or
 - (ii) the majority of the committee.

(3) The Director-General must appoint to each port security advisory committee for a security regulated port—

- (a) the senior security officer for the port;
- (b) other persons that the Director-General determines; and
- (c) a chairperson of the committee.

(4) In appointing members of a port security advisory committee, the Director-General must ensure that the committee membership reflects the operational functions of the port for which the committee is established and includes, as appropriate—

- (a) an employee in the Department not below the rank of deputy director, who represents the Director-General;
- (b) the senior security officer for each port facility within the port;
- (c) national, provincial and local government border control authorities and security agencies;
- (d) police and emergency services; and
- (e) an equal number of labour and employer representatives from among the maritime industry participants operating in the port.

(5) Before appointing a person to a port security advisory committee, Director-General must require the person to have passed an appropriate security background check.

(6) Members of a port security advisory committee are appointed on the terms and conditions (including travelling allowances and expenses) that the Director-General determines.

(7) The Director-General must provide a secretariat service for each port security advisory committee.

(8) A port security advisory committee may, subject to any written directions of the Director-General, regulate its procedure as it considers appropriate.

Maritime transport security coordination centres

16. (1) For the purposes of coordinating the administration of this Act, the Director-General may—

- (a) establish any coordinating structures that the Director-General considers appropriate; and
- (b) determine the make-up and functions of any established structure.

(2) A structure established under subsection (1) is a maritime transport security coordination centre.

(3) Before establishing a maritime transport security coordination centre, the Director-General—

- (a) must consult—
 - (i) the Minister; and
 - (ii) any organ of state, or person, required in writing by the Minister to be consulted; and
- (b) may consult any other organ of state, or person, the Director-General considers appropriate.

(4) The regulations may prescribe requirements in relation to the make-up, functions and operation of maritime transport security coordination centres.

CHAPTER 3

SECURITY REGULATED PORTS, SHIPS AND OFFSHORE FACILITIES

Part 1—Security regulated ports and port operators

Meaning of port

17. (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

18. (1) Each of the following is a security regulated port:

- (a) a port that, in terms of section 10(1) of the National Ports Act, 2005 (Act No. 12 of 2005), is under the jurisdiction of the National Ports Authority;
 - (b) a port, or an area of a port, that is—
 - (i) intended for use either wholly or partly in connection with the movement, loading, unloading, maintenance or provisioning of security regulated ships; and
 - (ii) declared by the Director-General by notice in the *Gazette*.
- (2) A notice under subsection (1)(b)(ii) must include a map of the port that shows the boundaries of the security regulated port.
- (3) An area controlled exclusively by the South African National Defence Force must not be included as part of a security regulated port.

Port operators

19. (1) The Director-General must, by notice in the *Gazette*, designate a person as the port operator for a security regulated port.
- (2) In designating a person as a port operator, the Director-General must take the following into account:
- (a) the ability of the person to undertake the functions of a port operator;
 - (b) the physical and operational features of the port;
 - (c) the views of the person, or persons, responsible for managing the operations of the port;

- (d) the provisions of any other law relating to the management and operation of the port, or ports generally;
- (e) any other matter required in writing by the Minister to be taken into account.

Part 2—Security regulated ships

Security regulated ships

20. Each of the following is a security regulated ship:

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

Meaning of regulated South African ship

21. (1) A ship is a regulated South African ship if the ship—

- (a) is a South African ship; and
- (b) is one of the following:
 - (i) a passenger ship that is used for international voyages;
 - (ii) a cargo ship of 500 gross tonnage or more that is used for international voyages;
 - (iii) a MODU that is on an international voyage and not engaged in drilling operations;
 - (iv) a ship of a kind prescribed in the regulations.

(2) However, the following ships are not regulated South African ships:

- (a) a South African ship regulated as an offshore facility;
- (b) a ship of a kind prescribed by the regulations.

(3) For the purposes of subsection (1)(b)(iv) or (2)(b), the regulations may prescribe the kind of ship in relation to all or only specified provisions of this Act.

(4) In this Act, a "South African ship regulated as an offshore facility" means a FPSO, FSU or MODU that is—

- (a) a South African ship; and
- (b) either a security regulated offshore facility or part of a security regulated offshore facility.

Meaning of regulated foreign ship

22. (1) A ship is a regulated foreign 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 MODU (other than a unit engaged in drilling operations);
 - (iv) a ship of a kind prescribed in the regulations; and
- (c) is either—

- (i) in South African waters and in, or intending to call at, a port in the Republic; or
- (ii) in the vicinity of a security regulated offshore facility and engaged in any activity in relation to the facility.

(2) However, the following ships are not regulated foreign ships:

- (a) a foreign ship regulated as an offshore facility;
- (b) a ship of a kind prescribed by the regulations.

(3) For the purposes of subsection (1)(b)(iv) or (2)(b), the regulations may prescribe the kind of ship in relation to all or only specified provisions of this Act.

(4) In this Act, a "foreign ship regulated as an offshore facility" means a FPSO, FSU or MODU that is—

- (a) a foreign ship; and
- (b) either a security regulated offshore facility or part of a security regulated offshore facility.

Part 3—Security regulated offshore facilities and offshore facility operators

Meaning of offshore facility

23. (1) An offshore facility is a facility, located in an offshore area, used for the exploration or exploitation of a subsea resource referred to

in subsection (2) with equipment on, or forming part of, the facility, and includes any structure or ship, located in the offshore area, used in operations or activities associated with, or incidental to, activities of that kind.

(2) For the purposes of subsection (1), each of the following is a subsea resource:

- (a) petroleum;
- (b) a subsea resource of a kind prescribed in the regulations.

(3) To avoid doubt, a FPSO, FSU or MODU located in an offshore area is an offshore facility.

(4) However, a ship is not an offshore facility, and does not form part of an offshore facility, if it is—

- (a) an offtake tanker;
- (b) a tug or an anchor handler; or
- (c) a ship used to supply an offshore facility, or otherwise travel between an offshore facility and the shore.

(5) An offshore facility does not include any subsea pipeline.

(6) In this Act, an "offshore area" is an area in—

- (a) South African waters;
- (b) the exclusive economic zone of the Republic; or
- (c) the sea over the continental shelf of the Republic.

Security regulated offshore facilities

24. (1) The Director-General may, by notice in the *Gazette*, declare that any of the following is a security regulated offshore facility:

- (a) an offshore facility;
- (b) a part of an offshore facility;
- (c) a group of offshore facilities;
- (d) a part of a group of offshore facilities.

(2) The notice must include information about the location and boundaries of the security regulated offshore facility of the kind and in the form prescribed by the regulations.

Offshore facility operators

25. (1) The Director-General must, in writing, designate a person as the offshore facility operator for a security regulated offshore facility.

(2) In designating a person as an offshore facility operator, the Director-General must take the following into account:

- (a) the ability of the person to undertake the functions of an offshore facility operator;
- (b) the physical and operational features of the facility;
- (c) the views of the person, or persons, responsible for managing the operations of the facility;

- (d) the provisions of any other law relating to the management and operation of the offshore facility, or offshore facilities generally;
- (e) any other matter required in writing by the Minister to be taken into account.

CHAPTER 4**MARITIME SECURITY (MARSEC) LEVELS AND MARITIME SECURITY
(MARSEC) DIRECTIONS*****Part 1—Maritime security (MARSEC) levels 1, 2 and 3*****Default security level—MARSEC level 1**

26. Unless a declaration under section 27(1) provides otherwise, MARSEC level 1 is in force for each—

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

Director-General may declare MARSEC level 2 or 3

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

- (a) a security regulated port;
- (b) a security regulated ship;
- (c) a security regulated offshore facility;

- (d) an area within a security regulated port;
- (e) a maritime industry participant;
- (f) operations conducted by a maritime industry participant within, or in connection with, a security regulated port or a security regulated offshore facility.

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

(3) If—

- (a) a foreign ship regulated as an offshore facility is registered in another state (the "flag state"); and
- (b) the ship is directed by the flag state to implement a higher level of security than would otherwise apply under this Part,

then—

- (i) that higher level of security is deemed to have been declared by the Director-General under subsection (1) to be in force for the ship; and
- (ii) the declaration is deemed to have been made on the day on which the direction is given; and
- (iii) that higher level of security is in force for the ship until it ceases to be in force under the law of the flag state; and

- (iv) if the ship is part of a security regulated offshore facility, the security level of the remainder of the facility is not affected.

(4) A declaration under subsection (1) that a MARSEC level is in force for a security regulated ship may specify that the level is only in force for the ship while it is in specified waters.

(5) The regulations may prescribe requirements in relation to the declaring of MARSEC level 2 or 3.

When MARSEC level is in force

28. (1) A MARSEC level declared under section 27(27) comes into force at the time specified in the declaration.

(2) If—

- (a) no time is specified; or
 - (b) the specified time is before the time when the declaration is made,
- the MARSEC level comes into force when the declaration is made.

(3) Unless subsection (4) applies, the MARSEC level declared in the declaration remains in force until—

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

(4) If the declaration is for a security regulated ship, and the declaration limits, under section 27(4), the waters in which the security level is in force, then unless—

- (a) the period (if any) specified in the declaration expires; or

- (b) the declaration is revoked, in writing, by the Director-General, the MARSEC level declared in the declaration is in force for the ship while it is in those waters.

MARSEC level declaration for port covers all port operations

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

- (a) every area;
- (b) every security regulated ship;
- (c) every ship regulated as an offshore facility;
- (d) every security regulated offshore facility;
- (e) any operations conducted by a maritime industry participant.

MARSEC level declaration for offshore facility covers ships and operations in vicinity

30. If the Director-General declares that a MARSEC level is in force for a security regulated offshore facility, that MARSEC level is in force for—

- (a) every security regulated ship—
 - (i) in the vicinity of the facility that is engaged in any activity in relation to the facility; and

- (ii) for which (but for this section) a lower MARSEC level is in force; and
- (b) any operations conducted by a maritime industry participant within the boundaries of the facility.

MARSEC levels and complying with maritime security plans

31. For the purposes of section **Error! Reference source not found.**, if—

- (a) a maritime industry participant is required to comply with a maritime security plan; and
- (b) the Director-General makes a declaration under section 27(1); and
- (c) the effect of the declaration is that MARSEC 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 may be) for that MARSEC level.

MARSEC levels and complying with ship security plans

32. For the purposes of section 78, if—

- (a) a ship security plan is in force for a regulated South African ship; and
- (b) the Director-General makes a declaration under section 27(1); and
- (c) the effect of the declaration is that MARSEC level 2 or 3 is in force for the ship,

the ship does not operate in accordance with the ship security plan in force for the ship unless the measures set out in the plan for that MARSEC level are implemented.

MARSEC level 1, 2 or 3 not affected by MARSEC directions

33. To avoid doubt, a MARSEC direction does not raise or lower a MARSEC level in force under this Act; instead, it directs additional security measures that must be implemented or complied with at that level.

Part 2—Notifying MARSEC level 2 and 3 declarations and revocations

Notifying declarations covering security regulated ports

34. (1) If the Director-General declares that a MARSEC 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 subsection (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.

Notifying declarations covering security regulated ships

35. If the Director-General declares that a MARSEC level is in force for a security regulated ship, the Director-General must, as soon as practicable, notify—

- (a) the ship operator for the ship or the master of the ship;
- (b) if the ship is in a security regulated port, the port operator for that port; and

- (c) if the ship is in the vicinity of a security regulated offshore facility and engaged in any activity in relation to the facility, the offshore facility operator for that facility.

Notifying declarations covering security regulated offshore facilities

36. (1) If the Director-General declares that a MARSEC level is in force for a security regulated offshore facility (and the declaration is not one that, under section 27(3), is deemed to have been made), the Director-General must, as soon as practicable, notify—

- (a) the offshore facility operator; and
- (b) each offshore industry participant who is required to have a maritime security plan and who operates within the boundaries of the security regulated offshore facility.

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

- (a) every offshore industry participant who is covered by the operator's maritime security plan and who operates within the boundaries of the facility; and
- (b) the ship operator or master of every security regulated ship located within the vicinity of the facility that is engaged in any activity in relation to the facility; and

- (c) if the security regulated offshore facility, or part of the facility, is a ship regulated as an offshore facility, the master of the ship.

Notifying declarations covering areas within security regulated ports

37. If the Director-General declares that a MARSEC 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

38. If the Director-General declares that a MARSEC 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; and

- (c) if the participant conducts operations covered by the declaration within a security regulated offshore facility and is not the offshore facility operator, the offshore facility operator.

Notifying revocations

39. (1) If—

- (a) the Director-General has notified a person in terms of section 34, 35, 36, 37 or 38 that a MARSEC 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 section 34(2) that a MARSEC level is in force; and
 - (b) the Director-General revokes the declaration concerned,
- the port operator must, as soon as practicable, notify the person of the revocation.

(3) If—

- (a) an offshore facility operator has notified a person in terms of section 36(2) that a MARSEC level is in force; and
 - (b) the Director-General revokes the declaration concerned,
- the offshore facility operator must, as soon as practicable, notify the person of the revocation.

Requirements for giving notice

40. The regulations may prescribe requirements in relation to notifying declarations, and revocations of declarations, under this Part.

Part 3—Maritime security (MARSEC) directions

Director-General may give MARSEC directions

41. (1) The Director-General may direct that additional security measures, including measures of a kind that may be prescribed in the regulations, be implemented or complied with.

(2) A direction under subsection (1) is a MARSEC direction.

(3) However, the Director-General must not give a MARSEC direction unless he or she reasonably believes that it is appropriate to do so to safeguard against unlawful interference with maritime transport.

(4) A MARSEC direction may be given orally, but must be confirmed in writing as soon as practicable.

(5) The regulations may prescribe requirements for, or in relation to, the giving of MARSEC directions.

Confidentiality requirements

42. (1) A MARSEC direction may include restrictions in relation to the disclosure of the direction.

(2) Restrictions under subsection (1) are confidentiality requirements.

MARSEC directions for participants and others

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

- (a) a maritime industry participant or an employee of a maritime industry participant;
- (b) passengers;
- (c) any person not mentioned in paragraphs (a) and (b) who is within the boundaries of—
 - (i) a security regulated port; or
 - (ii) a security regulated offshore facility.

(2) For the purposes of giving a MARSEC direction to persons mentioned in subsection (1)(b) or (c), the Director-General is deemed to have given the direction 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 MARSEC 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 subsection (3) that requires the operator to communicate all or a part of the direction to specified maritime industry participants, the port operator must, as soon as practicable, communicate the direction, or the part of the direction, to the specified maritime industry participants.

(5) The Director-General may, in a MARSEC direction given to an offshore facility operator for a security regulated offshore facility, require the offshore facility operator to communicate all or a part of the direction to specified maritime industry participants—

- (a) who are on board a security regulated ship that is in the vicinity of the facility and that is engaged in any activity in relation to the facility; or
- (b) who operate within the facility.

(6) If the Director-General gives an offshore facility operator a direction under subsection (5), that requires the operator to communicate all or a part of the direction to specified maritime industry participants, the offshore facility operator must, as soon as practicable, communicate the direction, or the part of the direction, to the specified maritime industry participants.

(7) A direction that is communicated to a maritime industry participant in accordance with subsection (4) or (6) is deemed to have been given to the participant by the Director-General.

MARSEC directions for security regulated ships

44. (1) The Director-General may give a MARSEC 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 subsection (1), the ship operator must, as soon as practicable, communicate the direction to the master of the ship covered by the direction.

(3) A direction that is communicated to a master in accordance with subsection (2) is deemed to have been given to the master by the Director-General.

MARSEC directions for ships regulated as offshore facilities

45. (1) The Director-General may give a MARSEC direction to a ship regulated as an offshore facility by giving the direction to—

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

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

(3) A direction that is given to a master in accordance with subsection (2) is deemed to have been given to the master by the Director-General.

When MARSEC direction is in force

46. (1) A MARSEC direction comes into force at the time specified in the direction.

(2) However, if—

- (a) no time is specified; or
 - (b) the specified time is before the time when the direction is given,
- the direction comes into force when the direction is given.

(3) The direction remains in force until—

- (a) it is revoked in writing by the Director-General; or
- (b) it has been in force for a continuous period of three months.

Revoking MARSEC directions

47. (1) The Director-General must revoke a MARSEC direction if the direction is no longer appropriate to safeguard against the unlawful interference with maritime transport in relation to which the direction was given.

(2) If—

- (a) the Director-General has given a MARSEC direction to a person (including a direction given under section 44 to the ship operator for, or the master of, a security regulated ship or a direction given under section 45 to the offshore facility operator for, or the master of, a ship regulated as an offshore facility); and
 - (b) the Director-General revokes the direction; and
 - (c) the direction has not been displayed in terms of section 43(2);
- the Director-General must notify the person of the revocation.

(3) If the Director-General has displayed a MARSEC direction in terms of section 43(2) and the Director-General revokes the direction, the Director-General must remove the displayed direction.

Complying with MARSEC directions

48. (1) A person must not fail to comply with a MARSEC direction given to the person and in force.

(2) Subsection (1) does not apply to confidentiality requirements in a MARSEC direction.

Complying with confidentiality requirements

49. (1) A person must not fail to comply with confidentiality requirements in a MARSEC direction given to the person and in force.

(2) Subsection (1) does not apply 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.

Director-General may carry out MARSEC directions

50. (1) The Director-General may carry out any additional security measures specified in a MARSEC direction given to—

- (a) a maritime industry participant;
- (b) a security regulated ship; or
- (c) a ship regulated as an offshore facility.

(2) However, the Director-General must not carry out a security measure under subsection (1) unless he or she reasonably believes that the person to whom the MARSEC direction was given is either unable or unwilling to comply with the direction in so far as it relates to that measure.

(3) If the Director-General carries out security measures under subsection (1), each of the following is liable to the State for the costs incurred by the Director-General in carrying out the measures:

- (a) for measures carried out for a maritime industry participant, the participant;
- (b) for measures carried out on, or for, a security regulated ship, the ship operator for the ship;
- (c) for measures carried out on, or for, a ship regulated as an offshore facility, the offshore facility operator for the ship.

