
GENERAL NOTICE

NOTICE 355 OF 2009 DEPARTMENT OF TRANSPORT

PUBLICATION FOR COMMENTS: MERCHANT SHIPPING (SAFE CONTAINERS) BILL, 2009

The above- mentioned draft Bill is hereby published for public comments. Interested persons are invited to submit written comments on the draft Bill by not later than 22 May 2009 .Submission should be posted to the Director – General Department of Transport for the attention of T.H.M Mphahlele

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**Draft Merchant Shipping (Safe
Containers Convention) Bill,
2009**

B I L L

To give effect to the International Convention for Safe Containers, and for related matters.

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

Definitions

1. (1) In this Act, unless the context indicates otherwise
- (i) **"applied provisions of the Convention"** means the provisions of the Convention that, in terms of section 5, have the force of law as part of the law of the Republic;
 - (ii) **"Authority"** means the South African Maritime Safety Authority established by section 2(1) of the South African Maritime Safety Authority Act, 1998 (Act No. 5 of 1998);
 - (iii) **"container"** means a container as defined in the Convention and to which the Convention applies;
 - (iv) **"Contracting State"** means a state specified in a notice under section 4;
 - (v) **"contravene"**, in relation to a provision of this Act, includes failing or refusing to comply with the provision;
 - (vi) **"inspector"** means a person designated as an inspector under section 7;
 - (vii) **"Minister"** means the Minister of Transport;
 - (viii) **"organ of state"** has the meaning it has in section 239 of the Constitution of the Republic of South Africa, 1996;

- (ix) **"the Convention"** means the International Convention for Safe Containers set out in Part 1 of the Schedule and, after the commencement of Part 2 of the Schedule, as amended by that Part;
- (x) **"the Republic"** includes the Prince Edward Islands referred to in section 3;
- (xi) **"this Act"** includes the regulations.

(2) Unless the context indicates otherwise, an expression used in this Act and in the Convention (whether or not a particular meaning is given to it by the Convention) has, in this Act, the meaning it has in the Convention.

Act binds State

2. This Act binds the State and every organ of state.

Operation of Act

3. (1) This Act extends to the Prince Edward Islands within the meaning of section 1 of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948).

(2) In its application to those Islands, transport between places in the Republic and places in those Islands is taken to be international transport within the meaning of Article II, paragraph 6 of the Convention.

Declaration of Contracting States

4. (1) The Minister may, by notice in the *Gazette*, declare that, for the purposes of this Act, a state, other than the Republic, specified in the notice is a state party to the Convention.

(2) A notice under subsection (1) is evidence that a state specified in the notice is a state party to the Convention.

Certain provisions of Convention have force of law

5. Subject to this Act, Articles II to VI of the Convention have the force of law as part of the law of the Republic.

Regulations to give effect to applied provisions of Convention

6. (1) The regulations may prescribe matters necessary or convenient for carrying out or giving effect to the applied provisions of the Convention.

(2) Without limiting subsection (1), the regulations may make provision about—

- (a) the detention and transportation of containers that do not carry a valid Safety Approval Plate as required by the Convention;
- (b) the detention and transportation of containers in respect of which there is significant evidence that the condition of the container creates an obvious risk to safety;
- (c) the maintenance and repairing of containers;
- (d) the circumstances and the manner in which the Authority may dispose of detained containers that have not been repossessed by the person entitled to possession;
- (e) requiring that the Safety Approval Plate affixed to any or all containers approved in terms of this Act be in one or more of the official languages of the Republic; and
- (f) the circumstances in which the Authority must obtain the consent of another specified authority in the choice of the person or persons to be authorised to conduct an inquiry under section 10(1).

(3) However, a regulation may not—

- (a) authorise a person to prevent the removal of the contents of a container; or
- (b) authorise the continued detention of a container after its contents have been removed, except if an inspector believes on reasonable grounds that there is about to be a contravention of a regulation about the transportation of containers made under subsection (2)(a) or (b).

Inspectors

7. (1) The Authority may designate as an inspector for the purposes of this Act any person who, in the Authority's opinion, is qualified to be so designated.

(2) The Authority must give every inspector a certificate attesting to his or her designation as an inspector setting out the provisions of this Act and the Convention that the inspector is authorised to enforce.

(3) When boarding any vehicle or entering any place described in section 8(1), an inspector must, if so required, show the certificate to the person in charge the vehicle or place.

