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LEGAL NOTICE NO. 191

THE MERCHANT SHIPPING ACT, 2009
(No. 4 of 2009)

THE MERCHANT SHIPPING (PORT STATE CONTROL) REGULATIONS, 2011

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THE MERCHANT SHIPPING ACT, 2009
(No. 4 of 2009)

IN EXERCISE of the powers conferred by section 230, 232 and 235 read with section 450 of the Merchant Shipping Act, the Minister for Transport makes the following Regulations:—

MERCHANT SHIPPING (PORT STATE CONTROL)REGULATIONS, 2011

PART I—GENERAL

Citation.

1. These Regulations may be cited as the Merchant Shipping (Port State Control) Regulations, 2011, and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

“Authority” has the same meaning under these Regulations as in section 2 of the Kenya Maritime Authority, 2006;

“clear grounds” means evidence which in the professional judgement of an inspector warrants a more detailed inspection of a ship, its equipment or its crew including in particular criteria listed in the First Schedule;

"Conventions" includes—

(a) the International Convention on Load Lines, 1966 (LL 66),

(b) the International Convention for the Safety of Life at Sea,1974 (SOLAS 74),

(c) the International Convention for the Prevention of Pollution from Ships, 1973, and the 1978 Protocol relating thereto (MARPOL 73/78),

(d) the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW),

(e) the Convention on the International Regulations for Preventing Collision at Sea, 1972 (COLREG 72),

(f) the International Convention on Tonnage Measurement of Ships, 1969;

(g) the Merchant Shipping (Minimum Standards) Convention,1976 (ILO No. 147), and

(h) the Maritime Labour Convention, 2006 (“MLC”), and with the Protocols and amendments to these Conventions and related Codes of mandatory status, in force;

"Convention enactments" means the Act and Regulations made, under the Act, which implement the Conventions;

"expanded inspection" means an inspection as specified in Regulation 7;

"fishing vessel" has the meaning given by section 2 of the Act;

"flag administration" in relation to a ship means the administration of the State whose flag the ship is entitled to fly;

"inspector" means a person duly authorised by the Authority to carry out inspections required by these Regulations;

"Kenyan ship" has the meaning given by section 2 of the Act;

"member state" means a State or Territory the maritime authority of which is a party to a Memorandum of Understanding;

"more detailed inspection" means an inspection where the ship, its equipment and crew as a whole or, as appropriate, parts thereof are subjected, in the circumstances specified in Regulation 6(3) to an in-depth inspection covering the ship's construction, equipment, manning, living and working conditions and compliance with on-board operational procedures;

"Memorandum of Understanding" means the Memorandum of Understanding on Port State Control in the Indian Ocean Region, signed in South Africa on 8 June 1998;

"offshore installation" means a fixed or floating platform operating in the territorial waters or the Exclusive Economic Zone of Kenya;

"owner" includes, in relation to a ship, any operator, manager, charterer or agent of the ship;

"port authority" has the same meaning as in section 2 of the Act;

"ship" includes hovercraft;

"stoppage of an operation" means a formal prohibition of a ship to continue an operation due to established deficiencies which, individually or together, would render the continued operation hazardous.

PART II—PROCEDURE FOR PORT STATE CONTROL

Application.

3. (1) Subject to sub-Regulation (2), this Part applies to any seagoing ship—

(a) in a port in Kenya or at an offshore installation; or

(b) anchored off such a port or such an installation, and

(c) the crew of a ship referred to in paragraph (a) or (b).

(2) This Part shall not apply to—

- (a) a Kenyan ship,
- (b) a fishing vessel,
- (c) a ship of war
- (d) a naval auxiliary,
- (e) a wooden ship of a traditional build,
- (f) a Government ship used for non-commercial purposes; or
- (g) pleasure craft not engaged in trade.

(3) In the case of a ship below 500 gross tonnage, to the extent to which a Convention does not apply, an inspector shall, without prejudice to any other powers under any Convention enactment, take such action as may be necessary to ensure that the ship is not clearly hazardous to safety, health or the environment, and shall in applying of this sub-Regulation be guided by 1B to the Memorandum of Understanding.

(4) When inspecting a ship pursuant to Regulation 5 to 8 no favourable treatment shall be given to a ship flying the flag of a State which is not a party to a Convention or to the crew of such a ship than that given to a ship flying the flag of a State which is a party to that Convention or to the crew of such a ship.

(5) A power of inspection or detention conferred by a Convention enactment shall in addition to its effect as stated, be exercisable in relation to a ship which—

- (a) is at an offshore installation, or
- (b) is anchored off an offshore installation or a port in Kenya where the ship is one to which this Part applies.

(6) Where—

- (a) a ship to which this Part applies is detained under a Convention enactment, or
- (b) the master of such a ship is served with a detention notice under such an enactment, section 435 of the Act shall apply in relation to the ship as if any reference to proceeding to sea were a reference to proceeding contrary to the detention notice and references to sending or taking to sea were construed accordingly

(7) In this Regulation "Kenyan waters" has the meaning given by section 2 of the Act.

Competent Authority.

4. (1) The Kenya Maritime Authority is designated the competent authority for Kenya for the

purposes of this Part.