(4) For the purposes of this section, the Director-General carries out a measure also by causing it to be carried out.

CHAPTER 5
MARITIME SECURITY PLANS AND SOC's FOR PORT AND OFFSHORE
OPERATIONS

*Part 1—Maritime industry participants required to have maritime
security plans*

Who must have maritime security plans

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

- (a) a port operator;
- (b) a port facility operator;
- (c) an offshore facility operator;
- (d) a participant of a kind prescribed in the regulations;
- (e) a particular participant prescribed in the regulations.

(2) A maritime industry participant who is required by subsection (1) to have a maritime security plan must not operate as a participant of that kind unless there is a maritime security plan in force for the participant.

Complying with maritime security plan

52. A maritime industry participant who is required by section 51(1) to have a maritime security plan must not fail to comply with the maritime security plan in force for the participant.

Part 2—Complying with other plans**Complying with maritime security plans of other participants**

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

(2) If—

(a) a maritime security plan (the "covering plan") for a maritime industry participant covers the activities of another maritime industry participant; and

(b) the other participant—

(i) is not required to have a maritime security plan; and

(ii) has been given the relevant parts of the covering plan,

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

(3) If—

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

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

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

54. The operations of a regulated South African ship must not hinder or obstruct compliance with a maritime security plan.

Part 3—Content and form of maritime security plans

Content of maritime security plans

55. (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 activities or measures to be undertaken or implemented by the participant for MARSEC levels 1, 2 and 3;
- (c) designate, by name or reference to a position, all security officers responsible for implementing and maintaining the plan;
- (d) make provision for the use of declarations of security;
- (e) demonstrate that the implementation of the plan will make an appropriate contribution towards the achievement of the maritime transport security outcomes; and
- (f) complement, to the greatest extent possible, the occupational health and safety requirements under the laws of the Republic applying in relation to the participant's operation.

(2) The security assessment referred to in subsection (1)(a) must—

- (a) take into account any documents required in writing by the Director-General to be taken into account; and
- (b) address any matters prescribed in the regulations.

Prescribed content for maritime security plans

56. The regulations may prescribe specific matters that are to be dealt with 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.

Form of maritime security plans

57. (1) A maritime security plan must be in writing and prepared in accordance with any requirements prescribed in the regulations.

(2) A maritime security plan for a maritime industry participant who is not an offshore industry participant must be accompanied by—

- (a) if the Director-General has not established any port security zones under section 123(1) within the area covered by the plan, and the participant proposes that the Director-General should establish such a zone or zones within that area, a map that shows each proposed zone; and
- (b) if the Director-General has established a port security zone or zones under section 123(1) within the area covered by the plan—
- (i) a map that shows each such zone;
 - (ii) if the participant proposes that such a zone be changed, a map that shows the proposed change; and
 - (iii) if the participant proposes that the Director-General should establish an additional port security zone within that area or revoke the establishment of an existing port security zone

within that area, a map that shows the zones that would be established within that area if the proposal were accepted.

(3) A maritime security plan for an offshore industry participant must be accompanied by—

- (a) information about the location of each offshore facility to which the plan relates;
- (b) if the Director-General has not established any offshore security zones under section 135(1) within or around an offshore facility to which the plan relates, and the participant proposes that the Director-General should establish such a zone or zones within or around such a facility, information about each proposed zone; and
- (c) if the Director-General has established an offshore security zone or zones under section 135(1) within or around an offshore facility to which the plan relates—
 - (i) information about each such zone;
 - (ii) if the participant proposes that such a zone be changed, information about the proposed change; and
 - (iii) if the participant proposes that the Director-General should establish an additional offshore security zone, or revoke the establishment of an existing offshore security zone, within or around the facility, information about the zones within or around the facility if the proposal were accepted.

(4) The map that accompanies a maritime security plan for a port operator must cover the whole security regulated port.

Part 4—Approving, varying, revising and cancelling maritime security plans

Applying for approval of maritime security plans

58. (1) A maritime industry participant may apply in writing to the Director-General for approval of a maritime security plan for the participant.

(2) A copy of the plan must accompany the application.

Approving maritime security plans

59. (1) If the Director-General is satisfied that the plan adequately addresses the relevant requirements under Part 3 of this Chapter, 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 Part 3 of this Chapter, 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 Part 3 of this Chapter, the Director-General may take account of existing circumstances as they relate to maritime transport security.

(4) If—

- (a) a maritime industry participant applies to the Director-General for approval of a maritime security plan; and
 - (b) the Director-General does not approve, or refuse to approve, the plan within the consideration period,
- the Director-General is deemed to have refused to approve the plan.

(5) The Director-General may, by written notice given to the participant within the consideration period, request the participant to give the Director-General specified information relevant to the approval of the plan.

(6) The notice must specify a period of not less than seven days within which the information must be given. However, the total of the periods specified in any notices given to the participant under subsection (5) must not exceed 45 days.

(7) In this section, the "consideration period" is the period of 60 days beginning on the day on which the Director-General receives the plan, extended, in relation to each notice given under subsection (5), by a number of days equal to the number of days falling within the period—

- (a) beginning on the day on which the notice under subsection (5) was given; and
- (b) ending on—

- (i) the day on which the information requested in that notice was received by the Director-General; or
- (ii) if the information is not given within the period specified in that notice, the last day of that period.

When maritime security plan is in force

60. (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) no time is specified; or
 - (b) the specified time is before the time when the notice is given,
- the plan comes into force when the notice is given.

(3) The plan remains in force until—

- (a) it is replaced under section 63(4) or 64(5); or
- (b) its approval is cancelled under this Part.

Participants may vary maritime security plans

61. (1) If a maritime security plan for a maritime industry participant is in force, the participant may apply in writing to the Director-General for approval to vary the plan.

(2) The application must set out the proposed variation.

(3) If the plan proposed to be varied is for a maritime industry participant who is not an offshore industry participant, the application must be accompanied by—

- (a) if the Director-General has established a port security zone or zones under section 123(1) within the area covered by the plan, and the participant proposes that such a zone be changed, a map that shows the proposed change; and
- (b) if—
 - (i) the Director-General has established a port security zone or zones under section 123(1) within the area covered by the plan; and
 - (ii) the participant proposes that the Director-General should establish an additional port security zone within that area or revoke the establishment of an existing port security zone within that area,a map that shows the zones that would be established within that area if the proposal were accepted.

(4) If the plan proposed to be varied is for an offshore industry participant, the application must be accompanied by—

- (a) if the Director-General has established an offshore security zone or zones under section 135(1) within or around an offshore facility to which the plan relates, and the participant proposes that such a zone be changed, information about the proposed change; and
- (b) if—

- (i) the Director-General has established an offshore security zone or zones under section 135(1) within or around an offshore facility to which the plan relates; and
- (ii) the participant proposes that the Director-General should establish an additional offshore security zone, or revoke the establishment of an existing offshore security zone within or around the facility,

information about the zones within or around the facility if the proposal were accepted.

(5) If the Director-General is satisfied that the plan, as varied, would continue to adequately address the relevant requirements under Part 3 of this Chapter, the Director-General must—

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

(6) If the Director-General is not satisfied that the plan, as varied, would continue to adequately address the relevant requirements under Part 3 of this Chapter, the Director-General must—

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

(7) In determining whether the plan, as varied, would continue to adequately address the relevant requirements under Part 3 of this Chapter, the Director-General may take account of existing circumstances as they relate to maritime transport security.

(8) If—

- (a) a maritime industry participant applies to the Director-General for approval to vary a maritime security plan; and
- (b) the Director-General does not approve, or refuse to approve, the variation within the consideration period,

the Director-General is deemed to have refused to approve the variation.

(9) The Director-General may, by written notice given to the participant within the consideration period, request the participant to give the Director-General specified information relevant to the approval of the variation.

(10) The notice must specify a period of not less than seven days within which the information must be given. However, the total of the periods specified in any notices to the participant under subsection (9) must not exceed 45 days.

(11) In this section, the "consideration period" is the period of 60 days beginning on the day on which the notice under subsection (1) requesting the variation is received by the Director-General, extended, in relation to each notice given under subsection (9), by a number of days equal to the number of days falling within the period—

- (a) beginning on the day on which the notice under subsection (9) was given; and
- (b) ending on—
 - (i) the day on which the information requested in that notice was received by the Director-General; or

- (ii) if the information is not given within the period specified in that notice, the last day of that period.

Director-General may direct participants to vary maritime security plans

62. (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 Part 3 of this Chapter,
- the Director-General may, by written notice given to the participant, direct the participant to vary the plan.

(2) However, the Director-General must not give a direction under subsection (1) unless he or she is satisfied that the plan, as varied, would adequately address the relevant requirements under Part 3 of this Chapter.

(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

63. (1) If a maritime security plan for a maritime industry participant is in force, the participant may apply in writing to the Director-General for approval of another maritime security plan for the participant (the "revised plan").

(2) A copy of the revised plan must accompany the application.

(3) If an application is made in accordance with this section, sections 59 and 60 apply in relation to the revised plan.

(4) If the revised plan 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

64. (1) 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 Part 3 of this Chapter—

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

the Director-General may, by written notice given to the participant, direct the participant to give the Director-General another maritime security plan (the "revised plan").

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

(3) If the participant gives the Director-General the revised plan within the specified period, or within any further period allowed by the Director-General, sections 59 and 60 apply in relation to the revised plan.

(4) 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.

(5) If the revised plan comes into force, it replaces any other plan for the participant in force at that time.

Maritime security plans cancelled after five years

65. The approval of a maritime security plan for a maritime industry participant is cancelled by force of this section five years after the plan comes into force, if the plan has not already ceased to be in force during that period.

Cancelling inadequate maritime security plans

66. 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 Part 3 of this Chapter; and
- (c) the Director-General is satisfied that it is not appropriate to direct the participant to—
 - (i) vary the plan under section 62; or
 - (ii) revise the plan under section 64,

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 plan

67. 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, or take other enforcement action, 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 for offshore industry participants
where facility moved**

68. If—

- (a) a maritime security plan for an offshore industry participant is in force;
and
- (b) the plan relates, in whole or in part, to a particular offshore facility; and
- (c) that facility is moved to a new location for purposes of—
 - (i) the exploration or exploitation of a subsea resource referred to in section 23(2) at that location; or
 - (ii) operations or activities associated with, or incidental to, activities of that kind at that location,

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

Cancelling maritime security plans on request

69. 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 5—Statements of compliance (SoCs)**Who must have SoCs**

70. (1) A maritime industry participant who is required by section 50(1) to have a maritime security plan must not operate as a participant of that kind unless there is a SoC or interim SoC in force for the participant.

(2) Subsection (1) does not apply to—

- (a) a participant of a kind prescribed in the regulations; or
- (b) a particular participant prescribed in the regulations.

Applying for SoC

71. (1) A maritime industry participant may apply in writing to the Director-General for a SoC.

(2) The application must be in accordance with any requirements (including in relation to the form and content of the application and the way in which it must be made) prescribed in the regulations.

Conditions for issuing SoC

72. The Director-General must issue a maritime industry participant with a SoC if—

- (a) the participant has applied for an SoC;
- (b) there is a maritime security plan for the participant in force; and
- (c) the participant is SoC verified.

SoC verification

73. (1) A maritime industry participant is SoC verified if—

- (a) a maritime security inspector has inspected the participant's operation; and
- (b) the inspector has verified that the participant meets the requirements for verification prescribed in the regulations; and

(c) the period, prescribed in the regulations, within which the participant must be next inspected has not expired.

(2) If—

- (a) there is a SoC in force for a maritime industry participant; and
 - (b) a maritime security inspector inspects the participant's operation; and
 - (c) the inspector finds that the participant does not meet the requirements prescribed under subsection (1)(b); and
 - (d) the participant does not meet those requirements within any period allowed in writing by the inspector,
- the participant is no longer SoC verified.

When SoC is in force

74. If the Director-General issues a SoC to a maritime industry participant, the SoC comes into force when it is issued and remains in force until any of the following happens:

- (a) the Director-General cancels the SoC;
- (b) the maritime industry participant is no longer responsible for the operation (in whole or in part) covered by the SoC;
- (c) any period in which the participant must be next inspected has ended without the participant being inspected as mentioned in section 157(1);
- (d) the period of five years after the SoC is issued, or any shorter duration specified in the SoC, expires.

Cancelling SoCs

75. (1) The Director-General must, by written notice given to a maritime industry participant, cancel the SoC for the participant if—

- (a) the maritime security plan covered by the SoC is no longer in force for the participant;
- (b) the participant is no longer SoC verified; or
- (c) the Director-General reasonably believes that the SoC was issued or endorsed on false or erroneous information.

(2) If the Director-General cancels a SoC under this section, the Director-General may require the SoC to be given to a specified person.

(3) A person who is subject to a requirement under subsection (2) must not fail to comply with the requirement.

Interim SoCs

76. (1) The Director-General may issue a maritime industry participant with an interim SoC if—

- (a) the participant has applied to the Director-General for a SoC; and
- (b) there is a maritime security plan for the participant in force; and
- (c) the participant is not SoC verified; and
- (d) a maritime security inspector has inspected the participant's operation; and
- (e) the inspector—

- (i) verifies that the elements, prescribed in the regulations, of the maritime security plan in force for the participant have been implemented; and
- (ii) is satisfied that the participant has taken adequate steps to implement the remainder of the plan within the proposed period of the interim SoC.

(2) An interim SoC is in force for the period, not exceeding six months, specified in the interim SoC.

(3) The Director-General may refuse to issue another interim SoC for a participant if the Director-General reasonably believes that a purpose of the interim SoC is for the participant to avoid complying with this Act.

CHAPTER 6
SHIP SECURITY PLANS AND ISSCs FOR REGULATED SOUTH
AFRICAN SHIPS

Part 1—Ships required to have security plans

Regulated South African ships must have ship security plans

77. (1) A regulated South African ship must not be used for maritime transport unless there is a ship security plan in force for the ship.

(2) Failure to comply with subsection (1) is a failure by the ship operator for the ship.

Complying with ship security plan

78. (1) A regulated South African ship must not fail to operate in accordance with the ship security plan in force for the ship.

(2) Failure to comply with subsection (1) is a failure by the ship operator for the ship.

Part 2—Complying with other plans

Complying with ship security plans of other ships

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

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

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

Part 3—Content and form of ship security plans

Content of ship security plans

81. (1) A ship security plan for a regulated South African ship must—
- (a) include a security assessment for the ship;
 - (b) set out the security activities or measures to be undertaken or implemented on, or in connection with, the ship for MARSEC levels 1, 2 and 3;

- (c) designate, by name or by reference to a position, all security officers responsible for implementing and maintaining the plan;
- (d) make provision for the use of declarations of security;
- (e) demonstrate that the implementation of the plan will make an appropriate contribution towards the achievement of the maritime transport security outcomes; and
- (f) complement, to the greatest extent possible, the occupational health and safety requirements under the laws of the Republic applying in relation to the ship.

(2) The security assessment referred to in subsection (1)(a) must—

- (a) take into account any documents required in writing by the Director-General to be taken into account; and
- (b) address any matters prescribed in the regulations.

Prescribed content for ship security plans

82. The regulations may prescribe specific matters that are to be dealt with 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.

Form of ship security plans

83. A ship security plan must be in writing and prepared in accordance with any requirements prescribed in the regulations.

Part 4—Approving, varying, revising and cancelling ship security plans

Applying for approval of ship security plans

84. (1) A ship operator for a regulated South African ship may apply in writing to the Director-General for approval of a ship security plan for the ship.

(2) A copy of the plan must accompany the application.

Approving ship security plans

85. (1) If the Director-General is satisfied that the plan adequately addresses the relevant requirements under Part 3 of this Chapter, the Director-General must—

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

(2) If the Director-General is not satisfied that the plan adequately addresses the relevant requirements under Part 3 of this Chapter, the Director-General 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 Part 3 of this Chapter, the Director-General may take account of existing circumstances as they relate to maritime transport security.

(4) If—

- (a) the ship operator for a regulated South African ship gives the Director-General a ship security plan for the ship; and
- (b) the Director-General does not approve, or refuse to approve, the plan within the consideration period,

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

(5) The Director-General may, by written notice give to the ship operator within the consideration period, request the ship operator to give the Director-General specified information relevant to the approval of the plan.

(6) The notice must specify a period of not less than seven days within which the information must be given. However, the total of the periods specified in any notices given to the ship operator under subsection (5) must not exceed 45 days.

(7) In this section, the "consideration period" is the period of 60 days beginning on the day on which the Director-General receives the

plan, extended, in relation to each notice given under subsection (5), by a number of days equal to the number of days falling within the period—

- (a) beginning on the day on which the notice under subsection (5) was given; and
- (b) ending on—
 - (i) the day on which the information requested in that notice was received by the Director-General; or
 - (ii) if the information is not given within the period specified in that notice, the last day of that period.

When ship security plan is in force

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

(2) However, if—

- (a) no time is specified; or
 - (b) the specified time is before the time when the notice is given,
- the plan comes into force when the notice is given.

(3) The plan remains in force until—

- (a) it is replaced in terms of section 89(4) or 90(5); or
- (b) its approval is cancelled under this Part.

Ship operator may vary ship security plan

87. (1) If a ship security plan for a regulated South African ship is in force, the ship operator for the ship may apply in writing to the Director-General for approval to vary the plan.

(2) The application must set out the proposed variation.

(3) If the Director-General is satisfied that the plan, as varied, would continue to adequately address the relevant requirements under Part 3 of this Chapter, the Director-General must—

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

(4) If the Director-General is not satisfied that the plan, as varied, would continue to adequately address the relevant requirements under Part 3 of this Chapter, the Director-General must—

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

(5) In determining whether the plan, as varied, would continue to adequately address the relevant requirements under Part 3 of this Chapter, the Director-General may take account of existing circumstances as they relate to maritime transport security.

