

(Legislative Supplement No. 4)

LEGAL NOTICE NO. 5

THE MERCHANT SHIPPING ACT (Cap.389)

ARRANGEMENT OF REGULATIONS

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PRELIMINARY

THE MERCHANT SHIPPING (MARITIME SECURITY) REGULATIONS, 2004

IN EXERCISE of the powers conferred by section 193 and 317 of the MERCHANT SHIPPING ACT, the minister for transport makes the following regulations;

THE MERCHANT SHIPPING (MARITIME SECURITY) REGULATIONS, 2004.

Citation.

1. These regulations may be cited as the merchant Shipping (Maritime security) Regulations, 2004 and shall be deemed to have come into effect on 1st of July, 2004.

2. (1) in these regulations unless the context otherwise requires

“Act” means the merchant shipping act.

“Administration” means the maritime administration of the state, other than Kenya, whose flag the ship is entitled to fly.

“Authorized officer” means the person designated as such by the minister for the purposes of these regulations.

“Bulk carrier” means a ship which is constructed generally with a single deck, top side tanks and hopper side tanks in cargo spaces, and is intended primarily to carry dry cargo in bulk and includes such types as ore carriers and combination carriers.

“Certificate” means an international ship security certificate (ISSC) or an interim international ship security certificate issued with accordance with regulation 29.

“Chemical tanker” means a cargo ship constructed or adapted and bused for the carriage in bulk of any liquid product listed in chapter 17 of the international bulk chemical (IBC) code.

“company” means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed responsibility for the operation of the ship from the owner of the ship and who on assuming such responsibility has agreed to take over all the duties and responsibilities imposed by chapter XI – 2 of the Safety Convention, the ISPS Code and these Regulations.

“company security officer” means the person designated by the company for ensuring that a ship security assessment is carried out; that a ship security plan is developed, submitted for approval, and thereafter implemented and maintained, and for liaison with the port facility security officers and the ship security officer;

“Contracting Government” means the government of a state which is Party to the International Convention for the Safety of Life at Sea, (SOLAS), 1974, as amended;

“Declaration of security” means an agreement reached between a ship and either a port facility or another ship with which it interfaces, specifying the security measures each will implement;

“Designated authority” means the person for the time being designated as such by the Minister for ensuring the Implementation of the provisions of Chapter XI -2 of the Safety Conventions, the ISPS Code and these Regulations pertaining to port facility security and ship/port interface;

“Enforcement order” means an order issued by the Minister prohibiting or restricting certain action by a person named in the enforcement order or requiring the person named in the enforcement order to take specified action;

“Gas carrier” means a cargo ship constructed or adapted for carriage in bulk of any liquefied gas or other liquid product in chapter 19 of the International Gas Carrier Code (IGC);

“High speed craft” means a vessel capable of a maximum speed in metres per second (m/s) equal to or exceeding:

$$3.7p^{0.1667}$$

Where: p = displacement corresponding to the design waterline (m³);

“Government” has the meaning assigned to it under the Interpretation and General Provisions Act;

“In writing” means printed, typewritten, or otherwise visibly represented, copied, or reproduced, including by facsimile or electronic mail or other electronic means;

“Internal waters”, in relation to Kenya, means Kenyan waters landward of the baselines for measuring the breadth of its territorial sea;

“ISM Code” means the International Management Code for the Safe Operation of Ships and for Pollution Prevention as adopted by Resolution A.741 (18) of the IMO and as amended from time to time and to which Kenya is a party.

“ISPS Code” means the International Code for the Security of Ships and of Port Facilities, as adopted, on 12 December 2002, by Resolution 2 of the Conference of Contracting Governments to the

International Convention for the Safety of Life at Sea, 1974 and any amendments that may be in effect for Kenya;

“Kenyan waters” means

- (a) The internal waters;
- (b) The territorial waters; and
- (c) The waters of the exclusive economic zone of the Republic;

“maritime security” means the combination of preventive measures intended to protect persons, cargo, ships stores, shipping and port facilities against threats of intentional unlawful acts;

“Minister” means the Minister for the time being in charge of ports and shipping;

“Mobile offshore drilling unit” means a mechanically Head unit or ship that is capable of engaging in drilling for the exploration for, or exploitation of, resources beneath the seabed such as liquid *or* gaseous hydrocarbons, sulphur, salt, when not on location.