(2) In relation to a member state "competent authority" means the national maritime administration maintained by that State for the inspection of ships.

(3) In relation to a State other than a member State "competent authority" means any authority designated as such by that State.

Inspection commitments.

5. (1) The Authority shall carry out an annual total number of inspections corresponding to at least 25% of the number of individual ships to which this Part applies and which entered its ports during a representative calendar year.

(2) In selecting ships for inspection the Authority shall give priority to the ships referred to in the Second Schedule.

(3) The Authority shall refrain from inspecting a ship which has been inspected by the competent authority of any member State within the previous six months,

Provided that this sub-Regulation shall only apply where-

(a) the ship is not in a category listed in the Second Schedule;

(b) no deficiencies have been reported, following a previous inspection; and

(c) no clear grounds exist for carrying out an inspection.

(4) The provisions of sub-Regulation (3) shall not apply to any of the operational controls specifically provided for in the Convention enactments.

Inspection procedure.

6. (1) In carrying out an inspection referred to in Regulation 5 the inspector shall as a minimum-

(a) check the certificates and documents listed in the Third Schedule;

(b) satisfy himself of the overall condition of the ship, including the engine room accommodation and hygiene conditions.

(2) The inspector may examine all relevant certificates and documents, other than those listed in the Third Schedule, which are required to be carried on board in accordance with the Convention enactments.

(3) Whenever there are clear grounds for believing, after the inspection referred to in sub-Regulations (1) and (2), that the condition of a ship or of its equipment or crew does not substantially meet the relevant requirements of a Convention enactment, a more detailed inspection shall be carried out, including further checking of compliance with on board operational requirements.

(4) The inspector shall observe the relevant procedures and guidelines for the control of ships

specified in the Fourth Schedule.

Expanded inspection of certain ships.

7. (1) Where there are clear grounds for a more detailed inspection of a ship belonging to the categories listed in Section A of the Fifth Schedule an expanded inspection shall be carried out taking into account the guidelines in section B of the Fifth schedule.

(2) A ship referred to in sub-Regulation (1) shall be subject to an expanded inspection by any of the competent authorities of the member States only once during a period of 12 months, but the ship may be subject to the inspection provided for in Regulation 6(1) and (2).

(3) Subject to sub-Regulation (2), in the case of a passenger ship operating on a regular schedule in or out of a port in Kenya an expanded inspection of the ship shall be carried out before the ship starts operating, and every 12 months thereafter by the Authority subject to consultation with the competent authority of a member State, where the ship operates to ports in that member State.

Report of inspection to the master.

8. (1) On completion of an inspection, a more detailed inspection, or an expanded inspection, the master of the ship shall be provided by the inspector with a document in the form specified in Annex 3 to the Memorandum of Understanding, giving the results of the inspection and details of any decisions taken by the inspector, and of corrective action to be taken by the master, owner or operator.

(2) In the case of deficiencies warranting the detention of a ship, the document to be given to the master in accordance with sub-Regulation (1) shall include information about the future publication of information concerning the detention in accordance with Regulation 16.

Rectification and detention.

9. (1) The owner shall satisfy the Authority that any deficiencies confirmed or revealed by an inspection referred to in Regulations 6 or 7 are or will be rectified in accordance with the Conventions.

(2) (a) In case of deficiencies which are clearly hazardous to safety, health or the environment, the inspector shall detain the ship, or require the stoppage of the operation in the course of which the deficiencies have been revealed, using powers of detention in the Convention enactments as appropriate, or issuing a prohibition notice under section 435 of the Act, as the case may be.

(b) A detention notice may—

(i) include a direction that a ship shall remain in a particular place, or shall move to a particular anchorage or berth; and

(ii) specify circumstances when the master of the ship may move his ship from a specified place for reasons of safety or prevention of pollution.

(3) The detention notice or stoppage of an operation shall not be lifted until the Authority establishes that the ship can, subject to any necessary conditions, proceed to sea or the

operation be resumed without risk to the safety and health of passengers or crew, or risk to other ships, or without there being an unreasonable threat to or harm to the marine environment.

(4) Without prejudice to any other requirement in the Convention enactments, when exercising his professional judgement as to whether or not a ship should be detained the inspector shall apply the criteria set out in the Sixth Schedule.

(5) In exceptional circumstances, where the overall condition of a ship is obviously substandard, the inspector may, in addition to detaining the ship, suspend the inspection of the ship until the responsible parties have taken the steps necessary to ensure that it complies with the relevant requirements of the Conventions.

(6) Without prejudice to any other requirement in the Convention enactments, in the event that an inspection referred to in Regulation 7 or 8 gives rise to detention, the Authority shall immediately inform, in writing, the flag administration or the Consul or, in his absence, the nearest diplomatic representative of the State of the flag administration, of all the circumstances in which intervention was deemed necessary. In addition, nominated surveyors or recognized organizations responsible for the issue of the ship's certificates shall also be notified where relevant.

(7) The provisions of these Regulations shall be without prejudice to the additional requirements of the Conventions concerning notification and reporting procedures related to port State control.

