



Republic of Namibia
Annotated Statutes

Merchant Shipping Act 57 of 1951 (SA)

(SA GG 4684)

brought into force in South Africa and South West Africa, with the exceptions of sections 68-72, on 1 January 1960 by SA Proc. 298/1959 (SA GG 6337); remaining sections brought into force in South Africa and South West Africa on 1 November 1961 by RSA Proc. 92/1961 (RSA GG 94) (see section 3(1) of Act)

APPLICABILITY TO SOUTH WEST AFRICA: Section 3(1), as amended by Act 69 of 1962 and prior to its post-independence repeal by Act 7 of 1991, stated "This Act and any amendment thereof shall apply to the Territory of South West Africa and the port and settlement of Walvis Bay, and the said territory shall for the purposes of this Act be deemed to form part of the Republic." Prior to its repeal, section 3(1) also expressly confirmed "the competency of the Legislative Assembly for the said Territory to make Ordinances dealing with matters relating to sealing and sea fisheries and the licensing of vessels engaged in sealing and sea fishing, in the exercise of its powers under section *twenty-five* of the South-West Africa Constitution Act, 1925 (Act No. 42 of 1925), as extended by section *thirteen bis* of the Sea Fisheries Act, 1940 (Act No. 10 of 1940), as inserted by section *three* of the Sea Fisheries Amendment Act, 1949 (Act No. 58 of 1949), nor the validity of any such Ordinances made before the coming into operation of any of the provisions of this Act."

TRANSFER TO SOUTH WEST AFRICA: The relevant Transfer Proclamation is the Executive Powers (Transport) Transfer Proclamation, AG 14 of 1978, dated 15 March 1978. However, section 3(1)(c) of this transfer proclamation excluded this Act from the operation of section 3(1) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, meaning that the administration of the Act was not transferred to South West Africa.

as amended by

Merchant Shipping Amendment Act 30 of 1959 (SA) (SA GG 6216)

came into force on date of publication: 1 May 1959;
amended by South African Transport Services Act 65 of 1981 (RSA) (RSA GG 7786),
which was brought into force on 1 October 1981 by RSA Proc. R.196/1981 (RSA GG 7807),
and which changes the amendment by Act 30 of 1959 to the First Schedule
of Act 57 of 1951 by repealing part of the amending provision

Commonwealth Relations Act 69 of 1962 (RSA) (RSA GG 264)

came into force on date of publication: 20 June 1962

Merchant Shipping Amendment Act 40 of 1963 (RSA) (RSA GG 498)

came into force on date of publication: 10 May 1963

Merchant Shipping Amendment Act 13 of 1965 (RSA) (RSA GG 1060)

sections 2, 4-7, 18 and 29 brought into force on 28 May 1965 by RSA Proc. R.107/1965
(RSA GG 1122); remaining sections (sections 1, 3, 8-17 and 19-28) brought
into force on 13 March 1968 by RSA Proc. R.13/ 1968 (RSA GG 1968)

RSA Proclamation R.228 of 1965 (RSA GG 1235)

under the authority of section 356*bis*(1);

came into force on date of publication: 24 September 1965

Unemployment Insurance Act 30 of 1966 (RSA) (RSA GG 1554)

brought into force on 1 January 1967 by R.324/1966 (RSA GG 1595)

Merchant Shipping Act 57 of 1951 (SA)

- RSA Proclamation R.12 of 1968** ([RSA GG 1972](#))
under the authority of section 356*bis*(1);
effective 13 March 1968 (in terms of the Proclamation)
- RSA Proclamation R.280 of 1968** ([RSA GG 2173](#))
under the authority of section 356*bis*(1);
came into force on date of publication: 27 September 1968
- Merchant Shipping Amendment Act 42 of 1969 (RSA)** ([RSA GG 2382](#))
came into force on date of publication: 7 May 1969
- Births, Marriages and Deaths Registration Amendment Act 58 of 1970 (RSA)** ([RSA GG 2843](#))
brought into force on 1 February 1972 by RSA Proc. 170/1971 ([RSA GG 3220](#))
- RSA Proclamation R.209 of 1972** ([RSA GG 3641](#))
under the authority of section 356*bis*(1);
came into force on date of publication: 1 September 1972
- Merchant Shipping Amendment Act 24 of 1974 (RSA)** ([RSA GG 4215](#))
came into force on date of publication: 13 March 1974
- Merchant Shipping Amendment Act 5 of 1976 (RSA)** ([RSA GG 5013](#))
came into force on date of publication: 17 March 1976
- Merchant Shipping Amendment Act 70 of 1977 (RSA)** ([RSA GG 5571](#))
came into force on date of publication: 3 June 1977
- RSA Proclamation R.107 of 1977** ([RSA GG 5577](#))
under the authority of section 356*bis*(1);
effective 15 July 1977 (in terms of the Proclamation);
as corrected by RSA GN R.2620/1977 ([RSA GG 5846](#))
- Merchant Shipping Amendment Act 62 of 1978 (RSA)** ([RSA GG 6017](#))
came into force on date of publication: 17 May 1978
- Native Laws Amendment Proclamation, AG 3 of 1979** ([OG 3898](#))
came into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979)
- RSA Proclamation R.203 of 1980** ([RSA GG 7270](#))
under the authority of section 356*bis*(1)(b)(ii);
came into force on date of publication: 24 October 1980
- Merchant Shipping Amendment Act 3 of 1981 (RSA)** ([RSA GG 7409](#))
came into force, with the exception of section 2, on date of publication: 13 February 1981;
section 2 brought into force on 12 July 1985 by RSA Proc. 113/1985 ([RSA GG 9838](#))
- Merchant Shipping Amendment Act 3 of 1982 (RSA)** ([RSA GG 8036](#))
sections 1 and 19- 20 brought into force on 1 August 1982 by RSA Proc. 131/1982 ([RSA GG 8319](#)); remaining sections (sections 2-18) brought into force on 1 October 1982 by RSA Proc. 181/1982 ([RSA GG 8389](#))
- RSA Proclamation R.168 of 1982** ([RSA GG 8378](#))
under the authority of section 356*bis*(2)(b)(i);
came into force on date of publication: 10 September 1982
- Admiralty Jurisdiction Regulation Act 105 of 1983 (RSA)** ([RSA GG 8891](#))
brought into force on 1 November 1983 by RSA Proc. R.162/1983 ([RSA GG 8937](#))
- RSA Proclamation R.71 of 1984** ([RSA GG 9236](#))
under the authority of section 356*bis*(1);
effective 28 April 1984 (in terms of the Proclamation)
- RSA Proclamation R.162 of 1985** ([RSA GG 9940](#))
under the authority of section 356*bis*(1);
came into force on date of publication: 20 September 1985
- Merchant Shipping Amendment Act 25 of 1985 (RSA)** ([RSA GG 9675](#))
brought into force on 12 July 1985 by RSA Proc. 113/1985 ([RSA GG 9838](#))
- Carriage of Goods by Sea Act 1 of 1986 (RSA)** ([RSA GG 10125](#))
brought into force on 4 July 1986 by RSA Proc. 101/1986 ([RSA GG 10269](#))
- Transport Advisory Council Act 58 of 1987 (RSA)** ([RSA GG 10925](#))
brought into force on 15 October 1987 by RSA Proc. 153/1987 ([RSA GG 10987](#))
- Merchant Shipping Amendment Act 3 of 1989 (RSA)** ([RSA GG 11736](#))
came into force on date of publication: 8 March 1989
- Merchant Shipping Act 7 of 1991** ([GG 217](#))

Merchant Shipping Act 57 of 1951 (SA)

came into force on date of publication: 5 June 1991
Namibian Ports Authority Act 2 of 1994 (GG 810)
came into force in relevant part on 1 March 1994 (section 32(1) of Act 2 of 1994)
Wreck and Salvage Act 5 of 2004 (GG 3244)
brought into force on 1 November 2004 by GN 232/2004 (GN 3313)

ACT

To provide for the control of merchant shipping and matters incidental thereto.

*(Afrikaans text signed by the Governor-General)
(Assented to 27th June, 1951)*

DIVISION OF ACT

PRELIMINARY

Numbers of sections

1. Repeal and amendment of laws
2. Definitions and interpretation of certain references
3. Application of Act

CHAPTER I

ADMINISTRATION

4. Powers of Minister
5. Permanent Secretary to be responsible for administration of Act
[heading of section 5 substituted by Act 30 of 1959]
6. National Marine Advisory Council, National Advisory Council for the welfare of merchant seamen, port welfare committees and *ad hoc* advisory committees
7. Survey of ship to ascertain whether she complies with the Act
8. Duty of proper officer to ensure compliance with this Act
9. Powers of officers and courts

CHAPTER II

RECORDING, REGISTERING AND LICENSING OF SHIPS

10. Notification of building of vessels
11. Qualification for owning ship registered under this Act
12. Power to enquire into the title of a registered ship to be registered
13. Obligation to apply for registry of a ship
14.
[section 14 deleted by Act 7 of 1991]
15. Register to be kept
16. Survey and measurement of ship before registry
17. Tonnage once ascertained to be the tonnage of ship
18. Tonnage of ships of other countries
19. Marking of ship

Merchant Shipping Act 57 of 1951 (SA)

20. Evidence on first registry
21. Entry of particulars in register
22. Documents to be retained by proper officer
23. Certificate of registry
24. Custody of certificate of registry
25. Improper certificate of registry not to be used
26. Power to grant new certificate of registry
27. Endorsement of change of master on certificate of registry
28. Endorsement of change of ownership on certificate of registry
29. Procedure when ship is lost or ceases to be a Namibian ship
30. Provisional certificate for ship which elsewhere than in Namibia becomes the property of a person qualified to own a Namibian ship
31. Temporary passes in lieu of certificates of registry
32. Notifications of alterations in ships
 [heading of section 32 substituted by Act 30 of 1959]
33. Registry of alterations
 [heading of section 33 substituted by Act 30 of 1959]
34. Registry anew on change of ownership
35. Procedure for registry anew
36. Transfer of registry
37. Re-registration of abandoned ships
38. Names of ships
39. Transfer of ships or shares
40. Declaration of transfer
41. Registry of transfer
42. Transmission of property in ship on marriage or death, etc.
43. Order for sale on transmission to unqualified person
44. Transfer of ship or sale by order of Permanent Secretary or court
45. Power of court to prohibit transfer
46. Mortgage of ship or share not to be registered in deeds registry
47. How ship or share mortgaged
48. Discharge of mortgage
49. Priority of mortgages
50. Rights of mortgagee
51. Preference under mortgage not affected by insolvency
- 51A.
 [section 51A inserted by Act 70 of 1977 and deleted by Act 105 of 1983]
52. Transfer of mortgage
53. Transmission of interest in mortgage by death, etc.
54. Authority to sell or mortgage outside Republic
55. Rules as to certificates of sale
56. Rules as to certificates of mortgage
57. Loss of certificate of mortgage or sale
58. Revocation of certificate of mortgage or sale
59. Access to register
60. Provision for cases of minority or other incapacity
61. Right of registered owner to dispose of ship or share
62. Rights and liabilities of person holding an interest in a ship or share
63. National character of ship to be declared before clearance
64. Ships recognized as ships of Namibian nationality
65. Flag to be flown on ships of Namibian nationality
66. Unlawful assumption of Namibian national character
67. Concealment of Namibian national character
68. Small vessels to be licensed
69. Renewal of licences

Merchant Shipping Act 57 of 1951 (SA)

- 70. Issue and duration of licences
- 71. Cancellation of licences
- 72. Unlicensed vessels not to be used
- 72A. Prohibition of use of vessels of less than three metres in length
[section 72A inserted by Act 3 of 1981]

CHAPTER III

CERTIFICATES OF COMPETENCY AND SERVICE

- 73. What certificated officers and other persons to be employed on certain ships
- 74. When ship's officers and other persons deemed to be duly certificated
- 75. Grades of certificates of competency
- 76.
[section 76 deleted by Act 3 of 1989]
- 77. Examinations for certificates of competency
- 78. Granting of certificates of competency after examination under this Act
- 79. Granting of certificates of competency otherwise than after examination under this Act
- 80.
[section 80 deleted by Act 3 of 1989]
- 81. Form and record of certificates of competency or service
- 82. Loss of certificates of competency or service
- 83. Certificates granted by competent foreign authorities
- 84. Certificates granted in Republic prior to commencement of Act
- 85. Minister may vary requirements as to certificates
- 86. Production to proper officer of certificates
- 87. Holder of certificate incapacitated by ill-health
- 88. Cancellation and suspension of certificates
- 89. Appeals against cancellation or suspension of certificate

CHAPTER IV

ENGAGEMENT, DISCHARGE, REPATRIATION, PAYMENT,
DISCIPLINE AND GENERAL TREATMENT OF SEAMEN, CADETS
AND APPRENTICE-OFFICERS

- 90. Cadets
- 91. Excessive number cadets or apprentice-officers not to be employed
- 92. Medical examination of cadets and apprentice-officers
- 93. Indentures of apprenticeship
- 94. Indentures voidable in certain case
- 95. Recording of indentures
- 96. Notice of cancellation of indentures or death or desertion of apprentice-officer
- 97. Entry of indentures on agreement with the crew
- 98. Death, insolvency, etc. of owner
- 99. Assignment of indentures
- 100. Certificate of expiration of indentures
- 101. Medical examination of crew prior to engagement
- 102. Agreements with crew
- 103. Special provisions as to agreements with crew of foreign-going ships
- 104. Changes in crew to be reported
[heading of section 104 substituted by Act 30 of 1959]
- 105. Certificates as to agreements with crew of foreign-going ships
- 106. Special provisions as to agreements with crew of coasting ships, and fishing, sealing or shore-based whaling boats

Merchant Shipping Act 57 of 1951 (SA)

107. Certificate as to agreements with crew of coasting ships, and fishing, sealing or shore-based whaling boats
108. Alterations in agreements with crew
109. Copy of agreement to be displayed
110. Employment of children on ships prohibited
111. Employment of young persons as trimmers or firemen
112. Rating of seamen
113. Discharge of seamen to take place before proper officer
[heading of section 113 substituted by Act 3 of 1982]
114. Repatriation of seamen whose service terminates elsewhere than at proper return port
115. Entries and certificates of desertion outside Namibia
116. Discharge of seamen on change of ownership
117. Discharge and leaving of seamen behind
118. Leaving seamen behind
119. Wages and other property of seaman or apprentice-officer left behind
120. Payment of wages on discharge of a seaman of a Namibian ship
[heading of section 120 substituted by Act 42 of 1969]
121. Master to deliver account of wages
122. Time of payment of wages for foreign-going ships
123. Time of payment for coasting ships, and fishing, sealing and shore-based whaling boats
124. Settlement of wages
125. Decision by proper officer on question as to wages
126. Payment of seamen in currency other than that mentioned in agreement
127. Disrating of seaman
128. Master to give facilities to seaman for remitting wages
129. Advance of more than one month's wages prohibited
130. Allotment notes
131. Right of suing on allotment notes
132. Time of payment of an allotment note
133. Rights to wages and provisions and when such are to commence
134. Agreement to forfeit lien for wages is void
135. Restrictions on assignment of wages
[heading of section 135 substituted by Act 5 of 2004]
136. Proceedings for wages
137. Wages not recoverable abroad except in certain cases
138. Wages not to depend on freight
139. Wages not claimable by seaman or apprentice-officer who fails to exert himself to save ship
140. Wages on termination of services by illness or injury of seaman or wreck or loss of ship
141. Wages not to accrue during refusal to work or imprisonment or illness caused by own default or drunkenness
142. Compensation to a seaman improperly discharged
143. Remedies of master for recovery of wages, disbursements, etc.
144. Unreasonable delay in paying master's wages
145. Power of court to rescind contract between owner or master and seaman or apprentice-officer
146. Master to take care and make record of property of seaman who dies
147. Delivery to proper officer of property of seaman who dies
148. Account to be rendered of property of seaman who dies
149. Property of deceased seaman left abroad but not on board ship
150. Sale of property of deceased seaman
151. Property of deceased seaman may be recovered as wages
152. Transmission by Permanent Secretary of property of deceased seaman
[heading of section 152 substituted by Act 7 of 1991]
153. Recovery of wages of seaman lost with his ship
154. Relief and maintenance of distressed seaman

Merchant Shipping Act 57 of 1951 (SA)

155. Receiving distressed seamen on ships
156. Provisions of seamen
157. Measuring instruments on board
[heading of section 157 substituted by Act 5 of 1976]
158. Refrigerating chamber
159. Certificated cooks
160. Bedding and other articles for seamen
161. Crew accommodation
162. Complaints as to provisions or water or accommodation
163. Powers of inspection of provisions, water and accommodation
164. Inspection of provisions, water and accommodation at sea
165. Compensation if short or bad provisions furnished
166. Provision of board and lodging elsewhere than on board ship
167. Medicines to be provided and kept on board certain ships
168. Inspection of medicines and medical appliances
169. Expenses of medical attendance in cases of injury or illness
170. Recovery of expenses from owner
171. Facilities for making complaints
172. Seamen's property not to be detained
173. Soliciting seamen
174. Misconduct by seamen endangering ship or life, and general offences against discipline
175. Desertion
176. Absence without leave
177. Notice to proper officer of absence of seaman at time of sailing
178. Unseaworthiness of ship a good defence to charge of desertion, etc.
179. Deserter's certificates of discharge may be withheld
180. Deserters from foreign ships
181. Entry of offences in official log
182. Official log-books to be kept
183. Entries in official log-books
184. Unlawful entries or alterations in official log-books
185. Delivery of official log-books to proper officer
186. Transmission of official log-books to proper officer
187. Documents to be handed to successor on change of master
188. List of the crew
189. Returns of births and deaths

CHAPTER V

SAFETY OF SHIPS AND LIFE AT SEA

Part I—Construction of Ships, Provision of Life-saving Appliances and Installation of Radio

190. Initial and subsequent surveys of vessels in respect of safety provisions
191. Surveyor's report on inspection under safety regulations
192. Issue of safety convention certificates in respect of passenger ships
193. Issue of safety convention certificates in respect of ships other than passenger ships
194. Issue of local safety certificates
195. Form of safety certificate
196. Modification of safety convention certificates as respects life-saving appliances
197. Duration of safety certificates
198. Cancellation of safety convention certificates and local safety certificates
199. Surrender of expired or cancelled safety convention certificate or local safety certificate
200. Namibian ships not to be taken to sea without safety certificates

Merchant Shipping Act 57 of 1951 (SA)

201. Carrying persons in excess
202. Issue of safety convention certificate by one Government at request of another
203. Application of this Part to ships not registered or licensed in Namibia while in Namibia

Part II—Load Lines

204. Exemption from this Part and issue of load line exemption certificates
205. Initial and subsequent surveys of ships in respect of load line provisions
206. Surveyor's inspection report on load line ship
207. Issue of load line certificates other than load line exemption certificates
[heading of section 120 substituted by Act 42 of 1969]
208. Entry of load line particulars in official log-book
209. Duration of load line certificates
210. Cancellation of load line certificates
211. Surrender of expired or cancelled load line certificate
212. Namibian ships not to be taken to sea without load line certificates
213. Maintenance of load lines and deck lines
214. Submersion of load line on Namibian ships
215. Issue of international load line certificate by one Government at request of another
[heading of section 215 substituted by Act 13 of 1965]
216. Inspection and control of load line convention ships not registered in Namibia
217. Issue of load line certificates in respect of ships not registered in Namibia
218. Recognition of certificates as to load lines issued in other countries
219. Load line ships not registered in Namibia not to be taken to sea without load line certificates
220. Submersion of load line on ships not registered in Namibia

Part III—Safety of Navigation

221. Ship's complement
222. Employment of radio officers and operators
223. Surveyor may direct that defects be made good
224. Display of safety convention certificate, local safety certificate or load line certificate
225. Printed notices and diagrams as to location of life-boats, etc.
226. Information about stability of ship
227. Production of certificates to officers of customs
228. Compasses to be adjusted
229. Signalling lamps
230.
[section 230 deleted by Act 30 of 1959]
231. Registration of private code of signals
232. Signals of distress
233. Boat and fire drills and inspection of life-saving appliances
234.
[section 234 deleted by Act 5 of 2004]
235. Dangerous goods not to be carried
236. Carriage of grain
237. Carriage of timber deck cargo
238. Marking of heavy packages or objects
239. Report of alteration or damage affecting seaworthiness, efficiency or compliance with regulations
240. Unseaworthy ships not permitted to leave port
[heading of section 240 substituted by Act 25 of 1985]
241. Obligation to secure seaworthiness of ship
242. Sending unseaworthy ship to sea in special circumstances
243. Unseaworthy ships to be detained
244. Ships may be inspected

Merchant Shipping Act 57 of 1951 (SA)

- 245. Complaint as to seaworthiness to be in writing
- 246. Complainant as to unseaworthiness may be required to give security
- 247. Complainant to pay costs if not successful
- 248. Expenses to be paid by owner if complaint founded
- 249. Reports of dangers to navigation
- 250. Careful navigation near ice
- 251. [section 251 deleted by Act 7 of 1991]
- 252. Period of grace for compliance with certain provisions
- 253. Provisions of this Chapter not to be applied to ships not registered in Namibia driven into Republic ports by stress of weather
- 254. Admissibility in evidence of safety and load line certificates and surveyors' reports

Part IV—Collisions, Accidents at Sea, and Limitation of Liability

- 255. Division of loss in case of collision
- 256. Damages for personal injury
- 257. Right of contribution
- 258. [section 258 deleted by Act 5 of 2004]
- 259. Report to proper officer of accidents to ships
- 260. Notice to Permanent Secretary of loss of ship
- 261. When owner not liable for whole damage
- 262. Tonnage how calculated
- 263. Application of this Part to persons other than the owners

CHAPTER VI

SPECIAL SHIPPING ENQUIRIES AND COURTS OF ENQUIRY AND
COURTS OF SURVEY

- 264. Preliminary enquiry into shipping casualties
- 265. Report to Permanent Secretary by person who has held preliminary enquiry
- 266. Convening of court of marine enquiry in Namibia
- 267. Constitution of court of marine enquiry
- 268. How decisions of court of marine enquiry are reached and announced
- 269. Powers of court of marine enquiry in respect of master or ship's officer
[heading of section 269 substituted by Act 42 of 1969]
- 270. Convening of maritime courts outside Namibia
- 271. Constitution of maritime courts
- 272. How decisions of maritime courts are reached and announced
- 273. Powers of maritime courts
- 274. Appeal from surveyor to court of survey
- 275. Convening of court of survey
- 276. Constitution of court of survey
- 277. How decisions of courts of survey are reached and announced
- 278. Powers of court of survey
- 279. Interested persons not to serve on courts of marine enquiry, maritime courts or courts of survey
- 280. Procedure at court of marine enquiry or maritime court or court of survey
- 281. Court of survey may cause ship to be surveyed
- 282. Reference in difficult cases to scientific persons
- 283. Opportunity of making a defence
- 284. Court may require delivery of certificate during course of investigation
- 285. Witnesses to be allowed expenses

Merchant Shipping Act 57 of 1951 (SA)

- 286. Transmission to Permanent Secretary of record and decision of court of marine enquiry, maritime court, or court of survey
- 287. Effect of cancellation or suspension of certificate or prohibition of employment
[heading of section 287 substituted by Act 42 of 1969]
- 288. Delivery of Republic certificate cancelled or suspended
- 289. Certificate not to be endorsed
[heading of section 289 substituted by Act 42 of 1969]
- 290. Powers of Minister in respect of cancelled or suspended certificates
- 291. Rehearing
- 292. Appeals against decisions of courts of marine enquiry and maritime courts

CHAPTER VII

WRECKS AND SALVAGE

[sections 293-306 deleted by Act 5 of 2004]

CHAPTER VIII

CARRIAGE OF GOODS BY SEA

[sections 307-311 deleted by Act 1 of 1986]

CHAPTER IX

OFFENCES, PENAL PROVISIONS AND LEGAL PROCEDURE

- 312. Offences not expressly mentioned
- 313. Penalties for offences
[heading of section 313 substituted by Act 5 of 1976]
- 314. Bribery
- 315. Forgery and other fraudulent acts
- 316. Obstructing administration of Act
- 317. Stowaways
- 318. Ships not to be boarded without authority
- 319. Offences in connection with passenger ships
- 320. Obstruction of navigation of ship
- 321. Conveyance of deserter on board ship
- 322. Imprisoned seamen may be sent back on board
- 323. Deduction from wages and payment to proper officers etc. of fines
- 324. Permanent Secretary may impose penalty upon admission of guilt
- 325. Release from forfeiture or mitigation of penalties
- 326. Appropriation of wages to satisfy award of compensation in offences against discipline
- 327. Jurisdiction in respect of offences committed outside Namibia
- 328. Jurisdiction of magistrates' courts to impose punishment
- 329.
[section 329 deleted by Act 105 of 1983]
- 330.
[section 330 deleted by Act 5 of 2004]
- 331.
[section 331 deleted by Act 5 of 2004]
- 332.
[section 332 deleted by Act 105 of 1983]
- 333. Inquiry into cause of death on board ship
- 334. Forfeiture of ships, shares in ships and goods
- 335. Method of detaining a vessel or a share in a ship or goods

Merchant Shipping Act 57 of 1951 (SA)

- 336. Procedure in forfeiture of a ship, a share in a ship or goods
- 337. Seizure of a ship, a share in a ship or goods detained or liable to forfeiture
- 338. No clearance to be granted to detained ship
- 339. Detention of foreign ship that has occasioned damage
- 340. Notice to be given to consular representative of proceedings taken in respect of foreign ships
- 341. Conveyance of accused persons and witnesses to Namibia
- 342. Service of documents
- 343. Notice of action against Government to be given
- 343*bis*. Indemnification of the State and certain persons in the employ of the State
[section 343*bis* inserted by Act 13 of 1965]
- 344. Prescription
- 345. Payment of allowances to persons appointed to make preliminary enquiries into shipping casualties, to members of courts of marine enquiry, maritime courts or courts of survey, assessors, and salvage officers
- 346. Presumption of knowledge
- 347. Presumption in case of collision
- 348. Mode of making declaration
- 349. Power to dispense with declarations and other evidence
- 350. Admissibility of documents in evidence
- 351. Evidence as to agreement with crew
- 352. Acts done by courts and functionaries of Namibia in relation to treaty ships other than Namibian ships
[heading of section 352 substituted by Act 69 of 1962]
- 353. Acts done by courts and functionaries of other treaty countries in relation to Namibian ships
[heading of section 353 substituted by Act 69 of 1962]

CHAPTER X

GENERAL

- 354. Recognition of certificates of competency or qualification granted in other treaty countries
[heading of section 354 substituted by Act 69 of 1962]
- 355. Application of certain industrial laws to seamen
- 356. Regulations
- 356*bis*. Ratification of certain conventions and of certain amendments of conventions
[section 356*bis* inserted by Act 40 of 1963, amended by Act 3 of 1982 and substituted by Act 7 of 1991]
- 357. Exemption from stamp duty
- 358. Short title and commencement

SCHEDULES

First Schedule: Laws repealed and amended by section *one*

Second Schedule: International Convention for the Safety of Life at Sea, 1974, as amended by the Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974
[The Second Schedule was originally the International Convention for the Safety of Life at Sea, 1918. It was substituted by the International Convention for the Safety of Life at Sea, 1960 (RSA Proc. R.12 of 1968) and then by the International Convention for the Safety of Life at Sea, 1974 (RSA Proc. R.203 of 1980), as amended by the Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974 (RSA Proc. R.168 of 1982).]

