

SPECIAL ISSUE

759

Kenya Gazette Supplement No. 108

24th July, 2015

(Legislative Supplement No. 50)

LEGAL NOTICE NO. 150

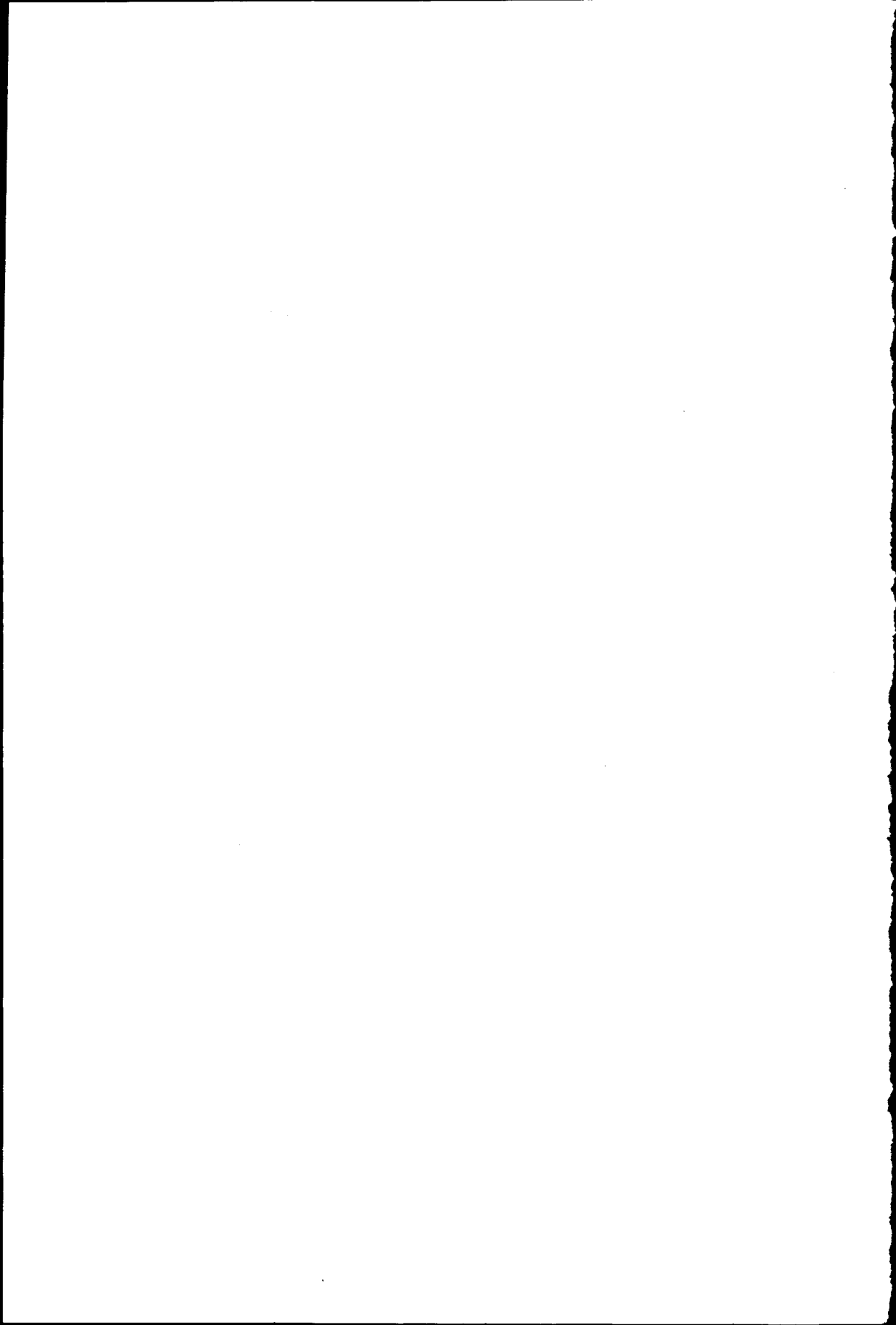
THE MERCHANT SHIPPING ACT

(No. 4 of 2009)

THE MERCHANT SHIPPING (INTERNATIONAL SAFETY
MANAGEMENT (ISM CODE) REGULATIONS, 2015

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THE MERCHANT SHIPPING ACT

(No 4 of 2009)

IN EXERCISE of the powers conferred by sections 230, 232 and 233 read with section 450 of the Merchant Shipping Act, 2009, the Cabinet Secretary for Transport and Infrastructure makes the following Regulations:—

THE MERCHANT SHIPPING (INTERNATIONAL SAFETY MANAGEMENT (ISM) CODE) REGULATIONS, 2015

1. These Regulations may be cited as the Merchant Shipping (International Safety Management (ISM) Code) Regulations, 2015 and shall be deemed to have come into effect on the date as the Cabinet Secretary may, by notice in the Gazette, appoint.