(8) When carrying out inspections under these Regulations, the inspector shall make all possible efforts to avoid undue detention or delay of a ship.

Procedure applicable in the absence of ISM code.

10. (1) Where an inspection reveals that a copy of the document of compliance or the safety management certificate required by the International Safety Management Code for the Safe Operation of Ships and for Pollution Prevention (ISM Code) are not on board a vessel to which the ISM Code is applicable at the date of inspection, the inspector shall detain the ship.

(2) Notwithstanding the absence of the documentation referred to in sub-Regulation (1)-

(a) where the inspection reveals no other deficiencies warranting detention of a ship, the Authority may lift the detention order for the purpose of avoiding port congestion, and shall immediately inform the competent authorities of the member States accordingly, and

(b) where deficiencies referred to in Regulation 9(2) are found and cannot be rectified in the port of detention, the relevant provisions of Regulation 4 shall apply.

(3) A ship which proceeds to sea from any port in any member State following release in order to avoid port congestion under sub Regulation (2) shall not enter any port in Kenya until the owner provides evidence to the satisfaction of the competent authority of the member State where the ship was detained that the ship fully complies with the requirements of the ISM Code.

(4) Notwithstanding the provisions of sub-Regulation (3), access to a specific port may be permitted in situations referred to in Regulation 14(8).

Detention procedure.

11. Regulations 12 and 13 shall apply in relation to the exercise of the power of detention in any Convention enactment.

Arbitration.

12. (1) Any question as to whether any of the matters specified in relation to a ship in a detention notice in pursuance of a power of detention to which this Regulation applies in connection with any opinion formed by the inspector constituted a valid basis for that opinion shall, where the master or owner of the ship so requires by a notice given to the inspector within 21 days from the service of the detention notice, be referred to a single arbitrator appointed by agreement between the parties for that question to be decided by him.

(2) Where a notice is given by the master or owner of the ship in accordance with sub-Regulation (1), the giving of the notice shall not have the effect of suspending the operation of the detention notice.

(3) The arbitrator shall have regard, in coming to his decision, to any other matters not specified in the detention notice which appears to him to be relevant as to whether the ship was or was not liable to be detained.

(4) Where on a reference under this Regulation the arbitrator decides as respects any matter to which the reference relates, that in all the circumstances the matter did not constitute a valid basis for the inspector's opinion the arbitrator shall either cancel the detention notice or affirm it with such modifications as he may in the circumstances think fit; and in any other case the arbitrator shall affirm the notice in its original form.

(5) The arbitrator shall include in his decision a finding as to whether or there was not a valid basis for the detention of the ship.

(6) A person shall not be qualified for appointment as an arbitrator under this Regulation unless the person—

(a) holds a certificate of competence as a master mariner or as a marine engineer officer Class 1, or its equivalent;

(b) is a naval architect;

(c) is an Advocate of the High Court of Kenya of at least 10 years' standing and holds a post-graduate qualification in maritime law; or

(d) has special experience in matters related to shipping, or the fishing industry, or port activities.

(7) In connection with his functions under this Regulation an arbitrator shall have the powers conferred on a surveyor by the Act.

Compensation.

13. (1) Where on a reference under Regulation 12 relating to a detention notice—

(a) the arbitrator decides that the owner of the ship has proved that any matter therein did not constitute a valid basis for the inspector's opinion; and

(b) it appears to him that the owner has proved that there were no reasonable grounds for the inspector to form that opinion, the arbitrator shall award the owner of the ship such compensation in respect of any loss suffered in consequence of the detention of the ship as the arbitrator may deem fit.

(2) Any compensation awarded under this Regulation shall be payable by the Authority.

Follow-up to inspections and detentions.

14. (1) Where deficiencies referred to in Regulation 9(2) cannot be rectified in the port of inspection, the Authority may allow the ship to proceed to the nearest appropriate repair yard available as chosen by the master and the responsible parties, provided that the conditions determined by the competent authority of the flag state and agreed by the Authority are complied with. to ensure that the ship proceeds without risk to the safety and health of passengers or crew, or risk to other ships, or without there being an unreasonable threat of harm to the marine environment.

(2) In the circumstances referred to in sub-Regulation (1), the Authority shall notify the competent Authority of the State where the repair yard is situated, the parties referred to in Regulation 9(5) and any other authority as appropriate, of all the conditions for the voyage.

(3) The notification of the parties referred to in sub-Regulation (2) shall be in accordance with Annex 2 to the Memorandum of Understanding.

(4) Where the Authority receives notification from the competent authority of another member State (“the notifying authority”) in respect of a ship which the Authority allows to proceed to a repair yard in Kenya the Authority shall inform the notifying authority of the action it has taken.

(5) A ship to which this Regulation applies which proceeds to sea from any port in any member State-

(a) without complying with the conditions determined by the competent authority of the member state in the port of inspection; or

(b) which fails to comply with the applicable requirements of the Conventions by not calling into the indicated repair yard; shall not enter any port within Kenya until the owner provides evidence to the satisfaction of the competent authority of the member State where the ship was found defective that the ship fully complies with all applicable requirements of the Conventions

(6) The sub-Regulation (5) applies to a ship, detained in a port in a member State after inspection, which reveals deficiencies which are clearly hazardous to safety, health or the

environment, and which has been allowed by the competent authority to proceed to the nearest appropriate repair yard.