“Organization” means the International Maritime Organization;

“port” means an area of water or land and water (including any gas, installations or equipment situated in or on that water), intended for use either wholly or partly in Connection with the movement, loading, unloading, maintenance, or provisioning of ship and 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 areas of water described in paragraphs (a) and (b).

"Port authority" includes all persons entrusted with the function of managing, regulating and maintaining a harbor;

"Port facility" means a location, as determined by the Minister where the ship/port interface takes place and includes areas such as anchorages, waiting berths and approaches from seaward as appropriate.

“Port facility operator” means any person operating a port facility or such other person as may be designated for the purposes of these Regulations as a port facility operator for one or more port facilities by the Minister.

"Port facility security assessment" means an assessment of the security of a port facility (or more than one port facility) carried out in accordance with regulation 34;

"Port facility security officer" means the person designated as responsible for the development, implementation, revision and maintenance of the port facility security plan and for liaison with the ship security officers and company security officers;

port facility security plan" means a plan developed to ensure the application of measures designed to protect the port facility and ships, persons, cargo, cargo transport units and ship's stores within the port facility from the risks of a security incident;

"Port service provider” means any operator who is involved in a ship/port interface but who is not a port facility operator and includes the following;

- (a) Commercial vessel operators, including lighter or barge operators;
- (b) Cargo handling operators; (c) tug operators;
- (d) Towage and salvage operators; and
- (e) Any person who provides any of the following port service:
 - (i) Offshore provisioning of ships
 - (ii) Offshore transshipment of persons, or goods; and
 - (iii) Offshore ship repairer;

“Port service provider security officer” means the person designated by the port service provider as responsible for the development, implementation, revision and maintenance of the port Service provider security plan and for liaison with the ship security' officer, port facility security officer and the company security officer, as applicable;

"Recognized security organization" means an organization with appropriate expertise in security matters and with appropriate knowledge of ship and port operations, ship and port construction authorized to carry out an assessment, or a verification, or an approval or a certification activity, required under these Regulations;

"restricted zone" means a zone to which access is restricted for security reasons pursuant to these Regulations;

"Safety Convention" means the International Convention for safety of Life at Sea (SOLAS) 1974 to which Kenya is a party;

"security incident" means any suspicious act or circumstance in the security of a;

- (a). Ship, including a mobile offshore drilling unit and high-speed craft; or
- (b). port facility; or
- (c) Crew, passengers or other persons working on board ship; or
- (d). ship-port interface; or
- (e). ship-to-ship activity.

"All ships" when used in these Regulations, means any ship to which these Regulations apply and for the purposes of these regulations reference to the Administrator shall in relation to Kenyan ships be reference to the Minister;

"Security level" means the quantification of the degree of risk that a security incident will be attempted or will occur;

"Security level 1" means the level for which minimum appropriate protective security measures shall be maintained at all times

"Security level 2" means the level for which appropriate additional protective security measures shall be maintained for a period of time as a result of heightened risk of a security incident;

"Security Level 3" means the level for which further specific security measures shall be maintained for a limited period of time when a security incident is probable or imminent, although it may not be possible to identify the specific target;

"Security regulated ship" or "security regulated port"
Means

- (i) A Kenyan regulated ship;
- (ii) A Kenyan regulated port facility;
- (iii) A foreign regulated ship.

"Ship" means every description of vessel, boat or craft used in navigation, and includes

- (a) A barge, lighter, or other like vessel;
- (b) 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;
- (c) A submarine or other submersible;
- (d) A high-speed craft; and
- (e) A mobile offshore drilling unit that is not on location; and

"All ships" when used in these Regulations means any ship to which these Regulations apply and for the purposes of these Regulations, reference to the Administration shall in relation to Kenyan ships be reference to the Minister;

"ship/port interface" means the interactions that occur when a ship is directly and immediately affected-by actions involving the movement of persons, goods or the provisions of port services to or from the ship;

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

"Territorial waters" has the meaning assigned to it under the Maritime Zones Act; and

"Tons" means gross tonnage,

(2). for the purposes of these Regulations, references to the administration shall in relation to Kenyan ships be reference to the Minister.