Third Schedule: Convention on the International Regulations for Preventing Collisions at Sea, 1972

[The Third Schedule was originally the International Regulations for Preventing Collisions at Sea, 1948. It was substituted by the International Regulations for Preventing Collisions at Sea, 1960 (RSA Proc. R.228 of 1965), and then by the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (RSA Proc. R.107 of 1977, as corrected by GN R.2620/1977).]

Fourth Schedule: International Convention on Load Lines, 1966

Merchant Shipping Act 57 of 1951 (SA)

[The Fourth Schedule was originally the International Convention respecting Load Lines, 1930. It was substituted by the International Convention on Load Lines, 1966 (RSA Proc. R.280 of 1968, as amended by RSA Proc. R.209 of 1972).]

Fifth Schedule: International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978

[Fifth Schedule inserted by RSA Proc. R.71 of 1984]

Sixth Schedule: International Convention on Tonnage Measurement of Ships, 1969

[Sixth Schedule inserted by RSA Proc. R.162 of 1985]

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:-

[Act 30 of 1959 amends the Act throughout to substitute "Secretary" for "Director".]

Act 40 of 1963 amends the Act throughout to substitute "Republic" for "Union" and "State President" for "Governor-General".

Act 3 of 1981 amends the Act throughout to substitute "Director-General" for "Secretary".

Act 7 of 1991 makes the following substitutions throughout the Act:

- (a) "President" for "State President";
- (b) "Permanent Secretary" for "Director-General";
- (c) "the official language" for "either of the official languages" and "one of the official languages";
- (d) "Namibian" and "non-Namibian" for "South African" and "non-South African", respectively;
- (e) "Ministry of Health and Social Services" for "Department of Health";
- (f) "the High Court" for "the superior court within whose area of jurisdiction the port of registry of the ship is situated", "the superior court within the area of jurisdiction of which that person resides", "superior courts", "a superior court", "any superior court", "the Supreme Court", wherever they occur, and for the words "any court" in section 44;
- (g) "Namibia" for "the Republic";
- (h) "State Revenue Fund" for "Consolidated Revenue Fund" in section 323(3);
- (i) "Transnamib Limited" for "the Railway Administration" in section 3(3) and "Transnamib Limited" and "it" for "the Railway Administration" and "that Administration", respectively.

These substitutions have not been applied to the Schedules, which reproduce international documents.]

PRELIMINARY

Repeal and amendment of laws

1. The laws mentioned in the First Schedule to this Act are hereby repealed or amended to the extent set out in the fourth column of that Schedule: Provided that until all the provisions of this Act have been brought into operation in terms of section *three hundred and fifty-eight*, any provision of any such law which corresponds to a provision of this Act which has not yet been so brought into operation shall, in so far as it is not inconsistent with any provision of this Act which has been so brought into operation, continue to apply in relation to the ships in respect of which the provisions of this Act which have been so brought into operation apply, and in relation to the owners, masters, seamen and apprentice-officers of such ships as if this section had not been enacted.

[Section 1 is amended by Act 30 of 1959 to add the proviso. A colon has been added accordingly.]

Definitions and interpretation of certain references

2. (1) In this Act, unless the context indicates otherwise -
 "apprentice-officer" means an indentured apprentice to the sea service;

Merchant Shipping Act 57 of 1951 (SA)

“cadet” means an unindentured apprentice to the sea service;

“cargo ship safety construction certificate” means a certificate issued under sub-paragraph (a) of paragraph (1) or sub-paragraph (a) of paragraph (2) of section *one hundred and ninety-three*, or deemed in accordance with the provisions of paragraph (b) of sub-section (1) of section two hundred and two to have been so issued;

[definition of “cargo ship safety construction certificate” inserted by Act 13 of 1965]

“cargo ship safety equipment certificate” means a certificate issued under sub-paragraph (b) of paragraph (1) or sub-paragraph (b) of paragraph (2) of section *one hundred and ninety-three*, or deemed in accordance with the provisions of paragraph (b) of sub-section (1) of section *two hundred and two* to have been so issued;

[definition of “cargo ship safety equipment certificate” inserted by Act 13 of 1965]

“cargo ship safety radiotelegraphy certificate” means a certificate issued under sub-paragraph (a) of paragraph (3) or item (i) of sub-paragraph (b) of paragraph (4) of section *one hundred and ninety-three*, or deemed in accordance with the provisions of paragraph (b) of sub-section (1) of section *two hundred and two* to have been so issued;

[definition of “cargo ship safety radiotelegraphy certificate” inserted by Act 13 of 1965]

“cargo ship safety radiotelephony certificate” means a certificate issued under sub-paragraph (b) of paragraph (3) or item (ii) of sub-paragraph (b) of paragraph (4) of section *one hundred and ninety-three*, or deemed in accordance with the provisions of paragraph (b) of sub-section (1) of section *two hundred and two* to have been so issued;

[definition of “cargo ship safety radiotelephony certificate” inserted by Act 13 of 1965]

“carrier” includes the owner or the charterer who enters into a contract of carriage with a shipper;

“clearance” includes any clearance or transire referred to in the Customs and Excise Act, 1964 (Act No. 91 of 1964);

[The definition of “clearance” is amended by Act 30 of 1959 and substituted by Act 5 of 1976. The Customs and Excise Act 91 of 1964 has been replaced by the Customs and Excise Act 20 of 1998.]

“coasting ship” means a ship employed in plying between ports in the same country, but does not include any fishing, sealing or whaling boat;

[definition of “coasting ship” amended by Act 30 of 1959]

“collision regulations” means the regulations made under paragraph (b) of subsection (2) of section 356 to give effect to the relative provisions of the International Collision Regulations Convention Act 40 of 1963, and Annexures thereto, or such regulations as applied under subsection (3) of that section;

[definition of “collision regulations” amended by Act 40 of 1963 and by Act 3 of 1982; not all changes made by Act 3 of 1982 indicated by amendment markings]

[definition of “Commonwealth ship” deleted by Act 69 of 1962]

“conditions of assignment” means such of the load line regulations as are made to give effect to the relative provisions of the Load Line Convention and Annexes thereto, or such regulations as applied under sub-section (3) of section *three hundred and fifty-six*;

Merchant Shipping Act 57 of 1951 (SA)

[definition of “conditions of assignment” substituted by Act 13 of 1965]

“construction regulations” means the regulations made under paragraph (a) of sub-section (2) of section *three hundred and fifty-six* to give effect to the relative provisions of the safety Convention, or such regulations as applied under sub-section (3) of the said section;

[definition of “construction regulations” amended by Act 30 of 1959 and substituted by Act 13 of 1965]

“contract of carriage” applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same;

“country to which the Load Line Convention applies” means -

- (a) a country the Government of which has been declared by the President, by proclamation in the *Gazette*, to have ratified or acceded to the Load Line Convention, and has not been so declared to have denounced that Convention; or
- (b) a country to which it has been so declared that the Load Line Convention has been applied under the provisions of the relative Article thereof, not being a country to which it has been so declared that that Convention has ceased to apply under the provisions of that Article;

[paragraph (b) of the definition of “country to which the Load Line Convention applies” substituted by Act 13 of 1965]

“country to which the Safety Convention applies” means -

- (a) a country the Government of which has been declared by the President, by proclamation in the *Gazette*, to have accepted the Safety Convention, and has not been so declared to have denounced that Convention; or
- (b) a territory to which it has been so declared that the Safety Convention has been extended under the provisions of the relative Article thereof, not being a territory to which it has been so declared that that Convention has ceased to extend under the provisions of that Article;

[paragraph (b) of the definition of “country to which the Safety Convention applies” substituted by Act 13 of 1965]

“crew accommodation” includes sleeping rooms, store rooms, galleys, mess rooms, sanitary accommodation, hospitals and recreation spaces provided for use by or for the benefit of seamen and apprentice-officers;

“dangerous goods” means goods which by reason of their nature, quantity or mode of stowage, are either singly or collectively liable to endanger the lives or the health of persons on or near the ship or to imperil the ship, and includes all substances within the meaning of the expression “explosives” as used in the Explosives Act, 1956 (Act No. 26 of 1956), as amended, and any other goods which the Minister by notice in the *Gazette* may specify as dangerous goods;

[definition of “dangerous goods” amended by Act 30 of 1959]

“deck line” means a mark on each side of a ship indicating the position of the uppermost complete deck, as defined by the load line regulations;

Merchant Shipping Act 57 of 1951 (SA)

[definition of “Director” deleted by Act 30 of 1959]

[definition of “Director-General” inserted by Act 3 of 1981 and deleted by Act 7 of 1991]

“equipment” includes boats, tackle, pumps, apparel, furniture, life-saving appliances of every description, spars, masts, rigging and sails, fog signals, lights and signals of distress, medicines and medical and surgical stores and appliances, charts, radio apparatus, apparatus for preventing, detecting or extinguishing fires, buckets, compasses, axes, lanterns, loading and discharging gear and apparatus of all kinds, and all other stores or articles belonging to or to be used in connection with, or necessary for, the navigation and safety of a ship;

“exemption certificate” means a certificate issued under paragraph (c) of section *one hundred and ninety-two*, sub-paragraph (a) or (b) of paragraph (2) or sub-paragraph (a) of paragraph (4) of section one hundred and ninety-three, or deemed in accordance with the provisions of paragraph (a) or (b) of sub-section (1) of section two hundred and two to have been so issued;

[definition of “exemption certificate” inserted by Act 13 of 1965]

“fishing boat” means any ship engaged in sea fishing for financial gain or reward, but does not include any sealing boat or whaling boat;

[definition of “fishing boat” amended by Act 30 of 1959 and substituted by Act 13 of 1965]

“foreign country” means a country which is not a treaty country;

[definition of “foreign country” amended by Act 69 of 1962]

“foreign-going ship” means -

(a) a ship plying between a port in one country and a port in another country; or

(b)

[paragraph (b) deleted by Act 30 of 1959]

(c)

[paragraph (c) deleted by Act 30 of 1959]

(d) a whaling boat other than a shore-based whaling boat;

“foreign ship” means a ship other than a treaty ship;

[definition of “foreign ship” amended by Act 69 of 1962]

“freight” includes passage money and hire;

[definition of “general safety certificate” deleted by Act 13 of 1965]

“goods” includes all animals, matter or things, save that in Chapter VIII “goods” does not include animals or cargo which by a contract of carriage it is provided shall be carried on deck and is so carried;

“International Collision Regulations Convention” means the convention set out in the Third Schedule to this Act;

Merchant Shipping Act 57 of 1951 (SA)**[definition of “International Collision Regulations” substituted by Act 40 of 1963 and amended by Act 3 of 1982]**

“international load line certificate” means a certificate issued under paragraph 1 of section 207, or deemed in accordance with the provisions of section 215 (1) to have been so issued and includes an international load line exemption certificate;

[definition of “international load line certificate” inserted by Act 13 of 1965 and substituted by Act 42 of 1969]

“international load line exemption certificate” means a certificate issued under section 204(1)(a);

[definition of “international load line exemption certificate” inserted by Act 42 of 1969]

“international load line ship” means a load line ship of 24 metres or more in length, which is engaged on an international voyage;

[definition of “international load line ship” substituted by Act 42 of 1969 and by Act 5 of 1976]

“international voyage”, when used with reference to ships registered in a country to which the Load Line Convention applies, means a voyage from a port in one country to a port in another country, either of those countries being a country to which the Load Line Convention applies, and when used with reference to ships registered in a country to which the Safety Convention applies, means a voyage from a port in one country to a port in another country either of those countries being a country to which the Safety Convention applies; and “short international voyage” means an international voyage· in the course of which a ship is not more than two hundred nautical miles from a port in which the passengers and crew could be placed in safety, and which does not exceed six hundred nautical miles in length between the last port of call in the country in which the voyage begins and the final port of destination; and in the application of this definition -

- (a) no account shall be taken of any deviation by a ship from her intended voyage due solely to stress of weather or any other circumstance which neither the master nor the owner nor the charterer (if any) of the ship could have prevented or forestalled; and
- (b) every colony, overseas territory, protectorate, territory for whose international relations a State that has accepted the Safety Convention is responsible, territory for which the United Nations are the administering authority, and territory administered by a State in whose favour a mandate thereover was issued by the Council of the former League of Nations, shall be deemed to be a separate country;

[definition of “international voyage” amended by Act 7 of 1991 to delete the proviso]

“life-saving equipment regulations” means the regulations made under paragraph (a) of subsection (2) of section *three hundred and fifty-six* to give effect to the relative provisions of the Safety Convention, or such regulations as applied under subsection (3) of the said section;

[definition of “life-saving equipment regulations” amended by Act 30 of 1959 and substituted by Act 13 of 1965]

“load lines” means the marks indicating the several maximum depths to which a ship is entitled to be loaded in various circumstances prescribed by the load line regulations;

“load line certificate” means an international load line certificate or a local load line certificate;

[definition of “load line certificate” substituted by Act 13 of 1965]

Merchant Shipping Act 57 of 1951 (SA)

“Load Line Convention” means the convention set out in the Fourth Schedule to this Act;

[definition of “Load Line Convention” substituted by Act 40 of 1963]

[definition of “load line convention certificate” deleted by Act 13 of 1965]

“load line exemption certificate” means an international load line exemption certificate or a local load line exemption certificate;

[definition of “load line exemption certificate” inserted by Act 42 of 1969]

“load line regulations” means the regulations made under paragraph (c) of sub-section (2) of section *three hundred and fifty-six* to give effect to the relative provisions of the Load Line Convention and Annexes thereto, or such regulations as applied under sub-section (3) of the said section;

[definition of “load line regulations” substituted by Act 13 of 1965]

“load line ship” means any ship of 14 metres or more in length, which is not solely engaged in fishing and is not a pleasure yacht;

[definition of “load line ship” substituted by Act 42 of 1969 and by Act 5 of 1976]

“local general safety certificate” means a certificate issued under section 194(1)(a) or (b)(ii);

[definition of “local general safety certificate” substituted by Act 42 of 1969]

“local load line certificate” means a certificate issued under paragraph 2 of section 207 and includes a local load line exemption certificate;

[definition of “local load line certificate” substituted by Act 42 of 1969]

“local load line exemption certificate” means a certificate issued under section 204(1)(b);

[definition of “local load line exemption certificate” inserted by Act 42 of 1969]

“local load line ship” means a load line ship -

- (a) engaged on an international voyage and of less than 24 metres in length; or
- (b) not engaged on an international voyage;

[definition of “local load line ship” substituted by Act 42 of 1969 and by Act 5 of 1976]

“local safety certificate” means a local general safety certificate or a local safety exemption certificate;

[definition of “load safety certificate” substituted by Act 13 of 1965]

“local safety exemption certificate” means a certificate issued under sub-paragraph (i) of paragraph (b) of sub-section (1) of section *one hundred and ninety-four*;

“master” means, in relation to a ship, any person (other than a pilot) having charge or command of such ship;

“medical practitioner” means -

Merchant Shipping Act 57 of 1951 (SA)

- (a) at a place in Namibia, a person registered as such under the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974); or

[The word “Supplementary” in the phrase “Supplementary Health Service Professions Act” is misspelt in the *Government Gazette*, as reproduced above. Medical practitioners in Namibia are now registered under the Medical and Dental Act 10 of 2004.]

- (b) at a place outside Namibia, a person who is entitled to practise as such under the law in force in that place;

[definition of “medical practitioner” substituted by Act 5 of 1976]

“Minister” means the Minister of Works, Transport and Communication;

[definition of “Minister” amended by Act 30 of 1959, Act 3 of 1981 and Act 7 of 1991]

“Namibian ship” means a ship registered in Namibia in terms of this Act or deemed to be so registered;

[definition of “Namibian ship” inserted by Act 7 of 1991]

“nautical mile” means a distance of 1 852 metres;

[definition of “nautical mile” inserted by Act 3 of 1981]

“near relative” in relation to a seaman means the wife or parent or a grandparent, child, grandchild, brother or sister of the seaman or the guardian or the person having the custody of a child of the seaman;

“officer of customs” means an officer as that expression is defined by section 1 of the Customs and Excise Act, 1964 (Act No. 91 of 1964);

[The definition of “officer of customs” is amended by Act 30 of 1959 and substituted by Act 5 of 1976. The Customs and Excise Act 91 of 1964 has been replaced by the Customs and Excise Act 20 of 1998.]

“owner” means any person to whom a ship or a share in a ship belongs;

[definition of “part of the Commonwealth” deleted by Act 69 of 1962]

“passenger” means any person carried in a ship, except -

- (a) a person employed or engaged in any capacity on board the ship on the business of the ship;
- (b) a person on board the ship either in pursuance of the obligation laid upon the master to carry shipwrecked, distressed or other persons or by reason of any circumstance that neither the master nor the owner nor the charterer (if any) could have prevented; and
- (c) a child under one year of age;

“passenger ship” means a ship which carries more than twelve passengers;

“passenger ship safety certificate” means a certificate issued under paragraph (a) or (c) of section *one hundred and ninety-two*, or deemed in accordance with the provisions of paragraph (a) of sub-section (1) of section *two hundred and two* to have been so issued;

[definition of “passenger ship safety certificate” inserted by Act 13 of 1965]

Merchant Shipping Act 57 of 1951 (SA)

[definition of “passenger ship’s exemption certificate” deleted by Act 13 of 1965]

“Permanent Secretary” means the Permanent Secretary: Works, Transport and Communication;

[definition of “Permanent Secretary” inserted by Act 7 of 1991]

“port”, in relation to -

- (a) a port in a country other than Namibia, means a place, whether proclaimed a public harbour or not, and whether natural or artificial, to which ships may resort for shelter or to ship or unship goods or passengers;
- (b) a port in Namibia means the Walvis Bay port or the Lüderitz port as defined in Schedule 1 to the Namibian Ports Authority Act, 1994, or a fishing harbour contemplated in the Sea Fisheries Act, 1992 (Act 29 of 1992), or any place which has under this Act or any other law been designated as a place from or at which any vessel or a vessel of a particular type may be launched, beached, moored or berthed;

[The definition of “port” substituted by Act 25 of 1985, and amended by Act 17 of 1991 and by Act 2 of 1994. The the Sea Fisheries Act 29 of 1992 has been replaced by the Marine Resources Act 27 of 2000,]

“port of registry” means, in relation to a ship, the port at which she is registered or is to be registered;

“prescribed” means prescribed by this Act;

“principal officer” means the officer in charge of the section 31 of the office of the Marine Division of the Department of Transport at a port;

[definition of “principal officer” inserted by Act 24 of 1974]

“proper officer” means the officer designated by the Permanent Secretary to be the proper officer at the place or in respect of the area and in respect of the matter to which reference is made in the provision of this Act in which the expression occurs; or if no such designation has been made -

- (a) at a place in Namibia, a principal officer or, where there is no principal officer, the Controller of Customs and Excise; or
- (b) at a place outside Namibia but within a treaty country, in the following order:
 - (i) a career consular representative of Namibia; or
 - (ii) a diplomatic representative of Namibia; or
 - (iii) the person who, in terms of the law in force in the treaty country, is entrusted with the function or charged with the duty to which reference is made in the provision of this Act in which the expression occurs; or
 - (iv) a consular representative of a treaty country (other than Namibia); or
 - (v) a diplomatic representative of a treaty country (other than Namibia); or
- (c) at a place outside any treaty country, the person, and in the order, indicated, in subparagraphs (i), (ii), (iv) and (v) of paragraph (b); or

Merchant Shipping Act 57 of 1951 (SA)

- (d) at a place outside Namibia, where there is no proper officer as defined in paragraph (b) or (c), any master of a Namibian ship who is specially authorized in writing to act as proper officer by the Permanent Secretary, but only in relation to the functions and duties in respect of which, and subject to the conditions subject to which, he has been so authorized to act;

[definition of “proper officer” amended by Act 69 of 1962, Act 42 of 1969 and Act 24 of 1974]

“proper return port”, in relation to a master, seaman or apprentice-officer discharged or left behind, means -

- (a) the port at which the master, seaman or apprentice-officer was engaged; or
- (b) a port in a country in which the master, seaman or apprentice-officer is domiciled; or
- (c) a port agreed to as such by the master, seaman or apprentice-officer,

as decided by the proper officer;

[definition of “qualified local safety certificate” deleted by Act 13 of 1965]

[definition of “qualified safety certificate” deleted by Act 13 of 1965]

[definition of “qualified safety equipment certificate” deleted by Act 13 of 1965]

[definition of “qualified safety radio exemption certificate” deleted by Act 13 of 1965]

[definition of “qualified safety radiotelegraphy certificate” deleted by Act 13 of 1965]

[definition of “qualified safety radiotelephony certificate” deleted by Act 13 of 1965]

“radio” includes radiotelegraphy and radiotelephony;

“radio regulations” means the regulations made under paragraph (a) of sub-section (2) of section *three hundred and fifty-six* to give effect to the relative provisions of the Safety Convention, or such regulations as applied under sub-section (3) of the said section;

[definition of “radio regulations” substituted by Act 13 of 1965]

“recognized non-Namibian”, used in relation to a safety convention certificate or an international load line certificate, signifies that the certificate has been issued by or under the authority of the Government of a country other than Namibia to which the Safety Convention or the Load Line Convention, as the case may be, applies, and that the certificate complies with the regulations made under paragraph (a) of sub-section (2) of section 356 to give effect to the relative provisions of the Safety Convention or with those made under paragraph (c) of that subsection to give effect to the relative provisions of the Load Line Convention, respectively;

[definition of “recognized non-Union” amended by Act 40 of 1963, to become a definition of “recognized non-South African”, substituted by Act 13 of 1965 and then amended by Act 7 of 1991 to become a definition of “recognized non-Namibian”]

“register tons” and “register tonnage” mean, in relation to a Namibian ship, the tonnage of the ship, either gross or net as the case may be, recorded in the register mentioned in section *fifteen*; and in the case of any other ship, the tonnage accepted or determined by the Minister, Permanent Secretary or proper officer;

“regulation” means a regulation made under this Act;

Merchant Shipping Act 57 of 1951 (SA)

“Safety Convention” means the convention set out in the Second Schedule to this Act;

[definition of “Safety Convention” substituted by Act 40 of 1963]

“safety convention certificate” means a passenger ship safety certificate, a cargo ship safety construction certificate, a cargo ship safety equipment certificate, a cargo ship safety radiotelegraphy certificate, a cargo ship safety radiotelephony certificate or an exemption certificate;

[definition of “safety convention certificate” substituted by Act 13 of 1965]

[definition of “safety equipment certificate” deleted by Act 13 of 1965]

[definition of “safety equipment exemption certificate” deleted by Act 13 of 1965]

[definition of “safety radio exemption certificate” deleted by Act 13 of 1965]

[definition of “safety radiotelegraphy certificate” deleted by Act 13 of 1965]

[definition of “safety radiotelephony certificate” deleted by Act 13 of 1965]

“savings bank” means the Post Office Savings Bank, or a banking institution registered under the Banking Act, 1965 (Act No. 23 of 1965), or a building society registered under the Building Societies Act, 1986 (Act 2 of 1986), or, in respect of the allotment of premiums, a person registered or deemed to be registered as an insurer under the Insurance Act, 1943 (Act No. 27 of 1943), or any other body designated by the Minister;

[The definition of “savings bank” is substituted by Act 5 of 1976 and amended by Act 7 of 1991. The Banks Act 23 of 1965 (the reference to the “Banking Act” is incorrect) has been replaced by the Banking Institutions Act 2 of 1998. The Insurance Act 27 of 1943 has been replaced by the Short-term Insurance Act 4 of 1998 and the Long-term Insurance Act 5 of 1998.]