Short title and commencement.

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

Interpretation.

“anniversary date” means the day and month of each year that corresponds to the date of expiry of the relevant document or certificate;

“audit” means a systematic and independent examination to determine whether the safety management system is suitable to meet the objectives set out in section 1 of the Code, and, so far as the system has been operated, that the system has been implemented effectively. Such audits shall take into account the Guidelines on the Implementation of the ISM Code by administrations, adopted by IMO pursuant to Assembly Resolution A. 788 (19);

“authorised person” means a person authorised by the Director-General to carry out inspections and audits for the purpose of these Regulations and includes any surveyor of ships appointed in terms of the Act or any Regulation.

“bulk carrier” means a ship which is constructed generally with 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;

“cargo ship” means a cargo ship within the meaning of the Merchant Shipping (Cargo Ship Construction) Regulations, 2011;

“chemical tanker” means a cargo ship constructed or adapted and used for the carriage in bulk of any liquid product listed in chapter 17 of the International Bulk Chemical 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 the responsibility for the operation of the ship from the shipowner and who on assuming such responsibility has agreed to take over all duties and responsibilities imposed by the Code;

“Document of Compliance” means the “Document of Compliance” issued to a Company which complies with the

requirements of the ISM Code;

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

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

$$3.7 \nabla^{0.1667}$$

where: ∇ = volume of displacement corresponding to the design waterline (m^3);

“IMO” means the International Maritime Organization;

“ISM Code” means the International Management Code for the Safe Operation of Ships and for Pollution Prevention as adopted by IMO by Resolution A.741 (18), together with any amendments which may be in effect in respect of Kenya;

“major non-conformity” means an identifiable deviation that causes a serious threat to the safety of personnel or the ship or a serious risk to the environment that requires immediate corrective action and includes the lack of effective and systematic implementation of a requirement of these regulations;

“mobile offshore drilling unit (MODU)” means a vessel capable of engaging in drilling operations for the exploration of resources beneath the sea-bed such as liquid or gaseous hydrocarbons, sulphur or salt;

“non-conformity” means an observed situation where objective evidence indicates the non-fulfilment of a special requirement;

“objective evidence” means quantitative or qualitative information, records or statements of fact pertaining to safety or to the existence and implementation of a safety management system element, which is based on observation, measurement or test and which can be verified;

“observation” means a statement of fact made during a safety management audit and substantiated by objective evidence;

“oil tanker” means a cargo ship constructed or adapted and used for the carriage of any bulk hydrocarbon product

“passenger ships of Classes I, II and III” means passenger ships so classified within the meaning of the Convention;

- (i) Class I—a passenger ship engaged on voyages which are not short international voyages;
- (ii) Class II—a passenger ship engaged on short international voyages; and
- (iii) Class III—a passenger ship, other than ships of Class IV, V and VI engaged on voyages other than international voyages.

“Safety Convention” means the International Convention for the Safety of Life at Sea, 1974 as amended;

“Safety Management Certificate” means a document issued to a ship which signifies that the Company and its shipboard management operate in accordance with the approved safety management system;

“safety management system” means a structured and documented system enabling company personnel to effectively implement the company safety and environmental protection policy;

“ship” includes hovercraft, and “master” shall be construed accordingly.

(2) In interpreting the ISM Code—

- (a) the requirements of the ISM Code having been made mandatory under regulation 5 the language thereof shall be construed accordingly; and
- (b) references to the Administration shall, in relation to Kenyan ships, be references to the Kenya Maritime Authority.

3. (1) Subject to sub-regulations (2) and (3), these Regulations apply to— Application.

- (a) Kenyan ships wherever they may be; and
- (b) other ships while they are within Kenyan waters.

(2) These Regulations apply to —

- (a) passenger ships of Classes I, II and III¹; (International sea going passenger vessels);
- (b) oil tankers, chemical tankers, gas carriers, bulk carriers, and cargo high-speed craft of 500 gross tonnage or more, which engage in international voyages; and
- (c) other cargo ships and mobile offshore drilling units of 500 gross tonnage or more, which engage in international voyages.

(3) These Regulations apply to every company operating a ship to which these Regulations apply.

(4) These Regulations shall not apply to naval vessels, auxiliaries and government operated ships used for non-commercial purposes.