PART I

SPECIAL MEASURES TO ENHANCE MARITIME SECURITY

General

3. (1) Subject to paragraph (6), Part 1 of these Regulations applies to;

- (a). the following types of ships engaged on international voyages -
 - (i). passenger ships, including high-speed passenger craft,
 - (ii) Cargo ships, including high-speed craft of 500 tons or more; and
 - (iii) Mobile offshore drilling units; and
- (b). port facilities serving such ships engaged on international voyages.

(2). Part 1 of these Regulations shall also apply to any port specified in a notice issued by the Minister which, although used primarily by ships not engaged on international voyages, is required occasionally to serve ships arriving or departing on international voyages.

(3). A notice referred to in paragraph (2) shall not be issued without a port facility security assessment for that port facility having been done in accordance with regulation 34 and the notice shall specify the extent of application of this Part and the relevant provisions of these Regulations relevant to the facility.

(4). any notice under paragraph (2) shall not compromise the level of security intended to be provided by these Regulations.

(5). Regulations 31, 32 and 33 shall also apply to a port facility not falling within paragraph (1) (b) or (2) of this regulation.

(6). Part 1 does not apply to -

- (a) Warships;
- (b) Naval auxiliaries; or
- (c) Other ships owned or operated by parties to the Safety Convention and used only on Government non-commercial service.

4. (1) without prejudice to any other duties under these regulations the Minister shall:

- (a) in accordance with regulation 6 set security levels and ensure the provision of security level information to port facilities within Kenya, and to ships prior to entering a port or whilst in a port within Kenya;

- (b) When changes in security level occur, update security level information as the circumstance dictates
 - (c) Determine which of the port facilities located within Kenya are required to designate a port facility security officer (PFSO) who will be responsible for the preparation of the port facility security plan;
 - (d) Determine which of the port service providers are required to prepare port service provider security plans;
 - (e) Approve the port facility security plan (PFSP) and any subsequent amendments to a previously approved plan;
 - (f). Approve port service provider security plans and any subsequent amendments to a previously approved plan; and
 - (g). Serve as a contact point for Kenya and to other states and to facilitate follow up and disseminate Information on the application of the maritime security measures laid down in these Regulations.
- (2) The Minister may delegate to a recognized security organization his duties under these Regulations, except -
- (a) Setting of the applicable security level for port facilities or ship to ship interface in Kenyan waters;
 - (b) Approving a port facility security assessment and subsequent amendments to an approved assessment;
 - (c). determining the port facilities which will be required to designate a port facility security officer;
 - (d) Approving a port facility security plan and subsequent amendments to an approved plan;
 - (e). Approving port service provider's security assessments and security plans.
 - (f). exercising control and compliance measures pursuant to regulations 31, 32 and 33; and
 - (g) Establishing the requirements for a declaration of security.

5. (1) The Minister shall set maritime security levels and ensure the provision of maritime security level information to ships operating in or having communicated an intention to enter Kenyan waters

(2)The Minister shall provide a point of contact through which such ships can request advice or assistance and to which such ships can report any security concerns about other ships, movements or communications.

(3)Where a security threat has been identified, the Minister shall advise the ships concerned and their Administrations of –

- (a). the current security level.
- (b).any security measures that should be put in place by the ships concerned to protect themselves from security threat, in accordance with the provisions of part A of the ISPS Code and these Regulations; and
- (c) Security measures that the Minister has put in place, as appropriate.

Maritime Security Levels and Security Directions

6. Unless a declaration under regulation 7 Provides otherwise, maritime security level 1 shall be in force for each designated -

- (a) Kenyan ship;

(b) Port facility; and

(c) Port service provider.

7. (1) The Minister may, in writing, declare that maritime security level 2 or maritime security level 3 shall be in force for, one or more of the following as specified in the declaration:

(a) A port facility;

(b) An area within a port facility;

(c) A Kenyan regulated ship;

(d) A port service provider; and

(e) Operations conducted by a port service provider within, or in connection with, a port facility.