Powers of inspectors

8. (1) In addition to any powers that he or she may have under the regulations, an inspector may, without a warrant, at any reasonable time—

- (a) go on board any vehicle, including a ship, train, truck or aircraft, or enter any place in which he or she believes on reasonable grounds that—
 - (i) there is significant evidence that the condition of a container creates an obvious risk to safety; or
 - (ii) a provision of this Act has been contravened;
 - (b) go on board any vehicle, including a ship, train, truck or aircraft, or enter any place in which he or she believes on reasonable grounds there is a container, for the purpose of verifying that the container carries a valid Safety Approval Plate as required by the Convention; and
 - (c) examine any record or document required by the regulations to be kept, and make copies or extracts.
- (2) The owner or person in charge of any vehicle boarded or place entered by an inspector and every person found therein must give the inspector all reasonable assistance to enable the inspector

to perform his or her functions under this Act and must provide the inspector with any information that he or she may reasonably require with respect to the administration of this Act.

Obstruction of inspectors

9. (1) No person may obstruct or hinder an inspector in the performance of his or her functions under this Act.

(2) No person may knowingly make any false or misleading statement, either orally or in writing, to an inspector engaged in the performance of his or her functions under this Act.

(3) Unless authorised by an inspector, no person may remove or interfere in any way with a container detained by an inspector under the regulations.

Authority may direct inquiry

10. (1) If an accident or incident involving a container results in death or injury to any person, danger to the health or safety of the public or damage to property or the environment, the Authority may direct an inquiry to be made into the accident or incident and may, subject to the regulations, authorise to conduct the inquiry any person or persons who in the Authority's opinion are qualified to be so authorised.

(2) For an inquiry, the person or persons authorised by the Authority under subsection (1) have all the powers conferred upon a court of marine enquiry by subsections (1)(i) to (vi) and (4) of section 9 of the Merchant Shipping Act, 1951 (Act No. 57 of 1951), and subsections (2) and (3) of that section apply accordingly.

(3) As soon as possible after the conclusion of an inquiry, the person or persons authorised to conduct the inquiry must give a report with recommendations to the Authority, together with all the evidence and other material that was before the inquiry.

(4) The report must be published by the Authority within 60 days after its receipt by the Authority, unless the report contains a

recommendation that publication be withheld in the public interest, in which case the Authority may withhold publication of the report in whole or in part as it thinks fit.

(5) However, if the concurrence of another person was obtained in relation to the choice of the person or persons to be authorised to conduct an inquiry, the report, or any portion thereof, may not be published unless that other person consents to publication.

(6) The Authority may supply copies of a published report in the manner and on the terms that it thinks proper.

Regulations

11. (1) The Minister may make regulations prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) (a) A regulation may make provision in terms of any document that the Minister or the Authority considers relevant from time to time, without stating the text, by mere reference to the number, title and year of issue of that document or to the other particulars by which that document can readily be identified, and any provision so made is, in the absence of a contrary intention, taken to have been made in terms of the relevant document as revised or re-issued from time to time.

(b) A copy of the complete text of each document, as revised or re-issued from time to time, in terms of which provision is made under paragraph (a), is to be kept at the place or places in the Republic that the Authority directs and is to be available for public inspection.

(c) To avoid doubt, section 31 of the Standards Act, 1993 (Act No. 29 of 1993), does not affect the operation of this subsection.

Offences and penalties

12. (1) A person who contravenes a provision of this Act commits an offence punishable upon conviction by a fine or by imprisonment for a period not exceeding two years.

(2) Without affecting the jurisdiction of any court existing apart from this subsection, a court has jurisdiction over an offence in terms of this Act if—

(a) the offence was committed in the territorial jurisdiction of that court; or

(b) the accused is found or carries on business in the territorial jurisdiction of that court.

(3) If a person—

(a) admits to the Authority that he or she has contravened a provision of this Act;

(b) agrees to abide by the decision of the Authority; and

(c) deposits with the Authority the sum required of him or her, which sum is not to exceed the maximum fine that may be imposed under subsection (1),

the Authority may, after the inquiry that it thinks fit, determine the matter summarily and may, without legal proceedings, order the whole or any part of the deposit to be forfeited by way of a penalty.

(4) There is a right of appeal to the Minister against a determination or order of the Authority. This right must be exercised within 90 days from the date of the determination or order.

(5) The imposition of a penalty under subsection (3) is taken not to be a conviction of an offence; however, no prosecution in respect of the offence in question may thereafter be instituted.

(6) All fines and other money penalties imposed under this Act are to be paid to the Authority for the benefit of the Maritime Fund established by section 38 of the South African Maritime Safety Authority Act, 1998 (Act No. 5 of 1998).

Duration of Act

13. This Act continues in force until a day fixed by the President by proclamation in the *Gazette* following denunciation of the Convention by the Republic or the termination thereof in accordance with Article XII.