“sealing boat” means any ship exclusively employed in seal-catching;

[definition of “sealing boat” amended by Act 30 of 1959]

“seaman” means any person (except a master, pilot or apprentice-officer) employed or engaged in any capacity as a member of the crew of a ship;

[definition of “Secretary” inserted by Act 30 of 1959 and deleted by Act 3 of 1981]

“ship” means any vessel used for transportation or for any other purpose on or under the surface of the water;

[definition of “ship” amended by Act 25 of 1985]

“ship’s officer” means a navigating officer or engineer officer, whether certificated or uncertificated, employed as such on board a ship, but does not include a master; and any reference to a ship’s officer shall, in its application to a ship in which a mate, boatswain, marine engineman or assistant marine engineman is employed, be construed as including a reference to a mate, boatswain, marine engineman or assistant marine engineman;

“shore-based whaling boat” means a whaling boat which delivers the whole of its catch to be processed in a factory established ashore in Namibia;

[definition of “short voyage safety certificate” deleted by Act 13 of 1965]

Merchant Shipping Act 57 of 1951 (SA)

“small vessel” means a vessel of less than twenty-five gross tons and of more than three metres in length;

[definition of “small vessel” inserted by Act 3 of 1981]

[definition of “South African ship” deleted by Act 7 of 1991]

“special load line certificate” means a certificate issued under sub-section (1) of section *two hundred and seventeen*;

“sport or recreation” means any sporting or recreational activity carried on in, on or under the water, irrespective of whether that activity is of a competitive nature or whether prizes are involved, provided it is not carried on for commercial purposes;

[definition of “sport or recreation” inserted by Act 25 of 1985]

[definition of “superior court” substituted by Act 5 of 1976, amended by Act 105 of 1983 and deleted by Act 7 of 1991]

“surveyor” means any person recognized or appointed in terms of section 4(b) or any qualified person employed as surveyor by an organization referred to in an instrument of delegation issued under section 4(d);

[definition of “surveyor” substituted by Act 42 of 1969]

“this Act” includes any proclamation, notice, rule or regulation issued or made thereunder;

“timber cargo regulations” means the regulations made under paragraph (c) of sub-section (2) of section *three hundred and fifty-six* to give effect to the relative provisions of the Load Line Convention, or such regulations as applied under sub-section (3) of the said section;

[definition of “timber cargo regulations” substituted by Act 13 of 1965]

“Tonnage Convention” means the International Convention on Tonnage Measurement of Ships, 1969;

[definition of “Tonnage Convention” inserted by Act 25 of 1985]

“treaty country”, in relation to any provision of this Act, means Namibia and any country, including any colony, protectorate or territory subject to the authority or under the suzerainty of such country or any territory over which a mandate or trusteeship is exercised by such country, which is a party to any bilateral treaty or agreement entered into by Namibia in connection with any matter dealt with in such provision;

[definition of “treaty country” inserted by Act 69 of 1962]

“treaty ship” means a ship registered at any place in a treaty country under the relative laws in force at that place or any ship which by the law of a treaty country is recognized as a ship belonging to that treaty country;

[definition of “treaty ship” inserted by Act 69 of 1962]

“unseaworthy”, used in relation to a vessel, means that she -

- (a) is not in a fit state as to the condition of her hull, equipment or machinery, the stowage of her cargo or ballast, or the number or qualifications of her master or crew, or in any other

Merchant Shipping Act 57 of 1951 (SA)

respect, to encounter the ordinary perils of the voyage upon which she is engaged or is about to enter; or

- (b) does not comply with the conditions of assignment to the extent set forth in paragraph (c) of section *two hundred and seven*; or
- (c) is loaded beyond the limits allowed -
 - (i) by a load line certificate issued in Namibia under this Act; or
 - (ii) if she is a load line ship, registered in a country in which the Load Line Convention applies, by a recognized non-Namibian international load line certificate; or
 - (iii) by a load line certificate to which a notice issued under section *two hundred and eighteen* applies:

Provided that a safety convention ship not registered in Namibia, in respect of which a recognized non-Namibian safety convention certificate is produced, shall not be deemed unseaworthy, as regards the condition of her hull, equipment or machinery, unless it appears, on the report of a surveyor, that she cannot proceed to sea without danger to human life owing to the fact; that the actual condition of her hull, equipment or machinery does not correspond substantially with the particulars stated in the certificate;

[definition of “unseaworthy” amended by Act 40 of 1963 and by Act 13 of 1965]

“vessel” includes any ship, or any boat, small vessel or other description of vessel used or designed to be used in navigation;

[definition of “vessel” amended by Act 3 of 1981]

“wages” includes any emoluments;

“whaling boat” means any ship engaged exclusively in whale-catching, or on which any processing takes place of the bodies or any portion of the bodies of the whales caught by other whaling boats;

“wreck” includes flotsam, jetsam, lagan and derelict found in or on the shores of the sea or of any tidal waters of Namibia, any portion of a ship or aircraft lost, abandoned, stranded or in distress, any portion of the cargo, stores or equipment of such ship or aircraft and any portion of the personal property on board such ship or aircraft when it was lost, abandoned, stranded or in distress and belonged to any person who was on board that ship or aircraft at that time;

“year” means the calendar year, but for the purpose of the inspection of vessels required by this Act it means twelve calendar months from the date of the certificate of inspection or survey.

(2)

[subsection (2) deleted by Act 69 of 1962]

- (3) Whenever in this Act reference is made to -
 - (a) an act or omission by or a duty resting upon or a fault committed by a vessel; or
 - (b) damage or loss suffered by a vessel; or

Merchant Shipping Act 57 of 1951 (SA)

(c) a liability resting upon a vessel,

such reference shall, unless the context indicates otherwise, be construed as a reference to -

- (i) an act or omission by or a duty resting upon or a fault committed by the person responsible for the navigation of the vessel in connection with the navigation thereof; or
- (ii) damage or loss suffered by the owner or the person having an interest in the vessel or her cargo or freight, in connection with the vessel or her cargo or freight; or
- (iii) a liability resting upon the person in charge of the vessel or upon the person who in law is answerable for the conduct of the person in charge of the vessel, in connection with such conduct, respectively.

(4) In this Act references to a ship built before or after any date shall be construed as references to a ship the keel of which has been laid before or after that date, as the case may be.

(5) Any reference in this Act to an entry of an occurrence or other fact in the official log-book of a ship shall, in the application of the provision in which the reference occurs to a ship for which no official log-book is kept, be construed as a reference to a record of such occurrence or fact made otherwise than in an official log-book.

(6) Any reference in this Act to any order or entry made or document issued under any provision of this Act shall, unless otherwise indicated, be construed as including a reference to an order or entry made or document issued under the corresponding provision of any law repealed by section *one*.

Application of Act

3. (1)

[subsection (1) amended by Act 69 of 1962 and deleted by Act 7 of 1991]

(2)

[subsection (2) amended by Act 69 of 1962 deleted by Act 7 of 1991]

(3) This Act shall bind the State: Provided that the Minister may by notice direct that sections *one hundred and two* to *one hundred and nine*, inclusive, *one hundred and thirteen*, *one hundred and twenty* to *one hundred and twenty four*, inclusive, *one hundred and thirty-three*, *one hundred and thirty-four*, *one hundred and forty-five*, *one hundred and eighty-eight* and *three hundred and twenty-three* shall not apply in respect of the master, seamen or apprentice-officers of any ship named in the notice and belonging to the Government of Namibia (including Transnamib Limited), whose conditions of service are governed by laws other than this Act or statutory regulations other than regulations made under this Act.

[subsection (3) amended by Act 40 of 1963]

(4) Unless otherwise indicated, those provisions of this Act which apply to vessels which are registered or licensed in Namibia or which in terms of this Act are required to be so registered or licensed shall so apply wherever such vessels may be.

Merchant Shipping Act 57 of 1951 (SA)

(5) Unless otherwise indicated, those provisions of this Act which apply to vessels other than those referred to in subsection (4) shall so apply only while such vessels are within Namibia or the territorial waters thereof.

(6) The provisions of this Act shall not apply to ships belonging to the defence forces of Namibia or of any other country.

[subsection (3) substituted by Act 13 of 1965]

(7) The provisions of this Act shall apply to any vessel or ship contemplated in section 68(3)(b) as if such vessel or ship were licensed in terms of this Act.

[subsection (7) amended by Act 30 of 1959 and by Act 25 of 1985]

(8) The Minister may by notice in the *Gazette* declare that any of the provisions of this Act which are by that proclamation specified; subject to the exemptions, modifications and restrictions so specified, and which do not by virtue of the other provisions of this Act apply to a particular ship or to ships of a particular class, category or tonnage, shall apply to that ship or to ships of that class, category or tonnage: Provided that provisions which in terms of this Act apply only to Namibian ships shall not by any such notice be applied also to ships not registered in Namibia and *vice versa*.

[subsection (8) amended by Act 30 of 1959]

(9) The Minister may by notice in the *Gazette* declare that any of the provisions of this Act which are by that proclamation specified, subject to the exemptions, modifications and restrictions so specified, shall apply to any dams or other inland waters so specified.

[subsection (9) amended by Act 30 of 1959]

(10) If it has been made to appear to the Minister that the Government of any country other than Namibia is desirous that any of the provisions of this Act, which do not apply to the ships of that country should so apply, and there are no special provisions in this Act for that application, the Minister may by notice in the *Gazette* declare that such of those provisions as are by that notice specified (subject to the limitations, if any, contained therein) shall apply to the ships of that country and to the owners, masters, seamen and apprentice-officers of those ships, when not locally within the jurisdiction of the government of that country, in the same manner in all respects as if those ships were ships registered in Namibia; and thereupon the provisions so specified shall, subject to such limitations, if any, so apply.

[subsection (10) amended by Act 30 of 1959]

(11) If the Minister is satisfied -

- (a) that ships registered in any country other than Namibia are required by the law in force in that country to comply with any provisions which are substantially the same as, or equally effective with, any of the provisions of this Act which apply to such ships while they are within Namibia or the territorial waters thereof; and
- (b) that that country has made or has undertaken to make provision for the exemption of Namibian ships while they are within that country or the territorial waters thereof from the corresponding requirements of the law of that country,

he may by notice in the *Gazette* declare that the said provisions of this Act shall not apply to any ship of that country, while she is within Namibia or its territorial waters, if it is proved that the

Merchant Shipping Act 57 of 1951 (SA)

ship complies with the corresponding provisions of the law in force in that country; and thereafter upon such proof being furnished, the said provisions of this Act shall not apply to such ship.

[subsection (11) substituted by Act 40 of 1963]

CHAPTER I

ADMINISTRATION

Powers of Minister

4. The Minister may -
- (a) subject to the laws governing the public service, appoint such officers as he considers necessary for the administration of this Act;
 - (b) recognize or, subject to the laws governing the public service, appoint as a ship surveyor, engineer surveyor or radio or other surveyor any qualified person whom he deems fit to act as such for the purposes of this Act;
 - (c) by notice in the *Gazette* declare a port in Namibia to be a port of registry for the registration of ships;
 - (cA) subject to such conditions as may be determined by him exempt any person from any of or all the provisions of the regulations made under section 356;

[paragraph (cA) inserted by Act 5 of 1976]

- (d) delegate any of his powers under this Act (except the power of delegation) to any officer or organization with respect to the powers or matters specified or the port or area defined in the instrument of delegation.

[paragraph (d) substituted by Act 42 of 1969]

Permanent Secretary to be responsible for administration of Act

5. (1) The Permanent Secretary shall, subject to the control of the Minister, be responsible for the administration of this Act, and shall have the control of all matters incidental thereto.

(2) The Permanent Secretary shall, subject to the provisions of this Act or any other law, have such powers and perform such duties as are assigned to him by the Minister.

(3) All powers conferred and all duties imposed upon the Permanent Secretary may be exercised or performed by the Permanent Secretary personally or by an officer or, with respect to conditions prescribed under section 68(3)(b), by a person or organization under a delegation from or under the control or direction of the Permanent Secretary.

[section 5 substituted by Act 30 of 1959 and amended by Act 25 of 1985]

National Marine Advisory Council, National Advisory Council for the welfare of merchant seamen, port welfare committees and *ad hoc* advisory committees

[All references to the National Marine Advisory Council and the National Advisory Council for the welfare of merchant seamen have been removed from this section but the heading has not been amended accordingly.]

Merchant Shipping Act 57 of 1951 (SA)

6. (1)

[subsection (1) substituted by Act 5 of 1976 and deleted by Act 58 of 1987]

(2)

[subsection (2) deleted by Act 30 of 1959]

(3)

[subsection (3) amended by Act 30 of 1959 and deleted by Act 58 of 1987]

(4)

[subsection (4) substituted by Act 5 of 1976 and deleted by Act 58 of 1987]

(5)

[subsection (5) deleted by Act 30 of 1959]

(6) The Minister may at any port in Namibia appoint a port welfare committee for the purposes of collecting information on the conditions in which seamen in the port live, advising departments of State, the local authority of the port and bodies engaged in promoting the welfare of seamen at the port as to the application, adaptation and co-ordination of measures for the improvement of such conditions, and collaborating in the carrying out of such measures.

[subsection (6) amended by Act 40 of 1963]

(7) The Minister may from time to time appoint a committee for the purpose of advising him in regard to any particular matter dealt with by this Act and referred to it.

(8) The members of every port welfare committee and every committee referred to in sub-section (7) shall be appointed by the Minister in accordance with the regulations, and the said councils and committees shall perform their functions in accordance with the regulations.

[subsection (8) amended by Act 30 of 1959 and by Act 58 of 1987]

(9) There shall be paid to members of any port welfare committee and any committee appointed under sub-section (7) such allowances towards subsistence and transport as may be prescribed by the regulations made under this Act, or, if they are members of the public service, such allowances towards subsistence and transport as are prescribed by or under the laws governing the public service.

[subsection (9) amended by Act 30 of 1959 and by Act 58 of 1987]

(10) In sub-section (6) the expression "seamen" includes all persons who are or have been employed, or are seeking employment, in any capacity on board any ship.

[subsection (10) inserted by Act 30 of 1959]

Survey of ship to ascertain whether she complies with the Act

7. Subject to the provisions of this Act, a surveyor may inspect any Namibian ship wherever she may be or any ship not registered in Namibia while she is within Namibia or the

Merchant Shipping Act 57 of 1951 (SA)

territorial waters of Namibia for the purpose of ascertaining whether she complies with the provisions of this Act.

Duty of proper officer to ensure compliance with this Act

8. If a proper officer has reason to suspect that the provisions of this Act are not being or have not been complied with in respect of any ship within Namibia or the territorial waters of Namibia, which is not registered in Namibia, or in respect of any Namibian ship wherever she may be, he shall take such steps as in his opinion are necessary to ensure compliance with the said provisions.

Powers of officers and courts

9. (1) Any -
- (a) proper officer or surveyor; or
 - (b) court of marine enquiry, maritime court or court of survey; or
 - (c) person appointed in terms of section *two hundred and, sixty four* or sub-section (1) of section *two hundred and eighty-one*, or to whom an appeal is referred in terms of sub-section (1) or (2) of section *two hundred and eighty-two*; or
 - (d) other person authorized or required by or under this Act, or generally or specially authorized or required by the Permanent Secretary, to make any survey or inspection or conduct any investigation,

may, in the execution of or its duty or the exercise of his or its functions -

- (i) board any Namibian ship wherever she may be, or any ship other than a Namibian ship while she is within Namibia or the territorial waters of Namibia, and inspect the same or any part thereof, or any equipment thereof, or any articles on board, or any log-books, certificates or other documents relating to the ship or the crew thereof, and muster the crew of the ship and interrogate them;
- (ii) enter any premises, including any land, structure, vehicle or vessel, and inspect the same or any articles therein;
- (iii) by written notice or otherwise summon any person who in his or its opinion may be able to give information which is likely to assist him or it in the carrying out of such duty, or who he or it suspects or believes has in his possession or custody or under his control any book, document or thing the inspection of which is likely to assist him or it in the carrying out of such duty, to appear before him or it at a time and place specified, to be interrogated or to produce that book, document or thing;
- (iv) administer an oath to any person appearing in obedience to any summons or otherwise, and interrogate him and inspect and detain any book, document or thing produced;
- (v) require any person interrogated to subscribe to a declaration of the truth of the statement made by him; and
- (vi) copy any document inspected by or produced to him or it.

[subsection (1) amended by Act 30 of 1959]

Merchant Shipping Act 57 of 1951 (SA)

- (2) Every person -
- (a) shall upon demand assist to the best of his ability any officer or other person or court in the exercise of any of the powers conferred by sub-section (1);
 - (b) summoned under paragraph (iii) of sub-section (1) whose reasonable expenses have been paid or offered to him shall attend at the time and place specified, and remain in attendance until excused by the officer or other person or court from further attendance;

[paragraph (b) amended by Act 30 of 1959]

- (c) shall take the oath administered to him by any officer or other person or court under paragraph (iv) of subsection (1);
- (d) shall answer fully and satisfactorily, to the best of his ability, all questions lawfully put to him by any officer or other person or court under paragraph (i) or (iv) of sub-section (1), and, upon being required to do so, produce any book, document or thing in his possession or under his control: Provided that in connection with the interrogation of any such person by, or the production of any such book, document or thing to any such officer or other person or court, the law relating to privilege, as applicable to a witness summoned to give evidence or produce any book, document or thing before a court of law shall apply; and
- (e) upon being required to do so, shall subscribe to a declaration of the truth of any statement made by him.

(3) Any person who, after being sworn by an officer or other person or court in the exercise of the said powers, gives a false answer to any question put to him, or makes a false statement on any matter, knowing that answer or statement to be false, shall be deemed to be guilty of perjury.

(4) Any person or court referred to in paragraph (a), (b) or (c) of sub-section (1) may in the execution of his or its duty or the exercise of his or its functions, if he or it deems it necessary to do so, direct that any Namibian ship wherever she may be, or any ship other than a Namibian ship while she is within Namibia or the territorial waters of Namibia, be taken into dock at the owner's expense, in order that every part of the hull thereof may be inspected.

CHAPTER II

RECORDING, REGISTERING AND LICENSING OF SHIPS

Notification of building of vessels

10. (1) Every person who at the coming into operation of the Merchant Shipping Amendment Act, 1991, is building, or after such coming into operation intends to build, a vessel which when completed will be required to be registered or licensed in terms of this Act, shall within sixty days of such coming into operation or before beginning to build the vessel, as the case may be, furnish to the proper officer at the port where the vessel will be registered or licensed or to the Permanent Secretary such written particulars of the vessel as may be prescribed.

[subsection (1) substituted by Act 42 of 1969 and amended by Act 7 of 1991]

(2) The person on whose account any vessel is built shall for the purposes of sub-section (1) be deemed to build that vessel.

Qualification for owning ship registered under this Act

11. (1) No ship shall be registered in Namibia unless the whole of the ship is owned by the Government of Namibia or by persons to each of whom one or other of the following descriptions applies:

- (a) Namibian citizens;
- (b) citizens of a treaty country (other than Namibia); and

[paragraph (b) amended by Act 69 of 1962]

- (c) corporate bodies established under and subject to the law in force in any treaty country and having their principal place of business in any treaty country.

[Paragraph (c) is amended by Act 69 of 1962. The full stop at the end should be a semicolon now that it is no longer the last paragraph in subsection (1).]

- (d) persons of any country other than a treaty country approved by the Minister.

[paragraph (d) inserted by Act 7 of 1991]

(2) No person other than the Government of Namibia or a person who is included in a category mentioned in sub-section (1) shall acquire, except by such transmission as is referred to in section *forty-three*, any interest in a ship registered in Namibia.

[section 11 amended by Act 40 of 1963]

Power to enquire into the title of a registered ship to be registered

12. (1) If the Minister has reason to believe that there is some doubt as to the title of any ship registered as a Namibian ship to be so registered, he may direct the proper officer of the port of registry of the ship to require that evidence be given to his satisfaction that the ship is entitled to be registered as a Namibian ship.

(2) If within such time as may be determined by the Minister, evidence to the satisfaction of the proper officer of the title of the ship to be registered is not given, the ship shall be liable to forfeiture.

Obligation to apply for registry of a ship

13. (1) Whenever the whole of a ship of twenty-five or more gross tons is owned -

- (a) by the Government of Namibia; or

[paragraph (a) amended by Act 40 of 1963]

- (b) by persons all of whom in terms of section *eleven* are qualified to own a Namibian ship, and -

- (i) a majority of the owners either in number or extent of ownership are persons resident in Namibia or corporate bodies having their principal place of business within Namibia; or

Merchant Shipping Act 57 of 1951 (SA)

(ii) the ship is, as to her management and use, principally controlled in Namibia,

the said Government or the other owners, as the case may be, shall, unless she is already registered in Namibia or elsewhere apply to the proper officer at one of the ports of registry appointed in terms of paragraph (c) of section *four* for the ship to be registered in terms of this Act.

(2) The application for registry mentioned in sub-section (1) shall be made -

- (a) in the case of a ship already owned at the coming into operation of this section by persons who in terms of section *eleven* are qualified to own a Namibian ship, within one month of such coming into operation; and
- (b) in the case of a ship acquired after the coming into operation of this section by persons so qualified, within one month of the date on which she is so acquired.

(3) The Minister may in his discretion exempt the owners of certain classes of ships of less than one hundred gross tons, to be determined by him, or the owners of ships which are not self-propelled and which are used exclusively in a port, from the provisions of this section.

[subsection (3) substituted by Act 42 of 1969]

14.

[section 14 amended by Act 40 of 1963 deleted by Act 7 of 1991]

Register to be kept

15. The proper officer shall enter all ships registered by him in a special book to be kept for the purpose (hereinafter referred to as the register), and such entries shall be made in the prescribed manner.

Survey and measurement of ship before registry

16. The owner of a ship in respect of which application for registry is made shall, upon demand by the proper officer, cause such ship to be surveyed by a surveyor, and the tonnage of the ship ascertained, in the prescribed manner. The surveyor shall grant a tonnage certificate specifying the ship's tonnage and build and such other particulars as may be required by the regulations, and that certificate shall be delivered to the proper officer by the owner before the ship is registered.

Tonnage once ascertained to be the tonnage of ship

17. Whenever the tonnage of a ship has been ascertained and registered in accordance with this Act, that tonnage shall thenceforth be deemed to be the tonnage of the ship, and shall be repeated in every subsequent registry thereof, unless any alteration is made in the form or capacity of the ship, or unless it is discovered that the tonnage of the ship has been erroneously computed, in either of which cases the ship shall be resurveyed, and her tonnage redetermined in accordance with this Act.

Tonnage of ships of other countries

Merchant Shipping Act 57 of 1951 (SA)

18. (1) Whenever the Minister is satisfied that provisions substantially the same as those of this Act relating to the measurement of the tonnage of ships are in force in any other country, he may by notice in the *Gazette* direct that ships registered in that country shall without being resurveyed in Namibia be presumed to be of the tonnage denoted in their certificates of registry or other national papers, in the same manner, to the same extent, and for the same purposes as the tonnage denoted in the certificate of registry of a Namibian ship is presumed to be the tonnage of that ship, and that the space shown by the certificate of registry or other national papers of any ship registered in such other country, as deducted from tonnage on account of being occupied by seamen or apprentice-officers and appropriated to their use, shall for the purpose of determining her tonnage be presumed to have been certified by a surveyor under sub-section (2) of section *two hundred and sixty-two* to comply with those of the provisions of this Act which apply to such a space in the case of a Namibian ship.

(2) Whenever the Minister has given any such direction as is mentioned in sub-section (1), the presumptions referred to shall apply in respect of any ship registered in the country to which the direction relates.

(3) If any question arises as to whether the tonnage of any ship registered in any country to which any such direction relates, as denoted in her certificate of registry or other national papers, materially differs from that which would be her tonnage if measured under this Act, or as to whether the construction and the equipment of any ship so registered as regards the said space do for the purpose of determining the tonnage of the ship conform to the standards required under this Act, the Permanent Secretary may direct that a surveyor inspect the ship.

(4) If from the report of a surveyor so directed to inspect a ship it appears to the Minister that the tonnage of that ship as so denoted, materially differs from that which would be her tonnage if measured under this Act or that her construction and equipment as regards the said space do not, for the purpose of determining her tonnage conform to the said standards, or if for any reason it appears to the Minister that the tonnage of any ship so registered has been erroneously computed, he may order that, notwithstanding any direction for the time being in force under this section, that ship or any ship registered in the country to which the direction relates shall, for all or any of the purposes of this Act, be surveyed in accordance with this Act.

Marking of ship

19. (1) The owner of a ship who applies for registry under this Act shall before registry cause her to be marked permanently and conspicuously in the prescribed manner and to the satisfaction of the proper officer, and any ship not so marked may be detained by that officer.