(2). the minister may in writing, declare that maritime security level 3 is in force for a foreign regulated ship.

(3). The minister shall not make a declaration under paragraph (1) or (2) unless it is appropriate for a higher level of security to be put into place for the port facility, ship, area or port service provider concerned because a heightened risk of unlawful interference with maritime transport has been identified.

8. Before making a declaration under regulation 7 (1) or (2), the minister shall make appropriate Consultation with the minister in charge of national security.

9. If a declaration is made under regulation 7(1) or (2), the level declared in the Declaration shall remain in force for the port facility, ship area, port service provider or operations covered by the declaration until either of the following occurs -

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

Or

(b).Declaration is revoked in writing by the Minister.

10. If the Minister declares that a maritime security level is in force for a Maritime security facility that maritime security level shall be in force for each of the following within the port facility -

(a). Every Area and every security regulated ship; and

(b). any operations conducted by a port service provider.

11. (1). For The purposes of regulation 36, if-

(a). a facility operator or a port service provider is required to comply with a security plan;
and

(b). the minister makes a declaration under regulation 7(1);

And

(c). the effect of the declaration is that maritime security level 2 or 3 is in force for—

(i). port facility operator;

(ii). the provider.

(iii). the area controlled by either facility operator or the provider; or

(iv). Port operations of the facility operator or the service provider,
The port facility operator or the port service provider security plan is not complied with unless the facility operator or provider implements the measures set out in the plan for the area or operations, as the case requires, for that maritime security level.

2. for the purposes of regulation 22, if –

- (a). a ship security plan is in force for a Kenyan ship; and
- (b). the minister makes a declaration under regulation 7(1); and
- (c). the effect of the declaration is that maritime security level 2 or 3 is in force for the ship.

The ship security plan for the ship is not complied with unless the measures set out in the plan for that maritime Security level are implemented.

12. For the avoidance of doubt, if maritime security level 1, 2 or 3, (hereinafter referred to as the existing security level) is in force for –

- (a). a port facility
- (b). a Kenyan regulated ship.
- (c). an area within a port facility.
- (d). a port service provider, or
- (e). the operations of a port service provider.

And a security direction is given to or in relation to the port facility, ship, area, port service provider or operation; the existing security level shall continue to be in force.

13. (1). Ships shall comply with the relevant requirements of this part and of **regulations** 19 to 25 as read together with Part A of the ISPS Code.

(2). Prior to entering a port or whilst in a port within the territory of any other state, a ship shall comply with the requirements for the security level set by that State, if such security level is higher than the security level set by the Minister, for that ship.

(3). Ships shall respond without undue delay to any change to a higher security level.

(4). Where a ship is not in compliance with the requirements of regulations 19 to 25, as read together with Part A of the ISPS Code or cannot comply with the requirements of the security level set by the Minister or other Contracting Government and applicable to that ship shall notify the appropriate competent authority prior to conducting any ship/port interface or prior to entry into port, whichever occurs earlier.

(5). Where there is a breach of paragraphs (1) to (4) of this regulation in relation to a ship, then the company and the master shall each be guilty of an offence?

Notifying Maritime Security **Level** 2 and 3, Declarations and Revocations.

14. (1) whenever the Minister declares that a maritime security level is in force for a port facility, the Minister shall, as soon as practicable, notify –

- (a). the port facility operator; and
- (b). each port service provider who is required to have a security plan and who –
 - (i). controls an area within the boundaries of the port facility; or
 - (ii). Operates within the boundaries of the port facility.

(2). Whenever the Minister gives a port facility operator notice of a declaration under paragraph (1), the port facility operator shall soon as practicable, give notice of the declaration to –

- (a) Every port service provider who is covered by the port facility operator's security plan and who –

- (I) controls an area within the boundaries of the port;
- (ii) Operates within the boundaries of the port; and
- (b) The master of every security regulated ship that is within the port facility or about to enter the port facility.

(3) If a port facility operator fails to comply with paragraph (2), the port facility operator commits an offence.