Repeal of Act 11 of 1985

14. The International Convention for Safe Containers Act, 1985 (Act No. 11 of 1985), is repealed.

Short title and commencement

15. (1) This Act is called the Merchant Shipping (Safe Containers Convention) Act, 2006.

(2) This Act commences on a day fixed by the President by proclamation in the *Gazette*; but the day so fixed in relation to Part 2 of the Schedule may not be a day before the day on which the amendments to the Convention set out in that Part enter into force for the Republic in accordance with Article IX, paragraph 2(c) of the Convention.

SCHEDULE

(Section 1)

PART 1**INTERNATIONAL CONVENTION FOR SAFE CONTAINERS******Preamble***

THE CONTRACTING PARTIES,
RECOGNIZING the need to maintain a high level of safety of human life in the handling, stacking and transporting of containers,
MINDFUL of the need to facilitate international container transport,
RECOGNIZING, in this context, the advantages of formalizing common international safety requirements,

CONSIDERING that this end may best be achieved by the conclusion of a convention,

HAVE DECIDED to formalize structural requirements to ensure safety in the handling, stacking and transporting of containers in the course of normal operations, and to this end

HAVE AGREED as follows:

ARTICLE I

General obligation under the present Convention

The Contracting Parties undertake to give effect to the provisions of the present Convention and the Annexes hereto, which shall constitute an integral part of the present Convention.

ARTICLE II

Definitions

For the purpose of the present Convention, unless expressly provided otherwise:

1. "Container" means an article of transport equipment:
 - (a) of a permanent character and accordingly strong enough to be suitable for repeated use;
 - (b) specially designed to facilitate the transport of goods, by one or more modes of transport, without intermediate reloading;
 - (c) designed to be secured and/or readily handled, having corner fittings for these purposes;
 - (d) of a size such that the area enclosed by the four outer bottom corners is either:
 - (i) at least 14 m² (150 sq ft), or
 - (ii) at least 7 m² (75 sq ft) if it is fitted with top corner fittings.

The term "container" includes neither vehicles nor packaging; however, containers when carried on chassis are included.

2. "Corner fittings" means an arrangement of apertures and faces at the top and/or bottom of a container for the purposes of handling, stacking and/or securing.
3. "Administration" means the Government of a Contracting Party under whose authority containers are approved.
4. "Approved" means approved by the Administration.
5. "Approval" means the decision by an Administration that a design type or a container is safe within the terms of the present Convention.
6. "International transport" means transport between points of departure and destination situated in the territory of two countries to at least one of which the present Convention applies. The present Convention shall also apply when part of a transport operation between two countries takes place in the territory of a country to which the present Convention applies.
7. "Cargo" means any goods, wares, merchandise and articles of every kind whatsoever carried in the containers.
8. "New container" means a container the construction of which was commenced on or after the date of entry into force of the present Convention.
9. "Existing container" means a container which is not a new container.
10. "Owner" means the owner as provided for under the national law of the Contracting Party or the lessee or bailee, if an agreement between the parties provides for the exercise of the owner's responsibility for maintenance and examination of the container by such lessee or bailee.
11. "Type of container" means the design type approved by the Administration.
12. "Type-series container" means any container manufactured in accordance with the approved design type.
13. "Prototype" means a container representative of those manufactured or to be manufactured in a design type series.
14. "Maximum operating gross weight" or "rating" or "R" means the maximum allowable combined weight of the container and its cargo.
15. "Tare weight" means the weight of the empty container including

permanently affixed ancillary equipment.

16. "Maximum permissible payload" or "P" means the difference between maximum operating gross weight or rating and tare weight.

ARTICLE III

Application

1. The present Convention applies to new and existing containers used in international transport, excluding containers specially designed for air transport.
2. Every new container shall be approved in accordance with the provisions either for type-testing or for individual testing as contained in Annex I.
3. Every existing container shall be approved in accordance with the relevant provisions for approval of existing containers set out in Annex I within five years from the date of entry into force of the present Convention.

ARTICLE IV

Testing, inspection, approval and maintenance

1. For the enforcement of the provisions of Annex I every Administration shall establish an effective procedure for the testing, inspection and approval of containers in accordance with the criteria established in the present Convention, provided, however, that an Administration may entrust such testing, inspection and approval to organizations duly authorized by it.
2. An Administration which entrusts such testing, inspections and approval to an organization shall inform the Secretary-General of the Inter-Governmental Maritime Consultative Organization (hereinafter referred to as "the Organization") for communication to Contracting Parties.
3. Application for approval may be made to the Administration of any Contracting Party.
4. Every container shall be maintained in a safe condition in

accordance with the provisions of Annex I.