(6) If—

- (a) a ship operator for a regulated South African ship applies to the Director-General for approval to vary a ship security plan for the ship; and
- (b) the Director-General does not approve, or refuse to approve, the variation within the consideration period,

the Director-General is deemed to have refused to approve the variation.

(7) The Director-General may, by written notice given to the ship operator within the consideration period, request the ship operator to give the Director-General specified information relevant to the approval of the variation.

(8) The notice must specify a period of not less than seven days within which the information must be given. However, the total of the periods specified in any notices to the ship operator under subsection (7) must not exceed 45 days.

(9) In this section, the "consideration period" is the period of 60 days beginning on the day on which the notice under subsection (1) requesting the variation is received by the Director-General, extended, in relation to each notice given under subsection (7), by a number of days equal to the number of days falling within the period—

- (a) beginning on the day on which the notice under subsection (7) was given; and
- (b) ending on—
 - (i) the day on which the information requested in that notice was received by the Director-General; or

- (ii) if the information is not given within the period specified in that notice, the last day of that period.

Director-General may direct ship operator to vary ship security plan

88. (1) If—

- (a) a ship security plan for a regulated South African ship is in force; and
 - (b) the Director-General is no longer satisfied that the plan adequately addresses the relevant requirements under Part 3 of this Chapter,
- the Director-General may, by written notice given to the ship operator for the ship, direct the ship operator to vary the plan.

(2) However, the Director-General must not give a direction under subsection (1) unless he or she is satisfied that the plan, as varied, would adequately address the relevant requirements under Part 3 of this Chapter.

(3) In the notice, the Director-General must—

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

(4) If the ship operator 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 ship operator, cancel the approval of the plan.

Ship operator may revise ship security plan

89. (1) If a ship security plan for a regulated South African ship is in force, the ship operator may apply in writing to the Director-General for approval of another ship security plan for the ship (the "revised plan").

(2) A copy of the revised plan must accompany the application.

(3) If an application is made in accordance with this section, sections 85 and 86 apply in relation to the revised plan.

(4) If the revised plan comes into force, it replaces any other plan for the ship in force at that time.

Director-General may direct ship operator to revise ship security plan

90. (1) If—

- (a) a ship security plan for a regulated South African ship (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 Part 3 of this Chapter—

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

the Director-General may, by written notice given to the ship operator for the ship, direct the ship operator to give the Director-General another plan for the ship (the "revised plan").

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

(3) If the ship operator gives the Director-General the revised plan within the specified period, or within any further period allowed by the Director-General, sections 85 and 86 apply in relation to the revised plan.

(4) If the ship operator 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 ship operator, cancel the approval of the existing plan.

(5) If the revised plan comes into force, it replaces any other plan for the ship in force at that time.

Ship security plans cancelled after five years

91. The approval of a ship security plan for a regulated South African ship is cancelled by force of this section five years after the plan comes into force, if the plan has not already ceased to be in force during that period.

Cancelling inadequate ship security plans

92. If—

- (a) a ship security plan for a regulated South African ship is in force; and
- (b) the Director-General is no longer satisfied that the plan adequately addresses the relevant requirements under Part 3 of this Chapter; and
- (c) the Director-General is satisfied that it is not appropriate to direct the ship operator for the ship to—
 - (i) vary the plan under section 88; or
 - (ii) revise the plan under section 90,

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

Cancelling for failure to comply with ship security plan

93. If—

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

- (b) the ship operator has failed to comply with the plan; and
- (c) the Director-General is satisfied that it is not appropriate to make an enforcement order, or take other enforcement action, in relation to the ship operator,

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

Cancelling ship security plans on request

94. If—

- (a) a ship security plan for a regulated South African ship is in force; and
- (b) the ship operator for the ship 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 ship operator, cancel the approval of the plan.

Part 5—International ship security certificates (ISSCs)

Regulated South African ships must have ISSCs

95. (1) A regulated South African ship must not be used for maritime transport unless there is an ISSC or interim ISSC in force for the ship.

(2) Failure to comply with subsection (2) is a failure by the ship operator for the ship.

Applying for ISSC

96. (1) The ship operator for a regulated South African ship may apply in writing to the Director-General for an ISSC for the ship.

(2) The application must be in accordance with any requirements (including in relation to the form and content of the application and the way in which it must be made) prescribed in the regulations.

Conditions for issuing ISSC

97. The Director-General must issue a ship operator with an ISSC for a regulated South African 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.

ISSC verification

98. (1) A regulated South African ship is ISSC verified if—

- (a) a maritime security inspector has inspected the ship; and

- (b) the inspector has verified that the ship meets the requirements for verification prescribed in the regulations; and
- (c) the period, prescribed in the regulations, within which the ship must be next inspected has not ended.

(2) If—

- (a) an ISSC is in force for a regulated South African ship; and
 - (b) a maritime security inspector inspects the ship; and
 - (c) the inspector finds that the ship does not meet the requirements prescribed under subsection (1)(b); and
 - (d) the ship does not meet those requirements within any period allowed in writing by the inspector,
- the ship is no longer ISSC verified.

When ISSC is in force

99. If the Director-General issues an ISSC to the ship operator for a regulated South African ship, the ISSC comes into force when it is issued and remains in force until any of the following happens:

- (a) the Director-General cancels the ISSC;
- (b) the ship operator is no longer the ship operator for the ship;
- (c) any period in which the ship must be next inspected has ended without the ship being inspected as mentioned in section 157(2);
- (d) the period of five years after the ISSC is issued, or any shorter duration specified in the ISSC, expires.

Cancelling ISSCs

100. (1) The Director-General must, by written notice given to the ship operator for a regulated South African ship, cancel the ISSC for the ship if—

- (a) there is no longer a ship security plan in force for the ship;
- (b) the ship is no longer ISSC verified; or
- (c) the Director-General reasonably believes that the ISSC was issued or endorsed on false or erroneous information.

(2) If the Director-General cancels an ISSC under this section, the Director-General may require the ISSC to be given to a specified person.

(3) A person who is subject to a requirement under subsection (2) must not fail to comply with the requirement.

Interim ISSCs

101. (1) The Director-General may issue a ship operator with an interim ISSC for a regulated South African ship if—

- (a) the ship operator has applied to the Director-General 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) a maritime security inspector has inspected the ship; and
- (e) the inspector—
 - (i) verifies that the elements, prescribed in the regulations, of the ship security plan in force for the ship have been implemented; and
 - (ii) is satisfied that the ship operator for the ship has taken adequate steps to implement the remainder of the plan within the proposed period of the interim ISSC.

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

(3) The Director-General may refuse to issue another interim ISSC for a ship if the Director-General reasonably believes that a purpose of the interim ISSC is for the ship, or ship operator for the ship, to avoid complying with this Act.

CHAPTER 7

REGULATED FOREIGN SHIPS

Regulated foreign ships must have ISSCs

- 102.** (1) The ship operator for a regulated foreign ship must—
- (a) have a valid ISSC, or an approved ISSC equivalent, for the ship; and
 - (b) ensure that the ship carries the required security records.

(2) An approved ISSC equivalent is a kind of certification approved in writing by the Director-General as an alternative to an ISSC.

Regulated foreign ships must provide pre-arrival information

103. A regulated foreign ship must provide pre-arrival information in accordance with Part 1 of Chapter 12.

Regulated foreign ships must allow inspections

104. (1) The master of a regulated foreign ship must allow a maritime security inspector to board and inspect the ship in accordance with Part 1 of Chapter 10.

(2) The master of a regulated foreign ship must provide a maritime security inspector with any ship security records kept on the ship that the inspector requests.

Regulated foreign ships must comply with MARSEC levels

105. (1) This section sets out security measures that must be implemented by a regulated foreign ship.

(2) Unless subsections (3) to (7) provide otherwise, the ship must, at all times, implement ISPS level 1 measures.

(3) If MARSEC level 2 is in force for the ship—

(a) because the ship is in a security regulated port where MARSEC level 2 is in force; or

(b) because the ship is in the vicinity of, and engaged in any activity in relation to, a security regulated offshore facility for which MARSEC level 2 is in force,

the ship must implement ISPS level 2 measures.

(4) If MARSEC level 3 is in force for the ship—

(a) because the ship is in a security regulated port where MARSEC level 3 is in force; or

(b) because the ship is in the vicinity of, and engaged in any activity in relation to, a security regulated offshore facility for which MARSEC level 3 is in force,

the ship must implement ISPS level 3 measures.

(5) If the Director-General declares under section 27(1) that MARSEC level 2 is in force for the ship, the ship must implement ISPS level 2 measures.

(6) If the Director-General declares under section 27(1) that MARSEC 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 section,
- the ship must comply with the direction.

Meaning of ISPS level 1, 2 and 3 measures

106. (1) ISPS level 1 measures are the measures that should, under the ISPS Code, be implemented when MARSEC level 1 is in force.

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

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

Regulated foreign ships must comply with MARSEC directions

107. If the Director-General gives a MARSEC direction under section 44 to a regulated foreign ship, the ship must comply with the direction.

Complying with maritime and ship security plans

108. The operations of a regulated foreign ship must not hinder or obstruct compliance with—

- (a) the maritime security plan of a maritime industry participant; or
- (b) the ship security plan of a regulated South African ship.

Acknowledging MARSEC level notifications and directions

109. (1) If the master of a regulated foreign ship—

- (a) is notified by the Director-General or a port operator that MARSEC level 2 or 3 is in force for the ship;
- (b) is notified by an offshore facility operator that MARSEC level 2 or 3 is in force for the facility and, in terms of section 30, that level is also in force for the ship; or
- (c) is given—
 - (i) a MARSEC direction by the Director-General that relates to the operations of the ship; or
 - (ii) a control direction that relates to the ship,

the master must acknowledge the notification or the direction, as the case may be, to the Director-General.

(2) If the ship operator for a regulated foreign ship—

- (a) is notified by the Director-General that MARSEC level 2 or 3 is in force for the ship;

(b) is given—

- (i) a MARSEC direction by the Director-General that relates to the operations of the ship; or
- (ii) a control direction that relates to the ship,

the ship operator must acknowledge the notification or the direction, as the case may be, to the Director-General.

CHAPTER 8

SHIPS REGULATED AS OFFSHORE FACILITIES

Part 1—South African ships regulated as offshore facilities

South African ships regulated as offshore facilities must have ISSCs

110. (1) A South African ship regulated as an offshore facility must not be used for maritime transport or the exploration or exploitation of subsea resources referred to in section 23(2) unless there is an ISSC or interim ISSC in force for the ship.

(2) Failure to comply with subsection (1) is a failure by the offshore facility operator for the ship.

Applying for ISSC

111. (1) The offshore facility operator for a South African ship regulated as an offshore facility may apply in writing to the Director-General for an ISSC for the ship.

(2) The application must be in accordance with any requirements (including in relation to the form and content of the application and the way in which it must be made) prescribed in the regulations.

Conditions for issuing ISSC

112. The Director-General must issue an offshore facility operator with an ISSC for a South African ship regulated as an offshore facility if—

- (a) the offshore facility operator has applied for an ISSC for the ship; and
- (b) there is a maritime security plan in force for the ship, or the security regulated offshore facility of which the ship forms a part; and
- (c) the ship is ISSC verified.

ISSC verification

113. (1) A South African ship regulated as an offshore facility is ISSC verified if—

- (a) a maritime security inspector has inspected the ship; and
- (b) the inspector has verified that the ship meets the requirements for verification prescribed in the regulations; and
- (c) the period, prescribed in the regulations, within which the ship must be next inspected has not ended.

(2) If—

- (a) there is an ISSC in force for a South African ship regulated as an offshore facility; and
- (b) a maritime security inspector inspects the ship; and
- (c) the inspector finds that the ship does not meet the requirements prescribed under subsection (1)(b); and

- (d) the ship does not meet those requirements within any period allowed in writing by the inspector,
- the ship is no longer ISSC verified.

When ISSC is in force

114. If the Director-General issues an ISSC to the offshore facility operator for a South African ship regulated as an offshore facility, the ISSC comes into force when it is given and remains in force until any of the following happens:

- (a) the Director-General cancels the ISSC;
- (b) the offshore facility operator is no longer the offshore facility operator for the ship;
- (c) any period in which the ship must be next inspected has ended without the ship being inspected as mentioned in section 157(2);
- (d) the period of five years after the ISSC is issued, or any shorter duration specified in the ISSC, expires.

Cancelling ISSCs

115. (1) The Director-General must, by written notice given to the offshore facility operator for a South African ship regulated as an offshore facility, cancel the ISSC for the ship if—

- (a) there is no longer a maritime security plan in force for the ship, or the security regulated offshore facility of which the ship forms a part;
- (b) the ship is no longer ISSC verified; or
- (c) the Director-General reasonably believes that the ISSC was issued or endorsed on false or erroneous information.

(2) If the Director-General cancels an ISSC under this section, the Director-General may require the ISSC to be given to a specified person.

(3) A person who is subject to a requirement under subsection (2) must not fail to comply with the requirement.

Interim ISSCs

116. (1) The Director-General may issue an offshore facility operator with an interim ISSC for a South African ship regulated as an offshore facility if—

- (a) the offshore facility operator has applied to the Director-General for an ISSC for the ship; and
- (b) there is a maritime security plan in force for the ship, or the security regulated offshore facility of which the ship forms a part; and
- (c) the ship is not ISSC verified; and
- (d) a maritime security inspector has inspected the ship; and
- (e) the inspector—

- (i) verifies that the elements, prescribed in the regulations, of the maritime security plan in force for the ship, or the security regulated offshore facility of which the ship forms a part, have been implemented; and
- (ii) is satisfied that the offshore facility operator for the ship, or the security regulated offshore facility of which the ship forms a part, has taken adequate steps to implement the remainder of the plan within the proposed period of the interim ISSC.

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

(3) The Director-General may refuse to issue another interim ISSC for a ship if the Director-General reasonably believes that a purpose of the interim ISSC is for the ship, or ship operator for the ship, to avoid complying with this Act.

Part 2—Foreign ships regulated as offshore facilities

Foreign ships regulated as offshore facilities must have ISSCs

117. The offshore facility operator for a foreign ship regulated as an offshore facility must—

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

Foreign ships regulated as offshore facilities must provide pre-arrival information

118. A foreign ship regulated as an offshore facility must provide pre-arrival information in accordance with Part 1 of Chapter 12.

Foreign ships regulated as offshore facilities must allow inspections

119. (1) The master of a foreign ship regulated as an offshore facility must allow a maritime security inspector to board and inspect the ship in accordance with Part 1 of Chapter 10.

(2) The master of a foreign ship regulated as an offshore facility must provide a maritime security inspector with any ship security records kept on the ship that the inspector requests.

Foreign ships regulated as offshore facilities must comply with MARSEC directions

120. If the Director-General gives a MARSEC direction under section 45 to a foreign ship regulated as an offshore facility, the ship must comply with the direction.

Acknowledging MARSEC level notifications and directions

121. (1) If the master of a foreign ship regulated as an offshore facility—

- (a) is notified by the Director-General, a port operator or the offshore facility operator that MARSEC level 2 or 3 is in force for the ship; or
- (b) is given—
 - (i) a MARSEC direction by the Director-General that relates to the operations of the ship; or
 - (ii) a control direction that relates to the ship,

the master must acknowledge the notification or the direction, as the case may be, to the Director-General.

(2) If the offshore facility operator for a foreign ship regulated as an offshore facility—

- (a) is notified by the Director-General that MARSEC level 2 or 3 is in force for the ship; or
- (b) is given—
 - (i) a MARSEC direction by the Director-General that relates to the operations of the ship; or
 - (ii) a control direction that relates to the ship,

the offshore facility operator must acknowledge the notification or the direction, as the case may be, to the Director-General.

CHAPTER 9

PREVENTIVE SECURITY MEASURES

Part 1—Maritime security zones

Purpose of maritime security zones

122. (1) The purpose of port security zones, on-board security zones, and offshore security zones is to subject those zones to additional security requirements.

(2) The purpose of ship security zones is to protect ships within those zones from unlawful interference with maritime transport.

Establishing port security zones

123. (1) The Director-General may, by written notice given to the port operator for a security regulated port, establish one or more port security zones within the port.

(2) The notice must include a map of the port that shows the boundaries of the port security zones.

(3) If—

- (a) a maritime security plan for a port operator for a security regulated port is accompanied by a map in accordance with section 57(2)(a) or
- (b) (ii) or (iii); and

(b) the Director-General gives the port operator notice under section 59(1)(b) approving the plan,

the Director-General is deemed to have given the port operator a notice under subsection (1) of this section (including a map as mentioned in subsection (2)) establishing, or revoking the establishment of, port security zones, as proposed by the operator in the map accompanying the plan.

(4) If—

(a) an application under section 61(1) to the Director-General for approval to vary a maritime security plan for a port operator for a security regulated port is accompanied by a map in accordance with section 61(3); and

(b) the Director-General gives the port operator notice under section 61(5)(b) approving the variation,

the Director-General is deemed to have given the port operator a notice under subsection (1) of this section (including a map as mentioned in subsection (2)) establishing, or revoking the establishment of, port security zones, as proposed by the port operator in the map accompanying the notice requesting the variation.

(5) If the Director-General establishes a port security zone under subsection (1), the Director-General must, in writing, notify the establishment to each maritime industry participant (other than the port operator) who controls an area included within the zone.

(6) A notice under subsection (6) must include a map that shows the boundaries of the zone.

Types of port security zones

124. (1) The regulations may prescribe different types of port security zones.

(2) The purposes for which different types of port security zones may be prescribed include, but are not limited to, the following:

- (a) controlling the movement of people or ships or any other thing within security regulated ports;
- (b) restricting access to areas within security regulated ports;
- (c) providing cleared areas within security regulated ports;
- (d) preventing interference with ships;
- (e) preventing interference with people or goods that have been, or are to be, transported by ship;
- (f) ensuring the security of the following:
 - (i) fuel storage areas;
 - (ii) goods handling facilities;
 - (iii) navigational aids;
 - (iv) critical installations.