4. Every company shall comply with the requirements of the ISM Code as it applies to that company and to any ship owned by it or for which it has responsibility.

Duty to comply with the ISM Code.

5. (1) No Company shall operate a ship unless that company holds a valid certificate of compliance issued under regulation 9.

Duty to hold certificates.

(2) No company shall operate a ship unless there is in force in respect of that ship a valid Safety Management Certificate.

(3) No Kenyan ship shall be operated unless—

- (a) the company holds a Document of Compliance issued by the Director-General in the form set out in the Schedule or accepted by the Director-General; and
- (b) there is in force in relation to the ship a Safety Management Certificate issued by the Authority in the form set out in the Schedule.

(4) For the purposes of this regulation a certificate of Compliance or Safety Management Certificate is not valid if it has not been endorsed, in the circumstances required by the ISM Code, showing, in the case of a certificate of Compliance, satisfactory annual audits, or in the case of a Safety Management Certificate, a satisfactory intermediate audit.

6. It shall be the duty of every company to ensure that a valid Safety Management Certificate and a copy of the Document of Compliance are carried on board each ship to which these Regulations apply.

Duty to carry certificates.

7. The master of every ship shall operate the ship in accordance with the safety management system on the basis of which the Safety Management Certificate was issued.

Duty of master.

8. (1) The company shall designate a person ashore who shall be responsible for monitoring the safe and efficient operation of each ship with particular regard to the safety and pollution prevention aspects, and in particular to—

Designated person.

- (a) take such steps as are necessary to ensure compliance with the company safety management system on the basis of which the Certificate of Compliance was issued; and
 - (b) ensure that proper provision is made for each ship to be so manned, equipped and maintained that it is fit to operate in accordance with the safety management system and with statutory requirements.
- (2) The company shall ensure that the designated person ashore—
- (c) is provided with sufficient Administration and resources; and
 - (d) has appropriate knowledge and sufficient experience of the operation of ships at sea and in port, to enable him to comply with sub-regulations (1) and (2).

9. (1) Where the Authority is satisfied that a company operating Kenyan ships complies with the requirements of the ISM Code the company may be issued with a Document of Compliance valid for a period not exceeding five years.

Issue of Document of Compliance and Safety Management Certificate.

(2) Where the Authority is satisfied that a ship is operated by a company to which a Document of Compliance has been issued and that the company and its shipboard management operate in accordance with

the safety management system that has been approved, the Authority shall issue in respect of that ship a Safety Management Certificate valid for a period not exceeding five years.

(3) Where a company operating ships which are registered in more than one country, but at least one of which is registered in Kenya, complies with the requirements of the ISM Code the Authority may accept a Document of Compliance issued by the government of one of those countries to which the Safety Convention applies, if prior to the issue of that document it has agreed to accept it. Conditions for acceptance may include completion of a satisfactory audit of the company by an authorised person.

(4) Where a company newly registers a ship in Kenya, the Authority may accept a Document of Compliance issued by the government of a country to which the Safety Convention applies in which ships operated by the company are registered. Conditions for acceptance may include completion of a satisfactory audit by an authorised person.

(5) Where the Authority is satisfied that a Kenyan ship is operated by a company which has a Document of Compliance accepted by the Authority under paragraph (3) or (4) above and that its shipboard management operates in accordance with a safety management system which complies with the ISM Code the Authority shall issue in respect of that ship a Safety Management Certificate valid for a period not exceeding five years.

10. (1) Where a company is newly established, or the company assumes, for the first time, the responsibility for operating a ship type not covered by a Document of Compliance the company already holds, an interim Document of Compliance may be issued to facilitate implementation of the ISM Code.

Interim
certificate.

(2) An interim Document of Compliance in the form set out in the Schedule, valid for no more than twelve months, may be issued to a company following a demonstration that the company has a safety management system that meets the objectives of section 1.2.3 of the ISM Code. The company shall demonstrate plans to implement a safety management system meeting the full requirements of the ISM Code within the period of validity of the interim Document of Compliance.

(3) An interim Safety Management Certificate, valid for not more than six months, may be issued in respect of a new ship on delivery, when a company takes on the responsibility for the management of a ship which is new to the company or when a ship is transferred between flag states. The Administration, may, as it considers appropriate, extend the validity of the interim Safety Management Certificate for a further six months.