5. If an approved container does not in fact comply with the requirements of Annexes I and II the Administration concerned shall take such steps as it deems necessary to bring the container into compliance with such requirements or to withdraw the approval.

ARTICLE V

Acceptance of approval

1. Approval under the authority of a Contracting Party, granted under the terms of the present Convention, shall be accepted by the other Contracting Parties for all purposes covered by the present Convention. It shall be regarded by the other Contracting Parties as having the same force as an approval issued by them.

2. A Contracting Party shall not impose any other structural safety requirements or tests on containers covered by the present Convention, provided, however, that nothing in the present Convention shall preclude the application of provisions of national regulations or legislation or of international agreements, prescribing additional structural safety requirements or tests for containers specially designed for the transport of dangerous goods, or for those features unique to containers carrying bulk liquids or for containers when carried by air. The term "dangerous goods" shall have that meaning assigned to it by international agreements.

ARTICLE VI

Control

1. Every container which has been approved under Article III shall be subject to control in the territory of the Contracting Parties by officers duly authorized by such Contracting Parties. This control shall be limited to verifying that the container carries a valid Safety Approval Plate as required by the present Convention, unless there is significant evidence for believing that the condition of the container is such as to create an obvious risk to safety. In that case the officer carrying out the control shall only

exercise it in so far as it may be necessary to ensure that the container is restored to a safe condition before it continues in service.

2. Where the container appears to have become unsafe as a result of a defect which may have existed when the container was approved, the Administration responsible for that approval shall be informed by the Contracting Party which detected the defect.

ARTICLE VII

Signature, ratification, acceptance, approval and accession

1. The present Convention shall be open for signature until 15 January 1973 at the Office of the United Nations at Geneva and subsequently from 1 February 1973 until 31 December 1973 inclusive at the Headquarters of the Organization at London by all States Members of the United Nations or Members of any of the specialized agencies or of the International Atomic Energy Agency or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the present Convention.

2. The present Convention is subject to ratification, acceptance or approval by States which have signed it.

3. The present Convention shall remain open for accession by any State referred to in paragraph 1.

4. Instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General of the Organization (hereinafter referred to as "the Secretary-General").

ARTICLE VIII

Entry into force

1. The present Convention shall enter into force twelve months from the date of the deposit of the tenth instrument of ratification, acceptance, approval or accession.

2. For each State ratifying, accepting, approving or acceding to the

present Convention after the deposit of the tenth instrument of ratification, acceptance, approval or accession, the present Convention shall enter into force twelve months after the date of the deposit by such State of its instrument of ratification, acceptance, approval or accession.

3. Any State which becomes a Party to the present Convention after the entry into force of an amendment shall, failing an expression of a different intention by that State,

(a) be considered as a Party to the Convention as amended;

and

(b) be considered as a Party to the unamended Convention in relation to any Party to the Convention not bound by the amendment.

ARTICLE IX

Procedure for amending any part or parts of the present Convention

1. The present Convention may be amended upon the proposal of a Contracting Party by any of the procedures specified in this Article.

2. Amendment after consideration in the Organization:

- (a) Upon the request of a Contracting Party, any amendment proposed by it to the present Convention shall be considered in the Organization. If adopted by a majority of two thirds of those present and voting in the Maritime Safety Committee of the Organization, to which all Contracting Parties shall have been invited to participate and vote, such amendment shall be communicated to all Members of the Organization and all Contracting Parties at least six months prior to its consideration by the Assembly of the Organization. Any Contracting Party which is not a Member of the Organization shall be entitled to participate and vote when the amendment is considered by the Assembly.
- (b) If adopted by a two-thirds majority of those present and voting in the Assembly, and if such majority includes a two-thirds

majority of the Contracting Parties present and voting, the amendment shall be communicated by the Secretary-General to all Contracting Parties for their acceptance.

- (c) Such amendment shall come into force twelve months after the date on which it is accepted by two thirds of the Contracting Parties. The amendment shall come into force with respect to all Contracting Parties except those which, before it comes into force, make a declaration that they do not accept the amendment.

3. Amendment by a conference:

Upon the request of a Contracting Party, concurred in by at least one third of the Contracting Parties, a conference to which the States referred to in Article VII shall be invited will be convened by the Secretary-General.

ARTICLE X

Special procedure for amending the Annexes

1. Any amendment to the Annexes proposed by a Contracting Party shall be considered in the Organization at the request of that Party.