(3) An installation is a critical installation if interference with, or damage to, the installation could put the operation of a port or a ship at risk.

Matters to be considered in establishing port security zones

125. In establishing a port security zone, the Director-General must—

- (a) have regard to the purpose of the zone; and
- (b) take into account—
 - (i) the existing physical and operational features of the port; and
 - (ii) the views of—
 - (aa) the port operator;
 - (bb) each person who controls an area of land (including any buildings on the land) that is to be included within the boundaries of the zone; and
 - (cc) the offshore facility operator for each security regulated offshore facility (if any), all or part of which is to be included within the boundaries of the zone.

Requirements for port security zones

126. (1) The regulations may, for the purposes of safeguarding against unlawful interference with maritime transport, prescribe requirements in relation to each type of port security zone.

(2) In particular, the regulations may deal with the following matters:

- (a) access to port security zones (including conditions of access, the issue and use of security passes and other identification systems);
- (b) the identification or marking of port security zones;
- (c) the movement, management or operation of ships, vehicles and other things in port security zones;
- (d) the maintenance of the integrity of port security zones;
- (e) the management of people and goods (including the management of unaccompanied, unidentified or suspicious goods) in port security zones;
- (f) the management (including the sale or disposal) of ships, vehicles or goods abandoned in port security zones;
- (g) when prescribed requirements are to be met.

Declaring ship security zones

127. (1) The Director-General may, by written notice given to—

- (a) the ship operator for, or the master of, a security regulated ship; and
- (b) the port operator for a security regulated port,

declare that a ship security zone is to operate around the ship while the ship is within the port.

(2) The Director-General may, by written notice given to—

- (a) the ship operator for, or the master of, a security regulated ship; and
- (b) the offshore facility operator for a security regulated offshore facility;

declare that a ship security zone is to operate around the ship while the ship is in the vicinity of the facility and is engaged in any activity in relation to the facility.

(3) To avoid doubt, a person or thing is not in a ship security zone if—

- (a) the zone is operating around the ship; and
- (b) the person or thing is on board the ship.

Types of ship security zones

128. (1) The regulations may prescribe different types of ship security zones.

(2) The purposes for which different types of ship security zones may be prescribed include, but are not limited to, the following:

- (a) limiting contact with security regulated ships;
- (b) controlling the movement of ships and other things in the vicinity of a security regulated ship;
- (c) providing cleared areas around security regulated ships;
- (d) preventing interference with security regulated ships;
- (e) preventing interference with people or goods that have been, or are to be, transported by security regulated ships.

Matters to be considered in declaring ship security zones

129. (1) In declaring under section 127(1) that a ship security zone is to operate around a security regulated ship, the Director-General must—

- (a) have regard to the purpose of the zone; and
- (b) take into account—
 - (i) the physical and operational features of the ship; and
 - (ii) the existing physical and operational features of the port or ports, and related port services, to be used by the ship.

(2) In declaring under section 127(2) that a ship security zone is to operate around a security regulated ship, the Director-General must—

- (a) have regard to the purpose of the zone; and
- (b) take into account—
 - (i) the physical and operational features of the ship; and
 - (ii) the existing physical and operational features of the offshore facility or offshore facilities to be serviced by the ship.

Requirements for ship security zones

130. (1) The regulations may, for the purposes of safeguarding against unlawful interference with maritime transport, prescribe requirements in relation to each type of ship security zone.

(2) In particular, the regulations may deal with the following matters:

- (a) access to ship security zones (including conditions of access, the issue and use of security passes and other identification systems);
- (b) the identification or marking of ship security zones;
- (c) the movement, management or operation of ships, vehicles and other things in ship security zones;
- (d) the maintenance of the integrity of ship security zones;
- (e) the management of people and goods (including the management of unaccompanied, unidentified or suspicious goods) in ship security zones;
- (f) the management (including the sale or disposal) of things abandoned in ship security zones;
- (g) when prescribed requirements are to be met.

Establishing on-board security zones

131. (1) The Director-General may, by written notice given to the ship operator for a regulated South African ship, establish one or more on-board security zones on the ship.

(2) The notice must identify the areas or parts of the ship to be covered by the on-board security zone or zones.

Types of on-board security zones

132. (1) The regulations may prescribe different types of on-board security zones.

(2) The purposes for which different types of on-board security zones may be prescribed include, but are not limited to, the following:

- (a) controlling access to areas or parts of regulated South African ships;
- (b) maintaining the security of areas or parts of regulated South African ships;
- (c) providing cleared areas on regulated South African ships;
- (d) preventing interference with the operation of regulated South African ships;
- (e) preventing interference with people or goods that are being, have been, or are to be, transported by regulated South African ships.

Matters to be considered in establishing on-board security zones

133. In establishing an on-board security zone on a regulated South African ship, the Director-General must—

- (a) have regard to the purpose of the zone; and
- (b) take into account—
 - (i) the physical and operational features of the ship; and
 - (ii) the views of the ship operator for the ship.

Requirements for on-board security zones

134. (1) The regulations may, for the purposes of safeguarding against unlawful interference with maritime transport, prescribe requirements in relation to each type of on-board security zone.

(2) In particular, the regulations may deal with the following matters:

- (a) access to on-board security zones (including conditions of access, the issue and use of security passes and other identification systems);
- (b) the identification or marking of on-board security zones;
- (c) the movement, management or operation of vehicles and other things in on-board security zones;
- (d) the maintenance of the integrity of on-board security zones;
- (e) the management of people and goods (including the management of unaccompanied, unidentified or suspicious goods) in on-board security zones;
- (f) the management (including the sale or disposal) of things abandoned in on-board security zones;
- (g) when prescribed requirements are to be met.

Establishing offshore security zones

135. (1) The Director-General may, by written notice given to the offshore facility operator for a security regulated offshore facility, establish one or more offshore security zones within and around the facility.

(2) The notice must include information about the location and boundaries of the offshore security zones of the kind and in the form prescribed by the regulations.

(3) If—

- (a) a maritime security plan for an offshore facility operator is accompanied by information in accordance with section 57(3)(b) or (c)(ii) or (iii) relating to proposed changes to the offshore security zones within or around an offshore facility; and
- (b) the Director-General gives the offshore facility operator notice under section 59(1)(b) approving the plan,

the Director-General is deemed to have given the offshore facility operator a notice under subsection (1) of this section (including information as mentioned in subsection (2)) establishing, or revoking the establishment of, offshore security zones, as proposed by the offshore facility operator in the information accompanying the plan.

(4) If—

- (a) an application under section 61(1) to the Director-General for approval to vary a maritime security plan for an offshore facility operator is accompanied by information in accordance with section 61(4); and

(b) the Director-General gives the offshore facility operator notice under section 61(5)(b) approving the variation,

the Director-General is deemed to have given the offshore facility operator a notice under subsection (1) of this section (including information as mentioned in subsection (2)) establishing, or revoking the establishment of, offshore security zones, as proposed by the offshore facility operator in the information accompanying the notice requesting the variation.

(5) If the Director-General establishes an offshore security zone under subsection (1), the offshore facility operator must, in writing, notify the establishment to each maritime industry participant (other than the offshore facility operator) who conducts operations within the zone.

(6) A notice under subsection (5) must include information about the location and boundaries of the zone of the kind and in the form prescribed by the regulations.

Types of offshore security zones

136. (1) The regulations may prescribe different types of offshore security zones.

(2) The purposes for which different types of offshore security zones may be prescribed include, but are not limited to, the following:

(a) limiting contact with security regulated offshore facilities;

- (b) controlling the movement of people within a security regulated offshore facility;
- (c) controlling the movement of ships and other things within and around a security regulated offshore facility;
- (d) providing cleared areas within and around security regulated offshore facilities;
- (e) preventing interference with security regulated offshore facilities;
- (f) preventing interference with people or goods that have been, or are to be, transported to or from security regulated offshore facilities.

Matters to be considered in establishing offshore security zones

137. In establishing an offshore security zone, the Director-General must—

- (a) have regard to the purpose of the zone;
- (b) take into account—
 - (i) the existing physical and operational features of the security regulated offshore facility; and
 - (ii) the views of the offshore facility operator and, if all or part of the zone is within a security regulated port, the port operator for that port; and
- (c) act consistently with the Republic's obligations under international law.

Requirements for offshore security zones

138. (1) The regulations may, for the purposes of safeguarding against unlawful interference with maritime transport, prescribe requirements in relation to each type of offshore security zone.

(2) In particular, the regulations may deal with the following matters:

- (a) access to offshore security zones (including conditions of access, the issue and use of security passes and other identification systems);
- (b) the identification or marking of offshore security zones;
- (c) the movement, management or operation of ships, vehicles and other things in offshore security zones;
- (d) the maintenance of the integrity of offshore security zones;
- (e) the management of people and goods (including the management of unaccompanied, unidentified or suspicious goods) in offshore security zones;
- (f) the management (including the sale or disposal) of ships, vehicles or goods abandoned in offshore security zones;
- (g) when prescribed requirements are to be met;
- (h) the suspension of the existence of an offshore security zone in prescribed circumstances.

(3) Regulations made under this section must be consistent with the Republic's obligations under international law.

Part 2—Screening and clearing

Screening and clearing

139. (1) A person or thing is screened when the person or thing undergoes screening in accordance with regulations made under section 140 either before or after—

- (a) coming on board a ship; or
- (b) entering an area within a security regulated port or an offshore security zone.

(2) A person or thing receives clearance if—

- (a) after being screened, the person or thing is allowed, by a screening officer, to pass through the screening point;
- (b) the person or thing passes through the screening point and the regulations provide, or the Director-General by written notice provides, that the person or thing may pass through that screening point without being screened; or
- (c) the person or thing enters a cleared area or comes on board a cleared ship other than through a screening point and the regulations provide, or the Director-General by written notice provides, that the person or thing may enter the area or come on board the ship that way.

(3) A person or thing is cleared at a particular time if—

- (a) the person or thing has received clearance; and

(b) since receiving clearance, the person or thing has at all times been in a cleared area or on a cleared ship.

(4) For the purposes of subsection (3)(b), a person or thing is deemed to be in a cleared area if the person or thing is under the supervision or control prescribed in the regulations.

(5) To avoid doubt—

- (a) a notice under subsection (2)(b) may provide that a class of persons or things may pass through a screening point without being screened; and
- (b) a notice under subsection (2)(c) may provide that a class of persons or things may enter a cleared area or come on board a cleared ship other than through a screening point.

Requirements for screening and clearing

140. (1) The regulations may, for the purposes of safeguarding against unlawful interference with maritime transport, prescribe requirements in relation to one or more of the following:

- (a) screening;
- (b) receiving clearance;
- (c) the circumstances in which persons or things must be cleared.

(2) In particular, the regulations may deal with the following matters:

- (a) the persons who are authorised or required to conduct screening;

- (b) the things to be detected by screening;
- (c) the procedures for dealing with things detected by screening;
- (d) the circumstances in which persons must be cleared in order to—
 - (i) board, or remain on, a ship; or
 - (ii) enter, or remain in, an area within a security regulated port or an offshore security zone;
- (e) the circumstances in which goods must be cleared in order to—
 - (i) come on board, or remain on, a ship; or
 - (ii) enter, or remain in, an area within a security regulated port or an offshore security zone;
- (f) the circumstances in which vehicles must be cleared in order to—
 - (i) come on board, or remain on, a ship; or
 - (ii) enter, or remain in, an area within a security regulated port or an offshore security zone;
- (g) the circumstances in which ships must be cleared in order to—
 - (i) come on board, or remain on, another ship; or
 - (ii) enter, or remain in, an area within a security regulated port or an offshore security zone;
- (h) the places where screening is to be conducted;
- (i) the methods, techniques and equipment to be used for screening;
- (j) the notices that must be displayed in places where screening is to be conducted;

(k) the supervision and control measures for ensuring that persons and things that have received clearance remain cleared on ships that are not cleared ships or in areas that are not cleared areas.

(3) Regulations made under paragraph (a) or (i) of subsection (2) may provide that some or all of the matters set out in that paragraph are to be specified in written notices made by the Director-General.

(4) A notice under subsection (3) may provide that the notice is only to be given to the persons, or classes of persons, specified in the notice.

Part 3—Weapons and prohibited items

Weapons in maritime security zones

141. (1) A person in a maritime security zone must not have a weapon in his or her possession.

(2) Subsection (1) does not apply to—

- (a) a law enforcement officer;
- (b) a member of the South African National Defence Force who is on duty; or
- (c) anyone authorised by the regulations, or permitted in writing by the Director-General, to have the weapon in his or her possession in the maritime security zone.

Carrying weapons through screening point

142. (1) A person must not pass through a screening point with a weapon in his or her possession.

(2) Subsection (1) does not apply to—

- (a) a law enforcement officer; or
- (b) anyone authorised by the regulations, or permitted in writing by the Director-General, to pass through the screening point with the weapon in his or her possession.

Weapons on board certain ships

143. (1) A person on board a regulated South African ship or a ship regulated as an offshore facility must not—

- (a) carry a weapon; or
- (b) otherwise have in his or her possession a weapon that is located at a place that is accessible to the person.

(2) Subsection (1) does not apply if—

- (a) the person is a law enforcement officer;
- (b) the carriage or possession of the weapon is authorised by the regulations or permitted in writing by the Director-General; or
- (c) the weapon is under the control of the master of the ship.

Prohibited items in maritime security zones

144. (1) A person in a maritime security zone of a kind prescribed in the regulations for the purposes of this section must not have a prohibited item in his or her possession.

(2) Subsection (1) does not apply to—

- (a) a law enforcement officer, a maritime security guard or a maritime security inspector;
- (b) a member of the South African National Defence Force who is on duty; or
- (c) anyone authorised by the regulations, or permitted in writing by the Director-General, to have the prohibited item in his or her possession in the maritime security zone.

Carrying prohibited items through screening point

145. (1) A person must not pass through a screening point with a prohibited item in his or her possession.

(2) Subsection (1) does not apply to—

- (a) a law enforcement officer, a maritime security guard or a maritime security inspector; or
- (b) anyone authorised by the regulations, or permitted in writing by the Director-General, to pass through the screening point with the prohibited item in his or her possession.

Prohibited items on board certain ships

146. (1) A person on board a regulated South African ship or a ship regulated as an offshore facility must not—

- (a) carry a prohibited item; or
- (b) otherwise have in his or her possession a prohibited item that is located at a place that is accessible to the person.

(2) Subsection (1) does not apply if—

- (a) the person is a law enforcement officer, a maritime security guard or a maritime security inspector;
- (b) the carriage or possession of the prohibited item is authorised by the regulations or permitted in writing by the Director-General; or
- (c) the prohibited item is under the control of the master of the ship.

Complying with conditions

147. A person authorised or permitted under this Part to have a weapon or prohibited item in his or her possession or under his or her control must not fail to comply with any conditions relating to the authorisation or permission.

Director-General may permit by class

148. To avoid doubt, for the purposes of this Part, the Director-General may give permission in relation to particular conduct by giving permission to a class of persons.

Other weapons and prohibited items requirements

149. (1) The regulations may, for the purposes of safeguarding against unlawful interference with maritime transport, prescribe requirements in relation to the carriage and use of weapons and prohibited items in a maritime security zone, on board a regulated South African ship or on board a ship regulated as an offshore facility.

(2) In particular, the regulations may deal with the following matters:

- (a) authorising the carriage of weapons and prohibited items in a maritime security zone, on board a regulated South African ship or on board a ship regulated as an offshore facility;
- (b) dealing with a person in a maritime security zone, on board a regulated South African ship or on board a ship regulated as an offshore facility who carries or uses a weapon or a prohibited item, or is suspected of carrying or using a weapon or a prohibited item, unlawfully;

- (c) dealing with a weapon or a prohibited item surrendered by a person in a maritime security zone, on board a regulated South African ship or on board a ship regulated as an offshore facility.

Part 4—Maritime security identification

Maritime security identification scheme

150. (1) The regulations may, for the purposes of safeguarding against unlawful interference with maritime transport, make provision about a scheme prohibiting a person from entering, or remaining in, a maritime security zone unless the person—

- (a) holds a maritime security identity card;
- (b) is escorted by the holder of such a card; or
- (c) is otherwise authorised under the scheme.

(2) A scheme under subsection (1) is a maritime security identification scheme.

(3) In particular, a maritime security identification scheme may deal with the following matters:

- (a) the persons, and kinds of maritime security zones, to be covered by the scheme;
- (b) the content and form, including security features, of maritime security identity cards;

- (c) the requirements, processes and procedures for issuing maritime security identity cards, including—
 - (i) the production and delivery of blank maritime security identity cards; and
 - (ii) the custody, handling, and accountability for blank and completed maritime security identity cards; and
 - (iii) the processing, by the Director-General or another specified person, of applications for, and suspensions or cancellations of, maritime security identity cards, and related administrative appeal procedures; and
 - (iv) requiring an applicant to have passed an appropriate security background examination;
 - (v) the establishment and operation of an appropriate electronic database for storing records of issued, suspended and cancelled maritime security identity cards; and
 - (vi) quality control, including periodic evaluation, of processes and procedures to ensure that applicable security and performance standards are met;
- (d) the carrying, display and inspection of maritime security identity cards;
- (e) the acceptance, by the Director-General or another specified person, of other forms of personal identification, including those issued under the authority of a foreign state;
- (f) the kinds of enforcement action that may be taken if the scheme is contravened.

Restrictions on use and maintenance of information

151. (1) Information about a person obtained under a maritime security identification scheme must not be made available to the public, including the person's employer.

(2) Any information constituting grounds for refusing a person a maritime security identity card under a maritime security identification scheme must be maintained confidentially and may be used only for making determinations under the scheme.

(3) However, nothing in this section limits information being shared with organs of state for the purposes of law enforcement.

Part 5—Seafarer identification**Seafarers' identity documents**

152. (1) The regulations may make provision about giving effect to the Seafarers' Identity Documents Convention.