(7) Where a ship proceeds to sea from a port in Kenya without complying with the conditions determined by the Authority in accordance with sub-Regulation (1), the Authority shall immediately alert the competent authorities of all the other member states.

(8) Where a ship to which sub-Regulation (5) applies is to proceed to a repair yard in Kenya but fails to call into the repair yard indicated, the Authority shall immediately alert the competent authorities of all the other member States.

(9) Notwithstanding the provisions of sub-Regulation (5), access to a specific port may be permitted by the Authority in the event of force majeure or overriding safety considerations, or to reduce or minimize the risk of pollution or to have deficiencies rectified, provided adequate measures to the satisfaction of the Authority are implemented by the owner or the master of the ship to ensure safe entry.

Professional profile of inspectors.

15. (1) Inspections under these Regulations shall be carried out only by inspectors who fulfil the criteria specified in the Seventh Schedule.

(2) Where an inspector does not possess the required professional expertise he shall be assisted by any person with the required professional expertise.

(3) An inspector and any person assisting him shall have no commercial interest either in the port of inspection or in the ships inspected, nor shall an inspector be employed by or undertake work on behalf of non-governmental organisations which issue statutory and classification certificates or which carry out the surveys necessary for the issuance of those certificates to ships.

(4) An inspector shall carry a personal document in the form of an identity card issued by the Authority, which shall include the following information:

(a) name of the issuing authority;

(b) full name of the holder of the identify card;

(c) an up-to-date picture of the holder of the identity card;

(d) the signature of the holder of the identity card; and

(e) a statement to the effect that the holder of the identity card is authorised to carry out inspections in accordance with shipping Convention enactments.

Reports from pilots and port authorities

16. (1) A Kenyan pilot, engaged in the berthing or unberthing of a ship to which this Part applies in Kenya or engaged on such a ship bound for a port within a member state, shall immediately inform the port authority or the Authority, whenever they learn in the course of their normal duties that there are deficiencies which may prejudice the safe navigation of the ship, or which

may pose a threat of harm to the marine environment.

(2) In sub-Regulation (1), "Kenyan pilot" means a pilot authorised by a port authority.

(3) Where a port authority, when exercising its normal duties, learns that such a ship within its port has deficiencies which may prejudice the safety of the ship or poses an unreasonable threat of harm to the marine environment, that port authority shall immediately inform the Authority.

Publication of detentions.

17. (1) The Authority shall, as a minimum, publish on a quarterly basis information concerning ships to which this Part applies detained during the previous 3-month period and which have been detained more than once during the past 24 months.

(2) The information required under sub-Regulation (1) shall include the following—

(a) the name of the ship;

(b) the name of the ship owner or the operator of the ship;

(c) the International Maritime Organization number;

(d) the flag state;

(e) the classification society, where relevant;

(f) where applicable, any other Party which has issued certificates to such ship in accordance with the Conventions on behalf of the flag State;

(g) the reason for detention; and

(h) port and date of detention.

Reimbursement of costs.

18. (1) The costs of any inspection which results in the detention of a ship to which Part I applies, and any subsequent inspection relating to the deficiencies which led to the detention and all costs relating to any inspection carried out by the Authority for the purposes of, or in connection with Regulation 14(5) shall be charged to the owner or his representative in Kenya.

(2) Any detention made pursuant to these Regulations shall not be lifted until any fees payable in respect of any inspection leading to it or arising from it have been paid, or the Authority has been provided with sufficient security for the fees.

Offences.

19. (1) Where there is any contravention of a direction made pursuant to Regulation 9(2) in respect of a ship, the owner and master of the ship commits an offence, and upon conviction, is liable to a fine not exceeding one hundred thousand shillings or to imprisonment of a period not exceeding twelve months, or to both such fine and imprisonment.

(2) Where a ship—

(a) fails to proceed to the yard specified in Regulation 14(1); or

(b) enters a port in contravention of Regulation 14(5); the owner and master commits an offence, and upon conviction, is liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment.

(3) Where a person obstructs an inspector or any person assisting the inspector he commits an offence and upon conviction, is liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment.

(4) Any pilot who contravenes Regulation 16(1) commits an offence and upon conviction, is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment.

(5) Any port authority official who contravenes Regulation 16(1) or 16(3) commits an offence and upon conviction, is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a period not exceeding twelve months or to both such fine and imprisonment.

(6) It shall be a defence for a person charged under this Regulation to prove that the person charged took all reasonable steps to avoid committing the offence.

Authority may impose penalty upon admission of guilt.

20. (1) If any person—

(a) admits to the Authority that he or she has failed to comply with any provision of these Regulations or Act, or that he or she has failed to comply with any such provision with which it was his or her duty to comply;

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

(c) deposits with the Authority such sum as may be required of him/her, but not exceeding the maximum fine which may be imposed upon conviction for the failure to comply in question, the Authority may, after such an enquiry as it deems necessary, determine the matter summarily and may, without legal proceedings, order by the way of a penalty the whole or any part of the said deposit to be forfeited.