2. If adopted by a two-thirds majority of those present and voting in the Maritime Safety Committee of the Organization to which all Contracting Parties shall have been invited to participate and to vote, and if such majority includes a two-thirds majority of the Contracting Parties present and voting, such amendment shall be communicated by the Secretary-General to all Contracting Parties for their acceptance.

3. Such an amendment shall enter into force on a date to be determined by the Maritime Safety Committee at the time of its adoption unless, by a prior date determined by the Maritime Safety Committee at the same time, one fifth or five of the Contracting Parties, whichever number is less, notify the Secretary-General of their objection to the amendment. Determination by the Maritime Safety Committee of the dates referred to in this paragraph shall be by a two-thirds majority of those present and voting, which majority shall include a two-thirds majority of the Contracting Parties present and voting.

4. On entry into force any amendment shall, for all Contracting Parties which have not objected to the amendment, replace and supersede any previous provision to which the amendment refers; an objection made by a Contracting Party shall not be binding on other Contracting Parties as to acceptance of containers to which the present Convention applies.
5. The Secretary-General shall inform all Contracting Parties and Members of the Organization of any request and communication under this Article and the date on which any amendment enters into force.
6. Where a proposed amendment to the Annexes has been considered but not adopted by the Maritime Safety Committee, any Contracting Party may request the convening of a conference to which the States referred to in Article VII shall be invited. Upon receipt of notification of concurrence by at least one third of the other Contracting Parties, such a conference shall be convened by the Secretary-General to consider amendments to the Annexes.

ARTICLE XI

Denunciation

1. Any Contracting Party may denounce the present Convention by effecting the deposit of an instrument with the Secretary-General. The denunciation shall take effect one year from the date of such deposit with the Secretary-General.
2. A Contracting Party which has communicated an objection to an amendment to the Annexes may denounce the present Convention and such denunciation shall take effect on the date of entry into force of such an amendment.

ARTICLE XII

Termination

The present Convention shall cease to be in force if the number of Contracting Parties is less than five for any period of twelve consecutive months.

ARTICLE XIII***Settlement of disputes***

1. Any dispute between two or more Contracting Parties concerning the interpretation or application of the present Convention which cannot be settled by negotiation or other means of settlement shall, at the request of one of them, be referred to an arbitration tribunal composed as follows: each party to the dispute shall appoint an arbitrator and these two arbitrators shall appoint a third arbitrator, who shall be Chairman. If, three months after receipt of a request, one of the parties has failed to appoint an arbitrator or if the arbitrators have failed to elect the Chairman, any of the parties may request the Secretary-General to appoint an arbitrator or the Chairman of the arbitration tribunal.
2. The decision of the arbitration tribunal established under the provisions of paragraph 1 shall be binding on the parties to the dispute.
3. The arbitration tribunal shall determine its own rules of procedure.
4. Decisions of the arbitration tribunal, both as to its procedures and its place of meeting and as to any controversy laid before it, shall be taken by majority vote.
5. Any controversy which may arise between the parties to the dispute as regards the interpretation and execution of the award may be submitted by any of the parties for judgment to the arbitration tribunal which made the award.

ARTICLE XIV***Reservations***

1. Reservations to the present Convention shall be permitted, excepting those relating to the provisions of Articles I to VI, XIII, the present Article and the Annexes, on condition that such reservations are communicated in writing and, if communicated before the deposit of the instrument of ratification, acceptance, approval or accession, are confirmed in that instrument. The Secretary-General shall communicate

such reservations to all States referred to in Article VII.

2. Any reservation made in accordance with paragraph 1:
 - (a) modifies for the Contracting Party which made the reservation the provisions of the present Convention to which the reservation relates to the extent of the reservation; and
 - (b) modifies those provisions to the same extent for the other Contracting Parties in their relations with the Contracting Party which entered the reservation.
3. Any Contracting Party which has formulated a reservation under paragraph 1 may withdraw it at any time by notification to the Secretary-General.

ARTICLE XV

Notification

In addition to the notifications and communications provided for in Articles IX, X and XIV, the Secretary-General shall notify all the States referred to in Article VII of the following:

- (a) signatures, ratifications, acceptances, approvals and accessions under Article VII;
- (b) the dates of entry into force of the present Convention in accordance with Article VIII;
- (c) the date of entry into force of amendments to the present Convention in accordance with Articles IX and X;
- (d) denunciations under Article XI;
- (e) the termination of the present Convention under Article XII.

ARTICLE XVI

Authentic texts

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General, who shall communicate certified

true copies to all States referred to in Article VII.

IN WITNESS WHEREOF the undersigned* Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE at Geneva this second day of December, one thousand nine hundred and seventy-two.