(2) In particular, the regulations may deal with the following matters:

- (a) the persons, and kinds of ships, to be covered by the regulations;
- (b) the content and form, including security features, of seafarers' identity documents;

- (c) the requirements, processes and procedures for issuing seafarers' identity documents, including—
 - (i) the production and delivery of blank seafarers' identity documents; and
 - (ii) the custody, handling, and accountability for blank and completed seafarers' identity documents; and
 - (iii) the processing of applications for, and suspensions or cancellations of, seafarers' identity documents, and related administrative appeal procedures; and
 - (iv) the establishment and operation of an appropriate electronic database for storing records of issued, suspended and cancelled seafarers' identity documents; and
 - (v) quality control, including periodic evaluation, of processes and procedures to ensure that applicable security and performance standards are met;
- (d) the carrying and inspection of seafarers' identity documents;
- (e) the acceptance, by the Director-General or another specified person, of forms of personal identification issued under the authority of a foreign state;
- (f) the kinds of enforcement action that may be taken if the regulations are contravened.

(3) For the purposes of regulations under this section, the Director-General of the Department of Home Affairs is designated by this

subsection to be responsible for functions relating to the issuance and administration of seafarers' identity documents.

(4) Regulations under this section must be made with the consent of both the Minister of Home Affairs and the Minister of Labour.

CHAPTER 10

POWERS OF OFFICIALS

Part 1—Maritime security inspectors

Appointment of maritime security inspectors

153. (1) The Director-General may, in writing, appoint any of the following as a maritime security inspector:

- (a) an employee in the Department;
- (b) a SAMSA officer;
- (c) a law enforcement officer;
- (d) a person prescribed in the regulations for the purposes of this paragraph.

(2) However, the Director-General must not appoint a person as a maritime security inspector unless the Director-General considers, on reasonable grounds, that the person has the necessary training or experience to be a maritime security inspector.

(3) An appointment under this section is subject to the conditions stated in the instrument of appointment.

Maritime security inspector's identity card

154. (1) The Director-General must issue each maritime security inspector with an identity card.

(2) The regulations may prescribe requirements in relation to the form, issue and use of identity cards.

(3) The regulations may also provide that an identity card may be combined with another identity card issued for other provisions, Acts or purposes.

Maritime security inspector subject to directions of Director-General

155. A maritime security inspector is subject to the directions of the Director-General in exercising the powers of a maritime security inspector.

Limitation of powers of maritime security inspector

156. (1) The powers of a maritime security inspector may be limited—

- (a) under the regulations;
- (b) by a condition of appointment; or
- (c) by notice of the Director-General given to the maritime security inspector.

(2) Notice under subsection (1)(c) may be given orally, but must be confirmed in writing as soon as practicable.

Maritime security inspectors' powers—SoC and ISSC verifications

157. (1) For the purpose of determining whether the operation of a maritime industry participant meets the requirements necessary for SoC verification, a maritime security inspector may inspect—

- (a) the participant's operation; and
- (b) any document or record made or kept by the participant that relates to the security of the participant's operation.

(2) For the purpose of determining whether a security regulated ship or a ship regulated as an offshore facility meets the requirements necessary for ISSC verification, a maritime security inspector may inspect—

- (a) the ship;
- (b) the ship security records for the ship; and
- (c) any other document relating to the security of the ship.

Maritime security inspectors' powers—security regulated ships

158. (1) A maritime security inspector may exercise the powers under this section for the purpose of—

- (a) determining whether a person or a ship is complying with this Act; or

(b) investigating a possible contravention of this Act.

(2) The inspector may do one or more of the following:

- (a) go on board a security regulated ship with any assistants and equipment the inspector considers necessary;
- (b) require the master of the ship to take any reasonable steps the inspector directs to facilitate the boarding;
- (c) inspect any part of the ship (including any restricted access area on the ship) or its machinery or equipment;
- (d) require the master of the ship to take any reasonable steps the inspector directs to facilitate the inspection of any part of the ship or its machinery or equipment;
- (e) observe and record operating procedures for the ship (whether carried out by the crew or some other person);
- (f) discuss those procedures with a person carrying them out or with another maritime industry participant;
- (g) require the master of the ship to produce for inspection 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) if the ship is a regulated South African ship, any document that relates to the security of the ship;

- (h) make copies of, or take extracts from, any such documents or records;
- (i) require the master of the ship to certify that a true copy or extract made by the inspector under paragraph (h) is a true copy of the original;
- (j) operate equipment on the ship for the purpose of gaining access to a document or record relating to the ship;
- (k) take photographs (including video recordings) of the ship or of equipment, or anything else, on the ship;
- (l) require a person to answer questions.

(3) A person who is subject to a requirement under subsection (2) must not fail to comply with the requirement.

(4) This section does not authorise a maritime security inspector to exercise powers in respect of a regulated foreign ship in way that is inconsistent with regulation XI-2/9 of the SOLAS Convention.

When powers may be exercised—security regulated ships

159. (1) A maritime security inspector may exercise a power mentioned in section 157(2) or 158 in an operational area of a security regulated ship—

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

(2) A maritime security inspector may exercise a power mentioned in section 157(2) or 158 in a private living area of a security regulated ship if—

- (a) both the master and any person or persons who occupy the private living area consent to the inspection; or
- (b) the inspector has a warrant, issued under section 165, to search the private living area.

(3) A private living area on a security regulated ship is an area—

- (a) used for the purposes of providing accommodation for passengers or crew of the ship; and
- (b) to which neither all passengers nor all crew have unrestricted access.

(4) An operational area on a security regulated ship is an area that is not a private living area.

Maritime security inspectors' powers—security regulated offshore facilities

160. (1) A maritime security inspector may exercise the powers under this section for the purpose of—

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

(2) The inspector may do one or more of the following:

- (a) enter a security regulated offshore facility with any assistants and equipment the inspector considers necessary;
- (b) require the offshore facility operator for the facility, or any other person in charge of the facility, to take any reasonable steps the inspector directs to facilitate the entry;
- (c) inspect any part of the facility (including any restricted access area at the facility) or any equipment at the facility;
- (d) require the offshore facility operator for the facility, or any other person in charge of the facility, to take any reasonable steps the inspector directs to facilitate the inspection of any part of the facility or any equipment at the facility;
- (e) observe and record operating procedures for the facility (whether carried out by the crew or some other person);
- (f) discuss those procedures with a person carrying them out or with another maritime industry participant;
- (g) require the offshore facility operator for the facility, or any other person in charge of the facility, to produce for inspection any document or record that relates to the security of the facility;
- (h) make copies of, or take extracts from, any such documents or records;
- (i) require the offshore facility operator for the facility, or any other person in charge of the facility, to certify that a true copy or extract made by the inspector under paragraph (h) is a true copy of the original;
- (j) operate equipment at the facility for the purpose of gaining access to a document or record relating to the facility;

- (k) take photographs (including video recordings) of the facility or of equipment, or anything else, at the facility;
- (l) require a person to answer questions.

(3) A person who is subject to a requirement under subsection (2) must not fail to comply with the requirement.

When powers may be exercised—security regulated offshore facilities

161. (1) A maritime security inspector may exercise a power mentioned in section 157 or 160 in an operational area of a security regulated offshore facility—

- (a) if the power is exercised within the boundaries of a security regulated offshore facility, at any time and without notice; or
- (b) otherwise, after giving reasonable notice to the offshore facility operator for the facility.

(2) A maritime security inspector may exercise a power mentioned in section 157 or 160 in a private living area of a security regulated offshore facility if—

- (a) both the offshore facility operator for the facility and any person or persons who occupy the private living area consent to the inspection; or
- (b) the inspector has a warrant, issued under section 165, to search the private living area.

(3) A private living area on a security regulated offshore facility is an area—

- (a) used for the purposes of providing accommodation for crew of, or visitors to, the facility; and
- (b) to which neither all crew nor all visitors have unrestricted access.

(4) An operational area on a security regulated offshore facility is an area that is not a private living area.

Maritime security inspectors' powers—maritime industry participants

162. (1) A maritime security inspector may exercise the powers under this section for the purpose of—

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

(2) The inspector may do one or more of the following:

- (a) enter, with any assistants and equipment the inspector considers necessary—
 - (i) any area, building (other than a residence), vehicle or ship 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) require the maritime industry participant to take any reasonable steps the inspector directs to facilitate the entry;

- (c) inspect a place, vehicle or ship mentioned in paragraph (a) or any equipment in that place, vehicle or ship;
- (d) require the maritime industry participant to take any reasonable steps the inspector directs to facilitate the inspection of any place, vehicle or ship, or any equipment, referred to in paragraph (c);
- (e) observe the operating procedures of a maritime industry participant;
- (f) discuss those procedures with an employee of the maritime industry participant or with another maritime industry participant;
- (g) require the maritime industry participant to produce for inspection any document or record made or kept by the participant;
- (h) make copies of, or take extracts from, any such documents or records;
- (i) require the maritime industry participant to certify that a true copy or extract made by the inspector under paragraph (h) is a true copy of the original;
- (j) operate equipment in a place, vehicle or ship mentioned in paragraph (a) for the purpose of gaining access to a document or record made or kept by the maritime industry participant;
- (k) take photographs (including video recordings) of a place, vehicle or ship mentioned in paragraph (a) or of equipment, or anything else, in that place, vehicle or ship;
- (l) require a person to answer questions.

(3) A person who is subject to a requirement under subsection (2) must not fail to comply with the requirement.

When powers may be exercised—maritime industry participants

163. A maritime security inspector may exercise a power mentioned in section 162—

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

Exercise of powers by maritime security inspectors

164. In exercising a power under this Part, a maritime security inspector must take account of occupational health and safety requirements under the laws of the Republic applying—

- (a) if the power is exercised in relation to a security regulated ship, in relation to that ship;
- (b) if the power is exercised within the boundaries of a security regulated offshore facility, at that facility; and
- (c) if the power is exercised in relation to an operation of a maritime industry participant, in relation to that operation.

Inspection warrants—private living areas

165. (1) A maritime security inspector may apply to a magistrate for a warrant to inspect a private living area on a security regulated ship or a security regulated offshore facility.

(2) The magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that it is necessary to inspect the private living area for one or more of the following purposes:

- (a) determining whether a security regulated ship or a ship regulated as an offshore facility meets the requirements necessary for ISSC verification;
- (b) determining whether an offshore industry participant's operation meets the requirements necessary for SoC verification;
- (c) determining whether a person or a ship is complying with this Act;
- (d) investigating a possible contravention of this Act.

(3) However, the magistrate must not issue the warrant unless the maritime security inspector or some other person has given to the magistrate, either orally or by affidavit, any further information that the magistrate requires about the grounds on which the issue of the warrant is being sought.

(4) The warrant must—

- (a) authorise the maritime security inspector to inspect the private living area, using such assistance and such force to enter the area as is necessary and reasonable;

- (b) state whether the inspection is authorised to be made at any time of the day or night or during specified hours of the day or night;
- (c) specify the day (not more than one week after the issue of the warrant) on which the warrant ceases to have effect; and
- (d) state the purpose for which the warrant is issued.

Inspection warrants by telephone, fax etc.

166. (1) In an urgent case a maritime security inspector may apply to a magistrate by telephone, fax or other electronic means for a warrant under section 165.

(2) The magistrate may—

- (a) require communication by voice to the extent that it is practicable in the circumstances; and
- (b) make a recording of the whole or any part of any such communication by voice.

(3) Before applying for the warrant, the maritime security inspector must prepare the information referred to in section 165(2) setting out the grounds on which the warrant is sought.

(4) If it is necessary to do so, the maritime security inspector may apply for the warrant before the information is sworn or affirmed.

(5) If the magistrate is satisfied—

- (a) after having considered the information; and

- (b) after having received any further information that the magistrate requires about the grounds on which the issue of the warrant is being sought,

that there are reasonable grounds for issuing the warrant, the magistrate may complete and sign the same warrant that the magistrate would issue under section 165 if the application had been made under that section.

(6) If the magistrate completes and signs the warrant—

(a) the magistrate must—

- (i) tell the maritime security inspector what the terms of the warrant are;
- (ii) tell the maritime security inspector the day on which and the time at which the warrant was signed;
- (iii) tell the maritime security inspector the day (not more than one week after the magistrate completes and signs the warrant) on which the warrant ceases to have effect; and
- (iv) record on the warrant the reasons for issuing the warrant; and

(b) the maritime security inspector must—

- (i) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate; and
- (ii) write on the form the name of the magistrate and the day on which and the time at which the warrant was signed.

(7) The maritime security inspector must also, not later than the day after the day of expiry or execution of the warrant, whichever happens first, send to the magistrate—

- (a) the form of warrant completed by the maritime security inspector; and
- (b) the information referred to in subsection (3), which must have been duly sworn or affirmed.

(8) When the magistrate receives those documents, the magistrate must—

- (a) attach them to the warrant that the magistrate completed and signed; and
- (b) deal with them in the way in which the magistrate would have dealt with the information if the application had been made under section 165.

(9) A form of warrant duly completed under subsection (6) is authority for the same powers as are authorised by the warrant signed by the magistrate.

(10) If—

- (a) it is material, in any proceedings, for a court to be satisfied that an exercise of a power was authorised by this section; and
- (b) the warrant signed by the magistrate authorising the exercise of the power is not produced in evidence,

the court must assume, unless the contrary is proved, that the exercise of the power was not authorised by such a warrant.

Part 2—Law enforcement officers

Law enforcement officers

167. Each of the following who is on duty at a security regulated port or security regulated offshore facility is a law enforcement officer:

- (a) a member of the South African Police Service;
- (b) a customs officer who is prescribed in the regulations for the purposes of this paragraph.

Access to ports by law enforcement officers

168. (1) A law enforcement officer may enter, and remain in, any part of a security regulated port at any time.

(2) However, before entering a part of a security regulated port that is under the control of a maritime industry participant, the law enforcement officer must—

- (a) identify himself or herself as a law enforcement officer to the participant; and
- (b) tell the participant why the officer is entering that part of the security regulated port.

Access to offshore facilities by law enforcement officers

169. (1) A law enforcement officer may enter, and remain in, any part of a security regulated offshore facility at any time.

(2) However, before entering a part of a security regulated offshore facility that is under the control of an offshore industry participant, the law enforcement officer must—

- (a) identify himself or herself as a law enforcement officer to the participant; and
- (b) tell the participant why the officer is entering that part of the security regulated offshore facility.

Stopping and searching people

170. (1) If a law enforcement officer reasonably believes that it is necessary to do so for the purposes of safeguarding against unlawful interference with maritime transport, the law enforcement officer may stop and search a person who is within a maritime security zone, on a security regulated ship or on a ship regulated as an offshore facility.

(2) If a law enforcement officer stops a person under subsection (1), the officer must—

- (a) identify himself or herself as a law enforcement officer to the person;
- (b) tell the person why the person has been stopped; and

- (c) if the person is to be searched, tell the person why the person is to be searched.

Stopping and searching vehicles

171. (1) If a law enforcement officer reasonably believes that it is necessary to do so for the purposes of safeguarding against unlawful interference with maritime transport, the law enforcement officer may do either or both of the following within a maritime security zone:

- (a) require the driver of a vehicle to stop the vehicle;
- (b) search the vehicle.

(2) If a law enforcement officer stops a vehicle under subsection (1), the law enforcement officer must—

- (a) identify himself or herself as a law enforcement officer to the driver of the vehicle;
- (b) tell the driver why the vehicle has been stopped; and
- (c) if the vehicle is to be searched, tell the driver why the vehicle is to be searched.

(3) Before a law enforcement officer searches a vehicle under subsection (1) that was not stopped by the officer, the officer must, if there is a driver or person in control of the vehicle present—

- (a) identify himself or herself as a law enforcement officer to the driver or person; and
- (b) tell the driver or person why the vehicle is to be searched.

Stopping and searching ships

172. (1) If a law enforcement officer reasonably believes that it is necessary to do so for the purposes of safeguarding against unlawful interference with maritime transport, the law enforcement officer may do either or both of the following within a maritime security zone:

- (a) require the person in control of a ship to stop the ship;
- (b) search the ship.

(2) If a law enforcement officer stops a ship under subsection (1), the law enforcement officer must—

- (a) identify himself or herself as a law enforcement officer to the person in control of the ship;
- (b) tell the person in control of the ship why the ship has been stopped;
and
- (c) if the ship is to be searched, tell the person in control of the ship why the ship is to be searched.

(3) Before a law enforcement officer searches a ship under subsection (1) that was not stopped by the officer, the officer must, if there is a person in control of the ship present—

- (a) identify himself or herself as a law enforcement officer to the person;
and
- (b) tell the person why the ship is to be searched.

Requests to leave ships or zones

173. (1) If a law enforcement officer reasonably suspects that a person on a security regulated ship or on a ship regulated as an offshore facility is committing, or has committed, an offence against this Act, the officer may request the person to leave—

- (a) the ship; or
- (b) if the ship is within a maritime security zone, the zone.

(2) If a law enforcement officer reasonably suspects that a person within a maritime security zone is committing, or has committed, an offence against this Act, the officer may request the person to leave the zone.

(3) A person who is requested to leave a ship or zone under this section must not fail to comply with the request.

Removing people from ships or zones

174. (1) If—

- (a) a request to leave a ship or a zone has been made to a person under section 173; and
 - (b) the person fails to comply with the request,
- a law enforcement officer may remove the person from the ship or zone.

Removing vehicles from zones

175. (1) If a law enforcement officer reasonably suspects that—

- (a) a vehicle in or near a maritime security zone presents a risk to maritime transport security; or
 - (b) a vehicle is in a maritime security zone without proper authorisation,
- the law enforcement officer may remove the vehicle.

(2) However, the law enforcement officer must not remove the vehicle without making reasonable efforts to have the person in control of the vehicle remove the vehicle.

