REPUBLIC OF KENYA

MERCHANT SHIPPING (AMENDMENT) BILL, 2025

A LEGISLATIVE PROPOSAL

BY THE MINISTRY OF MINING, THE BLUE ECONOMY, SHIPPING AND MARITIME AFFAIRS

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THE MERCHANT SHIPPING (AMENDMENT) BILL, 2025	
A Bill for—	
AN ACT of Parliament to amend the Merchant Shipping Act, Cap 389.	
ENACTED by the Parliament of Kenya as follows—	
Short title.	**1.** This Act may be cited as the Merchant Shipping (Amendment) Act, 2025.
Amendment to section 2 of Cap. 389.	**2.** The Merchant Shipping Act (hereinafter referred to as the Principal Act) is amended in section 2–
	(i) by inserting the following definitions in the proper alphabetical sequence—
	"Casualty Investigation Code" means the code of the international standards and recommended practices for a safety investigation into a marine casualty or marine incident as amended;
	"marine safety investigation" means an investigation or inquiry, into a marine casualty or marine incident, conducted with the objective of preventing marine casualties and marine incidents in the future;
	"marine incident" means an event, or sequence of events, other than a marine casualty, which has occurred directly in connection with the operations of a ship that endangered, or, if not corrected, would endanger the safety of the ship, its occupants or any other person or the environment;
	"substantially interested State" means a State—

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	(a) which is the flag State of a ship involved in a marine casualty or incident; or
	(b) which is the coastal State involved in a marine casualty or incident; or
	(c) whose environment was severely or significantly damaged by a marine casualty; or
	(d) where the consequences of a marine casualty or incident caused, or threatened, serious harm to that State or to artificial islands, installations, or structures over which it is entitled to exercise jurisdiction; or
	(e) where, as a result of a marine casualty, nationals of that State lost their lives or received serious injuries; or
	(f) that has important information at its disposal that the marine safety investigating State(s) consider useful to the investigation; or
	(g) that for some other reason establishes an interest that is considered significant by the marine safety investigating State.
	(ii) by deleting the definition of the word "marine casualty".
Amendment to Cap. 389.	**3.** The Principal Act is amended by deleting reference to PART XIX and substituting therefor the following–
	"PART XIX – INVESTIGATION INTO MARINE CASUALTIES AND INCIDENTS AND INQUIRY INTO CAUSE OF DEATH"
Amendment of section 421 of Cap. 389.	**4.** The Principal Act is amended in section 421 by deleting the section and substituting therefor the following new section **421 –**
	Marine casualty investigation. — **421**. (1) Where any of the following events, or sequence of events occur directly in connection with the operations of a ship—

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		(a) the death of, or serious injury to, a person; (b) the loss of a person from a ship; (c) the loss, presumed loss or abandonment of a ship; (d) material damage to a ship; (e) the stranding or disabling of a ship, or the involvement of a ship in a collision; (f) material damage to marine infrastructure external to a ship, that could seriously endanger the safety of the ship, another ship or an individual; or severe damage to the environment, or the potential for severe damage to the environment, brought about by the damage of a ship or ships; and, at the time it occurs, the ship was a Kenyan ship or a ship in waters under Kenyan jurisdiction, the Director-General may cause a preliminary inquiry into the marine casualty to be held by a person appointed for the purpose by the Director-General, and the person so appointed shall have the same powers as those conferred on an inspector by section 411. (2) Whether or not a preliminary inquiry into the marine casualty has been conducted under subsection (1), the Cabinet Secretary shall cause a marine safety investigation to be held by a Board appointed for that purpose in accordance with the Casualty Investigation Code. (3) The Director General shall carry out a marine casualty or incident investigation solely for purposes of enforcement.

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Amendment of section 422 of Cap. 389.	**5.** The Principal Act is amended in section 422 by deleting the section and substituting therefor the following new section **422 –**	
	Marine safety investigation.	**422**. (1) A Board holding a marine safety investigation under section 421 shall consist of a Master Mariner or Chief Marine Engineer specialized in marine casualty investigations, who shall be assisted by one or more assessors appointed by the Cabinet Secretary, such assessors being persons with requisite skills and knowledge in marine safety investigations. (2) The Board shall be appointed as investigators by way of Gazette notice, designating one of its members as the chief investigator. (3) The marine safety investigation under this Act shall be conducted to determine the facts, conditions, circumstances and safety factors, and where possible the probable cause of the marine casualty, with the sole objective of prevention of future accidents and incidents and not to apportion blame or liability. (4) The Cabinet Secretary may appoint in writing any persons with special skills or knowledge in specialized areas of marine casualty in an advisory capacity in any case where it appears to the Cabinet Secretary that such special skills or knowledge are required for proper completion of the investigation. (5) Upon completion of the marine safety investigation, the chief investigator shall submit a final report of the findings to the Cabinet Secretary for publication. (6) No part of the final report referred to under subsection (5) shall be admissible as evidence in a court of law or used in any suit or action for damages arising out of any matter mentioned in such reports.