(2) The owner and the master of a Namibian ship shall take all reasonable steps to ensure that the ship remains marked as required by this section or by sub-section (2) of section *thirty-six*, or, in the case of a ship referred to in section *fourteen*, that she remains marked as required by the law under which she was registered, and the said owner or master shall not cause or permit any alternations of such marks to be made, except in the event of any of the particulars thereby denoted being altered in the manner provided in this Act, or except to evade capture by an enemy or by a foreign ship of war in the exercise of some belligerent right.

Evidence on first registry

20. (1) On the first registry of a ship in Namibia the owner shall produce -

- (a) a declaration of ownership, in the prescribed form;
- (b) a certificate signed by the builder and containing a true account of the size and dimensions and the tonnage of the ship as estimated by the said builder, and of the

Merchant Shipping Act 57 of 1951 (SA)

time when and the place where she was built, and of the name of the person on whose account she was built, unless the person who makes the declaration of ownership declares that the time and place of building are unknown to him, or that the builder's certificate cannot be obtained, in which case there shall be required only the deed of sale under which the ship became vested in the applicant for registry;

[paragraph (b) substituted by Act 42 of 1969]

(c) if there has been any sale, the deed of sale under which the ship has been vested in the applicant for registry;

(d) in the case of a ship that has been forfeited, an official copy of the notice of forfeiture.

(2) The builder of a ship shall not refuse or omit upon request by the owner to grant the certificate required by this section.

[subsection (2) substituted by Act 42 of 1969]

(3) The proper officer may demand proof of ownership of the ship to his satisfaction before proceeding with the registry of the ship.

Entry of particulars in register

21. As soon as the requirements of this Act preliminary to registry have been complied with the proper officer shall enter in the register the following particulars:

(a) the name of the ship and the name of the port to which she belongs;

(b) the details contained in the tonnage certificate referred to in section *sixteen*;

(c) the origin of the ship, as stated in the declaration of ownership;

(d) the name, address and occupation of the owner of the ship, and if there are more owners than one, what share in the ship is held by each owner.

Documents to be retained by proper officer

22. On the registry of a ship in Namibia the proper officer shall retain in his possession the following documents:

(a) all declarations of ownership;

(b) the tonnage certificate;

(c) the builder's certificate;

(d) all deeds of sale of the ship previously made and no longer of force and effect; and

(e) the copy of the notice of forfeiture, if any.

Certificate of registry

23. On completion of the registry of a ship, the proper officer shall grant a certificate of registry in the prescribed form, containing the particulars respecting the ship entered in the register in accordance with section *twenty-one* and stating the name of her master.

Custody of certificate of registry

24. (1) A certificate of registry granted in terms of section *twenty-three* shall not be subject to detention by reason of any title to, lien on, charge against, or interest in the ship held or claimed by any person.

(2) No person who has in his possession or under his control the certificate of registry of a ship shall refuse or omit without reasonable cause to deliver such certificate on demand to the person entitled to the custody thereof.

Improper certificate of registry not to be used

25. The owner or master -

- (a) of a Namibian ship, wherever she may be; or
- (b) of a ship other than a Namibian ship, while she is within Namibia or the territorial waters of Namibia,

shall not use or allow to be used for the navigation of that ship a certificate of registry not lawfully granted in respect of that ship, or produce or put off as a certificate of registry of that ship any document other than the certificate of registry lawfully granted in respect of that ship.

Power to grant new certificate of registry

26. (1) The proper officer at the port of registry of a Namibian ship may, on delivery to him of the certificate of registry of the ship, grant a new certificate in lieu thereof.

(2) If the certificate of registry of a Namibian ship is mislaid, lost, or destroyed, the proper officer at the port of registry shall, subject to the regulations, grant a new certificate of registry in lieu of the original certificate.

(3) If the port at which a Namibian ship is at the time the event referred to in sub-section (2) occurs, or first arrives after the event occurs, is not in Namibia, the master of the ship or some other person having knowledge of the facts of the case shall furnish the proper officer at that port with a declaration stating the facts of the case and the names and descriptions of the registered owners of the ship, and the proper officer may thereupon grant a provisional certificate, containing a statement of the circumstances in which it is granted.

(4) The master of a ship in respect of which a provisional certificate has been granted under sub-section (3) shall, within ten days after the first subsequent arrival of the ship at a port in Namibia, deliver the provisional certificate to the proper officer at the port of registry, and the proper officer shall thereupon grant a new certificate of registry.

Endorsement of change of master on certificate of registry

27. (1) Whenever the master of a Namibian ship is changed, a memorandum of such change shall be endorsed on the certificate of registry -

- (a) if the change is made in consequence of the finding of a court of marine enquiry or a maritime court, by the presiding officer of that court;
- (b) if the change occurs from any other cause, by the proper officer at the place where the change takes place.

Merchant Shipping Act 57 of 1951 (SA)

(2) The person who makes the endorsement referred to in sub-section (1) shall forthwith report the change of master to the Permanent Secretary, and the proper officer at any port in Namibia may refuse to permit any person to do any act there as master of a Namibian ship unless such person's name is inserted in or endorsed on the certificate of registry as the last appointed master of that ship.

(3) This section shall not apply in respect of any ship belonging to Transnamib Limited and used by it in connection with the working of its harbours.

Endorsement of change of ownership on certificate of registry

28. (1) Whenever a change occurs in the registered ownership of a Namibian ship, such change of ownership shall be endorsed on the certificate of registry by the proper officer at the ship's port of registry, or by the proper officer at any other port at which the ship arrives after such officer has been advised of the change by the proper officer at the ship's port of registry.

(2) If a change of ownership of a Namibian ship occurs when the ship is at her port of registry, the master shall, for the purpose of endorsement in terms of sub-section (1), deliver the certificate of registry to the proper officer immediately after such change of ownership takes place, or upon the ship's return to that port, if the change occurs during the absence of the ship from that port and no endorsement in terms of sub-section (1) has been made by a proper officer at some other port.

(3) The proper officer at any port who is by this section required to make an endorsement on the certificate of registry of a Namibian ship, may require the master to produce such certificate forthwith.

Procedure when ship is lost or ceases to be a Namibian ship

- 29.** (1) (a) In the event of a Namibian ship being either actually or constructively lost, taken by the enemy, burnt or broken up, or ceasing to be a Namibian ship by reason of transfer to a person not qualified to own a Namibian ship or for any other cause, the registered owner of the ship or of any share in the ship shall immediately on obtaining knowledge of the event report the particulars thereof to the proper officer at the port of registry of the ship, who shall record such particulars in the register and, subject to the provisions of paragraph (c), close the registry of the ship in that register.
- (b) The registered owner of a Namibian ship or of any share in such ship subject to any unsatisfied mortgage or existing certificate of mortgage entered in the register shall not in any manner transfer such ship or share to any other person without the written consent of all the mortgagees.
- (c) Where a Namibian ship or share referred to in paragraph (b) is transferred without the written consent contemplated in that paragraph, the proper officer concerned shall not close the registry of such ship in the relevant register without the written consent of all the mortgagees.

[subsection (1) substituted by Act 70 of 1977]

(2) Where any of the events referred to in subsection (1)(a) occurs, except where the ship's certificate of registry is lost or destroyed, the master of the ship shall immediately, if the event occurs in port, or within three days after his arrival in port, if it occurs elsewhere, deliver

Merchant Shipping Act 57 of 1951 (SA)

the certificate to the proper officer, and that officer shall forthwith forward the certificate to the proper officer at the port of registry of the ship.

[subsection (2) substituted by Act 70 of 1977]

(3) Where a Namibian ship or share in such ship subject to any unsatisfied mortgage or existing certificate of mortgage entered in the register is in any manner transferred to any person without the written consent contemplated in subsection (1)(b) and the ship thereafter comes within the area of jurisdiction of any court in Namibia or in any other treaty country which has jurisdiction to give judgment upon any unsatisfied mortgage entered in the register, including any mortgage made under a certificate of mortgage entered in the register, and to order that the ship be sold in execution of the judgment, or which would have had such jurisdiction if the transfer of the ship had not been made, the court may exercise such jurisdiction notwithstanding the transfer of the ship, without prejudice, in a case in which the ship has been sold under a judgment of a court, to the effect of that judgment.

[subsection (3) amended by Act 69 of 1962 and substituted by Act 70 of 1977]

(4) For the purposes of sub-section (1) a ship shall be deemed to be constructively lost if -

- (a) she is reasonably abandoned on account of her actual total loss appearing to be unavoidable; or
- (b) she cannot be preserved from actual total loss without an expenditure which would exceed her value when the expenditure had been incurred; or
- (c) she has been so damaged that the cost of repairing the damage would exceed her value when repaired.

Provisional certificate for ship which elsewhere than in Namibia becomes the property of a person qualified to own a Namibian ship

30. (1) If at a port outside Namibia a ship becomes the property of a person qualified to own a Namibian ship, and if that person declares to the proper officer at that port or the Permanent Secretary that it is his intention to apply to have her registered in Namibia, the proper officer or the Permanent Secretary, as the case may be, may grant to the master of the ship, on application by him, a provisional certificate stating -

- (a) the name of the ship;
- (b) the time and place of her purchase, and the name and address of the purchaser;
- (c) the name of the master; and
- (d) the best particulars respecting the tonnage, build, and description of the ship which he is able to obtain,

and the proper officer shall, if the certificate is issued by him, forward a copy thereof at the first convenient opportunity to the Permanent Secretary.

[subsection (1) amended by Act 40 of 1963]

(2) A provisional certificate issued in terms of sub-section (1) shall be deemed to be a certificate of registry until the expiry of six months from the date on which it was issued, or until

Merchant Shipping Act 57 of 1951 (SA)

the ship's arrival at a port of registry in Namibia, whichever is the earlier date, but shall thereafter have no effect.

Temporary passes in lieu of certificates of registry

31. Whenever by reason of special circumstances it appears desirable to the Permanent Secretary that permission should be granted to a ship which, in terms of this Act, is entitled to be registered in Namibia, or, in terms of the laws in force in any other treaty country is entitled to be registered in that treaty country to proceed to sea without being previously registered, he may authorize the granting of a pass in the prescribed form for the ship to be taken from any port in Namibia to any other port in Namibia or, as the case may be, to any port in that other treaty country, and that pass shall for the time and within the limits therein mentioned be deemed to be a certificate of registry.

[section 31 amended by Act 69 of 1962]

Notifications of alterations in ships

32. (1) The master or owner of a Namibian ship which is so altered that she does not correspond with the particulars contained in the register relating to her tonnage or description shall -

(a) if at the time when the alteration is made the ship is at a port which has in terms of paragraph (c) of section *four* been declared to be a port of registry, within three days after the making of the alteration, notify the proper officer there of the alteration; or

(b) if the ship is not at such a port at the time when the alteration is made, but arrives at such a port within three months after the making of the alteration, within three days after she first arrives at such a port, notify the proper officer there of the alteration; or

(c) if the ship is not at such a port at the time when the alteration is made and does not arrive at such a port during the period of three months after the making of the alteration, as soon as practicable after the expiry of the said period, notify the proper officer at the ship's port of registry of the alteration.

(2) Every notification in terms of sub-section (1) shall be in writing and shall -

(a) in the case referred to in paragraph (a) or (b) of that sub-section, be delivered to the proper officer, accompanied by the certificate of registry of the ship and a certificate by a surveyor stating the particulars of the alteration; or

(b) in the case referred to in paragraph (c) of that sub-section, be sent by registered post to the proper officer, accompanied by an application for registry anew of the ship.

[section 32 substituted by Act 30 of 1959]

Registry of alterations

33. (1) If the proper officer to whom a notification of any alteration is given in terms of paragraph (a) or (b) of sub-section (1) of section *thirty-two* is the proper officer at the ship's port of registry, he shall, upon receipt by him of the notification and of the certificate of registry and surveyor's certificate referred to in paragraph (a) of sub-section (2) of that section, either direct that the ship be registered anew or endorse the particulars of the alteration on the existing certificate of registry and in the latter event he shall record in the register the particulars of the alteration and the fact that they have been endorsed on the certificate of registry.

Merchant Shipping Act 57 of 1951 (SA)

- (2) (a) If the proper officer to whom notification of any alteration is given in terms of paragraph (a) or (b) of sub-section (1) of section thirty-two is not the proper officer at the ship's port of registry, he shall, upon receipt by him of the notification and of the certificate of registry and surveyor's certificate referred to in paragraph (a) of sub-section (2) of that section, either withdraw the existing certificate of registry and direct that the ship be registered anew and, upon receipt of the application for registry anew of the ship, grant a provisional certificate of registry describing the ship as altered or endorse the particulars of the alteration on the existing certificate of registry.
- (b) Where a proper officer has granted a provisional certificate of registry or endorsed a certificate of registry in terms of paragraph (a), he shall forthwith report to the proper officer at the ship's port of registry the particulars of the case and transmit to him the surveyor's certificate delivered in terms of paragraph (a) of sub-section (2) of section thirty-two and, where a provisional certificate has been granted, the application in pursuance of which it was granted and the withdrawn certificate of registry.
- (3) Upon receipt by the proper officer at the ship's port of registry of the report made and documents transmitted to him in terms of sub-section (2), he shall record in the register the particulars of the alteration and the fact that a provisional certificate of registry has been granted, or, as the case may be, that the particulars of the alteration have been endorsed on the existing certificate of registry.
- (4) (a) The master or owner of a ship in respect of which a provisional certificate of registry has been granted under sub-section (2) shall, unless she has been registered anew in terms of paragraph (b), within three days after the first subsequent arrival of that ship at her port of registry deliver that certificate to the proper officer at that port, who shall retain that certificate and register the ship anew.
- (b) If the proper officer at the ship's port of registry has reason to believe that the ship will not arrive at that port within a reasonable period, he may register the ship anew and transmit the new certificate of registry granted by him in terms of sub-section (1) of section *thirty-five* to the proper officer at any port at which the ship is or for which she is bound, for delivery to the master or owner of the ship against the surrender of the provisional certificate of registry.
- (c) The proper officer to whom the provisional certificate of registry is surrendered shall forthwith transmit it to the proper officer at the ship's port of registry.
- (5) (a) Upon receipt by the proper officer at the ship's port of registry of the notification and application referred to in paragraph (b) of sub-section (2) of section *thirty-two*, he shall register the ship anew and transmit the new certificate of registry granted by him in terms of sub-section (1) of section thirty-five to the proper officer at any port at which the ship is or for which she is bound, for delivery to the master or owner of the ship against the surrender of the old certificate of registry.
- (b) The proper officer to whom the old certificate of registry is surrendered shall forthwith transmit it to the proper officer at the ship's port of registry.
- (6) If a proper officer directs that a ship be registered anew, the owner of the ship shall forthwith make application for registry anew of the ship.

Merchant Shipping Act 57 of 1951 (SA)

Registry anew on change of ownership

34. If the ownership of a Namibian ship is changed, the proper officer of the port at which the ship is registered may on application by the owner of the ship register the ship anew, but, subject to the provisions of paragraph (f) of section *fifty-five*, the owner shall not be obliged to apply for registry anew in such circumstances.

Procedure for registry anew

35. (1) If a Namibian ship is to be registered anew the proper officer shall proceed as in the case of first registry, and shall, subject to the provisions of this Act make such registry anew, and grant a certificate thereof.

[subsection (1) amended by Act 30 of 1959]

(2) When a Namibian ship is registered anew her former registry shall be considered as closed except so far as relates to any unsatisfied mortgages or existing certificates of sale or mortgage entered therein, but the names of all persons appearing in the former registry as being interested in the ship as owners or mortgagees shall be entered in the new registry, and the registry anew shall not in any way affect the rights of any of those persons.

Transfer of registry

36. (1) The registry of a Namibian ship may be transferred in accordance with the regulations from one port to another on application to the proper officer by the owner of the ship, and on completion of the transfer the ship shall be considered as registered at the new port of registry.

(2) The owner shall cause to be made such changes in the marking of the ship consequent upon the transfer of registry as may be prescribed.

(3) Transfer of the registry of a ship under sub-section (1) shall in no way affect the rights of any person appearing on the register to be interested in the ship as owner or mortgagee.

Re-registration of abandoned ships

37. If a ship has ceased to be registered as a Namibian ship by reason of having been wrecked or abandoned, or for any other reason except capture by the enemy or transfer to a person not qualified to own a Namibian ship, the ship shall not be re-registered until she has at the expense of the applicant for registration been inspected by a surveyor and certified by him to be seaworthy.

Names of ships

38. A Namibian ship shall not be described or registered by or marked with any name, and the name of a registered ship shall not be altered, except in accordance with the regulations.

Transfer of ships or shares

39. (1) A Namibian ship or a share therein when disposed of to a person qualified to own a Namibian ship shall be transferred by deed of sale.

(2) The deed of sale shall contain such description of the ship as is contained in the surveyor's certificate, or some other description sufficient to identify the ship to the satisfaction of the proper officer, and shall be in the prescribed form.

Merchant Shipping Act 57 of 1951 (SA)

Declaration of transfer

40. When a Namibian ship or a share therein is transferred the transferee shall not be entitled to be registered as owner thereof until he has made and signed a declaration of transfer in the prescribed form.

Registry of transfer

41. (1) Every duly executed deed of sale for the transfer of a Namibian ship or of a share therein shall be produced to the proper officer at the port of registry of the ship, with the declaration of transfer and any other documents which in terms of the regulations have to accompany such deed, and the proper officer shall thereupon enter in the register the name of the transferee as owner of the ship or share, and shall endorse on the deed of sale the fact that such entry has been made, with the date and time of entry.

[subsection (1) amended by Act 30 of 1959]

(2) Deeds of sale of a ship or of a share therein shall be entered in the register in the order of their production to the proper officer.

Transmission of property in ship on marriage or death, etc.

42. (1) When ownership of a Namibian ship or share therein is transmitted on marriage or death of any registered owner, or by any lawful means other than by a transfer under this Act, to a person qualified to own a Namibian ship, that person shall execute a declaration in the prescribed form certifying that the transmission has taken place.

(2) If the transmission takes place by virtue of marriage, the declaration shall be accompanied by a copy of the register or other legal evidence of the marriage.

(3) If the transmission is consequent on death, the declaration shall be accompanied by a certificate signed by the Master of the High Court having jurisdiction in respect of the estate of the deceased person from whom the ownership of the ship or share has been transmitted, stating the name of the person to whom the ship or share has been transmitted, and the letters of administration of the executor, or if no master of the High Court has such jurisdiction, the declaration shall be accompanied by other proof of the transmission to the satisfaction of the proper officer.

(4) The proper officer, on receipt of the duly executed declaration and the documents by which in terms of sub-sections (2) and (3) and the regulations it must be accompanied, shall enter in the register as owner the name of the person to whom the ownership of the ship or share has been so transmitted.

[subsection (4) amended by Act 30 of 1959]

Order for sale on transmission to unqualified person

43. (1) When ownership of a Namibian ship or share therein is transmitted on marriage or death or otherwise to a person not qualified to own a Namibian ship, that person may apply to the Permanent Secretary for an order directing that the property be sold and the proceeds of the sale, after deduction of the expenses thereof, be paid to him.

(2) The application shall be made in the form and manner prescribed, and shall be accompanied by proofs of the applicant's claim.

Merchant Shipping Act 57 of 1951 (SA)

(3) Upon any such application being made to him, the Permanent Secretary shall direct that notice of the application be published in the *Gazette* and in such newspapers and be served upon such persons as he may determine. The notice shall be in a form approved by the Permanent Secretary and shall call upon all persons who may object to the order being made to lodge their objections in writing with the Permanent Secretary within a period determined by him and mentioned in the notice.

(4) Upon proof of the due publication and service of the notice, the Permanent Secretary shall, if no objection in writing has been lodged with him within the period mentioned in the notice, and if he is satisfied of the justice of the applicant's claim, make the order applied for.

(5) If objection in writing is lodged with the Permanent Secretary within the period mentioned in the notice, or if he is not satisfied of the justice of the applicant's claim, he shall refuse to make the order.

(6) If the Permanent Secretary refuses to make the order, the applicant may apply to the High Court for such an order as is referred to in sub-section (1).

(7) The court may make the order on any terms and conditions it thinks fit, or may refuse to make the order, or generally may do what it considers best in the interests of the justice of the case.

(8) Every such application to the Permanent Secretary shall be made within thirty days after the date on which the event occurred on which the transmission took place, and every such application to the court shall be made within thirty days after the refusal by the Permanent Secretary to make the order. The court may allow an extension of the time (not exceeding in all one year from the said date) within which the application to the Permanent Secretary or the court must be made.

(9) If such application is not made within the time fixed by or extended under sub-section (8), or if the court refuse an order for sale, the ship or share transmitted shall be liable to forfeiture.

Transfer of ship or sale by order of Permanent Secretary or court

44. When the Permanent Secretary, in terms of section *forty-three*, or when the High Court, whether in terms of that section or otherwise, orders the sale of any Namibian ship or share therein, the order shall contain a declaration vesting in some person named therein the right to transfer the ship or share. The person so named shall thereupon be entitled to transfer the ship in the same manner and to the same extent as if he were the registered owner thereof, and the proper officer shall in respect of any such transfer regard that person as the registered owner.

[The word "registered" in the phrase "as if he were the registered owner thereof" is misspelt in the *Government Gazette*, as reproduced above.]

Power of court to prohibit transfer

45. On the application of an interested party the High Court may, without prejudice to the exercise of any other power of the court, make an order prohibiting for a time specified any dealing with that ship or any share therein, and may make the order on any terms or conditions it deems fit, or may refuse to make the order, or may discharge the order when made, and generally may do what it considers best in the interests of the justice of the case, and the proper officer shall on being served with the order or an official copy thereof obey the same.

Mortgage of ship or share not to be registered in deeds registry

46. (1) Notwithstanding anything contained in the Deeds Registries Act, 1937 (Act No. 47 of 1937), or in any other law, but subject to the provisions of sub-section (2), a Namibian ship or a share in a Namibian ship shall not after the coming into operation of this section be mortgaged by bond registered in a deeds registry, and no bond so registered -

- (a) before such coming into operation shall after the expiration of sixty days from such coming into operation; or
- (b) after such coming into operation shall after its registration,

confer upon the mortgagee any preference as against other creditors.

[The Deeds Registries Act 47 of 1937 has been replaced by the Deeds Registries Act 14 of 2015.]

(2) The mortgagee under any bond by which is hypothecated a Namibian ship or a share in a Namibian ship and which is registered in a deeds registry at the coming into operation of this section may produce to the proper officer at the ship's port of registry within sixty days after such coming into operation or within such further period as the Permanent Secretary in the particular case may allow a copy of the duplicate original of the bond filed in the deeds registry certified by the registrar of deeds in charge of that registry. Thereupon the proper officer shall record the mortgage in the register, and thereafter the provisions of this Act relating to the mortgage of ships and shares in ships shall apply in respect of that mortgage: Provided that for the purposes of section *forty-nine* and paragraph (e) of section *fifty-six* the mortgage shall be deemed to have been registered in the register on the date on which and at the time at which the said bond was registered in the deeds registry.

(3) Whenever the proper officer records any mortgage in terms of sub-section (2) he shall send written notice thereof to the registrar of deeds in charge of the deeds registry in which the bond was registered. Upon receipt of such notice the registrar shall endorse upon the duplicate original of the bond filed in the deeds registry the fact that the mortgage has been so recorded.

How ship or share mortgaged

47. (1) A Namibian ship or share therein may be mortgaged as security for a loan or other debt, and the instrument creating the mortgage shall be called a deed of mortgage and shall be in the prescribed form. On the production of such instrument the proper officer at the ship's port of registry shall record the mortgage in the register.

(2) Mortgages shall be recorded by the proper officer in the order in which the deeds creating them are produced to him, and he shall endorse on each deed that it has been so recorded, stating the date and time of that record.

Discharge of mortgage

48. If a registered mortgage is discharged the proper officer shall, on the production of the deed of mortgage, with a receipt for the mortgage money endorsed thereon, duly signed and attested, make an entry in the register to the effect that the mortgage has been discharged, and shall cancel the deed of mortgage.

Priority of mortgages

49. If there are more mortgages than one registered in respect of the same Namibian ship or share in a Namibian ship, the respective mortgagees claiming thereunder shall, notwithstanding

Merchant Shipping Act 57 of 1951 (SA)

any express, implied or constructive notice, but subject to the proviso to sub-section (2) of section *forty-six* be entitled in priority, one before the other, according to the date and time at which each mortgage is recorded in the register, and not according to the date and time at which each deed of mortgage was executed.

Rights of mortgagee

50. (1) The mortgagee under a registered mortgage of a ship or a share in a ship shall be entitled to recover the amount due under the mortgage in any court of competent jurisdiction, and when giving judgment or thereafter the court may direct that the mortgaged ship or share be sold in execution of the judgment.

(2) Subject to the provisions of sub-section (i), the mortgagee under a registered mortgage of a ship or a share in a ship shall not merely by virtue of the mortgage be entitled to sell or otherwise dispose of the mortgaged ship or share.

Preference under mortgage not affected by insolvency

51. (1) The right of preference given to a mortgagee by a registered mortgage of a Namibian ship or a share in a Namibian ship shall not be affected by any act of insolvency committed by the mortgagor, or by the sequestration of the estate of the mortgagor after the date of the record of the mortgage.