(3) If a vehicle is removed under this section, the law enforcement officer must make reasonable efforts to—

- (a) avoid damaging the vehicle; and
- (b) notify—
 - (i) the vehicle's owner; and
 - (ii) persons of a kind (if any) prescribed in the regulations,about the vehicle's removal and the vehicle's new location.

Removing ships from zones

176. (1) If a law enforcement officer reasonably suspects that—

- (a) a ship in or near a maritime security zone presents a risk to maritime transport security; or
- (b) a ship is in a maritime security zone without proper authorisation,

the law enforcement officer may remove the ship.

(2) However, the law enforcement officer must not remove the ship without making reasonable efforts to have the person in control of the ship remove the ship.

(3) If a ship is removed under this section, the law enforcement must make reasonable efforts to—

- (a) avoid damaging the ship; and
- (b) notify—
 - (i) the ship's owner; and
 - (ii) persons of a kind (if any) prescribed in the regulations, about the ship's removal and the ship's new location.

Exercise of powers by law enforcement officers

177. In exercising a power under this Part, a law enforcement officer must not use more force than is reasonably necessary for the exercise of the power.

Other law enforcement powers not affected

178. This Act does not limit the exercise of the powers a law enforcement officer has apart from this Act.

Part 3—Maritime security guards

Maritime security guards

179. (1) A maritime security guard is a person who—

- (a) satisfies the training and qualification requirements and any other requirements prescribed in the regulations for maritime security guards;
- (b) is on duty at a security regulated port, on a security regulated ship or at a security regulated offshore facility; and
- (c) is not a law enforcement officer.

(2) The regulations must prescribe the following for maritime security guards:

- (a) training and qualification requirements;
- (b) requirements in relation to the form, issue and use of identity cards.

(3) The regulations may prescribe the following for maritime security guards:

- (a) requirements in relation to uniforms;
- (b) any other requirements.

Maritime security guards' power to physically restrain persons

180. (1) A maritime security guard may physically restrain a person if—

- (a) the guard reasonably suspects that the person is committing, or has committed, an offence against this Act; and
 - (b) the guard reasonably believes it is necessary to do so to—
 - (i) ensure that a person who is not cleared is not in a cleared area; or
 - (ii) maintain the integrity of a maritime security zone.
- (2) If a person is restrained under subsection (1), the maritime security guard—
- (a) may detain the person; and
 - (b) if the guard does so, must deliver the person to a law enforcement officer as soon as practicable.

Maritime security guards' power to request information

181. (1) A maritime security guard may request any person found in a maritime security zone to do either or both of the following:

- (a) produce identification;
- (b) state the person's reason for being in the zone.

(2) The person must not fail to comply with the request if—

- (a) the guard has identified himself or herself as a maritime security guard to the person;
- (b) the guard has told the person of the guard's authority to make the request; and

- (c) the guard told the person that it may be an offence not to comply with the request.

Requests to leave maritime security zones

182. (1) If a maritime security guard reasonably suspects that a person is within a maritime security zone without proper authorisation, the guard may request the person to leave the zone.

(2) The person must not fail to comply with the request if—

- (a) the guard has identified himself or herself as a maritime security guard to the person;
- (b) the guard has told the person of the guard's authority to make the request; and
- (c) the guard has told the person that it may be an offence not to comply with the request.

Maritime security guards' power to remove people from zones

183. A maritime security guard may remove a person from a maritime security zone if—

- (a) the guard has requested the person under section 182(1) to leave the zone;
- (b) the guard has done the things mentioned in section 182(2)(a), (b) and (c); and

- (c) the person fails to comply with the request.

Maritime security guards' power to remove vehicles from zones

184. (1) A maritime security guard may remove, or cause to be removed, a vehicle from a maritime security zone if the guard reasonably suspects that the vehicle is in the zone without proper authorisation.

(2) However, a vehicle must not be removed under this section without the maritime security guard making reasonable efforts to have the person in control of the vehicle remove the vehicle.

(3) If a vehicle is removed under this section, the maritime security guard must make reasonable efforts to—

- (a) avoid damaging the vehicle; and
- (b) notify—
 - (i) the vehicle's owner; and
 - (ii) persons of a kind (if any) prescribed in the regulations, about the vehicle's removal and the vehicle's new location.

Maritime security guards' power to remove ships from zones

185. (1) A maritime security guard may remove, or cause to be removed, a ship, other than a security regulated ship or a ship regulated as an offshore facility, from a maritime security zone if the guard reasonably suspects that the ship is in the zone without proper authorisation.

(2) However, a ship must not be removed under this section without the maritime security guard making reasonable efforts to have the person in control of the ship remove the ship.

(3) If a ship is removed under this section, the maritime security guard must make reasonable efforts to—

(a) avoid damaging the ship; and

(b) notify—

(i) the ship's owner; and

(ii) persons of a kind (if any) prescribed in the regulations, about the ship's removal and the ship's new location.

Exercise of powers by maritime security guards

186. In exercising a power under this Part, a maritime security guard must not use more force than is reasonably necessary for the exercise of the power.

Part 4—Screening officers

Screening officers

187. (1) A person who is authorised or required to conduct screening is a screening officer.

(2) The regulations must prescribe the following for screening officers:

- (a) training and qualification requirements;
- (b) requirements in relation to the form, issue and use of identity cards.

(3) The regulations may prescribe the following for screening officers:

- (a) requirements in relation to uniforms;
- (b) any other requirements.

Screening powers

188. (1) If a screening officer considers it necessary in order to screen a person properly, the officer may request the person to remove any item of the person's clothing.

(2) The screening officer must not—

- (a) require the person to remove any clothing; or
- (b) remove or cause the removal of any of the person's clothing.

(3) If—

- (a) a request to remove an item of clothing has been made to a person under subsection (1); and
- (b) the person refuses to comply with the request; and
- (c) the person refuses to be screened in a private room by a screening officer of the same sex as the person; and
- (d) the refusals mean that it is not possible to screen the person properly,

the screening officer must refuse to allow a person to pass through the screening point.

Screening officers' power to physically restrain persons

189. (1) A screening officer may physically restrain a person if—

- (a) the officer reasonably suspects that the person is committing, or has committed, an offence against this Act; and
- (b) the officer reasonably believes it is necessary to do so to—
 - (i) ensure that a person who is not cleared is not in a cleared area; or
 - (ii) maintain the integrity of a cleared area.

(2) If a person is restrained under subsection (1), the screening officer—

- (a) may detain the person; and
- (b) if the officer does so, must deliver the person to a law enforcement officer as soon as practicable.

Exercise of powers by screening officers

190. In exercising a power under this Part, a screening officer must not use more force than is reasonably necessary for the exercise of the power.

CHAPTER 11

REPORTING MARITIME TRANSPORT SECURITY INCIDENTS

Part 1—Meaning of maritime transport security incident

Meaning of maritime transport security incident

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

- (a) an unlawful interference with maritime transport;
- (b) a threat of unlawful interference with maritime transport;
- (c) an occurrence of a kind prescribed in the regulations.

Part 2—Reporting requirements

Reporting by port operators

192. (1) If a port operator becomes aware of a maritime transport security incident, the port operator must report the incident as soon as possible in accordance with this section.

(2) Subsection (1) does not apply in relation to a report that must be made to a particular person if the port operator reasonably believes that the person is already aware of the incident.

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

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

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

- (a) relates to the port in general; and
- (b) is not specifically directed at—
 - (i) for an incident covered by subsection (3)(c), the part of the port controlled by that other person;
 - (ii) for an incident covered by subsection (3)(d), those operations;or
 - (iii) for an incident covered by subsection (3)(e), that ship.

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

(6) 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.

(7) An incident that relates to a security regulated offshore facility must be reported to the offshore facility operator for the facility.

Reporting by ship masters

193. (1) If the master of a security regulated ship becomes aware of a maritime transport security incident, the master must report the incident as soon as possible in accordance with this section.

(2) Subsection (1) does not apply in relation to a report that must be made to a particular person if the master reasonably believes that the person is already aware of the incident.

(3) An incident that relates to the master's ship must be reported to—

- (a) the Director-General;
- (b) the South African Police Service;
- (c) if the ship is within a security regulated port, the port operator for the port;
- (d) if the ship is using a port facility within a security regulated port, the port facility operator for the port facility; and
- (e) if the ship is located in the vicinity of a security regulated offshore facility and is engaged in any activity in relation to the facility, the offshore facility operator for the facility.

(4) 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.

(5) 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.

(6) An incident that relates to a security regulated offshore facility must be reported to the offshore facility operator for the facility.

Reporting by ship operators

194. (1) If the ship operator for a security regulated ship becomes aware of a maritime transport security incident, the ship operator must report the incident as soon as possible in accordance with this section.

(2) Subsection (1) does not apply in relation to a report that must be made to a particular person if the ship operator reasonably believes that the person is already aware of the incident.

(3) An incident that relates to a security regulated ship of the ship operator must be reported to—

- (a) the Director-General;
- (b) the South African Police Service;
- (c) if the ship is within a security regulated port, the port operator for the port;

- (d) if the ship is using a port facility within a security regulated port, the port facility operator for the port facility; and
- (e) if the ship is located in the vicinity of a security regulated offshore facility and is engaged in any activity in relation to the facility, the offshore facility operator for the facility.

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

(5) 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.

(6) An incident that relates to a security regulated offshore facility must be reported to the offshore facility operator for the facility.

Reporting by offshore facility operators

195. (1) If an offshore facility operator becomes aware of a maritime transport security incident, the operator must report the incident as soon as possible in accordance with this section.

(2) Subsection (1) does not apply in relation to a report that must be made to a particular person if the offshore facility operator reasonably believes that the person is already aware of the incident.

(3) An incident that relates to a security regulated offshore facility of the offshore facility operator must be reported to—

- (a) the Director-General;
- (b) the South African Police Service;
- (c) if the facility is within a security regulated port, the port operator for the port; and
- (d) if a security regulated ship is located in the vicinity of the facility and is engaged in any activity in relation to the facility, the ship operator for, or master of, the ship.

(4) An incident that relates to a port must be reported to the port operator for the 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 port facility operators

196. (1) If a port facility operator becomes aware of a maritime transport security incident, the operator must report the incident as soon as possible in accordance with this section.

(2) Subsection (1) does not apply in relation to a report that must be made to a particular person if the port facility operator reasonably believes that the person is already aware of the incident.

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

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

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

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

(6) 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.

(7) An incident that relates to a security regulated offshore facility must be reported to the offshore facility operator for the facility.

Reporting by persons with incident reporting responsibilities

197. (1) Each of the following is a person with incident reporting responsibilities:

- (a) a maritime security inspector;
- (b) a maritime security guard;
- (c) a screening officer;
- (d) a maritime industry participant other than a participant who is—
 - (i) a port operator;
 - (ii) a port facility operator;

- (iii) a ship operator;
- (iv) an offshore facility operator; or
- (v) an employee of a maritime industry participant.

(2) If a person with incident reporting responsibilities becomes aware of a maritime transport security incident, the person must report the incident as soon as possible in accordance with this section.

(3) Subsection (2) does not apply in relation to a report that must be made to a particular person ("the person to be notified") if the person with incident reporting responsibilities reasonably believes that the person to be notified is already aware of the incident.

(4) Each incident must be reported to the Director-General.

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

(6) 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.

(7) An incident that relates to a security regulated offshore facility must be reported to the offshore facility operator for the facility.

Reporting by employees

198. If an employee of a maritime industry participant becomes aware of a maritime transport security incident, the employee must report the incident as soon as possible to the maritime industry participant.

Part 3—Form and content of reports

How to make reports

199. (1) The Director-General may, by notice in the *Gazette*, specify either or both of the following:

- (a) information that must be included in a report required by this Chapter;
- (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 subsection (1) when the report is made,

the report is deemed, for the purposes of this Chapter, not to have been made.

CHAPTER 12

INFORMATION-GATHERING

Part 1—Pre-arrival information

Ships must provide pre-arrival information

200. (1) The master of each of the following ships must provide pre-arrival information in accordance with the regulations:

- (a) a regulated South African ship;
- (b) a regulated foreign ship, or a ship intending to enter South African waters that would, once it had done so, be a regulated foreign ship;
- (c) a South African ship regulated as an offshore facility;
- (d) a foreign ship regulated as an offshore facility that is—
 - (i) in an offshore area; or
 - (ii) intending to call at a port in the Republic.

(2) The regulations may prescribe—

- (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 of a kind prescribed in the regulations that must be provided by a ship before the ship enters one or more of the following:

- (a) South African waters;

- (b) a security regulated port;
- (c) a maritime security zone within a security regulated port;
- (d) a maritime security zone around a security regulated offshore facility;
- (e) a port that is not a security regulated port.

(4) The regulations may provide that different pre-arrival information is to be provided before entering different places or areas as mentioned in subsection (3)(a) to (e).

Part 2—Security compliance information

Director-General may require security compliance information

201. (1) Information that relates to compliance, or failure to comply, with this Act is security compliance information.

(2) If the Director-General reasonably believes 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 within the period, not exceeding 14 days, and in the form and manner specified in the notice.

(3) A person who is subject to a requirement under subsection (2) must not fail to comply with the requirement.

Self-incrimination

202. (1) A person is not excused from giving security compliance information in terms of section 201 because 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 for an offence against section 231.

Part 3—Maritime surveillance and alerting systems**Automatic identification system for ships**

203. (1) The regulations may make provision about the installation and operation in the Republic of an automatic identification and tracking system for ships.

(2) Regulations made under subsection (1) must—

- (a) be consistent with the obligations relating to automatic identification systems set out in regulation V/19 of the SOLAS Convention; and

(b) take into account any related guidance adopted by the International Maritime Organisation.

(3) A ship must be fitted with an automatic identification system in accordance with requirements prescribed in regulations under the Merchant Shipping Act, 1951 (Act No. 57 of 1951).

Long-range identification and tracking of ships

204. (1) The regulations may make provision about the installation and operation of a long-range identification and tracking system for ships that are equipped with the Global Maritime Distress and Safety System or equivalent satellite technology.

(2) Regulations made under subsection (1) must—

- (a) be consistent with the obligations set out in regulation V/19-1 of the SOLAS Convention;
- (b) take into account any related guidance adopted by the International Organisation; and
- (c) ensure that the system is capable of receiving information about the position of ships at interval positions appropriate to safeguarding against unlawful interference with maritime transport.

(3) Regulations made under subsection (1) may authorise the use of existing maritime organisations to collect and monitor tracking information under the system.

(4) A ship must be fitted with a long-range identification and tracking system in accordance with requirements prescribed in regulations under the Merchant Shipping Act, 1951 (Act No. 57 of 1951).

Security alerting systems

205. (1) The regulations may make provision about security alerting systems for one or more of the following:

- (a) security regulated ports;
- (b) security regulated ships;
- (c) security regulated offshore facilities.

(2) Regulations made under subsection (1)(b) must—

- (a) be consistent with the obligations set out in regulation XI-2/6 of the SOLAS Convention; and
- (b) take into account any related guidance adopted by the International Maritime Organisation.

(3) For the purposes of regulation XI-2/6 of the SOLAS Convention, the Director-General is designated as the competent authority in the Republic for receiving notifications of ship-to-shore security alerts.

CHAPTER 13

ENFORCEMENT

Part 1—Infringement notices

Infringement notices

206. (1) The regulations may make provision enabling a person who is alleged to have committed an offence against this Act, other than an offence against section 51(2), 77(1), 181(2), 229 or 230, to pay a penalty to the State as an alternative to prosecution.

(2) The penalty must not exceed one-third of the maximum fine that a court could impose on the person as a penalty for that offence.

Part 2—Enforcement orders for maritime industry participants

Director-General may make enforcement orders

207. (1) The Director-General may make a written order—

- (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) An order under subsection (1) is an enforcement order.

- (3) However, the Director-General must not make an enforcement order unless he or she reasonably believes that—
- (a) the maritime industry participant named in the order has contravened this Act;
 - (b) the order is necessary to ensure compliance with this Act; or
 - (c) the order is otherwise necessary to safeguard against unlawful interference with maritime transport.
- (4) An enforcement order must—
- (a) bear a clear and direct relationship to the grounds for making it; and
 - (b) be proportionate in relation to those grounds.
- (5) An enforcement order must not require the payment of money to the Director-General, or any other person, other than an amount of money that is already recoverable at law.
- (6) The regulations may prescribe requirements in relation to the making of enforcement orders.

When enforcement order is in force

- 208.** (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, when 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

- 209.** (1) The Director-General must—
- (a) at intervals of not more than three months, review an enforcement order; and
 - (b) after each review, confirm, vary or revoke the order by instrument in writing.
- (2) The Director-General must revoke the order unless he or she is satisfied that the order is still needed to safeguard against unlawful interference with maritime transport.
- (3) The Director-General must not vary the order unless he or she is satisfied that the order as varied—
- (a) adequately safeguards against unlawful interference with maritime transport; and
 - (b) meets the requirements set out in section 207(3) and (4).
- (4) If an enforcement order is varied, the order continues in force as varied.

Notifying enforcement orders

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

(2) Failure to comply with this section does not affect the validity of the order.

Complying with enforcement orders

211. A person who is subject to an enforcement order that is in force must not fail to comply with the order.

***Part 3—Control directions for security regulated ships and ships
regulated as offshore facilities***

Director-General may give control directions

212. (1) The Director-General may direct—

- (a) the ship operator for, or master of, a security regulated ship; or
- (b) the offshore facility operator for, or master of, a ship regulated as an offshore facility,

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

(2) A direction under subsection (1) is a control direction.

(3) However, the Director-General must not give a control direction unless he or she reasonably believes that—

- (a) the ship named in the control direction has operated in contravention of this Act;
- (b) the direction is necessary to ensure compliance with this Act; or
- (c) the direction is otherwise necessary to safeguard against unlawful interference with maritime transport.

(4) A control direction must—

- (a) bear a clear and direct relationship to the grounds for giving it; and
- (b) be proportionate in relation to those grounds.

(5) A control direction must not require the payment of money to the Director-General, or any other person, other than an amount of money that is already recoverable at law.