(4) An interim Safety Management Certificate shall only be issued when the Authority is satisfied that—

- (a) the Document of Compliance, or the interim Document of Compliance, is relevant to that ship type;

- (b) the safety management system provided by the company for the ship includes all key elements of the ISM Code and has been assessed during the audit for issuance of the Document of Compliance or issuance of the interim Document of Compliance in the form set out in the Schedule;
- (c) the master and relevant senior officers are familiar with the safety management system and the planned arrangements for its implementation;
- (d) instructions which have been identified as essential to be provided prior to sailing have been given;
- (e) plans for audit, by the company, of the ship within three months exist; and
- (f) the relevant information on the safety management system is given in a working language or languages understood by the ship's personnel.

11. The Authority may request, through a proper officer or otherwise, the government of a country to which the Safety Convention applies—

- (a) to conduct an audit of the safety management system operated onboard a Kenyan ship; and
- (b) where satisfied that the requirements of the ISM Code are complied with, to issue to the ship a Safety Management Certificate or authorise such issue or, where appropriate endorse such certificates in accordance with the requirements of the Safety Convention after intermediate audit. A certificate issued in accordance with such a request shall contain a statement that it has been so issued and shall have the same effect as if it was issued by the Authority.

Issue and endorsement of Safety Management Certificate by another government.

12. The Authority may, at the request of a government of a country to which the Safety Convention applies, audit the safety management systems of companies and ships registered in that country and, if satisfied that the requirements of the ISM Code are complied with, and that the audit has been satisfactorily completed in accordance with these Regulations, issue to the company a Document of Compliance or, in respect of the ship a Safety Management Certificate, or, where appropriate, endorse such certificates in accordance with the requirements of the Safety Convention after annual or intermediate audits. A certificate issued in accordance with such a request shall contain a statement that it has been so issued and shall have the same effect as if it was issued by that government and not by the Authority.

Issue of certificates on behalf of other governments.

13. The Authority shall carry out an annual audit of the safety management system of every company to which he has issued a Document of Compliance, within three months of the anniversary date of the Document of Compliance.

Annual audit of Document of Compliance.

14. The Authority shall carry out an intermediate audit of each ship, to ensure that the conditions for the continued validity of the Safety Management Certificate are being met, between the second and third anniversaries of the Safety Management Certificate issued by it, and at other times if it thinks fit.

Intermediate audit of Safety Management Certificate.

15. Before the renewal of any certificate the Authority shall carry out a renewal audit of the company or ship during the six month period preceding the expiry date of the Document of Compliance or Safety Management Certificate as the case may be, to ensure that compliance with the requirements of the ISM Code is maintained.

Renewal of certificates.

16. (1) (a) Any authorized person may audit the safety management system of any company.

Powers of audit, inspection, suspension of service and detention.

(2) where an authorized person considers that a company, notwithstanding that it holds a Document of Compliance, is unable to operate ships without creating a risk of—

- (a) serious danger to safety of life; or
- (b) serious damage to property; or
- (c) serious harm to the environment,

or that the company does not hold a Document of Compliance, he may suspend the operation of ships by that company until such time as any such risk is removed or a valid Document of Compliance is held.

(3) Where a service is to be suspended pursuant to paragraph (2) the authorized person shall serve on the company a notice stating that the operation of the service specified in the notice shall be suspended.

(4) Any authorised person may inspect any ship, and any such inspection may include an audit of its safety management system.

(5) Where an authorised person is satisfied on inspecting a ship that there is a failure to comply in relation to that ship with the requirements of regulation 4 or 5 he may detain the ship.

(6) In any case where a ship is liable to be detained, section 435 of the Act (which relates to the detention of the ship) shall have effect in relation to the ship;

(7) Where a ship is detained in relation to a failure to comply with a requirement of these Regulations the Act shall apply to the notice of detention, and as if for references to the ship being dangerously unsafe there were substituted references to it being in breach of these Regulations.

(8) An authorized person exercising functions under this regulation shall have the powers conferred on a surveyor by the Act.

17. The Director-General may grant exemptions from all or any of the provisions of these Regulations (as may be specified in the exemption) for classes of cases or individual cases on such terms (if any) as he or she may specify, and may, subject to giving reasonable notice, alter or cancel any such exemption.

Exemptions.

18. (1) The Director-General may by notice in writing suspend or cancel any Document of Compliance or Safety Management Certificate issued by him or at his request under these Regulations where it has reason to believe that—

- (a) the certificate was issued on false or erroneous information; or
- (b) since any audit required by these Regulations, the management structure of either the company or ship has changed substantively, or where any audit of a company or ship has revealed a failure to comply with regulation 4.

(2) Any such notice shall contain the grounds for the suspension or cancellation of the certificate.

(3) A notice shall not be given unless the holder has been given the opportunity to make representations, except where the Director-General considers that urgent safety or pollution prevention considerations require the notice to be given immediately.