(2) There shall be the right of appeal to the Cabinet Secretary from a determination or order by the Authority under sub-Regulation (1) whereby a penalty exceeding five hundred thousand shillings is imposed, provided that such right is exercised within a period of three months from the date of such determination or order.

(3) The imposition of a penalty under sub-Regulation (1) shall not be deemed to be a conviction of a criminal offence, but no prosecution for the same offence shall thereafter be competent.

(4) Nothing in this Regulation shall in any way affect liability to forfeiture of ships, shares therein or goods.

PART III—INSPECTION OF FAMILIARITY OF CREW WITH OPERATIONAL PROCEDURES

Inspection of operational procedures.

21. (1) Ships when in ports in Kenya and also in the case of Kenyan ships when elsewhere shall be subject to inspection for the purpose of checking that the master and crew are familiar with essential procedures and operations relating to the safety of the ship.

(2) Section 230 of the Act shall apply in relation to a ship in a port in Kenya as if, in subsection (1), after "articles on board" there were inserted "the familiarity of the crew with essential procedures and operations relating to the safety of their ship."

FIRST SCHEDULE

(R.2)

EXAMPLES OF "CLEAR GROUNDS" FOR A MORE DETAILED INSPECTION

1. Ships identified in the Second Schedule with the exception of paragraph 1;
2. A report or notification by another member state;
3. A report or complaint by the master, a crew member, or any person or organization with a legitimate interest in the safe operation of the ship, shipboard living and working conditions or the prevention of pollution, unless the Authority deems the report or complaint to be manifestly unfounded; the identity of the person lodging the report or the complaint must not be revealed to the master or the shipowner of the ship concerned;
4. The ship has been involved in a collision on its way to the port;
5. The Oil Record Book has not been properly kept;
6. The ship has been accused of an alleged violation of the provisions on discharge of harmful substances or effluents;
7. During examination of the certificates and other documentation, (see Regulation 6 (1) (a) and (2)), inaccuracies have been revealed;
8. Indications that the crew members are unable to comply with the requirements of the Conventions on the minimum level of training of seafarers;
9. Evidence of cargo and other operations not being conducted safely, or in accordance with International maritime Organization guidelines, e.g. the content of oxygen in the inert-gas mains supply to the cargo tanks is above the prescribed maximum level;
10. Failure of the master on an oil tanker to produce the record of the oil discharge monitoring and control system for the last ballast voyage;

11. Absence of an up-to-date muster list, or crew members not aware of their duties in the event of fire or an order to abandon ship.

SECOND SCHEDULE

(R.5 (2), 6 (1))

SHIPS TO BE CONSIDERED FOR PRIORITY INSPECTION

1. Ships visiting a port in the Memorandum of Understanding region for the first time or after an absence of 12 months or more from a port in the Memorandum of Understanding region.
2. Ships which have been permitted to leave the port of a member state on condition that the deficiencies noted must be rectified within a specified period, upon expiry of such period.
3. Ships which have been reported by pilots or port authorities as having deficiencies which may prejudice their safe navigation pursuant to Regulation 16.
4. Ships which are in a category for which an expanded inspection is required by Regulation 7.
5. Ships which have been suspended from their class for safety reasons in the course of the preceding six months.

THIRD SCHEDULE

(R.6 (1))

LIST OF CERTIFICATES AND DOCUMENTS

1. International Tonnage Certificate (1969);
2. Passenger Ship Safety Certificate;
3. Cargo Ship Safety Construction Certificate;
4. Cargo Ship Safety Equipment Certificate;
5. Cargo Ship Safety Radiotelegraphy Certificate;
6. Cargo Ship Safety Radio Certificate;
7. Exemption Certificate;
8. Cargo Ship Safety Certificate;
9. Document of Compliance (SOLAS 74, Regulation 11-2/54)
10. International Certificate of Fitness for Carriage of Liquefied Gases in Bulk;
11. International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk;

12. International Oil Pollution Prevention Certificate;
13. International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk;
14. International Load Line Certificate (1966);
15. International Load Line Exemption Certificate;
16. Oil Record Book, Parts I and II;
17. Shipboard Oil Pollution Emergency Plan;
18. Cargo Record Book;
19. Minimum Safe Manning Document
20. Certificates of Competency including dangerous goods endorsement;
21. Medical Certificates, (see , Maritime Labour Convention, 2006 , Appendix A5- concerning Medical Examination of Seafarers);
22. Stability information including grain loading information and document of authorisation;
23. Safety Management Certificate and Document of Compliance issued in accordance with The International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Maritime Organization Resolution A.741 (18));
24. Certificates as to the ship's hull strength and machinery installations issued by the classification society in question, only to be required where the ship maintains its class with a classification society;
25. Survey report files (in case of bulk carriers or oil tankers in accordance with resolution A.744 (18));
26. For ro-ro passenger ships, information on the A/A max ratio;
27. Document of authorization for the carriage of grain;
28. Special Purpose Ship Safety Certificate;
29. High-Speed Craft Safety Certificate and permit to operate High-speed Craft;
30. Mobile offshore Drilling Unit Safety Certificate;
31. For oil tankers, the record of the oil discharge monitoring and control system for the last ballast voyage;

32. The muster list, fire control plan, and, for passenger ships, a damage control plan;
33. Ship's log-book with respect to the records of tests and drills and the log for records of inspection and maintenance of life-saving appliances and arrangements;
34. Procedures and Arrangements Manual (chemical tankers);
35. Cargo Securing Manual;
36. Certificate of Registry or other document of nationality;
37. Garbage Management Plan;
38. Garbage Record Book;
39. Bulk Carrier Booklet (SOLAS Chapter VI, Regulation 7);
40. Reports of previous port state control inspection;
41. Maritime Labour Certificate; and
42. Declaration of Maritime Labour Compliance.