(6) In giving a control direction in respect of a regulated foreign ship, the Director-General must—

- (a) act consistently with the obligations set out in regulation XI-2/9 of the SOLAS Convention; and
- (b) take into account any related guidance adopted by the International Maritime Organisation.

(7) The action that a ship operator, offshore facility operator or master may be directed to take under subsection (1) includes, but is not limited to, the following:

- (a) removing the ship from specified waters;
- (b) removing the ship from a security regulated port;
- (c) moving the ship within a security regulated port;
- (d) removing the ship from an offshore security zone;
- (e) moving the ship within or around an offshore security zone;
- (f) if the ship—
 - (i) is a security regulated ship; and
 - (ii) is located in the vicinity of a security regulated offshore facility;
and
 - (iii) is engaged in any activity in relation to the facility,
removing the ship from the vicinity of the facility;
- (g) holding the ship in a particular position for a specified period or until a specified event happens;
- (h) taking particular action, or ensuring that particular actions are taken, on board the ship;
- (i) allowing a maritime security inspector on board the ship to inspect the ship or ship security records carried by the ship.

(8) A customs officer must not grant a clearance or transire for a ship if a control direction directing action under subsection (7)(g) is in force for the ship.

(9) The regulations may prescribe requirements for, or in relation to, the giving of control directions.

Complying with control directions

213. A person must not fail to comply with a control direction given to the person and in force.

Part 4—Interdicts

Interdicts

214. (1) If a person has engaged, is engaging or is proposing to engage in any conduct in contravention of this Act, the High Court may, on the application of the Director-General, grant an interdict—

- (a) restraining the person from engaging in the conduct; or
- (b) requiring the person to do an act or thing.

(2) On an application, the court may, if it thinks it appropriate, grant an interdict by consent of all parties to the proceedings, whether or not the court is satisfied that the person has engaged, is engaging or is proposing to engage in any conduct in contravention of this Act.

(3) The court may, if it thinks it desirable, grant an interim interdict pending its determination of an application.

(4) The court is not to require the Director-General or anyone else, as a condition of granting an interim interdict, to give an undertaking about damages.

(5) The court may discharge or vary an interdict it has granted.

(6) The power to grant or vary an interdict restraining a person from engaging in conduct may be exercised—

- (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in such conduct; and
- (b) whether or not the person has previously engaged in such conduct.

(7) The power to grant or vary an interdict requiring a person to do an act or thing may be exercised—

- (a) whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
- (b) whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the person refuses or fails to do that act or thing.

CHAPTER 14

MISCELLANEOUS

Part 1—Alternative and equivalent arrangements

Alternative security agreements

215. (1) If the Republic has entered into an alternative security agreement under regulation XI-2/11 of the SOLAS Convention, the Director-General must supervise the operation of the agreement.

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

(a) periodically—

(i) at an interval specified 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.

(3) The review must take into account—

(a) the experience gained from the operation of the agreement;

(b) any changes in the particular circumstances of the ships, ports or routes covered by the agreement; and

(c) any changes in circumstances that could impact on the security of those ships, ports or routes.

(4) A ship covered by an alternative security agreement must not conduct any ship-to-ship activity with another ship not covered by the agreement.

(5) Subsection (4) does not apply to an activity forming part of a search and rescue operation.

(6) Failure to comply with subsection (4) is a failure by both the ship operator for, and the master of, the ship.

(7) An alternative security agreement varies or replaces, according to its terms, the provisions of this Act applying in relation to matters covered by the agreement.

Equivalent security arrangements

216. (1) The Minister may, in writing and on any conditions he or she determines, authorise—

- (a) the ship operator for a regulated South African ship;
- (b) the port operator for a security regulated port;
- (c) the offshore facility operator for a security regulated offshore facility; or
- (d) the port facility operator for a port facility,

to implement, in respect of the ship, port or facility (as the case may be), other security measures equivalent to those prescribed by this Act if the other measures are at least as effective as those prescribed.

(2) A person who is subject to a requirement under subsection (1) to comply with a condition must not fail to comply with the requirement.

Part 2—Delegation

Delegation—SMS employees

217. (1) The Director-General may, in writing and on any conditions he or she determines, delegate all or any of the Director-General's powers or duties under this Act to an SMS employee, or acting SMS employee, in the Department.

(2) A delegation may authorise the delegate to subdelegate all or any of the delegated powers or duties.

(3) In exercising or performing a delegated power or duty, a delegate must comply with any directions of the Director-General.

(4) Anything done by a person under a delegated power or duty has the same force as if it had been done by the Director-General.

(5) Despite delegating a power or duty, the Director-General may still exercise or perform the power or duty.

Delegation—designated authority

218. (1) The Director-General may, in writing and on any conditions he or she determines, delegate all or any of the Director-General's powers or duties under Chapter 5 to a person who—

- (a) satisfies the criteria prescribed in the regulations; and
- (b) is engaged by a designated authority.

(2) The Minister may determine by notice in the *Gazette* that an organ of state is a designated authority.

(3) In exercising or performing a delegated power or duty, a delegate must comply with any directions of the Director-General.

(4) Anything done by a person under a delegated power or duty has the same force as if it had been done by the Director-General.

(5) Despite delegating a power or duty, the Director-General may still exercise or perform the power or duty.

(6) A person exercising or performing a delegated power or duty may charge the person in relation to whom the power or duty is exercised or performed a reasonable fee for the exercise or performance of that power or duty.

Designated authority may conduct SoC inspections

219. (1) The Director-General may, in writing and on any conditions he or she determines, authorise a person to whom powers and

duties can be delegated under section 218(1) to conduct inspections for the purposes of verifying that maritime industry participants meet the requirements necessary for SoC verification.

(2) If a person authorised under subsection (1) conducts an inspection, the person is deemed to be a maritime security inspector for the purposes of section 157(1).

Delegation—recognised security organisations

220. (1) The Director-General may, in writing and on any conditions he or she determines, delegate all or any of the Director-General's powers or duties under Chapter 6 or Part 1 of Chapter 8 to a person who—

- (a) satisfies the criteria prescribed in the regulations; and
- (b) is engaged by a recognised security organisation.

(2) The Minister may determine by notice in the *Gazette* that an organisation is a recognised security organisation.

(3) In exercising or performing a delegated power or duty, a delegate must comply with any directions of the Director-General.

(4) Anything done by a person under a delegated power or duty has the same force as if it had been done by the Director-General.

(5) Despite delegating a power or duty, the Director-General may still exercise or perform the power or duty.

(6) A person exercising a delegated power or duty may charge the person in relation to whom the power or duty is exercised or

performed a reasonable fee for the exercise or performance of that power or duty.

Recognised security organisation may conduct ISSC inspections

221. (1) The Director-General may, in writing and on any conditions he or she determines, authorise a person to whom powers and duties can be delegated under section 220(1) to conduct inspections of ships for the purposes of verifying that ships meet the requirements necessary for ISSC verification.

(2) If a person authorised under subsection (1) conducts a ship inspection, the person is deemed to be a maritime security inspector for the purposes of section 157(2).

Part 3—Review of decisions

Review of decisions

222. (1) Application may be made to the Minister in accordance with this Part for a review of a decision by the Director-General—

- (a) to refuse to approve a maritime security plan under section 59(2) or (4) or a ship security plan under section 85(2) or (4);
- (b) to refuse to approve a variation of a maritime security plan under section 61(6) or (8) or a ship security plan under section 87(4) or (6);

- (c) to direct a maritime industry participant or ship operator to vary a plan under section 62 or 88;
- (d) to direct a maritime industry participant or ship operator to revise a plan under section 64 or 90;
- (e) to cancel a maritime security plan or a ship security plan under section 66, 67, 68, 92 or 93;
- (f) to refuse an interim SoC under section 76 or an interim ISSC under section 101 or 116;
- (g) to declare that a particular port, or a part of a particular port, is a security regulated port under section 18(1)(b);
- (h) to designate a person as a port operator under section 19;
- (i) to declare that one of the following is a security regulated offshore facility under section 24(1):
 - (i) an offshore facility;
 - (ii) a part of an offshore facility;
 - (iii) a group of offshore facilities;
 - (iv) a part of a group of offshore facilities;
- (j) to designate a person as an offshore facility operator under section 25;
- (k) to establish a port security zone under section 123;
- (l) to declare, under section 127, that a ship security zone is to operate around a security regulated ship;
- (m) to establish an on-board security zone under section 131; or
- (n) to establish an offshore security zone under section 135.

(2) An application under subsection (1) is a review application.

Applying for review

223. (1) A person aggrieved by a decision mentioned in section 222(1) may make a review application to the Minister within 30 days after being given notice of the decision.

(2) The Minister may accept a review application that is out of time if the Minister considers it just and equitable to do so.

(3) A review application must—

- (a) be in writing;
- (b) give the applicant's name and an address to which notices can be sent;
- (c) give sufficient details of the decision that the applicant wants reviewed; and
- (d) include any material or representations that the applicant wants taken into account in the review.

Minister to cause inquiry

224. (1) On receiving a review application, the Minister must cause an inquiry to be conducted about the matters raised in the review

application by a person, or persons, that the Minister appoints in writing for the purpose.

(2) The appointment of a person under subsection (1) is on the terms and conditions (including travelling allowances and expenses) that the Minister determines.

(3) Despite subsection (1), the Minister may dismiss a review application, and need not cause an inquiry to be conducted, if the Minister, after considering the review application, considers it to be trivial or frivolous.

Conduct of inquiry

225. (1) The applicant and the Director-General must be given a reasonable opportunity of being heard by and making submissions to the person conducting the inquiry.

(2) The inquiry must be conducted fairly according to the substantial merits of the case without regard to technicalities.

(3) The person conducting the inquiry is not bound by any rules of evidence and may conduct the inquiry and obtain information as that person considers appropriate.

(4) On completing the inquiry, the person conducting it must report to the Minister giving the person's findings and recommendations.

Determining review

226. (1) When the Minister receives the report of the person conducting the inquiry, the Minister must consider and determine the review application and may—

- (a) confirm, vary or reverse the decision under review; or
- (b) refer the application back to the person conducting the inquiry with a request for consideration, or further consideration, of some fact or issue.

(2) The Minister must take into account, but is not bound by, the findings and recommendations of the person conducting the inquiry.

(3) The decision of the Minister on a review application is final administrative action and must be given effect.

Decisions continue in force pending review

227. (1) A decision that is the subject of a review application continues in force pending the determination of the application in accordance with this Part.

(2) To avoid doubt, a person is not excused from complying with any of the provisions of this Act because any review application is pending.

Part 4—Offences, defences and proceedings**General offences**

228. A person commits an offence who contravenes section 34(2), 36(2), 39(2) or (3), 43(4) or (6), 44(2), 45(2), 48(1), 49(1), 51(2), 52, 70(1), 75(3), 77(1), 78(1), 95(1), 100(3), 109(1) or (2), 110(1), 115(3), 121(1) or (2), 141(1), 142(1), 143(1), 144(1), 145(1), 146(1), 147, 158(3), 160(3), 162(3), 173(3), 181(2), 182(2), 192(1), 193(1), 194(1), 195(1), 196(1), 197(1), 198, 201(3), 211, 213, 215(4), 216(2) or 243(3).

Offence—impersonating officials

- 229.** A person commits an offence if—
- (a) the person is not—
 - (i) a maritime security inspector;
 - (ii) a law enforcement officer;
 - (iii) a maritime security guard; or
 - (iv) a screening officer; and
 - (b) the person by words, conduct, demeanour, or assumption of the dress, name, designation, or description of an official mentioned in paragraph (a)(i), (ii), (iii) or (iv), holds himself or herself out as being such an official.

Offence—obstructing administration of Act

230. A person commits an offence if—

- (a) the person engages in conduct; and
- (b) the conduct hinders or obstructs any one or more of the following in carrying out functions under this Act:
 - (i) the Director-General;
 - (ii) a maritime security inspector;
 - (iii) a law enforcement officer;
 - (iv) a maritime security guard;
 - (v) a screening officer.

Offence—false or misleading statements or information

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

- (a) the person makes a statement (whether orally, in a document or in any other way); and
- (b) the person does so knowing that the statement—
 - (i) is false or misleading in a material particular; or
 - (ii) omits any matter or thing without which the statement is misleading in a material particular; and
- (c) any of the following applies:
 - (i) the statement is made to a maritime industry participant in connection with whether—

- (aa) a SoC or interim SoC is in force for the person; or
 - (bb) an ISSC or interim ISSC is in force for a ship;
 - (ii) the statement is made to a person who is authorised by a SOLAS Convention state to request information about, or in connection with, whether a valid ISSC or interim ISSC is in force for a ship;
 - (iii) the statement is made to a person who is carrying out functions under this Act;
 - (iv) the statement is made in compliance with or purported compliance with this Act.
- (2) A person commits an offence if—
- (a) the person gives any of the following information to another person:
 - (i) security compliance information;
 - (ii) pre-arrival information;
 - (iii) any other information under this Act; and
 - (b) the person does so knowing that the information—
 - (i) is false or misleading in a material particular; or
 - (ii) omits any matter or thing without which the information is misleading in a material particular; and
 - (c) the information is given—
 - (i) to an organ of state;
 - (ii) to a person who is carrying out functions under this Act; or
 - (iii) in compliance or purported compliance with this Act.

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

- (a) a statement made or information given by a person acting on behalf of the body corporate is deemed to have been made or given by the body corporate; and
- (b) the knowledge or state of mind of any person employed by or concerned in the management of the body corporate is deemed to be knowledge or the state of mind of the body corporate.

Strict liability

232. Unless the provision specifying the offence provides otherwise, every offence against this Act is an offence of strict liability.

Continuing offence

233. If an offence against this Act is committed or continued on more than one day, the person who committed it is liable to be convicted of a separate offence for each day on which the offence is committed or continued.

Penalties

234. (1) A person who commits an offence against section 51(2), 77(1), 211 or 213 is liable upon conviction to a fine not exceeding one million rand or imprisonment for a period not exceeding 10 years, or both.

(2) A person who commits an offence against section 48(1), 49(1), 52, 70(1), 78(1), 95(1), 110(1), 141(1), 142(1), 143(1), 144(1), 145(1), 146(1), 147, 173(3), 182(2), 201(3), 215(4), 216(2), 229, 230 or 231 is liable upon conviction to a fine not exceeding R500 000 or imprisonment for a period not exceeding five years, or both.

(3) A person who commits an offence against section 34(2), 36(2), 39(2) or (3), 43(4) or (6), 44(2), 45(2), 109(1) or (2), 121(1) or (2), 192(1), 193(1), 194(1), 195(1), 196(1) or 243(3) is liable upon conviction to a fine not exceeding R200 000 or imprisonment for a period not exceeding two years, or both.

(4) A person who commits an offence against this Act for which no other penalty is provided is liable upon conviction to a fine not exceeding R100 000 or imprisonment for a period not exceeding 12 months, or both.

General defence

235. A person does not commit an offence against this Act if the person exercised all due diligence to prevent its commission.

Defence—ship masters decisions

236. A person does not commit an offence against this Act if—

- (a) the master engaged in conduct in the operation or control of the ship;
and
- (b) the offence exists only because the master engaged in the conduct;
and
- (c) the master engaged in the conduct to protect the safety or security of—
 - (i) the ship;
 - (ii) the ship's cargo;
 - (iii) a person (whether on or off a ship);
 - (iv) another ship;
 - (v) a port, or a port facility or other installation within a port; or
 - (vi) an offshore facility; and
- (d) the conduct was reasonable in the circumstances.

Defence—complying with MARSEC directions

237. If—

- (a) a person is required to comply with a MARSEC direction; and
 - (b) by complying with the direction the person would commit an offence against, or otherwise contravene a requirement of, this Act,
- the person, in complying with the MARSEC direction, is deemed not to have committed the offence or contravened the requirement.

Defence—complying with control directions

238. If—

- (a) a person is required to comply with a control direction; and
 - (b) by complying with the direction the person would commit an offence against, or otherwise contravene a requirement of, this Act,
- the person, in complying with the control direction, is deemed not to have committed the offence or contravened the requirement.

Jurisdiction—offences

239. (1) Proceedings for an offence against this Act may be instituted, and the offence may for all incidental purposes be treated as having been committed, in any place in the Republic.

(2) Despite anything to the contrary in any law, a magistrates' court has jurisdiction to impose any penalty prescribed by this Act.

Evidence

240. In any proceedings for an offence against this Act—

- (a) any document or record kept for the purposes of this Act is admissible as *prima facie* evidence of the matters stated in the document or record;
- (b) a copy of an entry in such a document or record, being a copy certified by the person by whom the record is kept to be a true copy of the entry, is admissible as *prima facie* evidence of the matters stated in the entry; and
- (c) a document purporting to be such a document or record, or purporting to be such a certified copy, is deemed, unless the contrary is proved, to be such a document or record or certified copy and to have been duly kept or certified, as the case may be.

Certificates by Minister

241. (1) The Minister may give a certificate stating that a document set out in, or annexed to, the certificate sets out the terms of either or both of the following:

- (a) the SOLAS Convention (including the ISPS Code);
- (b) the Seafarers' Identity Documents Convention.

(2) A certificate given under subsection (1) is *prima facie* evidence of the matters stated in it.

Part 5—Regulations

Regulations

242. (1) The Minister may make regulations about—
- (a) the recovery of costs and expenses incurred by persons in relation to the removal, relocation or storage of things under Chapter 9 or 10;
 - (b) the disposal, through sale or otherwise, of unclaimed things removed from maritime security zones under Chapter 10;
 - (c) the manner in which the proceeds of any sale of things referred to in paragraph (a) or (b) are to be distributed;
 - (d) the scope and subject matter of training courses relevant to Chapter XI-2 of the SOLAS Convention and the ISPS Code, or otherwise relevant to this Act;
 - (e) the approval, by the Director-General or another specified person, of—
 - (i) training courses relevant to Chapter XI-2 of the SOLAS Convention and the ISPS Code, or otherwise relevant to this Act; and
 - (ii) the providers of those training courses;

- (f) the form of any certificate, notice or other instrument required or permitted to be issued or otherwise made or used under this Act;
- (g) the surrender of cancelled or expired certificates;
- (h) the fixing and payment of fees in respect of matters under this Act;
- (i) giving effect to Chapter XI-2 of the SOLAS Convention and the ISPS Code, other than provisions of the Convention and Code to which effect is given by this Act;
- (j) matters required or permitted by this Act to be provided or prescribed by regulation; and
- (k) any other matter the Minister considers necessary or convenient for carrying out or giving effect to this Act.