(2) The provisions of sub-section (1) shall be subject to the provisions of sections *twenty-six*, *twenty-seven*, *twenty-nine*, *thirty*, *thirty-one* and *eighty-eight* of the Insolvency Act, 1936 (Act No. 24 of 1936); and in the application of the said section *eighty-eight* to the mortgage of a ship or share the references in that section to the registrar of deeds and a mortgage bond shall be construed as references to the proper officer and a deed of mortgage, respectively.

51A.

[section 51A inserted by Act 70 of 1977 and deleted by Act 105 of 1983]

Transfer of mortgage

52. (1) A registered mortgage of a Namibian ship or a share in a Namibian ship may be transferred to any person by deed of cession in the prescribed form, and on the production of such deed and the relative deed of mortgage, the proper officer shall record the transfer of the mortgage by entering in the register the name of the transferee as mortgagee of the ship or share, and shall endorse on the deeds of mortgage and cession that the transfer of the mortgage has been so recorded, stating the date and time of the record.

(2) The person to whom a registered mortgage of a ship or a share in a ship has been transferred shall enjoy the same right of preference as was enjoyed by the transferor.

Transmission of interest in mortgage by death, etc.

53. (1) Whenever the rights of the mortgagee under a deed of mortgage over a Namibian ship or a share in a Namibian ship are transmitted on marriage or death or by any other lawful means other than by a transfer under this Act to any person, that person shall execute a declaration in the prescribed form certifying that the transmission has taken place.

Merchant Shipping Act 57 of 1951 (SA)

(2) The proper officer on the receipt of the declaration accompanied by documents similar to those required by section *fifty-two* in the case of a corresponding transmission of the ownership of a ship or share, shall enter in the register as mortgagee the name of the person to whom the rights have been transmitted.

Authority to sell or mortgage outside Republic

54. (1) Upon written application by the registered owner of a Namibian ship who wishes to sell the ship, or the registered owner of a Namibian ship or a share therein who wishes to mortgage the ship or share, by a deed of sale or mortgage to be executed outside Namibia, the proper officer of the port of registry of the ship shall issue to him a certificate of sale or a certificate of mortgage.

(2) In any such application there shall be set forth, and the proper officer shall enter in the register, the following particulars:

- (a) the name and address of the person by whom the sale or mortgage is to be entered into on behalf of the owner, and in the case of -
 - (i) a sale, the minimum price at which a sale is to be made, if it is intended to fix any such minimum; and
 - (ii) a mortgage, the maximum amount thereof, if it is intended to fix any such maximum;
- (b) the place where the power is to be exercised, or if no place is specified, a declaration that it may be exercised anywhere, subject to the provisions of this Act;
- (c) the limit of time within which the power may be exercised.

In the case of a certificate of mortgage, the proper officer shall also enter in the register the date and time of the entry.

(3) A certificate of sale or of mortgage shall not authorize any sale or mortgage to be made in Namibia or by any person not named in the certificate.

(4) A certificate of sale and a certificate of mortgage shall contain a statement of the particulars referred to in subsection (2) and also a statement of any registered mortgages or certificates of sale or mortgage affecting the ship or share in respect of which the certificate is given.

(5) Any certificate of sale or certificate of mortgage issued under any law repealed by section *one* shall be deemed to have been issued under this Act.

Rules as to certificates of sale

55. The following rules shall be observed as to certificates of sale:

- (a) a certificate of sale shall not be issued except for the sale of an entire ship;
- (b) the power shall be exercised in conformity with the directions contained in the certificate;

Merchant Shipping Act 57 of 1951 (SA)

- (c) a sale made thereunder in good faith to a purchaser without notice shall not be impeached by reason of the person by whom the power was given dying before the execution of the deed of sale;
- (d) whenever the certificate specifies the place at which, and the limit of time not exceeding twelve months within which, the power is to be exercised, a sale made thereunder in good faith to a purchaser without notice shall not be impeached by reason of the fact that before the deed of sale was executed the estate of the person by whom the power was given was sequestrated as insolvent;
- (e) a transfer made to a person qualified to be the owner of a Namibian ship shall be by a deed of sale in accordance with this Act;
- (f) if the ship is sold -
 - (i) to a person who would, if the ship were not already registered in Namibia, be required, in terms of section *thirteen*, to apply for the ship to be so registered, the ship shall be registered anew; or
 - (ii) to a person who is qualified to be the owner of a Namibian ship, but who would, if the ship were not already registered in Namibia, not be required, in terms of section *thirteen*, to apply for the ship to be so registered, the ship may be registered anew;

[paragraph (f) substituted by Act 30 of 1959]

- (g) before registry anew there shall be produced to a proper officer the application for registry anew, the deed of sale by which the ship is transferred, the certificate of sale and the certificate of registry of the ship;

[paragraph (g) amended by Act 30 of 1959]

- (h) if the proper officer to whom the documents referred to in paragraph (g) are produced, is the proper officer at the ship's port of registry, he shall retain those documents, except the deed of sale, and register the ship anew;

[paragraph (h) substituted by Act 30 of 1959]

- (h)*bis* if the proper officer to whom the documents referred to in paragraph (g) are produced, is not the proper officer at the ship's port of registry, he shall retain those documents, except the deed of sale, and shall, after having endorsed on the certificate of sale and the certificate of registry an entry of the fact that a sale has taken place, forward those certificates and the application for registry anew to the proper officer at the ship's port of registry;

[paragraph (h)*bis* inserted by Act 30 of 1959]

- (h)*ter* upon receipt by the proper officer at the ship's port of registry of the certificates and application referred to in paragraph (h)*bis* he shall register the ship anew and transmit the new certificate of registry granted by him in terms of sub-section (1) of section thirty-five to the proper officer at any port at which the ship is or for which she is bound, for delivery to the master or owner of the ship;

[paragraph (h)*ter* inserted by Act 30 of 1959]

Merchant Shipping Act 57 of 1951 (SA)

- (i) on registry anew in terms of paragraph (h) or (h)*ter* the description of the ship contained in her former certificate of registry shall be entered in the register, without her being resurveyed, and the purchaser shall make a declaration of transfer in the prescribed form;

[paragraph (i) amended by Act 30 of 1959]

- (j) if the ship is sold to a person not qualified to be the owner of a Namibian ship, or to such a person as is referred to in sub-paragraph (ii) of paragraph (f) who does not wish the ship to be registered anew, that person shall produce or cause to be produced to a proper officer the deed of sale by which the ship is transferred, the certificate of sale and the certificate of registry of the ship;

[paragraph (j) substituted by Act 30 of 1959]

- (j)*bis* if the proper officer to whom the documents referred to in paragraph (j) are produced, is the proper officer at the ship's port of registry, he shall retain the certificate of sale and the certificate of registry;

[paragraph (j)*bis* inserted by Act 30 of 1959]

- (j)*ter* if the proper officer to whom the documents referred to in paragraph (j) are produced, is not the proper officer at the ship's port of registry he shall retain the certificate of sale and the certificate of registry and shall, after having endorsed thereon an entry of the fact that the ship has been sold to a person not qualified to be the owner of a Namibian ship, or, as the case may be, to such a person as is referred to in sub-paragraph (i) of paragraph (f) who does not wish the ship to be registered anew, forward them to the proper officer at the ship's port of registry;

[paragraph (j)*ter* inserted by Act 30 of 1959]

- (j)*quat* any proper officer who has retained the certificate of sale and the certificate of registry of any ship in terms of paragraph (j)*bis* and any proper officer to whom such certificates have been forwarded in terms of paragraph (j)*ter* shall make a memorandum of the sale in his register, and close the registry of the ship in that register except in the case of the transfer of a ship subject to any unsatisfied mortgage or existing certificate of mortgage entered therein in respect of which the written consent contemplated in section 29(1)(b) has not been given. The provisions of section 29(1) and (3) shall apply in respect of such mortgage or certificate of mortgage;

[paragraph (j)*quat* inserted by Act 30 of 1959 and substituted by Act 70 of 1977]

- (k) if on a sale being made to a person referred to in paragraph (j) the certificates mentioned in that paragraph are not produced as required by that paragraph that person shall be considered not to have acquired any title to or interest in the ship;

[paragraph (k) substituted by Act 30 of 1959]

- (l) if no sale is made in conformity with the directions contained in the certificate of sale, the proper officer by whom it was issued shall, on delivery of the certificate to him, cancel the certificate and enter the fact of its cancellation in the register.

Rules as to certificates of mortgage

56. The following rules shall be observed as to certificates of mortgage:

Merchant Shipping Act 57 of 1951 (SA)

- (a) the power shall be exercised in conformity with the directions contained in the certificate;
- (b) every mortgage made thereunder shall be registered by the endorsement of a record of the registration on the certificate by a proper officer who shall therein state the date and time of that record;
- (c) a mortgage made thereunder in good faith to a mortgagee without notice shall not be impeached by reason of the person by whom the power was given dying before the execution of the deed of mortgage;
- (d) whenever the certificate specifies the place at which, and the limit of time not exceeding twelve months within which, the power is to be exercised, a mortgage made thereunder in good faith to a mortgagee without notice shall not be impeached by reason of the fact that before the deed of mortgage was executed the estate of the person by whom the power was given was sequestrated as insolvent;
- (e) every mortgage so registered by being recorded on the certificate shall have priority over all mortgages of the same ship or share recorded in the register subsequently to the entry of the certificate in the register; and if there are more mortgages than one so registered, the respective mortgagees claiming thereunder shall, notwithstanding any express, implied or constructive notice, but subject to the proviso to sub-section (2) of section *forty-six*, be entitled in priority one before the other, according to the date and time at which each mortgage is recorded on the certificate and not according to the date and time at which each deed of mortgage was executed;
- (f) subject to the foregoing rules, every mortgagee whose mortgage is registered by being recorded on the certificate shall have the same rights and be subject to the same liabilities as he would have had and been subject to if his mortgage had been recorded in the register instead of on the certificate;
- (g) the discharge of any mortgage registered by being recorded on the certificate may be endorsed on the certificate by any proper officer on the production of the documents which are by section *forty-eight* required to be produced to the proper officer on the discharge of a mortgage in the register;
- (h) on the delivery of any certificate of mortgage to the proper officer by whom it was issued, he shall record in the register, in such manner as to preserve its priority, any undischarged mortgage registered by being recorded thereon and cancel the certificate and enter the fact of the cancellation in the register.

Loss of certificate of mortgage or sale

57. On proof at any time to the satisfaction of the Permanent Secretary that a certificate of sale or mortgage has been lost or destroyed or so damaged as to be useless, and that the powers thereby given have never been exercised, or if they have been exercised, then on proof of the several matters and things that have been done thereunder, the proper officer may, if authorized thereto by the Permanent Secretary, either issue a new certificate, or direct such entries to be made in the register or such other things to be done as might have been made or done if the loss, destruction or damage had not taken place.

Revocation of certificate of mortgage or sale

Merchant Shipping Act 57 of 1951 (SA)

58. (1) The registered owner of a Namibian ship or a share therein in respect of which a certificate of sale or mortgage has been issued, specifying the places where the power thereby given is to be exercised, may, by an instrument under his hand, authorize the proper officer by whom the certificate was issued, to give notice to the proper officer at every such place that the certificate is revoked.

(2) Notice shall thereupon be given accordingly and shall be recorded by the proper officer receiving it, and after it is recorded the certificate shall be deemed to be revoked and of no effect in respect of any sale or mortgage to be thereafter made at that place.

(3) The notice after it has been recorded shall be exhibited to every person applying for the purpose of effecting or obtaining a transfer or mortgage under the certificate.

(4) A proper officer on recording any such notice shall inform the proper officer by whom the certificate was issued whether any previous exercise of the power to which such certificate refers has taken place.

Access to register

59. Any person may upon payment of the prescribed fee have access to the register at any port of registry at any reasonable time during the hours of official attendance of the proper officer.

Provision for cases of minority or other incapacity

60. If by reason of minority, mental disorder or defect or any other cause any person interested in a Namibian ship or a share therein is incapable of making any declaration or doing any act required or permitted by this Act to be made or done in connection with the registry of the ship or share, the legal guardian or *curator bonis* of that person, or, if there is no such guardian or *curator bonis*, any person appointed, on application made on behalf of the incapable person or of any other person interested, by the master of the superior court within whose area of jurisdiction the incapable or other interested person is domiciled may make such declaration or a declaration as nearly corresponding thereto as circumstances permit, and do such act in the name and on behalf of the incapable person.

[Similar phrases referring to the “superior court” were replaced by “the High Court” by Act 7 of 1991, but the phrase “the superior court within whose area of jurisdiction the incapable or other interested person is domiciled” was not included in this direction for this global substitution. This was probably an oversight.]

Right of registered owner to dispose of ship or share

61. No record of any interest in a ship or a share in a ship, other than by way of ownership or mortgage, shall be made in the register, and, subject to the provisions of section 29(1)(b) and to any rights recorded in the register as being vested in any other person under mortgage or under certificate of sale or mortgage, the registered owner of a ship or share therein shall have the right, absolutely to dispose of the ship or share.

[section 61 substituted by Act 70 of 1977]

Rights and liabilities of person holding an interest in a ship or share

62. (1) Subject to the provisions of this Act, any interest in a ship or share therein arising out of any contract, testamentary disposition or otherwise may be enforced by or against an owner or a mortgagee of the ship or share in respect of his interest therein in the same manner as in respect of any other movable property.

Merchant Shipping Act 57 of 1951 (SA)

(2) Any person who holds any interest (otherwise than by way of mortgage) in a ship or share therein, arising under any contract, testamentary disposition or otherwise, shall be subject to all pecuniary penalties imposed by this or any other Act on the owners of ships or shares therein, and proceedings may be taken for the enforcement of any such penalties against both the person holding any such interest and the registered owner, or either of them, jointly, or jointly and severally.

National character of ship to be declared before clearance

63. (1) An officer of customs shall not grant a clearance for any ship until the master of the ship has declared to that officer the name of the country to which he claims the ship belongs, and that officer shall thereupon inscribe that name on the clearance.

(2) If a ship attempts to proceed to sea without such clearance, it may be detained by the officer of customs until the declaration is made.

Ships recognized as ships of Namibian nationality

64. The following classes of ships shall be recognized as ships of Namibian nationality, to wit:

- (a) any ship registered under this Act;
- (b) any ship which in terms of subsection (2) of section 30 is deemed to be registered under this Act;

[paragraph (b) amended by Act 7 of 1991]

- (c) any ship licensed under this Act;
- (d) any ship (other than a ship referred to in paragraph (a), (b) or (c)) which is owned by the Government of Namibia; and

[paragraph (d) amended by Act 40 of 1963]

- (e) any vessel or ship contemplated in section 68(3)(b) -
 - (i) the whole of which is owned by persons all of whom in terms of section *eleven* are qualified to own a Namibian ship; and
 - (ii) the majority of the owners of which, either in number or extent of ownership, are persons resident in Namibia.

[paragraph (e) amended by Act 25 of 1985]

Flag to be flown on ships of Namibian nationality

65. (1) The National Flag of Namibia is hereby declared to be the national colours for all ships registered in Namibia.

(2) The master of a ship of Namibian nationality, shall cause the National Flag of Namibia to be hoisted -

Merchant Shipping Act 57 of 1951 (SA)

- (a) on a signal being made to the ship by any ship in the naval service of Namibia or of any other treaty country; and
- (b) on entering or leaving any port other than a port in Namibia; and
- (c) if the ship is of fifty or more gross register tons, on entering or leaving any port in Namibia.

[subsection (2) amended by Act 69 of 1962 and by Act 40 of 1963]

(3) No person on board a ship of Namibian nationality shall hoist any distinctive national colours (except the National Flag of Namibia) or any colours usually worn by ships in the naval service of Namibia or of any other treaty country, or colours resembling those colours, or any pennant usually carried by ships in any such naval service, or any pennant resembling such pennant, and the master of the ship, and the owner thereof if on board, shall not permit any hoisting of any colours or any pennant in contravention of this sub-section.

[subsection (3) amended by Act 69 of 1962]

Unlawful assumption of Namibian national character

66. No person on board a ship not of Namibian nationality shall, wherever the ship may be, for the purpose of making the ship appear to be a ship of Namibian nationality use or permit the use of the National Flag of Namibia or cause or permit the ship to assume the national character of Namibia.

Concealment of Namibian national character

67. The owner or master of a ship of Namibian nationality shall not knowingly or wilfully do or permit anything to be done, or carry or permit to be carried on board that ship any papers or documents with intent to conceal the national character of the ship or with intent that a non-Namibian national character be assumed for the ship.

Small vessels to be licensed

68. (1) The owner or master -
- (a) of a small vessel which -
 - **
 - (ii) is not registered as a ship in Namibia or elsewhere; and
 - **
 - (iv) operates at or from a port in or from anywhere else on the coast of Namibia; or
 - (b) of a ship which has been exempted under the provisions of sub-section (3) of section 13,

shall before such small vessel or ship is used in Namibia be in possession of a licence issued to him in terms of this Act by a proper officer.

[subsection (1) amended by Act 13 of 1965 and by Act 3 of 1981; not all changes made by Act 3 of 1981 indicated by amendment markings]

Merchant Shipping Act 57 of 1951 (SA)

(2) An application for a licence in terms of subsection (1) shall be made in the prescribed form and the owner or master shall produce to the proper officer a local general safety certificate and, where applicable, a local safety exemption certificate.

[subsection (2) substituted by Act 13 of 1965]

- (3) The provisions of this section shall not apply in respect of any ship or vessel -
- (a) unless the whole of the vessel is owned -
- (i) by the Government of Namibia; or
- (ii) by persons all of whom in terms of section *eleven* are qualified to own a Namibian ship; and
- (aa) a majority of the owners of the ship or vessel, either in number or extent of ownership, are persons resident in Namibia or bodies corporate having their principal place of business within Namibia; or
- (bb) the ship or vessel is, as to her management and use, principally controlled in Namibia;
- (b) used, subject to such conditions as may be prescribed, solely for sport or recreation.

[subsection (3) amended by Act 40 of 1963 and by Act 25 of 1985; not all changes made by Act 25 of 1985 are indicated by amendment markings]

(4)

[subsection (4) inserted by Act 3 of 1981 and deleted by Act 25 of 1985]

Renewal of licences

69. (1) The owner or master of any vessel which in terms of section *sixty-eight* is required to be licensed, and in respect of which a licence has been issued, shall before or at the expiration of the period for which the licence was issued or renewed apply to the proper officer by whose office the licence was issued for a renewal thereof.

(2) The provisions of sub-section (2) of section *sixty-eight* shall apply, *mutatis mutandis*, to any application for the renewal of a licence.

Issue and duration of licences

70. A licence issued upon an application made under section *sixty-eight* or *sixty-nine* shall be in the prescribed form and shall be issued for one year under such conditions as may be prescribed.

Cancellation of licences

71. (1) If the proper officer is satisfied that a licence issued under this Act was obtained fraudulently or on wrong information he may cancel the licence.

(2) If by reason of the contents of a report by a surveyor, or for any other reason, a proper officer is satisfied that -

Merchant Shipping Act 57 of 1951 (SA)

- (a) material alterations which affect the seaworthiness of a vessel which has been licensed under this Act have taken place since the licence was issued; or
- (b) the life-saving appliances have not been maintained on such vessel in an effective condition; or
- (c) the master of such a vessel is not a fit and proper person to operate the vessel,

he may cause the vessel to be detained and direct that the deficiency or other cause for the detention of the vessel be remedied; and if after due notice the directions of the proper officer are not complied with, the licence shall be cancelled.

Unlicensed vessels not to be used

72. No person shall use a vessel which in terms of section 68 is required to be licensed, for any purpose whatsoever, unless the owner or master of the vessel holds a valid and current licence issued in respect thereof.

[section 72 substituted by Act 42 of 1969]

Prohibition of use of vessels of less than three metres in length

72A. (1) No vessel of less than three metres in length shall go to sea from any port in or from anywhere else on the coast of Namibia.

- (2) Notwithstanding the provisions of subsection (1) the Minister may by regulation -
 - (a) prescribe the purpose for and the area in which a vessel of less than three metres in length may be used; and
 - (b) apply the provisions of section 68 *mutatis mutandis* to any such vessel in any area.

[section 72A inserted by Act 3 of 1981]

CHAPTER III

CERTIFICATES OF COMPETENCY AND SERVICE

What certificated officers and other persons to be employed on certain ships

73. (1) Subject to the provisions of this section, the owner and the master of every-
- (a) Namibian ship going to sea from any port whatsoever; or
 - (b) ship (other than a Namibian ship) embarking passengers at, and going to sea from, any port in Namibia,

shall ensure that there is employed on board that ship in their appropriate capacities the number of officers or other persons, duly certificated as prescribed by regulation, or deemed to be so certificated.

[subsection (1) amended by Act 30 of 1959, Act 40 of 1963 and substituted by Act 5 of 1976 and by Act 3 of 1989]

(2) The Minister may by notice in the *Gazette* require that more or more highly certificated officers or other persons than are prescribed by subsection (1) shall be employed on

Merchant Shipping Act 57 of 1951 (SA)

board any class of ships of any tonnage or power specified in that notice; and after the publication of any such notice the owner of any ship to which it applies shall ensure that there are employed on board that ship the number of officers or other persons prescribed by that notice, duly certificated or deemed to be certificated under this Act.

[subsection (2) substituted by Act 5 of 1976]

(3) Whenever the Minister is satisfied from a report by a surveyor that it would be unreasonable to require the owner of a ship built before the coming into operation of this section to provide the accommodation on board that ship necessary to accommodate the numbers of officers or other persons required to be employed in terms of sub-section (1), or in terms of a notice issued under sub-section (2), he may vary the requirements of sub-section (1) or of that notice in respect of that ship as he deems fit.

(4) The owner of every treaty ship (other than a ship embarking passengers at a port in Namibia) going to sea from any port in Namibia shall ensure that there are employed on board that ship in their appropriate capacities a master and so many ships' officers holding certificates of such grades as, by the relative laws in force in the treaty country in which the ship is registered, she is required to carry when going to sea from a port in that treaty country.

[subsection (4) amended by Act 69 of 1962 and Act 40 of 1963]

(5) No person who has been engaged for the purpose of subsection (1) or (2) as master or ship's officer shall go to sea as such unless he is duly certificated, or deemed to be so certificated, in terms of this Act.

(6) No person shall for the purpose of sub-section (1) or (2) employ a master or ship's officer as such without first ascertaining that he is duly certificated, or deemed to be so certificated, in terms of this Act.

(7)

[subsection (7) deleted by Act 30 of 1959]

(8) This section shall not apply in respect of any vessel belonging to Transnamib Limited and used by it in connection with the working of its harbours, if that vessel goes to sea in an emergency.

When ship's officers and other persons deemed to be duly certificated

74. (1) Subject to the provisions of section *eighty-three, eighty-four* and *three hundred and fifty-four*, a master or ship's officer shall not be deemed to be duly certificated as such for the purpose of this Act unless he is the holder for the time being of a valid certificate of competency or certificate of service, issued in terms of this Act, of a grade appropriate to the ship in which he is employed and to his station in the ship, or of a higher grade: Provided that a citizen of a foreign country who holds a certificate of competency issued in terms of this Act shall not be deemed to be duly certificated for employment on board a treaty ship, except in such cases and on such conditions as the Minister may, by notice in the Gazette, specify.

[Subsection (1) is amended by Act 69 of 1962 to insert the proviso. A colon has been inserted accordingly.]

(2) Whenever the question arises whether any certificate is of a higher grade than any other certificate, that question shall be determined by the Permanent Secretary, in accordance with the regulations relative thereto, if any.

Grades of certificates of competency

75. (1) Certificates of competency may be granted for each of the following grades:
- (a) master of a foreign-going ship;
 - (b) chief navigating officer of a foreign-going ship;
 - (c) second navigating officer of a foreign-going ship;
 - (d) master of a coasting ship of one hundred or more gross register tons;
 - (e) navigating officer of a coasting ship of one hundred or more gross register tons;
 - (f) skipper of a fishing, sealing or shore-based whaling boat of one hundred or more gross register tons;
 - (g) mate of a fishing, sealing or shore-based whaling boat of one hundred or more gross register tons;
 - (h) boatswain of a fishing, sealing or shore-based whaling boat of one hundred or more gross register tons;
 - (i) skipper of a coasting ship or a fishing, sealing or shore-based whaling boat of less than one hundred gross register tons;
 - (j) mate of a coasting ship or a fishing, sealing or shore-based whaling boat of less than one hundred gross register tons;
 - (k) chief engineer-officer of a foreign-going ship;
- [paragraph (k) substituted by Act 40 of 1963]**
- (k)*bis* chief engineer-officer of a coasting ship;
- [paragraph (k)*bis* inserted by Act 40 of 1963]**
- (l) second engineer-officer of a foreign-going ship;
- [paragraph (l) substituted by Act 40 of 1963]**
- (l)*bis* second engineer-officer of a coasting ship;
- [paragraph (l)*bis* inserted by Act 40 of 1963]**
- (m) marine engineman;
 - (n) assistant marine engineman.

[Section 12(2) of Act 40 of 1963 includes the following transitional provision:

“Any certificate of competency granted for the grade of chief engineer-officer or second engineer-officer before the coming into operation of sub-section (1) **[the provision of Act 40 of 1963 which amended subsection (1) of section 75]** shall be deemed to have been granted in respect of a foreign-going ship and any such certificate shall on production thereof to the Secretary be endorsed to that effect by him.”