FOURTH SCHEDULE

(R.6 (4))

PROCEDURES FOR THE CONTROL OF SHIPS

1. Procedures for Port State Control (International Maritime Organization Resolution A. 787(19), as amended;
2. Principles of Safe Manning (International Maritime Organization Resolution A.481 (X11)) and Annexes which are Contents of Minimum Safe Manning Document (Annex 1) and Guidelines for the Application of Principles of Safe Manning (Annex 2);
3. Procedures for the Control of Ships and Discharges under Annex 11 to MARPOL 73/78 (International Maritime Organization Resolution MEPC 26 (23));
4. The Provisions of the International Maritime Dangerous Goods Code;
5. International Labour Organization (ILO) publication "Inspection of Labour Conditions on Board Ship: Guidelines for Procedure";
6. Annex 1 to the IOMOU Guidelines for Surveyors.

FIFTH SCHEDULE

(R.7 (1))

A. CATEGORIES OF SHIPS SUBJECT TO EXPANDED INSPECTION

1. Oil tankers, 5 years or less from the date of phasing out in accordance with MARPOL 73/78, Annex 1, Regulation 13G, i.e.

(a) a crude oil tanker of 20,000 tonnes deadweight and above or a product carrier of 30,000 tonnes deadweight and above, not meeting the requirements of a new oil tanker as defined in Regulation 1(26) of Annex I to MARPOL 73/78, will be subject to expanded inspection 20 years after its date of delivery as indicated on the Supplement, Form B, to the IOPP Certificate, or 25 years that date, if the ship's wing tanks or double-bottom spaces not used for the carriage of oil meet the requirements of Regulation 13G(4) of the Annex, unless it has been reconstructed to comply with Regulation 13F of the same Annex;

(b) an oil tanker as mentioned above meeting the requirements of a new oil tanker as defined in Regulation 1(26) of Annex I to MARPOL 73/78 will be subject to expanded inspection 25 years after its date of delivery as indicated on the Supplement, Form B, to the IOPP Certificate, unless it complies with
or has been reconstructed to comply with Regulation 13F of that Annex;

2. Bulk carriers, of over 12 years of age, as determined on the basis of the date of construction indicated in the ship's safety certificates;

3. Passenger ships;

4. Gas and chemical tankers older than 10 years of age, as determined on the basis of the date of construction indicated in the ship's safety certificates.

B. NON-MANDATORY GUIDELINES FOR EXPANDED INSPECTION OF CERTAIN CATEGORIES OF SHIPS

To the extent applicable the following items may be considered as part of an expanded inspection, Inspectors must be aware that it may jeopardize the safe execution of certain on-board operations, e.g. cargo operation, if tests having a direct effect thereon, are required to be carried out during such operations.

1. SHIPS IN GENERAL (CATEGORIES IN SECTION A):

- Black-out and start of emergency generator;
- Inspection of emergency lighting;
- Operation of emergency fire-pump with two fire hoses connected to the fire main-line;
- Operation of bilge pumps;
- Closing of watertight doors;
- Lowering of one seaside lifeboat to the water;
- Test of remote emergency stop for e.g. boilers, ventilation and fuel pumps;
- Test of steering gear including auxiliary steering gear;
- Inspection of emergency source of power to radio installations;
- Inspection and, to the extent possible, test of engine-room separator.

2. OIL TANKERS

In addition to the items listed under Section B (1), the following items may also be considered as part of the expanded inspection for oil tankers:

- Fixed-deck foam system;
- Fire-fighting equipment in general;
- Inspection of fire dampers to engine room, pump room and accommodation;
- Control of pressure of inert gas and oxygen content thereof;
- Check of the Survey Report to identify possible suspect areas requiring inspection.

3. BULK CARRIERS

In addition to the items listed under Section B(1), the following items may also be considered as part of the expanded inspection for bulk carriers-

- Possible corrosion of deck machinery foundations;
- Possible deformation or corrosion of hatch covers;
- Possible cracks or local corrosion in transverse bulkheads;
- Access to cargo holds;
- Check of the Survey Report File to identify possible suspect areas requiring inspection.