15 Whenever the Minister declares that a maritime security level is in force for a Kenyan regulated ship or a foreign regulated ship, the Minister shall, as soon as practicable, notify

- (a) The ship operator for the ship; or
- (b) The master of the ship; and
- (c) If the ship is in port, the port authority.

16. Whenever the Minister declares that a maritime security level is in force for an area within a port facility, the Ministers shall as soon as practicable, notify –

- (a) The port service provider who controls the area; and
- (b) If the port service provider is not the port facility operator, also the port facility operator.

7. (1) whenever -

- (a). The Minister has notified a person in terms of regulations 14, 15, 16 that a maritime security level is in force; and
- (b). The Minister revokes the declaration concerned, the Minister shall, as soon as practicable, notify all persons concerned of the revocation.

(2). Whenever –

- (a). a port facility operator has notified a person in terms of regulation 14(2) that a maritime security level is in force; and
- (b). The Minister revokes the declaration concerned,

Facility operator shall, as soon as practicable, notify all persons concerned of the revocation.

(3). If a port facility operator fails to comply with paragraph (2) the port facility operator commits an offence.

18. (1). The Minister may notify a person of a declaration under regulation 14(1) or (2) by facsimile, courier or electronic mail.

(2). A port facility operator required to give notice of a =s of regulation 14(2) may do so by facsimile, courier or electronic mail.

(3). The Minister may also notify a person of the revocation of a declaration under regulation 17(1) by facsimile, courier or electronic mail.

(4). A port facility operator required to notify a person of the revocation of a declaration under regulation 17(2) may do so by facsimile, courier or electronic mail.

Ships and Ship Security Plans

19. (1) Every Company shall comply with the relevant requirements of this Part and of the First Schedule and in particular and without prejudice to any other duties under this Part, the Company shall ensure that –

- (a) A company security officer (CSO) is appointed, and is properly trained and qualified in his duties and responsibilities;
- (b) A ship security officer (SSO) is appointed for each of the ships and is properly trained and qualified in his duties and responsibilities;
- (c) Each ship has a ship security plan (SSP);
- (d) The master has available on board, at all times information through which officers duly authorized by any State can establish –

- (i). who is responsible for appointing the members of the crew or other persons currently employed engaged on board the ship in any capacity on the business of that ship;
- (ii) Who is responsible for deciding the employment of the ship; and
- (iii) In cases where the ship is employed under the terms of charter party or parties, who are the parties to such charter party or parties.

(2) Any company which fails to comply with this regulation shall be guilty of an offence.

20. (1) the company security officer shall for each ship under the company's control ensure -

- (a) That the ship security officer is kept informed Potential threats and other information relevant to the ship's security;
- (b) That the ship security assessment and any amendment thereto are done and submitted to the Minister for approval;
- (c) That a ship security plan and any amendment is done and submitted to the Minister for approval;
- (d) That the ship security plan is implemented and amended when necessary;
- (e) That security drills and exercises are conducted;
- (f). That the ship's security activities are audited;
- (g) The timely correction of problems identified by audits or inspections;
- (h) The enhancement of security awareness and vigilance within the company;
- I) that personnel with security responsibilities receive adequate security training to fulfill those responsibilities;
- (j) That there is proper communication and cooperation between the ship, port facility, port service provider and offshore facilities with which the ship interfaces;
- (k). Consistency between the security and safety requirements;
- (l). that if a common ship security plan is prepared for more **than** one ship, the plan accounts for characteristics specific to each ship; and

(m). that the safe manning document is applied in the development of security procedures.

(2) The ship security officer shall in addition to the duties and responsibilities specified in these Regulations

- (a) Undertake regular security inspections of the ship to ensure that appropriate security measures are maintained;
- (b) Maintain and supervise the implementation of the security plan, including any amendments to the plan;
- (c) Co-ordinate the security aspects of the handling of cargo ship's stores with other shipboard personnel and with relevant port facility security officers;
- (d) Propose modifications to the ship security plan;
- (e) Reporting to the company security officer any deficient and non-conformities identified during internal audits, periodic reviews, security inspections and verifications compliance and implementing any corrective actions;
- (f). Enhance security awareness and vigilance on board ship;

- (g). Ensure that adequate training has been provided to ship personnel, as appropriate;
- (h) Report all security incidents;
- (i) Co-ordinate implementation of the ship security plan with, company security officer and the relevant port facility security officer; and
- (j). Ensure that security equipment is properly operated, tested, calibrated and maintained, if any.