Merchant Shipping Act 57 of 1951 (SA)

(2) A certificate of competency granted for the grade of chief or second engineer-officer, marine engineman or assistant marine engineman shall state whether it entitles the holder to act as engineer-officer or marine engineman in ships fitted with steam engines or in ships fitted with internal combustion engines or in ships fitted with any other type of engines, and the holder shall not be entitled to act as engineer-officer or marine engineman in a ship fitted with a type of engines not stated in the certificate.

(3) Certificates testifying to the competency of the holders to act in grades or capacities other than those referred to in sub-section (1) may be issued in accordance with the regulations.

76.

[section 76 deleted by Act 3 of 1989]

Examinations for certificates of competency

77. (1) Examinations of applicants for certificates of competency under this Act shall be held in such places in Namibia and at such times as the Minister may determine and under such conditions as may be prescribed by regulation.

(2) No person shall be admitted to examination for a certificate of competency unless he produces proof that he is a Namibian citizen or a citizen of a treaty country (other than Namibia) and possesses the qualifications prescribed by regulation: Provided that the Minister may, in his discretion and subject to any conditions which he may impose, admit to such examination a person who is a citizen of any other country if he possesses either the qualifications prescribed by regulation or qualifications which are in the opinion of the Minister of a standard not lower than those so prescribed.

[subsection (2) amended by Act 69 of 1962 and substituted by Act 13 of 1965]

(3)

[subsection (3) deleted by Act 13 of 1965]

(4) The Minister may appoint examiners for the conduct of such examinations, and remove any examiner so appointed.

Granting of certificates of competency after examination under this Act

78. (1) Subject to the provisions of sub-section (2), the Minister may grant a certificate of competency to every applicant who passes the examination prescribed for the certificate satisfactorily, and produces satisfactory evidence that he possesses the qualifications prescribed for the holder of the certificate and of his sobriety, experience, ability, physical fitness and general good conduct.

(2) The Minister may, at any time before the delivery of a certificate, require a re-examination of the applicant by the examiners who made the examination or by any other examiners, and order a further enquiry into his testimonials or character or both, and if not satisfied with the result may order that a certificate be not granted to him.

Granting of certificates of competency otherwise than after examination under this Act

79. (1) Any person who -

Merchant Shipping Act 57 of 1951 (SA)

- (a) is a Namibian citizen or a citizen of a treaty country (other than Namibia) and is the holder of an uncancelled certificate of competency issued under the Merchant Shipping (Certificates of Competency) Act, 1925 (Act No. 45 of 1925); or
- (b) is a Namibian citizen and is the holder of an uncancelled certificate of competency issued by a competent authority of a country other than Namibia,

may apply to the Minister for the grant to him of a certificate of competency under this Act.

[Subsection (1) is substituted by Act 69 of 1962 and amended by Act 40 of 1963. The Merchant Shipping (Certificates of Competency) Act 45 of 1925 is repealed by this Act.]

(2) The Minister may grant to the applicant an appropriate certificate of competency which, in the opinion of the Minister, testifies to the possession by the holder thereof of qualifications and a degree of competency not higher than those to which the certificate, upon the possession of which the application is based, testifies: Provided that before the grant is made the Minister may require the last-mentioned certificate to be surrendered to him.

[Subsection (2) is substituted by Act 13 of 1965. The word "surrendered" is misspelt in the Government Gazette, as reproduced above.]

(3) After the expiration of the period of one year from the date on which this section comes into operation sub-sections (1) and (2) shall no longer apply in respect of certificates of only mate of a foreign-going ship, master of a home-trade ship and mate of a home-trade ship granted under the Merchant Shipping (Certificates of Competency) Act, 1925.

80.

[Section 80 is amended by Act 30 of 1959, Act 40 of 1963, Act 42 of 1969 and Act 5 of 1976, and deleted by Act 3 of 1989. Section 3(2) of Act 3 of 1989 provides the following transitional provision: "Any certificate of service granted under section 80 of the Merchant Shipping Act, 1951, before the date of commencement of this Act, shall remain in force as if the said section 80 has not been repealed by subsection (1)."]

Form and record of certificates of competency or service

81. (1) All certificates of competency or service shall be made in the prescribed form.

[subsection (1) amended by Act 40 of 1963]

(2) A record of certificates of competency or service granted and of the suspension, cancellation or alteration thereof and of any other matter affecting them shall be kept in such manner as the Permanent Secretary may direct.

(3) Any such certificate and any record kept in terms of sub-section (2) shall be admissible in evidence.

Loss of certificates of competency or service

82. If any person proves to the satisfaction of the Permanent Secretary that he has lost or been deprived of a valid certificate of competency or service granted him under this Act or the Merchant Shipping (Certificates of Competency) Act, 1925 (Act No. 45 of 1925), the Permanent Secretary may, upon payment of such fee as may be prescribed, issue to that person a certified

Merchant Shipping Act 57 of 1951 (SA)

copy of the said certificate, and such copy shall be regarded as having the same force and effect as the original.

[The Merchant Shipping (Certificates of Competency) Act 45 of 1925 is repealed by this Act.]

Certificates granted by competent foreign authorities

83. (1) The master and every officer on board a foreign ship who has received a certificate of competency or certificate of service granted by a competent authority in a foreign country and still in force shall, if the Minister is satisfied that the certificate is of corresponding value to any certificate of competency granted under this Act or the Merchant Shipping (Certificates of Competency) Act, 1925 (Act No. 45 of 1925), be deemed to be duly certificated under this Act in respect of such ship, provided his certificate is of a grade appropriate to his station in such ship, or of a higher grade.

[The Merchant Shipping (Certificates of Competency) Act 45 of 1925 is repealed by this Act.]

(2) Notwithstanding the provisions of section 73 the Minister may, in his discretion, and for such periods and under such conditions as he may specify, permit the engagement on a Namibian ship going to sea from any port whatsoever or on a treaty ship other than a Namibian ship going to sea from a port in Namibia, in lieu of a person duly certificated under this Act or deemed, in terms of the other provisions of this Act, to be so certificated, of a person who is the holder of such a certificate of competency or certificate of service as is referred to in subsection (1), and who possesses a knowledge of the official language of Namibia sufficient to enable him to give the necessary orders in the performance of his duties; and while any such permission remains in force, and if the conditions under which it was granted are complied with, the person so engaged shall be deemed to be duly certificated under this Act in respect of such ship, provided his certificate is of a grade appropriate to his station in such ship, or of a higher grade.

[section 83 amended by Act 69 of 1962 and by Act 40 of 1963, and substituted by Act 42 of 1969]

Certificates granted in Republic prior to commencement of Act

[Act 7 of 1991 makes a global substitution of “Namibia” for the phrase “the Republic”, but this does not apply to the word “Republic” on its own as it appears here.]

84. (1) All uncanceled certificates of competency or service issued under the Merchant Shipping (Certificates of Competency) Act, 1925 (Act No. 45 of 1925), shall continue in force as if issued under this Act, but shall be valid only for the purpose for which, and the extent to which, they would have been valid in accordance with the provisions of the aforementioned Act: Provided that such certificates of competency held by citizens of a foreign country shall not continue in force for purposes of employment of the holders on board a treaty ship, except in such cases and on such conditions as the Minister may, by notice in the Gazette, specify.

[Subsection (1) is amended by Act 69 of 1962 to insert the proviso. A colon has been inserted accordingly. The Merchant Shipping (Certificates of Competency) Act 45 of 1925 is repealed by this Act.]

(2) Any such certificate may be dealt with as if issued under this Act.

(3) Sub-section (1) shall apply to the certificates of competency mentioned in sub-section (3) of section *seventy-nine* and to the certificates of service referred to in paragraph (b) of sub-section (1) of section *eighty* during the period of one year after the coming into operation of this section and no longer

Minister may vary requirements as to certificates

85. Notwithstanding the provisions of section *seventy-three* the Minister may, in his discretion and for such periods and under such conditions as he may specify if he is satisfied that no suitable holder of a certificate of the required grade and granted under this Act or referred to in section *eighty-three* or *eighty-four* or recognized under section *three hundred and fifty-four* is available, permit a Namibian ship to go to sea from any port whatsoever or a ship other than a Namibian ship to go to sea from a port in Namibia without the prescribed number of certificated officers or other persons, and while any such permission remains in force any person who acts in terms thereof shall not, if the conditions under which it was granted are complied with, be deemed to have contravened the provisions of section *seventy-three*.

[section 85 amended by Act 40 of 1963]

Production to proper officer of certificates

86. (1)

[subsection (1) deleted by Act 3 of 1982]

(2) The master -

- (a) of a Namibian ship to which the provisions of sub-section (1) of section *seventy-three* or of a notice issued under sub-section (2) of the said section apply, upon going to sea from any port whatsoever; or
- (b) of a ship other than a Namibian ship to which the provisions of sub-section (1) or (4) of the said section apply, upon going to sea from a port in Namibia,

shall produce to the functionary from whom he requests a clearance for the ship the certificates of competency which, by the said provisions, subject to any variation approved by the Minister under sub-section (3) of the said section, the master, officers and other persons on board the ship are required to hold.

[subsection (2) amended by Act 40 of 1963]

(3) If the master of a ship fails to comply with the provisions of this section the ship may be detained by the proper officer until the certificates are produced.

Holder of certificate incapacitated by ill-health

87. (1) If at any time it appears to the proper officer that owing to ill-health or mental or physical defect the holder of a certificate of competency or service is unfit to perform the duties required of him, the proper officer may require him to submit himself to examination by a medical practitioner.

(2) If after consideration of the report on the medical examination the Minister is satisfied that the person concerned is owing to continued ill-health or mental or physical defect incapable of performing satisfactorily the duties appertaining to his certificate of competency or service, he may direct that until he is satisfied that the holder of the certificate has again become capable of performing satisfactorily the duties appertaining to the said certificate, the holder shall not be engaged or go to sea in the capacity referred to in the certificate or in any other capacity specified by the Minister.

(3) Any direction by the Minister under sub-section (2) shall -

Merchant Shipping Act 57 of 1951 (SA)

- (a) if the certificate was issued in Namibia, be effective everywhere and in respect of all ships; and
- (b) if the certificate was issued elsewhere than in Namibia, be effective -
 - (i) within Namibia and the territorial waters of Namibia in respect of all ships; and
 - (ii) outside Namibia and the territorial waters of Namibia in respect of Namibian ships only.

Cancellation and suspension of certificates

88. Notwithstanding anything contained in this Act, the Minister may cancel or suspend a certificate of competency or service -

- (a) if the holder has been convicted of any offence and sentenced to imprisonment without the option of a fine, or has been convicted of any offence under this Act; or
- (b) if the holder obtained the certificate on erroneous information.

Appeals against cancellation or suspension of certificate

89. (1) Any person in respect of whom any direction has been given under section *eighty-seven* or whose certificate of competency or service has been cancelled or suspended under section *eighty-eight* may appeal against the direction, cancellation or suspension to the High Court, and that court may confirm, set aside or vary the direction, cancellation or suspension.

(2) An appeal under this section shall be made in the manner and subject to the conditions and in accordance with the provisions laid down in the regulations.

CHAPTER IV

ENGAGEMENT, DISCHARGE, REPATRIATION, PAYMENT,
DISCIPLINE AND GENERAL TREATMENT OF SEAMEN, CADETS
AND APPRENTICE-OFFICERS

Cadets

90. (1) No person shall be employed as a cadet on board any Namibian ship unless he is a Namibian citizen or a citizen of a treaty country (other than Namibia) or a citizen of any other country whom the Minister has in his discretion and subject to any conditions which he may have imposed, permitted to be so employed, and has attained the age of sixteen years and the master of the ship undertakes to train him or cause him to be trained in navigation and seamanship or in engineering and in the duties of a ship's officer.

[subsection (1) amended by Act 69 of 1962 and substituted by Act 13 of 1965]

(2) The owner or master of any such ship shall not permit the agreement with the crew to be signed by any person who is to be employed as a cadet unless he is satisfied that the provisions of subsection (1) are being complied with.

**[subsection (2) amended by Act 3 of 1982;
not all changes indicated by amendment markings]**

Excessive number cadets or apprentice-officers not to be employed

91. No person shall engage or permit cadets or apprentice-officers to serve on board a Namibian ship in excess of the number of cadets or such officers permitted by the regulations.

Medical examination of cadets and apprentice-officers

92. No person shall be employed as a cadet on board any Namibian ship or indentured as an apprentice-officer to the owner of a Namibian ship until he has passed the colour and form vision tests prescribed and has been certified by a medical practitioner approved by the proper officer as physically fit for the sea service.

Indentures of apprenticeship

93. All indentures of apprenticeship to the sea service entered into in Namibia shall be in accordance with the regulations and shall be executed in the prescribed form by the intended apprentice-officer and the person to whom he is to be bound in the presence of, and shall be attested by, a proper officer, who shall before the execution of the indentures satisfy himself -

- (a) that the intended apprentice-officer -
 - (i) understands the contents and provisions of the indentures;
 - (ii) freely consents to be bound;
 - (iii) is a Namibian citizen or citizen of a treaty country (other than Namibia) or a citizen of any other country whom the Minister has in his discretion and subject to any conditions which he may have imposed, permitted to be indentured, and has attained the age of sixteen years;
- [subparagraph (iii) amended by Act 69 of 1962 and substituted by Act 13 of 1965]**
- (iv) is in possession of a certificate by a medical practitioner to the effect that the said apprentice-officer is physically fit for the sea service; and
 - (v) has passed the colour and form vision tests prescribed;
- (b) that the intended apprentice-officer is to be bound to a person who is the owner of a Namibian ship and is a fit and proper person for the purpose and who undertakes to ensure that the intended apprentice-officer shall be trained in navigation and seamanship or in engineering and in the duties of a ship's officer;
 - (c) if the intended apprentice-officer is under the age of twenty-one years, that his guardian's consent has been obtained to his being indentured.

Indentures voidable in certain case

94. All indentures of apprenticeship entered into in Namibia whereby a person under the age of twenty-one years is bound without the consent of his guardian shall be voidable by the guardian.

Recording of indentures

95. (1) The indentures of an apprentice-officer shall be executed in triplicate.

Merchant Shipping Act 57 of 1951 (SA)

(2) The proper officer shall forward the indentures executed, in triplicate, to the Permanent Secretary, who shall keep and record the one set of indentures, and after endorsing on the others the fact that they have been recorded, transmit one to the master of the apprentice-officer and the other to the apprentice-officer, or, if he is a minor, to his guardian.

Notice of cancellation of indentures or death or desertion of apprentice-officer

96. The master shall notify the cancellation of the indentures, or the death or desertion of the apprentice-officer to the Permanent Secretary or to a proper officer, within three days of the occurrence if it occurs within Namibia, or as soon as circumstances permit if it occurs elsewhere.

Entry of indentures on agreement with the crew

97. The master of a Namibian ship shall, before going to sea from a port in Namibia with an apprentice-officer on board -

- (a) cause the name of the apprentice-officer to be entered on the agreement with the crew referred to in section *one hundred and two*, together with the date of his indentures and every assignment thereof, and the name of every port at which the indentures have been registered;

(b)

[paragraph (b) deleted by Act 3 of 1982]

(c)

[paragraph (c) deleted by Act 3 of 1982]

Provided that -

- (i) in the case of a ship other than a foreign-going ship it shall not be necessary to cause the apprentice-officer to reappear before the proper officer more frequently than once in six months; and
- (ii) in the case of a foreign-going ship, it shall not be necessary to cause the apprentice-officer to reappear before the proper officer except at the last port of departure from Namibia.

[section 97 amended by Act 40 of 1963]

Death, insolvency, etc. of owner

98. If the owner of a Namibian ship carrying an apprentice-officer dies, or if his estate is sequestrated as insolvent, or if he ceases to have any interest in the ship, the indentures shall cease and a proportionate part of any premium paid shall be repaid, and until repaid shall be a charge on the ship: Provided that the name of the person by whom the ship has been acquired may with his consent and that of the apprentice-officer and, if he is under the age of twenty-one years, that of his guardian, and with the approval of the proper officer, be inserted in the indentures as master of the apprentice-officer in lieu of the previous owner, in which case the indentures shall continue: Provided, further, that if the voyage is continued and the apprentice-officer consents in terms of sub-section (1) of section *one hundred and sixteen* to complete the voyage, the name of the person by whom the ship has been acquired may with his consent be inserted in the indentures

as master of the apprentice-officer in lieu of the previous owner, and the indentures shall continue until the voyage has been completed.

Assignment of indentures

99. (1) Every assignment of the indentures of an apprentice-officer shall be executed in the prescribed form by the apprentice-officer and the person to whom the indentures are to be assigned in the presence of, and shall be attested by, a proper officer, who shall before the execution of the assignment satisfy himself -

- (a) that the apprentice-officer freely consents to the assignment;
- (b) that the person to whom the indentures are to be assigned is the owner of a ship, and is a fit and proper person for the purpose, and undertakes to ensure that the apprentice-officer shall be taught navigation and seamanship and the duties of an officer; and
- (c) if the apprentice-officer is under the age of twenty-one years, that his guardian's consent has been obtained to the assignment.

(2) An assignment of the indentures of an apprentice-officer shall be executed in triplicate.

(3) The proper officer shall forward the assignment, executed in triplicate, to the Permanent Secretary, who shall keep and record one assignment and after endorsing on the others the fact that they have been recorded, transmit one to the master of the apprentice-officer, and the other to the apprentice-officer, or, if he is under the age of twenty-one years, to his guardian.

Certificate of expiration of indentures

100. Upon the expiration of the period for which any apprentice-officer was indentured, including any period for which the indentures were lawfully extended, the master to whom he has been bound shall issue to him a certificate in the prescribed form, signed by the master and setting forth such matters as may be prescribed, and shall forward to the Permanent Secretary a duplicate of the certificate, signed by the master.

Medical examination of crew prior to engagement

101. (1) Subject to the provisions of this section, the master of a Namibian ship shall not engage a seaman to serve in that ship unless there has been delivered to the master a certificate, valid in terms of sub-section (3), from which it appears that the seaman has been examined, that he is physically fit to serve in the capacity in which it is proposed to employ him, and that he is not suffering from any disease likely to be aggravated by, or to render him unfit for, service at sea or likely to endanger the health of other persons on board.

(2) The certificate mentioned in sub-section (1) shall be signed by a medical practitioner or, if the certificate relates only to the seaman's sight, by a person approved by the proper officer.

(3) The certificate shall remain in force for a period of six months from the date on which it was granted: Provided that a certificate relating only to colour vision shall remain in force for six years from the date on which it was granted.

[subsection (3) amended by Act 30 of 1959]

Merchant Shipping Act 57 of 1951 (SA)

(4) If required to do so by the proper officer, the master shall produce the certificate referred to in sub-section (1), and if the master fails to do so, the proper officer may refuse to permit the engagement of the seaman concerned.

(5) The proper officer may on the ground of urgency authorize the engagement of a seaman for a single voyage notwithstanding the fact that a certificate has not been delivered to the master as required by sub-section (1).

(6) Any medical examination for the purpose of this section shall be at the expense of the owner of the ship concerned.

(7) The provisions of this section shall apply, *mutatis mutandis*, to the engagement of a master and an apprentice-officer.

(8) This section shall not apply in respect of any -

- (a) vessel belonging to Transnamib Limited and used by it in connection with the working of its harbours; or
- (b) vessel of less than one hundred gross register tons.

Agreements with crew

102. (1) The master of every Namibian ship of more than one hundred gross register tons shall, and the master of every other Namibian ship may, enter into an agreement (in this Act called the agreement with the crew) with every seaman whom he engages to serve in that ship: Provided that the proper officer may refuse to allow the engagement of a seaman -

- (a) who has not completed any period of pre-sea training that may be prescribed; or
- (b) who does not possess a knowledge of the official language of Namibia sufficient to enable him to understand fully any necessary orders given him in that language in the performance of his duties.

(2) The agreement with the crew shall be in the prescribed form, dated at the time of the first signature thereof, and shall be signed by the master before any seaman signs it,

(3) The agreement with the crew shall contain, *inter alia*, as terms thereof the following particulars:

- (a) the nature and, as far as practicable, either the duration of the intended voyage or engagement, or the maximum period of the voyage or engagement and any places or parts of the world to which the voyage or engagement is not to extend;
- (b) the particulars as to the position of the deck line and load lines specified in any load line certificate issued in respect of the ship and still in force;
- (c) the number and description of the crew;
- (d) the time at which each seaman is to be on board or to begin work;
- (e) the capacity in which each seaman is to serve;
- (f) the wages which each seaman is to receive;

Merchant Shipping Act 57 of 1951 (SA)

[paragraph (f) substituted by Act 42 of 1969]

- (g) a scale of the provisions which are to be furnished to each seaman;
- (h) any regulations approved by the Minister as to conduct on board and as to fines or other lawful punishment for misconduct which the parties agree to adopt.

(4) If the master of a Namibian ship engages single seamen and there is already in existence in respect of that ship an agreement with the crew made in due form, those seamen may sign that agreement, and the master need not enter into a separate agreement with them.

Special provisions as to agreements with crew of foreign-going ships

103. The following provisions shall apply to agreements with the crew of a foreign-going Namibian ship:

- (a) subject to the provisions of this Act as to substitutes, the agreement shall be signed by each seaman in the presence of a witness;

[paragraph (a) amended by Act 3 of 1982]

- (b) the master, owner or authorized agent of the owner shall cause the agreement to be read over and explained to each seaman, or otherwise ascertain that each seaman understands the same before he signs it in the presence of a witness, who, shall attest each signature;

[paragraph (b) amended by Act 3 of 1982]

- (c) when the crew is first engaged the agreement shall be signed in duplicate, and one agreement shall be delivered to the proper officer and the other shall be retained by the master, and shall contain a special place or form for the descriptions and signatures of substitutes or persons engaged subsequent to the first departure of the ship;

[paragraph (c) amended by Act 3 of 1982]

- (d) if a substitute is engaged in the place of a seaman who has duly signed the agreement and whose services are terminated, within twenty-four hours before the ship proceeds to sea, by death, desertion, absence without leave or other unforeseen cause, the engagement of the substitute shall be effected before the master, who shall before the ship proceeds to sea, or as soon thereafter as is practicable, cause the agreement to be read over and explained to the substitute, and the substitute shall thereupon sign the same in the presence of a witness, who shall attest the signature;

[paragraph (d) amended by Act 3 of 1982]

- (e) the master shall not proceed with the engagement of the crew until he is satisfied that the particulars required by paragraph (b) of subsection (3) of section 102 have been inserted in the agreement;

[paragraph (e) amended by Act 3 of 1982;
not all changes indicated by amendment markings]

- (f) separate agreements may be made for each single voyage, or an agreement (in this Act referred to as a running agreement) may be made to extend over two or more voyages;

Merchant Shipping Act 57 of 1951 (SA)

- (g) a running agreement shall not be for a longer period than one year, but if the period for which the agreement was entered into expires while the ship is not in a port in Namibia, the agreement shall continue in force until the ship is again in a port in Namibia: Provided that the agreement shall not continue for more than three months after the expiration of the period for which it was entered into unless the seamen concerned agree thereto in writing;

[paragraph (g) amended by Act 40 of 1963]

- (h) on every return to a port in Namibia before the final termination of a running agreement, the master shall endorse on the agreement particulars of the engagement or discharge of any seaman, or that no engagements or discharges have been made or are intended to be made before the ship leaves port, and also that any engagements or discharges made have been according to law.

[paragraph (h) amended by Act 3 of 1982]

Changes in crew to be reported

104. (1) Where an agreement has been entered into with the crew of a Namibian ship, the master or the owner thereof shall -

- (a) before the ship leaves the port where the agreement was entered into, sign and render to the proper officer at that port a full and accurate statement in a form approved by the Permanent Secretary of every change that has taken place in the crew since the agreement was entered into; and
- (b) before the ship leaves any port subsequently entered by her during the currency of the agreement, sign and render to the proper officer at that port a full and accurate statement in a form approved by the Permanent Secretary of every change that has taken place in the crew since he last rendered a statement in terms of this section.

[subsection (1) substituted by Act 42 of 1969 and amended by Act 3 of 1982]

(2) Every statement rendered in accordance with the provisions of this section shall be admissible in evidence.

[section 104 substituted by Act 30 of 1959]

Certificates as to agreements with crew of foreign-going ships

105. (1) In the case of a foreign-going Namibian ship -

- (a) on the due execution of an agreement with the crew; or
- (b) where the agreement is a running agreement, on compliance by the master with paragraph (h) of section 103,

the master shall issue a certificate to that effect.

[subsection (1) amended by Act 3 of 1982; not all changes indicated by amendment markings]

(2) The master of every foreign-going Namibian ship shall before proceeding to sea from a port in Namibia produce to the officer of customs, if that officer should so require, the

Merchant Shipping Act 57 of 1951 (SA)

certificate mentioned in sub-section (1), and any such ship may be detained until the certificate is so produced.

(3) The master of every foreign-going Namibian ship shall, within forty-eight hours after the ship's arrival at her final port of destination for the voyage, or, in the case of a running agreement, within forty-eight hours of her arrival at her final port of destination for the last voyage over which the agreement extends, or upon the discharge of the crew, whichever event first occurs, deliver the agreement with the crew to the proper officer, who shall give the master a certificate of that delivery.