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		(7) The chief investigator may at any time during the conduct of marine safety investigation communicate or cooperate with substantially interested States.
Amendment of section 423 of Cap. 389.	**6.** The Principal Act is amended by repealing section 423.	
Amendment of section 424 of Cap. 389.	**7.** The Principal Act is amended in section 424 by deleting the section and substituting therefor the following new section **424 –**	
	Rules.	**424**. The Cabinet Secretary may make rules for– (a) the conduct of marine safety investigations; (b) conduct of investigations of a completed marine safety investigation following the re-opening of an investigation where, new and important evidence is discovered which could have a material effect on marine safety investigation; and (c) the appointment of assessors and witness summons.

MEMORANDUM OF REASONS AND OBJECTS

Section 421 of Cap. 389 for which it is proposed to amend

421. Shipping casualties

(1) Where any of the following casualties occur, that is to say—

(a)the loss or presumed loss, stranding, grounding, abandonment of, or damage to, a ship;
(b)a loss of life or serious injury to any person, caused by fire on board, or by any accident to a ship or ship's boat, or by any accident occurring on board a ship or ship's boat; or

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(c)any damage caused by a ship, and, at the time it occurs, the ship was a Kenyan ship or the ship or ship's boat was in Kenyan waters, the Director-General may cause a preliminary inquiry into the casualty to be held by a person appointed for the purpose by the Director-General, and the person so appointed shall have the same powers as those conferred on an inspector by section 411.

(2) Whether or not a preliminary inquiry into the casualty has been held under subsection (1), the Cabinet Secretary may cause a formal investigation to be held by a Board appointed for that purpose.

Section 422 of Cap. 389 for which it is proposed to amend

422. Formal investigation

(1) A Board holding a formal investigation into a shipping casualty under section 421 shall consist of a Judge of the High Court or a chief magistrate or an advocate of at least ten years standing, who shall be assisted by one or more assessors appointed by the Cabinet Secretary, such assessors being persons with requisite skills and knowledge in maritime matters.

(2) Where in any investigation, any question as to the cancellation or suspension of the certificate issued to an officer in pursuance of any regulations made under section 170(5)(c) is likely to arise, there shall be not less than two assessors.

(3) Where as a result of the investigation the Board is satisfied, with respect to any officer, or any of the matters mentioned in section 182(1) and, if it is a matter mentioned in paragraph (a) or (b) of that section, is further satisfied that it caused or contributed to the accident, the Board may cancel or suspend any certificate issued to the officer under regulations made pursuant to section 170(5)(c) or censure him, and where the Board cancels or suspends the certificate, the officer shall deliver the certificate to the Board or the Director-General.

(4) Where a person fails to deliver a certificate as required under subsection (3), he commits an offence shall be liable, upon conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(5) Where a certificate has been cancelled or suspended under this section, the Director-General, if of the opinion that the justice of the case requires it, may re-issue the certificate or, as the case may be, reduce the period of suspension and return the certificate, or may grant a new certificate of the same or a lower grade in place of the cancelled or suspended certificate.

(6) The Board may make such awards as it deems just with regard to the costs or, as the case may be, expenses of the investigation, and with regard to the parties by whom those costs or expenses are to be paid, and any such award of the Board may, on the application of any party named in it, be made an order of the Court.

(7) Subsections (2), (3) and (4) shall apply to endorsements of certificates in the same manner as they apply to certificates.

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(8) The Board shall make a report on the investigation to the Cabinet Secretary.

Section 423 of Cap. 389 for which it is proposed to amend

423. Re-hearings and appeal

(1) Where a formal investigation has been held under section 422, the Cabinet Secretary may order the whole or part of the case to be reheard and shall do so if—

(a) new and important evidence which could not have been produced at the inquiry or investigation has been discovered; or
(b) it appears to the Cabinet Secretary that there are other grounds for suspecting that a miscarriage of justice may have occurred.

(2) An order under subsection (1) may provide for the rehearing to be made by the Board which held the investigation or by the Court.

(3) Any rehearing under this section shall be conducted in accordance with rules made under section 424, and section 422 shall apply in relation to a rehearing of an investigation by a Board as it applies in relation to the holding of an investigation.

(4) Where the Board holding the investigation has decided to cancel or suspend the certificate of any person issued pursuant to any regulations made under section 170(5)(c), or has found any person at fault, then if no application for an order under subsection (1) has been made, or if such application has been refused, that person or any other person who, having an interest in the investigation has appeared at the hearing and is affected by the decision or finding, may appeal to the Court.

Section 424 of Cap. 389 for which it is proposed to amend

424. Rules

(1) The Cabinet Secretary may make rules for the conduct of inquiries under section 421, for formal investigations under section 422, and for the conduct of any rehearing under section 423 which is not held by the High Court.

(2) Without prejudice to the generality of subsection (1), rules under this section may provide for the appointment and summoning of assessors, the manner in which any facts may be proved, the persons allowed to appear, and the notices to be given to persons affected.

(3) Rules of the Court made for the purpose of rehearings under section 423 which are held by the Court, or of appeals to the Court, may require the Court, subject to such exceptions, if any, as may be allowed by the rules, to hold such a rehearing or hear such an appeal with the assistance of one or more assessors.

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