(3) Any contravention of this regulation by the company security officer or the ship security officer shall be an offence.

21. The ship security officer appointed under regulation 19(1) (b) shall ensure that an on-scene survey of the ship is conducted to examine and evaluate protective measures, procedures and operations existing on board the ship, including measures, procedures or operations to -

- (a). ensure the performance of all ship security duties;
- (b). control access to the ship, through the use of identification systems or otherwise;
- (c) Control the embarkation of ship personnel and other persons and their effects, including personal effects and baggage whether accompanied or unaccompanied;
- (d). supervise the handling of cargo and the delivery of ship's stores;
- (e). monitor Restricted areas and other areas that have restricted access to ensure that only authorized person's have access.
- (f). monitor Deck areas and areas surrounding the ship; and
- (g). ensure the ready availability of security communications, information and equipment

22. (1) On Conclusion of the survey and assessment of the ship, the ship security officer shall prepare a ship security plan taking cognizance of the matters specified in regulation 21.

(2). Every Ship security plan or amendment thereto shall be submitted to the Minister, or to a recognized security organization authorized by the Minister, for approval in accordance with the provisions of the ISPS Code and the First schedule to these regulations.

(3). A Recognized security organization authorized under paragraph (2), shall not have been involved in the preparation of the ship security plan or the amendment in question.

(4). The Minister shall determine which changes to an approved ship security plan or to any security equipment specified in the approved plan shall not be implemented unless the relevant amendments to the plan are approved by the Minister and any such changes Shall be at least as effective as those measures prescribed in this part and in the First schedule to these regulations.

(5) Any company which does not comply with paragraph (1) and (2) or otherwise fails to comply with the First Schedule shall be guilty of an offence

23.(1) The master of a Kenyan ship shall not be constrained by the company, the charterer or any other person from taking or executing any decision which, in the professional judgment of the master, is necessary to maintain the safety and security of the ship.

(2) Such measures may include denial of access to persons (except those identified as duly authorized by a Contracting Government) or their effects and refusal to load cargo, including containers or other closed cargo transport units.

(3) Where, in the professional judgment of the master, a conflict between any safety and security requirements applicable to the ship arises during its operations, the master shall give effect to requirements necessary to maintain the safety of the ship.

(4) In such cases, the master may implement temporary security measures and shall forthwith inform the Minister and, if appropriate the Contracting Government in whose port the ship is operating or intends to enter.

(5) Any such temporary security measures under these regulations shall, to the highest possible degree, be commensurate with prevailing security level. When such cases are identified, the Minister shall ensure that such conflicts are resolved and possibility of recurrence is minimized.

24. (1) all ships shall be provided with a ship security alert system, as follows

- (a). Ships constructed on or after 1 July 2004;
- (b). passenger ships, including high-speed passenger craft, **constructed** before 1st July 2004, not later than the first survey of the radio installation after 1 ST July, 2004;
- (c). Oil tankers, chemical tankers, gas carriers, bulk carriers and high speed craft, of 500 tons and upwards constructed 1st July, 2004, not later than the first survey of the installation after 1 ST July, 2004; and
- (d) Cargo ships of 500 tons and upwards and mobile offshore drilling units constructed before 1st July, 2004, not later than the first survey of the radio installation after 1st July, 2004

(2). the security alert system, when activated, shall -

- (a). initiate and transmit a ship-to-shore security alert to a competent authority designated by the Minister, which in circumstances may include the Company, identifying the ship, its location and indicating that the security of the ship is under threat or it has been compromised;
- (b). not to send any security alert to any other ships;
- (c). not raise any alarm on-board the ship; and
- (d). continue the ship security alert until deactivated and/or reset

(3) The security alert system shall –

- (a). be capable of being activated from the navigation bridge and in at least one other location; and
- (b). conform to performance standards not inferior to those adopted by the organization.

(4). the ship security alert system activations points shall be designed so as to prevent the inadvertent initiation of the ship security alert.