Special provisions as to agreements with crew of coasting ships, and fishing, sealing or shore-based whaling boats

106. The following provisions shall have effect in respect of agreements with the crew of a coasting ship or a fishing, sealing or shore-based whaling boat registered in Namibia:

- (a) agreements may be made either for service in a particular ship or for service in two or more ships belonging to the same owner;
- (b) crews or single seamen shall be engaged in the same manner as they are required to be engaged for foreign-going ships and the provisions of section 103 with regard to substitutes shall apply;

[paragraph (b) amended by Act 3 of 1982; not all changes indicated by amendment markings]

- (c) an agreement for service in two or more ships belonging to the same owner may be made by the owner of the ship instead or by the master, and the relative provisions of this Act shall apply *mutatis mutandis* to such an agreement;
- (d) an agreement shall not be for a longer period than two years, but if the period for which the agreement was entered into expires while the ship is not in a port in Namibia, the agreement shall continue in force until the ship is again in a port in Namibia: Provided that the agreement shall not continue for more than three months after the expiration of the period for which it was entered into unless the seamen concerned agree thereto in writing.

[paragraph (d) amended by Act 40 of 1963]

Certificate as to agreements with crew of coasting ships, and fishing, sealing or shore-based whaling boats

107. When the agreement with the crew of a coasting ship or a fishing, sealing or shore-based whaling boat registered in Namibia has expired, the master or owner of the ship shall deliver such agreement to the proper officer within twenty-one days after such expiry, and the proper officer on receiving such agreement shall give the master or owner a certificate to that effect.

Alterations in agreements with crew

108. No erasure, interlineation or alteration in any agreement with the crew of a Namibian ship (except additions made for the purpose of shipping substitutes or persons engaged after the first departure of the ship) shall be of force or effect unless proved by the written attestation of a proper officer to have been made with the consent of the members of the crew interested in such erasure, interlineation or alteration.

Copy of agreement to be displayed

109. The master of a Namibian ship shall at the beginning of every voyage or engagement cause a legible copy of the agreement with the crew (omitting the signatures) to be framed and displayed in some conspicuous place on board the ship which is accessible to the crew, and shall cause it to be kept so framed and displayed during its currency.

Employment of children on ships prohibited

110. The owner or master of a ship which is registered in Namibia, or of a ship which is not registered in Namibia and is wholly engaged in plying between ports in Namibia, shall not knowingly take into employment or keep in employment or permit the employment of any person under the age of fifteen years in any capacity on board the ship.

[section 110 amended by Act 40 of 1963]

Employment of young persons as trimmers or firemen

111. (1) Subject to the provisions of this section the owner or master of a Namibian ship shall not knowingly take into employment, or keep in employment, or permit the employment of, a young person as a trimmer or fireman in that ship: Provided that -

- (a) this sub-section shall not apply -
 - (i) to the employment of a young person on such work as aforesaid in a school-ship or training-ship, if the work is of a kind approved by the Minister and is carried on subject to supervision by officers approved or appointed by him; or
 - (ii) to the employment of a young person on such work as aforesaid in a ship which is mainly propelled otherwise than by means of steam; and
- (b) if in any port a trimmer or fireman is required for any ship and no person over the age of eighteen years is available to fill the place, a young person over the age of sixteen years may be employed as a trimmer or fireman, but in any such case two young persons over the age of sixteen years shall be employed to do the work which would otherwise have been performed by one person over the age of eighteen years.

(2) There shall be included in every agreement with the crew of a Namibian ship a list of the young persons who are members of the crew, together with particulars of the dates of their birth, and, in the case of a ship in which there is no such agreement, the master of the ship shall, if young persons are employed therein, keep a register of those persons with particulars of the dates of their birth and of the dates on which they become or cease to be members of the crew.

(3) There shall be included in every agreement with the crew of a Namibian ship a short summary of the provisions of this section.

(4) Subject to the provisions of this section, the owner or master of a Namibian ship shall not knowingly employ a young person in any capacity in that ship unless there has been delivered to the master of the ship a certificate, valid in terms of sub-section (15), signed by a medical practitioner approved by the proper officer, to the effect that the young person is fit to be employed in that capacity: Provided that -

- (a) this sub-section shall not apply to the employment of a young person in a ship in which only members of the same family are employed; and

Merchant Shipping Act 57 of 1951 (SA)

- (b) a proper officer may on the ground of urgency authorize a young person to be employed in a ship notwithstanding that no such certificate as aforesaid has been delivered to the master of the ship, but a young person in respect of whom any such authorization is given shall not be employed beyond the first port at which the ship calls after he has embarked (hereon, except subject to and in accordance with the foregoing provisions of this section.

(5) A certificate such as is referred to in sub-section (4) shall be effective for a period of six months from the date on which it is signed: Provided that if the said period of six months expires at some time during the course of the voyage of the ship in which the young person is employed, the certificate shall remain effective until the end of the voyage.

(6) The guardian of a young person shall not knowingly cause or permit him to be employed in contravention of the terms of this section.

(7) The master of a Namibian ship shall on demand by a proper officer produce to that officer for the purpose of inspection the register mentioned in sub-section (2) and every certificate delivered to the said master in terms of this section.

- (8) In this section -

“young person” means a person who is under the age of eighteen years;

“ship” means any sea-going ship or boat of any description, and includes a fishing-boat, but does not include any tug, dredger, sludge vessel, barge, or other craft whose navigation does not extend beyond the seaward limits of the jurisdiction of the harbour authority of the port at which such vessel is regularly employed.

Rating of seamen

112. (1) After such date as may be fixed by the regulations a seaman engaged in any Namibian ship shall not be rated as able seaman, unless -

- (a) he is the holder of a certificate of qualification as able seaman issued under this Act; or
- (b) he is deemed in terms of section *three hundred and fifty-four* to be the holder of such a certificate.

(2) The Permanent Secretary may grant a certificate of qualification as able seaman to any candidate who passes the examination prescribed and produces satisfactory evidence that he possesses the qualifications prescribed.

[subsection (2) amended by Act 3 of 1981]

- (3) (a) The Permanent Secretary shall grant to every person who produces proof to his satisfaction that he was serving as able seaman or in an equivalent or superior deck rating in a Namibian ship prior to the coming into operation of this section a certificate of qualification as able seaman.
- (b) The Permanent Secretary may grant to every person who is a Namibian citizen and who produces proof to the Permanent Secretary's satisfaction that he is the holder of an uncanceled certificate issued in a country other than Namibia which entitles him to serve as able seaman, a certificate of qualification as able seaman.

[subsection (3) amended by Act 40 of 1963 to insert paragraph (b)]

(4) The Permanent Secretary may make provision for the instruction of seamen who wish to undergo the examination prescribed for the certificate of qualification of able seaman.

(5) The Minister may appoint examiners for the conduct of the examination referred to in sub-section (4) and remove any examiner so appointed.

(6) The master or owner in whose presence a seaman is engaged in a Namibian ship after the date referred to in subsection (1) shall not enter the seaman as an able seaman on the agreement with the crew unless the seaman produces a certificate of qualification as able seaman issued under this Act or produces other proof that he is the holder of such certificate or proof that in terms of this Act he is deemed to be the holder of such a certificate.

[subsection (6) amended by Act 3 of 1982; not all changes indicated by amendment markings]

Discharge of seamen

113. (1) The master of a Namibian ship shall not discharge a seaman who has signed the agreement with the crew from the ship, except before a proper officer, where the seaman does not consent to his discharge, and in accordance with the provisions of this Act.

(2) Upon the discharge of a seaman the master shall issue to the seaman a certificate of his discharge in the prescribed form.

(3) Upon the discharge of a seaman the master shall return to him any certificate of competency or qualification belonging to him which may have been in the custody of the master.

(4) When a seaman is discharged and the master declines to express an opinion on the conduct, character and ability of the seaman, the discharge shall be made before a proper officer, to whom he shall furnish a report in the prescribed form stating that he so declines, and the proper officer shall, if the seaman so desires, give to him or endorse on his certificate of discharge a copy of such report. The master shall enter in the official log-book his reasons for so declining, and shall, upon the request of the seaman, read out to him, in the presence of the proper officer, the reasons so entered. The proper officer shall, whenever practicable, give the seaman a reasonable opportunity to make a statement upon such report.

(5) The proper officer shall transmit the report, together with the seaman's statement, if any, furnished to him in terms of sub-section (4) to the proper officer at the port where the agreement with the crew was entered into.

[section 113 amended by Act 42 of 1969 and by Act 3 of 1982]

Repatriation of seamen whose service terminates elsewhere than at proper return port

114. (1) When the service of a seaman or apprentice-officer belonging to a Namibian ship terminates without the consent of the said seaman or apprentice-officer at a place other than a proper return port, and before the expiration of the period for which the seaman was engaged or the apprentice-officer was indentured, the master or owner of the ship shall, in addition to any other relative obligation imposed on either of them by this Act, make adequate provision for the maintenance of the seaman or apprentice-officer according to his rank or rating, and for the return of that seaman or apprentice-officer to a proper return port.

(2) If the master or owner fails without reasonable cause to comply with the provisions of sub-section (1), the expenses of maintenance and of the journey to the proper return port shall,

Merchant Shipping Act 57 of 1951 (SA)

if defrayed by the seaman or apprentice-officer, be recoverable as wages due to him, and if defrayed by the proper officer, be regarded as expenses falling within the provisions of sub-sections (4) and (5) of section *one hundred and fifty-four*. Inability to provide the said expenses shall not, for the purposes of this sub-section, be regarded as reasonable cause.

(3) The provisions of this section shall not apply in the case of a seaman who is not a Namibian citizen or a citizen of a "treaty country (other than Namibia) and who was engaged at a port out of Namibia and discharged at a port outside Namibia.

[subsection (3) amended by Act 69 of 1962]

Entries and certificates of desertion outside Namibia

115. (1) In every case of desertion from a Namibian ship at a port outside Namibia, the master shall as soon as possible after the event produce the entry of the desertion in the official log-book to a proper officer, and shall request that officer to make and certify a copy of such entry, and the proper officer shall, in the absence of reasonable cause to the contrary, comply with that request.

(2) The certified copy made in terms of subsection (1) shall be transmitted by the master to the proper officer at the port where the agreement was entered into and shall be admissible in evidence.

[subsection (2) amended by Act 3 of 1982; not all changes indicated by amendment markings]

Discharge of seamen on change of ownership

116. (1) If a Namibian ship is transferred or disposed of while she is at or on a voyage to any port outside Namibia, every seaman or apprentice-officer belonging to that ship shall be discharged at that port, unless he consents in writing in the presence of a proper officer to complete the voyage in the ship if continued.

(2) If a seaman or apprentice-officer is discharged from a Namibian ship in terms of subsection (1), the provisions of section *one hundred and fourteen* shall apply as if the service of the seaman or apprentice-officer had terminated without his consent and before the expiration of the period for which the seaman was engaged or the apprentice-officer was indentured, and, in the case of a seaman, the provisions of the said section shall, notwithstanding sub-section (3) thereof, be applicable whatever may be his nationality and wherever may be situated the port where he was engaged.

(5) Every seaman or apprentice-officer discharged in terms of sub-section (1) shall, if the voyage for which he was engaged is not continued, be entitled to the wages to which he would have been entitled if his service had been wrongfully terminated by the owner before the expiration of the period for which the seaman was engaged or the apprentice-officer was indentured.

Discharge and leaving of seamen behind

117. (1) The master of a Namibian ship shall not -

- (a) discharge a seaman before the expiration of the period for which he was engaged, unless the seaman consents to his discharge; nor

Merchant Shipping Act 57 of 1951 (SA)

- (b) except in circumstances beyond his control, leave a seaman or apprentice-officer behind,

without the authority of the proper officer, who shall certify on the agreement with the crew that he has granted such authority, and also the reason for the seaman's being discharged or the seaman or apprentice-officer's being left behind.

(2) The proper officer to whom application is made for authority in terms of sub-section (1) shall investigate the grounds on which the seaman is to be discharged or the seaman or apprentice-officer left behind and may in his discretion grant or refuse to grant such authority: Provided that he shall not refuse to grant his authority if he is satisfied that the seaman has without reasonable cause -

- (a) failed or refused to join his ship or to proceed to sea therein; or
- (b) been absent from his ship without leave, either at the commencement or during the progress of a voyage for a period of more than forty-eight hours.

(3) The proper officer shall keep a record in the prescribed form of all seamen or apprentice-officers discharged or left behind in Namibia with his authority; and whenever any charge is made against a seaman or apprentice-officer under section *one hundred and seventy-five* or *one hundred and seventy-six* the fact that no such authority is so recorded shall be *prima facie* evidence that it was not granted.

Leaving seamen behind

118. No person shall cause a seaman or apprentice-officer to be wrongfully left behind -

- (a) at any place in Namibia, in the case of a ship other than a Namibian ship;
- (b) at any place whatsoever, in the case of Namibian ship.

Wages and other property of seaman or apprentice-officer left behind

119. (1) If a seaman or apprentice-officer belonging to a Namibian ship is left behind, the master of the ship shall enter in the official log-book a statement of the amount due to the seaman or apprentice-officer in respect of wages at the time when he was left behind and of all property left on board by him, and shall take such property into his charge.

(2) Within forty-eight hours after the arrival of the ship at the port at which the voyage terminates, the master shall deliver to the proper officer -

- (a) a statement of the amount due to the seaman or apprentice-officer in respect of wages, and of all property left on board by him; and
- (b) a statement, with full particulars, of any expenses that may have been caused to the master or owner of the ship by the absence of the seaman or apprentice-officer, where the absence is due to a contravention by the seaman or apprentice-officer of section *one hundred and seventy-five* or *one hundred and seventy-six*,

and if required by the proper officer to do so, shall furnish such vouchers as are reasonably required to verify the statements.

(3) The master shall at the time when he delivers the statements referred to in sub-section (2) to the proper officer also deliver to him the amount due to the seaman or apprentice-officer in

Merchant Shipping Act 57 of 1951 (SA)

respect of wages and the property that was left on board by him, and the proper officer shall give to the master a receipt therefor in the prescribed form.

(4) The master shall be entitled to be reimbursed out of the wages or property referred to in paragraph (a) of subsection (2) such expenses shown in the statement referred to in paragraph (b) of that sub-section as appear to the proper officer to be properly chargeable.

(5) If the master or owner of the ship is not satisfied with any decision of the proper officer under sub-section (4), he may appeal therefrom to the Permanent Secretary, whose decision shall be final.

(6) The seaman or apprentice-officer concerned may within thirty days of his first becoming aware of any such decision of the proper officer under sub-section (4) appeal therefrom to the Permanent Secretary, whose decision in the matter shall be final. The Permanent Secretary may on such appeal direct that any money paid to the master in accordance with the decision of the proper officer shall be paid over by the master or the owner of the ship to the seaman or apprentice-officer, who may recover the amount as wages.

Payment of wages on discharge of a seaman of a Namibian ship

120. When a seaman of a Namibian ship is discharged, he may or if he has a dispute regarding his wages, he shall be paid his wages, or the balance thereof, in the manner directed by the proper officer, and the owner or master of the ship, as the case may be, shall, in the case of a dispute, not pay the wages of the seaman, or the balance thereof, in any other manner.

[section 120 amended by Act 30 of 1959
and substituted by Act 42 of 1969]

Master to deliver account of wages

121. (1) When a seaman of a Namibian ship is discharged, the master or the owner of such ship shall cause to be delivered to such seaman a full and true account of his wages in a form approved by the Permanent Secretary.

[subsection (1) substituted by Act 42 of 1969]

(2)

[subsection (2) deleted by Act 42 of 1969]

(3) A deduction from the wages of a seaman shall not be allowed unless it is included in the account delivered in terms of subsection (1) except in respect of a matter happening after the said delivery.

[subsection (3) substituted by Act 42 of 1969]

(4) The master shall during the voyage enter the various matters in respect of which the deductions are made, with the amount of the respective deductions, as they occur, in a book to be kept for that purpose, and shall, if required, produce the book at the time of the payment of wages, and also upon the hearing before any competent authority of any complaint in question relating to that payment.

[section 121 amended by Act 30 of 1959]

Time of payment of wages for foreign-going ships

Merchant Shipping Act 57 of 1951 (SA)

122. In the case of a foreign-going Namibian ship (other than a ship employed on voyages for which seamen by the terms of their agreement are wholly compensated by a share in the profits of the venture) -

- (a) the owner or master of the ship shall pay to each seaman at the time when he lawfully leaves the ship at the end of his engagement, the sum of 50 rand or one-half of the balance of wages due to him, whichever amount is the lesser, and shall pay to him the remainder of his wages within two days after he so leaves the ship: Provided that if the seaman consents, the settlement of his wages may be left to the proper officer and in that case any relative receipt given by that officer to the owner or master shall operate as if it were a release given by the seaman in accordance with the provisions of this Act;
- (b) if the wages of a seaman or any part thereof are not paid or settled in terms of this section, the said wages shall continue to run and be payable until the time of final payment or settlement thereof, unless the delay in payment or settlement is due to the act or default of the seaman, or to any reasonable dispute as to liability, or to any other cause not being the wrongful act or default of the owner or master.

[section 122 amended by Act 30 of 1959 and by Act 3 of 1982]

Time of payment for coasting ships, and fishing, sealing and shore-based whaling boats

123. (1) When a seaman is discharged from a coasting ship or a fishing, sealing or shore-based whaling boat, registered in Namibia, the owner or master shall pay to that seaman, within two days of his discharge, the balance of wages due to him, and if an owner or master fails without reasonable cause to make such payment he shall pay to the seaman a sum equal to two days' pay for each of the days during which payment is delayed beyond the said period of two days, but the additional sum so payable shall not exceed ten days' double pay.

- (2) A sum payable under this section may be recovered as wages.

[section 123 amended by Act 30 of 1959]

Settlement of wages

124. (1) When settlement of the wages of a seaman of a Namibian ship is required to be and is completed before a proper officer, the said seaman shall sign in the presence of the proper officer a release, in the prescribed form, of all claims in respect of the period of service concerned. The release shall also be signed by the proper officer and shall operate as a mutual discharge and settlement of all relative demands between the parties concerned, but shall not debar a claim under any law relating to workmen's compensation.

[subsection (1) amended by Act 3 of 1982]

(2) The release shall be retained by the proper officer, and shall be admissible in evidence.

(3) Where the settlement of wages is by this Act required to be completed through or in the presence of a proper officer, no payment, receipt or settlement made otherwise shall operate as or be admitted as evidence of the release or satisfaction of any claim in respect of such wages.

(4) Upon any payment being made by a master before a proper officer, the said officer shall on request sign and give to the master a statement of the whole amount so paid, and that

Merchant Shipping Act 57 of 1951 (SA)

statement shall as between the master and his employer be admissible as evidence that the master has made the payments therein mentioned.

(5) A seaman may except from the release signed by him under this section any specified claim or demand against the owner or master of the ship, and a note of any claim or demand so excepted shall be entered upon the release. The release shall not operate as a discharge or settlement of any claim or demand so noted, nor shall subsection (3) of this section apply to any payment, receipt, or settlement made with respect to any such claim or demand.

[section 124 amended by Act 30 of 1959]

Decision by proper officer on question as to wages

125. Whenever a question as to wages is raised between the owner or master of a Namibian ship and a seaman or apprentice-officer, and the parties concerned agree in writing to submit such matter for adjudication to a proper officer, he may hear and decide the question so submitted, and his decision shall be final.

[section 125 amended by Act 3 of 1982]

Payment of seamen in currency other than that mentioned in agreement

126. If a seaman has agreed with the master of a Namibian ship for payment of his wages in Namibian or any other currency, payment of or on account of such wages, if made in any other currency than that stated in the agreement, shall be made at the rate of exchange in force at the time when and at the place where the payment is made.

[section 126 amended by Act 30 of 1959 and by Act 40 of 1963]

Disrating of seaman

127. (1) Whenever the master of a Namibian ship disrates a seaman he shall forthwith enter or cause to be entered in the official log-book a statement of the disrating and furnish the seaman with a copy of the entry, and any reduction of wages consequent on the disrating shall not take effect until the entry has been so made and the copy so furnished.

(2) Any reduction of wages consequent on the disrating of a seaman shall be deemed to be a deduction from wages within the meaning of section *one hundred, and twenty-one*.

Master to give facilities to seaman for remitting wages

128. If the balance of wages earned by but not yet payable to a seaman of a Namibian ship is more than 50 rand and the seaman expresses to the master of the ship his desire to have facilities afforded to him for remitting all or any part of the balance to a savings bank, or to a near relative in whose favour an allotment note may be made, the master shall give to the seaman all reasonable facilities for so doing so far as regards so much of the balance as is in excess of 50 rand, but shall be under no obligation to give those facilities while the ship is in port if the sum will become payable before the ship leaves port, or otherwise than conditionally upon the seaman going to sea in the ship.

[section 128 amended by Act 3 of 1982]

Advance of more than one month's wages prohibited

Merchant Shipping Act 57 of 1951 (SA)

129. (1) The owner or master of a Namibian ship shall not pay or agree to pay in advance to or on account of any seaman in respect of wages an amount in excess of one month's wages.

(2) Any agreement for the payment in advance of wages to or on account of any seaman in contravention of sub-section (1) shall be void, and any money paid in pursuance of any such agreement shall not be deducted from the seaman's wages, and no person shall have any right of action or set-off against the seaman or his assignee in respect of any money so paid.

Allotment notes

130. (1) Subject to the provisions of subsection (2), a seaman engaged on a Namibian ship may before the commencement of a voyage make stipulations for the payment during his absence by means of an allotment note to a near relative or a savings bank or a body engaged in the promotion of the welfare of seamen and registered under the National Welfare Act, 1965 (Act No. 79 of 1965), of any portion of the wages which he may earn during the voyage.

[subsection (1) amended by Act 3 of 1982; not all changes indicated by amendment markings]

(2) Except by agreement with the master an allotment note shall not provide for payment of a greater sum than three-fourths of the seaman's wages.

(3) The stipulations shall be inserted in the agreement with the crew, and shall state the amounts and times of the payments to be made and the names of the persons to whom they are to be made.

(4) All allotment notes shall be in the prescribed form, and shall be signed by the master or owner of the ship or his authorized agent and the seaman.

(5) The master, owner or authorized agent of the owner before whom a seaman is engaged shall, after the seaman has signed the agreement, enquire of the seaman whether he requires a stipulation for the allotment of part of his wages by means of an allotment note. If the seaman requires such stipulation, the master, owner or authorized agent of the owner shall insert it in the agreement with the crew, and every such stipulation shall be deemed to have been agreed to by the parties thereto.

[subsection (5) amended by Act 3 of 1982]

Right of suing on allotment notes

131. (1) The person in whose favour an allotment note under this Act has been made may, unless the seaman has forfeited or ceased to be entitled to the wages out of which the allotment is to be paid, recover the sums allotted when and as the same are made payable, with costs, from the owner of the ship in respect of which the seaman was engaged or from any agent of the owner who has authorized the allotment, and the provisions of section *one hundred and thirty-six* shall, *mutatis mutandis*, apply to any proceedings for such recovery: Provided that the wife of a seaman, if she deserts her children or so misconducts herself as to be undeserving of support from her husband shall forfeit all rights to further payments under any allotment made in her favour.

(2) In any proceedings mentioned in sub-section (1) it shall be sufficient for the claimant to prove that he is the person mentioned in the allotment note and that the note was given by the owner or by the master or the authorized agent of the owner or master, and the seaman shall be presumed to be duly earning his wages unless the contrary is shown to the satisfaction of the court

Merchant Shipping Act 57 of 1951 (SA)

- (a) in the case of a seaman serving on a foreign-going ship, by the official statement of the change in the crew caused by the seaman's absence, made and signed by the master in terms of section *one hundred and four*; or
- (b) by a certified copy of some entry in the official logbook, or by a letter from the master, to the effect that the seaman has left the ship; or
- (c) by such other evidence as the court in its discretion considers sufficient to show that the seaman has ceased to be entitled to the wages out of which the allotment is to be paid.

Time of payment of an allotment note

132. (1) Subject to the provisions of sub-section (2), payment under an allotment note under this Act shall -

- (a) begin at the expiration of one month from the date on which the seaman was engaged;
- (b) be made at the expiration of every subsequent month after the first month; and
- (c) be made only in respect of wages earned before the date of payment.

(2) By agreement with the master or owner or the authorized agent of the master or owner of a Namibian ship an allotment note may be granted to a seaman providing for payment at a time earlier than one month from the date of his engagement and at intervals more frequent than one month.

Rights to wages and provisions and when such are to commence

133. The rights of a seaman or apprentice-officer of a Namibian ship to wages and provisions shall be deemed to begin either at the time at which he commences work or at the time specified in the agreement or articles of indenture, as the case may be, for his commencement of work or presence on board, whichever first happens.

Agreement to forfeit lien for wages is void

134. (1) A seaman of a Namibian ship shall not by agreement forfeit his or her lien on the ship for his or her wages, or be deprived of any remedy for the recovery of wages to which in the absence of the agreement he or she would be entitled, or abandon his or her right to wages in the case of the loss of the ship, and every stipulation in any agreement with the crew inconsistent with the provisions of this section shall be void.