(2) The regulations may provide that a contravention of a regulation is an offence and prescribe a penalty of a fine not exceeding R200 000 or a period of imprisonment not exceeding two years, or both.

(3) Regulations prescribing fees must be made with the consent of the Minister of Finance.

Exemptions from regulations

243. (1) The Director-General may, in writing and on any conditions he or she determines, exempt any person or thing from any requirement prescribed in the regulations.

(2) However, the Director-General must not give an exemption under subsection (1) unless he or she is satisfied that—

- (a) the exemption will not breach the Republic's obligations under the SOLAS Convention and the Seafarers' Identity Documents Convention; and
- (b) either—
 - (i) the prescribed requirements have been substantially complied with and further compliance is unnecessary;
 - (ii) the action taken or provision made in respect of the matter to which the prescribed requirements relate is as effective or more effective than actual compliance with the prescribed requirements;
 - (iii) the prescribed requirements are clearly unreasonable or inappropriate in the particular case; or
 - (iv) something has happened that makes the prescribed requirements unnecessary or inappropriate in the particular case; and
- (c) the risk to safety and maritime transport security will not be significantly increased by giving the exemption.

(3) A person who is subject to a requirement under subsection (1) to comply with a condition must not fail to comply with the requirement.

(4) This section does not apply if the regulations provide that exemptions must not be given.

Part 6—Miscellaneous

Communicating with ship operators and masters

244. For the purposes of this Act, a person may give a notice or direction to, or otherwise communicate with, a ship operator for, or master of, a ship by giving the notice or direction to, or otherwise communicating with, the shipping agent for the ship.

Compensation for undue detention or delay—paid by State

245. (1) If—

- (a) the Director-General gives a control direction to a security regulated ship or a ship regulated as an offshore facility; and
- (b) the ship is unduly detained or delayed because the ship complies with the direction,

the State is liable to pay the relevant operator for the ship reasonable compensation for any loss or damage suffered by the ship operator as a result of the undue detention or delay.

(2) If the State and the relevant operator do not agree on the amount of the compensation, the ship operator may institute proceedings in the High Court for such reasonable compensation as the Court determines.

(3) Compensation is payable out of money appropriated by Parliament.

(4) A complainant is liable to indemnify the State for any compensation for which the State is liable under subsection (1), if—

- (a) the ship was detained or delayed on information given by the complainant; and
- (b) the information is subsequently found to be false; and
- (c) the complainant knew that the information was false when he or she gave it.

(5) In this section—

"relevant operator"—

- (a) for a security regulated ship, means the ship operator for the ship; and
- (b) for a ship regulated as an offshore facility, means the offshore facility operator for the ship;

"unduly detained or delayed" has the meaning it has in regulation XI-2/9.3.5 of the SOLAS Convention.

Compensation for inspection and detention—paid by ship operators or other persons

246. (1) If—

- (a) a person fails to comply with this Act; and
- (b) because of that failure a ship is detained or inspected; and
- (c) the detention or inspection is reasonable in the circumstances; and
- (d) the State incurs costs in connection with the detention or inspection,

the person is liable to pay the State reasonable compensation in respect of the detention or inspection.

(2) If the State and the person do not agree on the amount of the compensation, the State may institute proceedings in the High Court for such reasonable compensation as the Court determines.

(3) If—

- (a) a security regulated ship (the "non-complying ship") fails to comply with this Act; and
 - (b) because of that failure, the non-complying ship or another ship is detained or inspected; and
 - (c) the detention or inspection is reasonable in the circumstances; and
 - (d) the State incurs costs in connection with the detention or inspection,
- the ship operator for the non-complying ship is liable to pay the State reasonable compensation in respect of the detention or inspection.

(4) If the State and the ship operator do not agree on the amount of the compensation, the State may institute proceedings in the High Court for such reasonable compensation as the Court determines.

Protection to officials

247. (1) A protected official or a person acting under a delegation or direction of a protected official is not civilly liable for an act or omission done in good faith and without negligence under this Act.

(2) If subsection (1) prevents civil liability attaching to a protected official or a person, the liability attaches instead to the State.

(3) In this section, each of the following is a "protected official":

- (a) the Director-General;
- (b) a maritime security inspector;
- (c) a law enforcement officer;
- (d) a maritime security guard;
- (e) a screening officer.

Effect of Act on other laws

248. (1) This Act does not affect an immunity or privilege that is conferred by—

- (a) the Foreign States Immunities Act, 1981 (Act No. 87 of 1981);
- (b) the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001);
- (c) the Defence Act, 2002 (Act No. 42 of 2002), in relation to a visiting force; or
- (d) any other Act.

(2) If—

- (a) under the National Ports Act, 2005 (Act No. 12 of 2005), a harbour master or any other person; or

(b) under the South African Maritime Safety Authority Act, 1998 (Act No. 5 of 1998), the Authority or any other person, does anything that conflicts with any direction or order of the Director-General under this Act, the Director-General's direction or order prevails.

Repeals, savings and transitional

249. (1) The Merchant Shipping (Maritime Security) Regulations, 2004, published by Government Notice No. R. 751 of 21 June 2004 are repealed.

(2) Anything in force under the provisions of the regulations repealed by subsection (1) (the "repealed regulations") immediately before the commencement of this Act continues in force, according to its terms, under the corresponding provisions of this Act.

(3) Any proceedings begun, but not completed, under the provisions of the repealed regulations must be continued as if this Act had not been enacted.

(4) Anything else begun, but not completed, under the provisions of the repealed regulations must be continued under the corresponding provisions of this Act.

(5) The regulations may make provision about the transition to this Act of any matter under the repealed regulations that is not adequately covered by subsection (4).

Short title and commencement

250. (1) This Act is the Maritime Transport Security Act, 200X.

(2) This Act commences on the day fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE MARITIME TRANSPORT SECURITY BILL

1 BACKGROUND

1.1 The shape of maritime transport security today is a product largely of the international community's response to the tragic events of 11 September 2001 in the United States and the underlying threat posed by international terrorism. The international response has sought to address vulnerabilities across a broad front and, from a maritime perspective, two United Nations' agencies in particular, namely the International Maritime Organisation (IMO) and the International Labour Organisation (ILO), have played (and continue to play) a key role in shaping and influencing the content of maritime transport security measures at the international, as well as a national, level. The following paragraphs briefly describe the relevant international developments and the way South Africa is responding to them.

SOLAS chapter XI-2 and ISPS Code

1.2 In December 2002, a conference of contracting governments to the International Convention for the Safety of Life at Sea 1978 (SOLAS) convened under the auspices of IMO to adopt far-reaching security amendments to SOLAS. The most significant of these are set out set in SOLAS chapter XI-2 (on special measures to enhance maritime security) and its related International Ship and Port Facility Security (ISPS) Code, both of which entered into force on 1 July 2004. SOLAS chapter XI-2 and the ISPS

Code adopt an approach that treats ensuring the security of ships and port facilities as a risk management activity, where determining what security measures are appropriate relies on an assessment of the risks in each particular case. The ISPS Code, in particular, provides a standardized, consistent framework for evaluating risk that enables changes in threat levels to be offset with changes in vulnerability. This risk management concept is embodied in the minimum functional security requirements for ships and port facilities set out in the code.

IMO/ILO Code of Practice on Security in Ports

1.3 SOLAS security measures, while comprehensive in what they cover, have some notable limitations: they do not cover non-trading vessels, domestic-trade vessels, international-trade vessels under 500 gross tonnage, or port facilities exclusively serving such vessels; nor do they cover port-side operations beyond the immediate ship/port interface. In 2004 IMO and ILO jointly addressed the latter of these "gaps" by adopting a complementary, but voluntary, Code of Practice on Security in Ports that extended the consideration of port security beyond the area of the port facility into the whole port area.

National response

1.4 South Africa is a member of both IMO and ILO, and is a contracting government to SOLAS. In June 2004 South Africa responded to the international developments around maritime transport security by adopting

and implementing the Merchant Shipping (Maritime Security) Regulations, 2004, under the Merchant Shipping Act, 1951. The regulations implemented both the SOLAS requirements and the IMO/ILO Code of Practice on Security in Ports. At the time it was necessary to meet the SOLAS 1 July 2004 deadline to avoid significant disruption of maritime trade that missing the deadline inevitably would have entailed. However, it was also recognised that the Merchant Shipping Act, 1951, with its primary focus and administrative apparatus centred around shipping safety, was neither the ideal nor a permanent vehicle for regulating maritime transport security and that a desired end-state included a free-standing Act of Parliament.

Subsequent international developments

1.5 Since 2004 there have been two significant developments at the international level that affect maritime transport security and demand national attention. First, the ILO Seafarers' Identity Documents Convention (Revised) 2003 (No. 185) entered into force in 2005; second, amendments to SOLAS chapter V (on long-range identification and tracking of ships (LRIT)) entered into force in January 2008. South Africa has provisionally indicated its commitment to the ILO convention, but must still accept it formally and provide an appropriate legislative basis for its implementation. As a contracting government to SOLAS, South Africa is obligated to implement the SOLAS LRIT amendments before the end of the year.

Current national considerations

1.6 Apart from these international developments, there are also a number of national considerations underpinning this Bill, the most important of which are the following:

- a consolidated administrative framework for maritime transport security centred on the Transport Portfolio;
- an improved framework for coordinated planning and action across organs of state with responsibilities for maritime transport security;
- a facility to improve "domain awareness" through an enhanced information-gathering and maritime surveillance capability (e.g. ship identification and tracking systems);
- enhanced integrity of the maritime transport security system through:
 - extended coverage of vessels, facilities and other maritime operations (e.g. offshore industries);
 - better control over certain preventive security measures (e.g. security zones, and screening and clearing);
 - a facility to enhance personal identification of maritime transport workers;
- a facility to implement the ILO Seafarers' Identity Documents Convention (Revised) 2003 (No. 185) to promote security and avoid prejudicing the work opportunities of South African seafarers;
- improved compliance and enforcement measures for promoting compliance and for deterring, detecting and appropriately punishing contraventions.

2 PURPOSE

2.1 The Bill proposes to repeal and replace the existing Merchant Shipping (Maritime Security) Regulations, 2004, made under the Merchant Shipping Act, 1951. In replacing the regulations, the Bill retains many of the main elements of the regulations, but it also addresses the international developments and national considerations mentioned in paragraphs 1.5 and 1.6 above.

Main purpose

2.2 The Bill's main purpose is to safeguard against unlawful interference with maritime transport. It seeks to achieve this purpose by continuing the risk-based and outcome focussed approach, first adopted in the 2004 regulations, of a regulatory scheme centred on the development of security plans for ships, ports, offshore facilities and other maritime transport operations. The specific outcomes sought to be achieved remain essentially unchanged, namely:

- South Africa's obligations under SOLAS chapter XI-2 and the ISPS Code, including those with regard to the rights, freedoms and welfare of seafarers, are met;
- the vulnerability to terrorist attack or other unlawful interference of South African ships, ports and other ships within South Africa, and offshore facilities, is reduced without undue disruption of trade;

- the risk that ships, offshore facilities and other maritime transport operations are used to facilitate terrorist or other unlawful activities is reduced;
- security information is communicated effectively among maritime industry participants and organs of state with maritime security responsibilities.

Other purpose

2.2 Another purpose of the Bill is to give effect to the ILO Seafarers' Identity Documents Convention (Revised) 2003 (No. 185). The convention establishes enhanced minimum standards covering the identification of seafarers, including identity documents to be held by seafarers. However, this purpose can only be achieved with the cooperation of the Labour and Home Affairs Portfolios.

3 SUMMARY OF BILL

Administration

3.1 The administration of the enactment is the responsibility of the Transport Portfolio. Coordinated planning and action by organs of state with maritime transport security responsibilities is required under a high-level Maritime Transport Security Coordination Plan, and certain advisory and operational structures are mandated.

Main elements

3.2 The regulatory scheme established by the Bill adopts a risk-based, outcome focussed approach that is centred on security plans for ships, ports, offshore facilities and other maritime transport operations. The flexibility of this approach enables a responsive attitude to a changing threat environment. The main elements of the scheme can be summarised as follows:

- Effect is given to the mandatory requirements in SOLAS chapter XI-2 and the ISPS Code and also to the IMO/ILO Code of Practice on Security in Ports, to ensure that South Africa remains in step with the international maritime transport security regime. However, measures under the Bill are not restricted to these requirements and extended coverage is mandated (e.g. the Bill covers offshore facilities; it also enables wider coverage in other cases).
- Maritime security levels are established and changes in these levels are mandated, along with supplementary security directions.
- Identified South African ports, and port facilities within them, and offshore facilities are required to operate with approved maritime security plans.
- Certain types of South African and other ships are required to operate with approved security plans;
- Security verification and certification of certain ships, facilities and operations is required. For ships, the issue of international ship

security certificates (ISSCs) allows entry into the ports of SOLAS contracting countries.

- Preventive security measures are mandated in respect of maritime security zones, screening and clearing, the treatment of weapons and prohibited items, and personal identification of maritime transport workers and seafarers.
- Incident reporting is required for the purposes of detection and response. Other information-gathering is also mandated to enable:
 - the health of the security system to be assessed periodically; and
 - wider maritime domain awareness (e.g. through ship identification and tracking systems).
- Compliance and enforcement measures are mandated to promote compliance and to deter, detect and appropriately punish contraventions.

Structure

3.3 The Bill has 14 chapters. The content of each of these is described briefly below.

- Chapter 1 (Interpretation, purposes and application of Act) covers definitions and interpretation, the purposes of the enactment and matters relating to its material and geographical application.
- Chapter 2 (Maritime transport security planning and coordination) covers requirements relating to a Maritime Transport Security

Coordination Plan, advisory structures in the form of a Maritime Transport Security Advisory Committee and port security committees, and operations-level coordinating structures in the form of maritime transport security coordination centres.

- Chapter 3 (Security regulated ports, ships and offshore facilities) contains provision defining some of the main concepts relevant to the Bill's scope. While there is provision enabling its scope to be extended or limited, by default the Bill's scope is largely consistent with SOLAS chapter XI-2 and the ISPS Code, the obvious exception being facilities and ships engaged in the South African offshore petroleum industry.
- Chapter 4 (Maritime security (MARSEC) levels and maritime security (MARSEC) directions) covers matters relating to MARSEC levels and the giving of supplementary MARSEC directions. There are three MARSEC levels, level 1 being the default level. Security measures established in a security plan for a particular MARSEC level must be implemented when that level is in force. MARSEC directions do not change a MARSEC level in force; instead these directions require additional security measures to be undertaken or implemented when existing measures are inadequate for a particular threat environment.
- Chapter 5 (Maritime security plans and SoCs³ for port and offshore operations) covers security planning, verification and certification requirements for ports, offshore facilities and related port and offshore

³ Statements of compliance.

operations that are security regulated. However, offshore facilities and certain ports must be declared before they can become security regulated.

- Chapter 6 (Ship security plans and ISSCs⁴ for regulated South African ships) covers security planning, verification and certification requirements for South African ships that are security regulated.
- Chapter 7 (Regulated foreign ships) covers obligations on foreign ships that are security regulated. For example, these ships are required to have ISSCs, to provide pre-arrival information, and to comply with MARSEC levels and directions.
- Chapter 8 (Ships regulated as offshore facilities) covers requirements for South African and foreign FPSOs⁵, FSUs⁶ and MODUs⁷ that are either declared a security regulated offshore facility or form part of such a facility.
- Chapter 9 (Preventive security measures) covers requirements relating to maritime security zones (port, ship, on-board or offshore), screening and clearing, and the treatment of weapons and prohibited items. The chapter also contains provision relating to security identification for maritime transport workers and seafarers. For

⁴ International ship security certificates.

⁵ Floating production, storage and offtake units.

⁶ Floating storage units.

⁷ Mobile offshore drilling unit.

seafarers, the reference standard is that contained in the ILO Seafarers' Identity Documents Convention (Revised) 2003 (No. 185).

- Chapter 10 (Powers of officials) covers the inspection powers of maritime security inspectors, and the powers of law enforcement officers, maritime security guards and screening officers in relation to maritime security zones.
- Chapter 11 (Reporting maritime transport security incidents) covers requirements relating the reporting of security incidents by maritime industry participants.
- Chapter 12 (Information-gathering) covers requirements in relation to pre-arrival reporting by ships and the gathering of security compliance information from maritime industry participants. The chapter also covers matters relating to maritime surveillance and security alerting systems.
- Chapter 13 (Enforcement) contains provisions relating to enforcement orders and control directions. Control directions relate specifically to ships and may extend to detention and denial of entry. Control directions for regulated foreign ships are required to be consistent with SOLAS regulation XI-2/9. The chapter also covers other enforcement alternatives, namely infringement notices in respect of certain offences and interdicts.
- Chapter 14 (Miscellaneous) covers different matters including the following:
 - alternative and equivalent arrangements

- delegations
- review of decisions
- offences, penalties and defences
- regulations
- compensation for undue detention or delay
- compensation for inspection and detention
- protection to officials
- repeals and transitional matters

4 ORGANISATION AND PERSONNEL IMPLICATIONS

5 FINANCIAL IMPLICATIONS FOR STATE

6 COMMUNICATION IMPLICATIONS

7 OTHER DEPARTMENTS AND BODIES CONSULTED

8 PARLIAMENTARY PROCEDURE

8.1 *The State Law Advisers and the Department of Transport are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.*

8.2 *The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.*