(4) The Director-General may require that any Document of Compliance or Safety Management Certificate, issued by it under these Regulations, which has expired or has been suspended or cancelled, be surrendered as directed.

(5) No person shall —

- (a) intentionally alter a Document of Compliance or Safety Management Certificate;
- (b) in connection with any audit conducted pursuant to these Regulations, knowingly or recklessly furnish false information;
- (c) with intent to deceive, use, lend or allow to be used by another, a Document of Compliance or Safety Management Certificate;
- (d) fail to surrender a Document of Compliance or Safety Management Certificate required to be surrendered under sub regulation (2); or
- (e) forge any Document of Compliance or Safety Management Certificate.

19. (1) Any person who fails to comply with any regulation as identified hereunder commits an offence and shall be liable, upon conviction, to a fine not exceeding the shillings identified in the table below, or to a term of imprisonment not exceeding the period identified in the table below, or to both such fine and imprisonment.

Suspension or cancellation of Documents of Compliance and Safety Management Certificates.

Violations, offences and penalties.

Regulation	Company	Master	Designated Person ashore	Any person	Imprisonment	Penalty in Shs
3,4,5 or 7	x				2 years	700,000
6		x			12 months	350,000
16 (1) (1)(b)	x				2 years	700,000
18 (3)				x	2 years	700,000

(2) It shall be a defence to an offence under this regulation to prove that the person who committed the offence, took all reasonable steps to avoid the commission of the offence.

20. (1) If any person—

- (a) admits to the Director-General that he has failed to comply with the provisions of these regulations or Act, or that he has failed to comply with any such provision with which it was his duty to comply;
- (b) agrees to abide by the decision of the Director-General; and
- (c) deposits with the Director-General such sum as may be required of him, but not exceeding the maximum fine which may be imposed upon conviction for the failure to comply in question,

Director-General may impose penalty upon admission of guilt.

the Director-General may, after such 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 under sub-regulation (1) whereby a penalty exceeding one hundred thousand shillings is imposed, provided 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 relative offence shall thereafter be competent.

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

SCHEDULE

FORM 1

(r. 5(3)(b))

REPUBLIC OF KENYA
THE MERCHANT SHIPPING ACT
(No. 4 of 2009)
THE KENYA MARITIME AUTHORITY
SAFETY MANAGEMENT CERTIFICATE

(Official seal)

Certificate No.....

Issued under the provisions of the

INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1974,
as amended

Under the authority of the Government of Kenya by.....
(person or organisation authorised)

Name of ship:.....

Distinctive number of letter:.....

Port of registry:.....

Type of Ship*:.....

Gross Tonnage:.....

IMO Number:.....

Name and address of the Company:.....

(see regulation 2(1))

THIS IS TO CERTIFY THAT the safety management system of the ship has been audited and that it complies with the requirements of the International Safety Management Code for the Safe Operation of Ships and for Prevention Control (ISM Code), following verification that the Document of Compliance for the Company is applicable to this type of ship:

This Safety Management Certificate is valid until.....
subject to periodical Verification and the Document of Compliance for the Company remaining valid.

Issued at.....

(place of issue of the Document)

Date of issue.....

*(Signature of the duly authorised official
issuing the document)*

(Seal or stamp of issuing authority, as appropriate)

FORM 2

(r. (10 (1) (b))

REPUBLIC OF KENYA
THE MERCHANT SHIPPING ACT
(No. 4 of 2009)
THE KENYA MARITIME AUTHORITY
INTERIM SAFETY MANAGEMENT CERTIFICATE

(Official seal)

Certificate No.....

Issued under the provisions of the

INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1974,
as amended

Under the authority of the Government of Kenya by.....
(person or organisation authorised)

Name of ship:.....

Distinctive number of letter:.....

Port of registry:.....

Type of Ship*:.....

Gross Tonnage:.....

IMO Number:.....

Name and address of the Company:.....

(see regulation 2(1))

THIS IS TO CERTIFY THAT the requirements of regulation.....of the ISM Code have been met and that the Document of Compliance/Interim Document of Compliance *(delete as appropriate)* of the Company is relevant to this ship.

This Interim Safety Management Certificate is valid untilsubject to the Document of Compliance/Interim Document of Compliance *(delete as appropriate)* remaining valid.

Issued at.....
(place of issue of the Document)

Date of issue.....
(Signature of the duly authorised official issuing the document)

(Seal or stamp of issuing authority, as appropriate)

Dated the 12th June, 2015.

JAMES MACHARIA,
Cabinet Secretary for Transport and Infrastructure.