4. GAS AND CHEMICAL TANKERS

In addition to the items listed under section B(1), the following items may also be considered as part of the expanded inspection for gas and chemical tankers:

- Cargo tank monitoring and safety devices relating to temperature, pressure and hullage;
- Oxygen analysing and explosimeter devices, including their calibration; availability of chemical detection equipment (bellows) with an appropriate number of suitable gas detection tubes for the specific cargo being carried;
- Cabin escape sets giving suitable respiratory and eye protection, for every person on board (if required by the products listed on the International Certificate of Fitness or Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk or Liquefied Gases in Bulk as applicable);
- Check that the product being carried is listed in the International Certificate of Fitness or Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk or Liquefied Gases in Bulk as applicable;
- The fixed fire-fighting installations on deck, whether they be foam or dry chemical or other as required by the product carried.

5. PASSENGER SHIPS

In addition to the items listed under section B(1), the following items may also be considered as part of the expanded inspection for passenger ships:

- Testing of fire detection and alarm system;
- Testing of proper closing of fire doors;
- Test of public address system;
- Fire drill where, as a minimum, all sets of fireman's outfits must be demonstrated and part of the catering crew take part;
- Demonstration that key crew members are acquainted with the damage control plan.

Where deemed appropriate the inspection may be continued while the ship is on passage to or from the port in Kenya, with the consent of the shipmaster or the operator.

Inspectors must not obstruct the operation of the ship, nor must they induce situations that, in the master's judgement could endanger the safety of the passengers, the crews and the

SIXTH SCHEDULE

(R.9 (4))

CRITERIA FOR DETENTION OF A SHIP

Introduction

Before determining whether deficiencies found during an inspection warrant detention of the ship involved, the inspector shall apply the criteria mentioned below in items 1 and 2.

Section 3 includes examples of deficiencies that may for themselves warrant detention of the ship involved.

1. Main Criteria When exercising his professional judgement as to whether or not a ship should be detained the inspector must apply the following criteria:

Timing:

Ships which are unsafe to proceed to sea must be detained upon the first inspection irrespective of how much time the ship will stay in port.

Criterion:

The ship is detained if its deficiencies are sufficiently serious to merit an inspector returning to satisfy himself that they have been rectified before the ship sails.

The need for the inspector to return to the ship is a measure of the seriousness of the deficiencies. However, it does not impose such an obligation for every case. It implies that the Authority must verify one way or another, preferably by a further visit, that the deficiencies have been rectified before departure.

2. Application of main criteria

(1) When deciding whether the deficiencies found in a ship are sufficiently serious to merit detention the inspector must assess whether-

(a) The ship has relevant, valid documentation;

(b) The ship has the crew required in the Minimum Safe Manning Document.

(2) During inspection the inspector must further assess whether the ship or crew is able to—

- (a) navigate safely throughout the forthcoming voyage;
- (b) safely handle, carry and monitor the condition of the cargo throughout the forthcoming voyage;
- (c) operate the engine room safely throughout the forthcoming voyage;
- (d) maintain proper propulsion and steering throughout the forthcoming voyage;
- (e) fight fires effectively in any part of the ship if necessary during the forthcoming voyage;
- (f) abandon ship speedily and safely and effect rescue if necessary during the forthcoming voyage;
- (g) prevent pollution of the environment throughout the forthcoming voyage;
- (h) maintain adequate stability throughout the forthcoming voyage;
- (i) maintain adequate watertight integrity throughout the forthcoming voyage;
- (j) communicate in distress situations if necessary during the forthcoming voyage;
- (k) provide safe and healthy conditions on board throughout the forthcoming voyage.

(3) Where the answer to any of these assessments is negative, taking into account all deficiencies found, the ship shall be strongly considered for detention. A combination of deficiencies of a less serious nature may also warrant the detention of the ship.

(4) To assist the inspector in the use of these guidelines, there follows a list of deficiencies, grouped under relevant conventions or Codes, which are considered of such a serious nature that they may warrant the detention of the ship involved. This list is not intended to be exhaustive.

3.1 General

3. (1) Ships flying the flag of States not party to a Convention or not having implemented another relevant instrument are not entitled to carry the certificates provided for by the Convention or other relevant instrument.

However, absence of the required certificates should not by itself constitute reason to detain these ships, but, in applying the "no more favourable treatment" clause, substantial compliance with the provisions is required before the ship sails.

4. Areas under the SOLAS Convention

(1) Failure of the proper operation of propulsion and other essential machinery, as well as electrical installations.

(2) Insufficient cleanliness of engine room, excess amount of oily-water mixtures in bilges,

insulation of piping including exhaust pipes in engine room contaminated by oil, improper operation of bilge pumping arrangements.

(3) Failure of the proper operation of emergency generator, lighting, batteries and switches.

(4) Failure of the proper operation of the main and auxiliary steering gear.

(5) Absence, insufficient capacity or serious deterioration of personal lifesaving appliances, survival craft and launching arrangements.

(6) Absence, non-compliance or substantial deterioration of fire detection system, fire alarms, firefighting equipment, fixed fire-extinguishing installation, ventilation valves, fire dampers, quick-closing devices to the extent that they cannot comply with their intended use.

(7) Absence, substantial deterioration or failure of proper operation of the cargo deck area fire protection on tankers.

(8) Absence, non-compliance or serious deterioration of lights, shapes or sound signals.

(9) Absence or failure of the proper operation of the radio equipment for distress and safety communication.

(10) Absence or failure of the proper operation of navigation equipment, taking the provisions of SOLAS Regulation V/12(o) into account.

(11) Absence of corrected navigational charts, and/or all other relevant nautical publications necessary for the intended voyage, taking into account that electronic charts may be used as a substitute for the charts.

(12) Absence of non-sparking exhaust ventilation for cargo pump rooms

5. Areas under the IBC Code

(1) Transport of a substance not mentioned in the Certificate of Fitness or missing cargo information.

(2) Missing or damaged high-pressure safety device.

(3) Electrical installations not intrinsically safe or not corresponding to code requirements.

(4) Sources of ignition in hazardous locations.

(5) Contraventions of special requirements.

(6) Exceeding of maximum allowable cargo quantity per tank.

(7) Insufficient heat protection for sensitive products (16.6)

6. Areas under the IGC Code

- (1) Transport of a substance not mentioned in the Certificate of Fitness or missing cargo information.
- (2) Missing closing devices for accommodations or service spaces.
- (3) Bulkhead not gastight.
- (4) Defective air locks.
- (5) Missing or defective quick-closing valves.
- (6) Missing or defective safety valves.
- (7) Electrical installations not intrinsically safe or not corresponding to code requirements.
- (8) Ventilators in cargo area not operable.
- (9) Pressure alarms for cargo tanks not operable.
- (10) Gas detection plan and/or toxic gas detection plant defective.
- (11) Transport of substances to be inhibited without valid inhibitor certificate.

7. Areas under the LOAD LINES Convention

- (1) Significant areas of damage or corrosion, or pitting of plating and associated stiffening in decks and hull affecting seaworthiness or strength to take local loads, unless proper temporary repairs for a voyage to a port for permanent repairs have been carried out.
- (2) A recognized case of insufficient stability.
- (3) The absence of sufficient and reliable information, in an approved form, which by rapid and simple means, enables the master to arrange for the loading and ballasting of his ship in such a way that a safe margin of stability is maintained at all stages and at varying conditions of the voyage, and that the creation of any unacceptable stresses in the ship's structure are avoided.
- (4) Absence, substantial deterioration or defective closing devices, hatch closing arrangements and watertight doors.
- (5) Overloading.
- (6) Absence of draft mark or draft mark impossible to read.

8. Areas under the MARPOL Convention, Annex I.

- (1) Absence, serious deterioration or failure of proper operation of the oilywater filtering equipment, the oil discharge monitoring and control system or the 15 ppm alarm

arrangements.

(2) Remaining capacity of slop and/or sludge tank insufficient for the intended voyage.

(3) Oil Record Book not available.

(4) Unauthorized discharge bypass fitted.

9. Areas under the MARPOL Convention, Annex II.

(1) Absence of the P & A Manual.

(2) Cargo is not categorized.

(3) No cargo record book available.

(4) Transport of oil-like substances without satisfying the requirements or without an appropriately amended certificate.

(5) Unauthorized discharge by-pass fitted.

10. Areas under the STCW Convention Number, composition or certificate of crew not corresponding with safe manning document.

11. Areas under the ILO Conventions

(1) Insufficient food for voyage to next port.

(2) Insufficiency portable water for voyage to next port.

(3) Excessively unsanitary conditions on board.

(4) No heating in accommodation of a ship operating in areas where temperatures may be excessively low.

(5) Excessive garbage, blockage by equipment or cargo or otherwise unsafe conditions in passageways/accommodations.

(6) Areas which may not warrant a detention, but where cargo operation may be suspended.

(7) Failure of the proper operation or maintenance of inert gas system, cargo-related gear or machinery are considered sufficient grounds for stopping cargo operation.

SEVENTH SCHEDULE

(R.15 (1))

MINIMUM CRITERIA FOR INSPECTORS

1. The inspector shall be authorised to carry out port state control by the Authority.
3. A person shall be qualified to be an inspector if the person has completed a minimum of one year's service as flag State an inspector dealing with surveys and certification in accordance with the Conventions and—
 - (a) holds—
 - (i) a certificate of competency as a master, enabling that person to take command of a ship of 1,600 GT or more
 - (ii) a certificate of competency as chief engineer, enabling him to take up that task on board a ship whose main power plant has a power equal or superior to 3,000 KW,
 - (b) has passed an examination as a naval architect, mechanical engineer or an engineer to any maritime fields and worked in that capacity for at least five years;
 - (c) has served for a period of not less than five years at sea as officer in the deck or engine-department respectively, or
 - (d) holds a relevant university degree or an equivalent training, and-
 - (i) has been trained and qualified at a school for ship safety inspectors, and-
 - (ii) has served at least two years as a flag State inspector dealing with surveys and certification in accordance with the Conventions; or
 - (e) Where the class or classes of ship are specified, has successfully completed an approved course for ship safety and port state control inspectors, and
 - (f) is able to communicate orally and in writing with seafarers in the language most commonly spoken at sea; and
 - (g) has appropriate knowledge of the provisions of the international conventions, Memorandum of Understanding, national legislation and of the relevant procedures on port state control.

Dated the 18th November, 2011.

AMOS KIMUNYA,

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