[subsection (1) substituted by Act 5 of 2004]

(2)

[subsection (2) deleted by Act 5 of 2004]

Restrictions on assignment of wages

135. (1) The following provisions shall apply to wages due or to become due to a seaman or apprentice-officer of a Namibian ship:

Merchant Shipping Act 57 of 1951 (SA)

- (a) Such wages shall not be liable to attachment or subjected to any form of execution under a judgment or order of any court;
- (b) an assignment or hypothecation thereof shall not bind the person making the same;
- (c) a power of attorney or authority for the receipt thereof shall not be irrevocable; and
- (d) payment of wages to a seaman or apprentice-officer shall be valid in law, notwithstanding any previous assignment or hypothecation of those wages, or any attachment of or execution upon those wages.

(2) Nothing in this section shall affect the provisions of this Act regarding allotment notes or those of section 326 of this Act or those of sections 91 and 92 of the Income Tax Act, 1981 (Act No. 24 of 1981).

[section 135 amended by Act 7 of 1991 and substituted by Act 5 of 2004]

Proceedings for wages

136. (1) A seaman or apprentice-officer, or a person duly authorized by him, may as soon as wages due to him by reason of his engagement in a Namibian ship become payable sue for the same before any magistrate's court within whose area of jurisdiction the place at which his service has been terminated is situated, or which by reason of any other fact has jurisdiction in the matter; and no appeal shall lie from any judgment given or order made by the court in the matter.

(2) Nothing in sub-section (1) contained shall increase the jurisdiction of any magistrate's court as regards the amount which may be claimed in any proceeding tried by the court.

Wages not recoverable abroad except in certain cases

137. If a seaman is engaged in a Namibian ship for a voyage or period of service which is to terminate in Namibia he shall not be entitled to sue in any court outside Namibia for wages, unless he has been discharged, or proves such ill-usage on the part of or by the authority of the master as to warrant reasonable apprehension of danger to his life or health if he were to remain on board.

Wages not to depend on freight

138. The right to wages shall not depend on the earning of freight, and every seaman and apprentice-officer of a Namibian ship who would be entitled to demand and recover wages if the ship in which he has served had earned freight shall, subject to all other laws and conditions applicable to the case, be entitled to recover the same notwithstanding that freight has not been earned.

Wages not claimable by seaman or apprentice-officer who fails to exert himself to save ship

139. (1) If it is proved that a seaman or apprentice-officer of a Namibian ship whose ship has been wrecked or actually or constructively lost has not made every reasonable effort to save the ship, cargo and stores, he shall not be entitled to claim any wages that would otherwise be due to him.

(2) In sub-section (1) the expression "constructively lost" has the meaning assigned to it in sub-section (4) of section *twenty-nine*.

Merchant Shipping Act 57 of 1951 (SA)

Wages on termination of services by illness or injury of seaman or wreck or loss of ship

140. (1) If the service of a seaman of a Namibian ship is terminated, before the date contemplated in the agreement, by reason of -

- (a) the wreck, loss, abandonment, flooding, stranding, fire on board or collision of the ship; or
- (b) his being left behind at a place other than a proper return port owing to his incapacity to perform his duty because of illness, hurt or injury, unless it be proved that his illness, hurt or injury was caused by his own wilful act or default or his own misbehaviour, or unless he has unreasonably refused to undergo medical or surgical treatment for such illness, hurt or injury involving no appreciable risk to his life,

he shall be entitled to receive wages at the rate provided in the agreement for the period from the date his services are so terminated until he is returned to and arrives at a proper return port: Provided that the period for which he shall be entitled to receive wages shall not exceed ninety days, nor be less than sixty days or the period from the date his services so terminated until the date contemplated in the agreement, whichever is the shorter period.

[subsection (1) amended by Act 30 of 1959 and by Act 3 of 1981]

(2) Notwithstanding the proviso to sub-section (1), a seaman shall not be entitled to receive wages under that sub-section in respect of any particular day if it be proved that he was able to obtain employment on that day in work which he was able to do and which was suitable, having regard to his rank or rating.

(3) If by reason of the wreck, loss, abandonment, flooding, stranding, fire on board or collision of a ship on which a seaman is employed he sustains the loss of any or all of his property, he shall be entitled, in accordance with the regulations, to compensation from the owner of the ship for such loss.

[subsection (3) amended by Act 3 of 1981]

(4) A seaman shall not be entitled to receive compensation under sub-section (3) if it be proved that the loss of his property was not due to the wreck, loss, abandonment, flooding, stranding, fire on board or collision of the ship.

[subsection (4) amended by Act 3 of 1981]

(5) Nothing in this section shall deprive any seaman of any compensation to which he may be entitled in terms of the Workmen's Compensation Act, 1941 (Act No. 30 of 1941), -

- (a) for temporary partial disablement or temporary total disablement in respect of any period for which he shall not been paid wages in terms of this section; or
- (b) for permanent disablement.

[Subsection (5) is amended by Act 30 of 1959. The Workmen's Compensation Act 30 of 1941 was renamed the "Employees' Compensation Act" in 1995.]

(6) A seaman shall not be entitled to receive any compensation under the Workmen's Compensation Act, 1941, for temporary partial disablement or temporary total disablement in respect of any period for which he has been paid wages in terms of this section; but his employer who has paid such wages to him for that period shall, if he has paid all assessments for the payment

Merchant Shipping Act 57 of 1951 (SA)

of which he is liable under that Act, be entitled to recover from the accident fund established under that Act an amount equal to the compensation that would, but for the provisions of this section, have been payable to the seaman under that Act in respect of that period.

[subsection (6) amended by Act 30 of 1959]

(7) In this section the expression “seaman” includes every person employed or engaged in any capacity on board any ship, but in the case of a ship which is a fishing boat, does not include any person who is entitled to be remunerated only by a share in the profits or the gross earnings of the working of the boat.

Wages not to accrue during refusal to work or imprisonment or illness caused by own default or drunkenness

141. (1) A seaman or apprentice-officer of a Namibian ship shall not be entitled to wages -

- (a) for any period during which he is absent without leave from his ship or from his duty; or
- (b) for any period during which he unlawfully refuses or neglects to work when required; or
- (c) unless the court hearing the case otherwise directs, for any period during which he is lawfully imprisoned; or
- (d) for any period during which he is by reason of his being under the influence of liquor or a drug, incapable of performing his duty.

(2) A seaman or apprentice-officer shall not be disentitled to claim wages for any period during which he has not performed his duty if he proves that he was incapable of doing so by reason of illness, hurt or injury, unless it be proved that -

- (a) his illness, hurt or injury was caused by his own wilful act or default or his own misbehaviour; or
- (b) his illness was contracted or his hurt or injury was sustained at a proper return port and was not attributable to his employment; or
- (c) he has unreasonably refused to undergo medical or surgical treatment for his illness, hurt or injury involving no appreciable risk to his life.

(3) This section shall be construed as though sub-sections (5) and (6) of section *one hundred and forty* were included in this section; and in such construction any reference in the said subsections to the payment of wages in terms of section *one hundred and forty* shall be deemed to be a reference to the payment of wages in terms of this section.

[subsection (3) amended by Act 30 of 1959]**Compensation to a seaman improperly discharged**

142. If a seaman of a Namibian ship is discharged otherwise than in accordance with the terms of his engagement -

- (a) before the commencement of the voyage; or

Merchant Shipping Act 57 of 1951 (SA)

- (b) before one month's wages are earned,

without fault on his part justifying that discharge and without his consent, he shall be entitled to receive from the owner or master, in addition to any wages which he may have earned, compensation not exceeding one month's wages for any damage caused to him by the discharge, and may recover that compensation as if it were wages duly earned.

Remedies of master for recovery of wages, disbursements, etc.

143. (1) The master of a Namibian ship shall, so far as the case permits, have the same rights, liens and remedies for the recovery of his wages as a seaman has under this Act or by any law or custom.

(2) The master of a Namibian ship shall, so far as the case permits, have the same rights, liens and remedies for the recovery of disbursements or liabilities properly made or incurred by him on account of the ship as a master has for the recovery of his wages.

(3) If in any proceedings in any court touching the claim of a master in respect of wages or of disbursements or liabilities properly made or incurred on account of the ship any right of set-off or counter-claim is set up, the court may enter into and adjudicate upon all questions and settle all accounts then arising or outstanding and may direct payment of any balance found to be due.

Unreasonable delay in paying master's wages

144. If payment of the sum due to the master of a Namibian ship on account of wages has been delayed, the court trying any proceedings for the recovery of such wages may order the person liable to make the payment of wages to pay to the master, in addition to any sum due on account of wages, such sum as it thinks just as damages in respect of the delay, unless the court finds that the delay is due to the act or default of the master, or to any reasonable dispute as to liability, or to any other cause not being the wrongful act or default of the person liable to make the payment.

Power of court to rescind contract between owner or master and seaman or apprentice-officer

145. When any proceedings are instituted in any court of competent jurisdiction in relation to any dispute between an owner or master of a Namibian ship and a seaman or apprentice-officer, arising out of or incidental to their relation as such, the court may in its discretion rescind any contract between the owner or master and the seaman or apprentice-officer, or any contract of apprenticeship, upon such terms as the court may think just, and this power shall be in addition to any other jurisdiction which the court may have.

Master to take care and make record of property of seaman who dies

146. (1) If a seaman or apprentice-officer of a Namibian ship dies, the master of the ship shall take charge of all money and other property on board the ship belonging to the said seaman or apprentice-officer.

- (2) The master shall enter in the official log-book the following particulars:
- (a) a statement of the amount of the money and a detailed description of the other property; and

Merchant Shipping Act 57 of 1951 (SA)

- (b) a statement of the sum due to the deceased for wages and of the amount of any deductions to be made from the wages.

(3) The said money, balance of wages and other property are in this Chapter referred to as the property of the seaman or apprentice-officer.

Delivery to proper officer of property of seaman who dies

147. (1) If a seaman or apprentice-officer of a Namibian ship dies during a voyage, the master of the ship shall within forty-eight hours after arrival at the ship's next port of call where there is a proper officer report all the circumstances of the death to that officer, and shall within the same period deliver the property of the deceased seaman or apprentice-officer to the proper officer, unless that officer directs that such delivery be made to the proper officer at some other port, in which case the master shall act accordingly.

(2) If a seaman or apprentice-officer of a Namibian ship dies in Namibia, the master or owner of the ship shall deliver the property of the deceased seaman or apprentice-officer to the proper officer at the port where the seaman or apprentice-officer was discharged or was to have been discharged.

(3) The master of the ship shall, as soon as is practicable, report the death to the next-of-kin of the seaman or apprentice-officer.

Account to be rendered of property of seaman who dies

148. (1) In all cases where a seaman or apprentice-officer of a Namibian ship dies during a voyage or engagement, the master shall give to the proper officer to whom the property of the deceased is delivered an account of such property, in such form as that officer may require.

(2) No deductions claimed by the master shall be allowed unless verified by such vouchers as may reasonably be required by the proper officer and, if an official log-book is required to be kept, by an entry in that book made and attested as required by this Act.

(3) When a master has complied with the provisions of this section the proper officer shall grant him a certificate to that effect.

Property of deceased seaman left abroad but not on board ship

149. If a seaman or apprentice-officer of a Namibian ship, the voyage of which is to terminate in Namibia, dies at any place out of Namibia, leaving any money or other property not on board the ship to which he belonged at the time of his death, the proper officer at or near that place shall claim and take charge of such money and other property, and such money and other property shall be deemed to be the property of a deceased seaman or apprentice-officer within the meaning of this Chapter.

Sale of property of deceased seaman

150. (1) Subject to the provisions of sub-section (2), the proper officer may, if he thinks fit, sell any of the property of a deceased seaman or apprentice-officer delivered to him, or of which he takes charge under this Chapter, and the proceeds of any such sale shall be deemed to form part of the said property.

(2) Before selling any valuables comprised in such property the proper officer shall endeavour to ascertain the reasonable wishes of the next-of-kin of the deceased seaman or

Merchant Shipping Act 57 of 1951 (SA)

apprentice-officer as to the disposal of such valuables. He shall, if practicable and lawful, comply with such wishes.

(3) Every such officer shall remit the property or proceeds so acquired to the Permanent Secretary, and shall render such accounts in respect thereof as may be prescribed or may be required by the Permanent Secretary.

Property of deceased seaman may be recovered as wages

151. The provisions of section *one hundred and thirty-six* shall apply, *mutatis mutandis*, in respect of the property of a deceased seaman or apprentice-officer.

Transmission by Permanent Secretary of property of deceased seaman

152. If any property of a deceased seaman or apprentice-officer who at the date of such seaman's or apprentice-officer's death was ordinarily resident in Namibia, comes into the hands of the Permanent Secretary, the Permanent Secretary shall, after deducting for expenses incurred in respect of that seaman or apprentice-officer or of such seaman's or apprentice-officer's property such sum as the Permanent Secretary thinks proper to allow, transmit the residue to the Master referred to in section 1 of the Administration of Estates Act, 1965 (Act 66 of 1965), and the Master shall take such steps as may be necessary to ensure that such residue shall be dealt with in the manner provided by law.

[section 152 amended by Act 40 of 1963 and by AG 3 of 1979, and substituted by Act 7 of 1991]

Recovery of wages of seaman lost with his ship

153. (1) If a seaman or apprentice-officer of a Namibian ship is lost with the ship to which he belongs the proper officer may recover the wages due to him from the owner of the ship.

(2) The provisions of sections *one hundred and thirty-six* and *one hundred and fifty-two* shall apply, *mutatis mutandis*, in respect of wages referred to in sub-section (1).

(3) If in any proceedings under sub-section (1) for the recovery of wages it is shown by the official records or by other evidence that the ship departed from a port twelve months or more before the institution of the proceedings and has not since been heard of, that ship shall be deemed to have been lost with all hands on board, either immediately after the latest time at which she is known to have been still in existence or at such later time as the court hearing the case may think probable.

(4) Any duplicate agreement with the crew delivered to a proper officer in terms of paragraph (c) of section 103 or any statement of a change of the crew transmitted to a proper officer in terms of section 104 at the time of the departure of the ship from the port last visited, and any certificate purporting to be a certificate issued in terms of section 105(1), stating that certain seamen and apprentice-officers joined the ship at the said port shall, if produced by the Permanent Secretary or any person thereto authorized by him, be taken in the absence of proof to the contrary as sufficient proof that the seamen and apprentice-officers therein named as belonging to the ship were on board at the time of the loss.

[subsection (4) amended by Act 3 of 1982]

Relief and maintenance of distressed seaman

154. (1) In this section and in section *one hundred and fifty-five* -

Merchant Shipping Act 57 of 1951 (SA)

- (a) “distressed seaman” includes any master, seaman or apprentice-officer -
- (i) who is a Namibian citizen and who by reason of having been discharged or left behind from or shipwrecked in any ship other than a Namibian ship at a place outside Namibia, is in distress at that place; or
 - (ii) whether he is a Namibian citizen or not, who, by reason of having been discharged or left behind from or shipwrecked in any Namibian ship at a place outside Namibia, is in distress at that place;
- (b) “repatriation expenses” means expenses incurred in returning a distressed seaman to a proper return port and in providing him with necessary clothing and maintenance until his arrival at such port and includes, in the case of a shipwrecked seaman, the repayment of expenses incurred in conveying him to port after shipwreck and maintaining him while being so conveyed; and
- (c) “excepted expenses” means repatriation expenses incurred in cases where the cause of the seaman’s being left behind is desertion or absence without leave or imprisonment for misconduct or discharge from his ship by a maritime court on the ground of misconduct.

(2) The proper officer shall on application being made to him by a distressed seaman, provide in terms of the regulations for the return of that seaman to a proper return port, and also for the said seaman’s necessary clothing and maintenance until his arrival at such port.

(3) A distressed seaman shall not have any right to be maintained or sent to a proper return port except to the extent and on the conditions provided for in the regulations.

(4) All repatriation expenses, other than excepted expenses, incurred by or on behalf of the State in accordance with the provisions of this Act shall constitute a debt due to the State for which the owner of the ship to which the seaman in respect of whom they were incurred belonged at the time of his discharge or other event which resulted in his becoming a distressed seaman shall be liable. The owner shall not be entitled to recover from the seaman any amount paid by him to the State in settlement or part settlement of such debt.

(5) All excepted expenses incurred by or on behalf of the State in accordance with the provisions of this Act shall constitute a debt due to the State for which the seaman in respect of whom they were incurred and the owner of the ship to which that seaman belonged at the time of his discharge or other event which resulted in his becoming a distressed seaman shall be jointly and severally liable. The owner shall be entitled to recover from the seaman any amount paid by him to the State in settlement or part settlement of such debt, and may apply to the satisfaction of his claim so much as may be necessary of any wages due to the seaman.

(6) All excepted expenses incurred in accordance with the provisions of this Act in respect of any distressed seaman by the owner of the ship to which he belonged at the time of his discharge or other event which resulted in his becoming a distressed seaman shall constitute a debt due to the owner for which the seaman shall be liable. The owner may apply to the satisfaction of his claim so much as may be necessary of any wages due to the seaman. The owner shall not be entitled to recover from the seaman any repatriation expenses other than excepted expenses.

(7) In any proceedings for the recovery of any expenses which in terms of sub-section (4) or (5) are a debt due to the State the production of an account of the expenses and proof of payment thereof by or on behalf of or under the direction of the Minister shall be *prima facie*

Merchant Shipping Act 57 of 1951 (SA)

evidence that the expenses were incurred or repaid in accordance with the provisions of this Act by or on behalf of the State.

Receiving distressed seamen on ships

155. (1) The master of a Namibian ship shall receive on board his ship and afford passage and maintenance to all distressed seamen whom he is required by a proper officer to take on board his ship, and shall during the passage provide every such distressed seaman with accommodation equal to that normally provided for the crew of the ship and subsistence, proper to the rank or rating of the said distressed seaman:

(2) Every distressed seaman who is taken on board a ship in accordance with the provisions of sub-section (1) shall as long as he remains in the ship be deemed to belong to the ship and be subject to the same laws and regulations for preserving discipline as if he were a member of the crew and had signed the agreement with the crew.

(3) The master of a ship shall not be required to receive on board his ship a distressed seaman in terms of this section, if the proper officer is satisfied that accommodation is not and cannot be made available for such seaman.

Provisions of seamen

156. (1) The master of a Namibian ship of more than one hundred gross register tons shall furnish provisions to every seaman and apprentice-officer (who does not furnish his own provisions) in accordance with the prescribed scale.

(2) The provisions of sub-section (1) shall not apply to non-white seamen not accustomed to the dietary of white persons, if in the agreement with the crew an adequate scale of provisions suited to their needs and approved by the proper officer has been provided for them.

[subsection (2) amended by Act 40 of 1963]

Measuring instruments on board

157. The master of a Namibian ship shall keep on board proper measuring instruments for determining the quantities of the several provisions and articles served out, and in the event of any dispute as to the quantities served out, shall cause the quantities to be measured in the presence of a witness by using such measuring instruments.

[section 157 substituted by Act 5 of 1976]

Refrigerating chamber

158. (1) Subject to the provisions of sub-sections (2) and (3), the owner of every foreign-going Namibian ship shall cause her to be provided with a mechanically cooled refrigerating chamber of such capacity and design as to be capable of preserving in good condition fresh meat and other similar perishable foods prescribed for the consumption of the seamen and apprentice-officers between the principal ports of supply on the projected voyage of the ship.

(2) If the Minister is satisfied -

(a) from a report of a surveyor that in the case of a ship built before the coming into operation of this section the provision of a refrigerating chamber is impracticable; or

Merchant Shipping Act 57 of 1951 (SA)

- (b) in the case of a ship built before or after the coming into operation of this section, the purpose of this section will, by reason of the small tonnage of the ship or the nature or conditions of the projected voyage of the ship, be secured by the provision of a refrigerator instead of a refrigerating chamber,

he may direct that a refrigerator of a capacity and design approved by him be provided instead of a refrigerating chamber.

(3) If the Minister is satisfied that because of the nature and conditions of the projected voyage of the ship the provision of a refrigerating chamber or a refrigerator would be unreasonable or unnecessary, he may exempt the ship from the provisions of this section.

(4) If a proper officer or surveyor finds on inspecting any foreign-going Namibian ship which has not been exempted under sub-section (3), that the provisions of sub-section (1) or any direction given in respect of that ship under sub-section (2), as the case may be, is not being complied with, he may cause the ship to be detained until the sub-section or the direction, as the case may be, is complied with.

Certificated cooks

159. (1) The owner or master of every Namibian ship going to sea from any port whatsoever, of not less than five hundred gross register tons, shall provide the ship with a cook, who is the holder of -

- (i) a certificate of qualification prescribed by the regulations; or
- (ii) a certificate of qualification in cooking granted by a school of cooking or an institution approved by the Minister; or
- (iii) certificates of discharge showing that he had at least two years' sea service as cook prior to a prescribed date,

or who in terms of section *three hundred and fifty-four* is deemed to be the holder of any such certificate: Provided that if the proper officer is satisfied that a suitable cook so certificated is not available at a reasonable rate of pay, he may in his discretion permit the engagement as cook in any such ship of a person who is not so certificated.

[The paragraphs in this subsection are labelled with Roman numerals rather than letters, unlike similar paragraphs in most of the rest of the Act.]

(2) A ship's cook shall be entered as such on the agreement with the crew, or, in the case of a ship of not more than two thousand gross registered tons or a ship in which the crew, or the majority of the crew, provide their own provisions, either as cook or as cook and steward. A person who is rated as cook and steward in accordance with the provisions of this sub-section shall not be required to possess the qualifications that may be prescribed for ships' stewards.

Bedding and other articles for seamen

160. The master of a Namibian ship of more than one hundred gross register tons shall supply every seaman and apprentice-officer with such bedding, towels, mess utensils and other articles for personal use as may be prescribed.

Crew accommodation

Merchant Shipping Act 57 of 1951 (SA)

161. (1) The owner of a Namibian ship shall provide crew accommodation to the satisfaction of the proper officer, and in accordance with the regulations.

(2)

[subsection (2) amended by Act 40 of 1963 and deleted by Act 7 of 1991]

(3) The master of a Namibian ship shall ensure that the crew accommodation shall be kept free from goods and stores of any kind (except stores and furniture and other equipment necessary for the proper use of such accommodation) not being the personal property of a seaman or apprentice-officer in use during the voyage, and if any part of such accommodation is not so kept free, each seaman or apprentice-officer lodged in that part may recover, by way of compensation for the discomfort suffered by him by reason of the fact that such accommodation was not so kept free after complaint had been made to the master by any two or more of the said seamen or apprentice-officers, an amount which the court or the proper officer, as the case may be, considers reasonable, having regard to all the circumstances.

(4) Any amount recoverable in terms of sub-section (3) may be recovered as wages.

Complaints as to provisions or water or accommodation

162. (1) If three or more seamen or apprentice-officers of a Namibian ship consider -

- (a) that the provisions or water for the use of the seamen or apprentice-officers are at any time of bad quality or deficient in quantity; or
- (b) that the crew accommodation is unsanitary or is not in accordance with the regulations; or
- (c) that in any other respect the conditions under which the seamen or apprentice-officers are living on board ship are not of a reasonably good standard,

they may complain thereof to the proper officer, who shall investigate the complaint or cause it to be investigated.

(2) If the proper officer or person making the investigation finds -

- (a) that the provisions or water are of bad quality, or deficient in quantity; or
- (b) that the crew accommodation is unsanitary or is not in accordance with the regulations; or
- (c) that the living conditions are not of a reasonably good standard,

as the case may be, he shall communicate that finding in writing to the master.

(3) Upon the finding being communicated to him, the master shall forthwith -

- (a) if the finding is in terms of paragraph (a) of sub-section (2), provide other provisions or water of good quality or sufficient in quantity, as the case may be, and shall not permit any provisions or water so found to be of bad quality to be used on board the ship; or

Merchant Shipping Act 57 of 1951 (SA)

- (b) if the finding is in terms of paragraph (b) of sub-section (2), take steps to the satisfaction of the proper officer to provide crew accommodation that is sanitary and in accordance with the regulations; or
- (c) if the finding is in terms of paragraph (o) of sub-section (2), take steps to the satisfaction of the proper officer to ensure that the living conditions of the seamen and apprentice-officers are of a reasonably good standard;

and the ship shall be detained until this has been done.

(4) The officer making or causing the investigation shall enter a statement of the result of the examination in the official log-book, and send a report thereof to the Permanent Secretary, and that report shall be admissible in evidence.

(5) If the said officer certifies in that statement that there was no reasonable ground for the complaint, each of the complainants shall, if so directed by the officer in the certificate, forfeit to the owner out of his wages a sum to be determined by the proper officer, but not exceeding one week's wages.

Powers of inspection of provisions, water and accommodation

163. (1) A port health officer, district surgeon or other medical officer of the Ministry of Health and Social Services in Namibia, or any medical practitioner outside Namibia, or a surveyor may at the request of the proper officer board any Namibian ship and inspect the provisions and water provided for the use of the seamen, apprentice-officers or passengers and the crew accommodation and the accommodation for passengers, for the purpose of ascertaining whether the same are in accordance with the requirements of this Act or any other law.

(2) The provisions of sub-sections (2), (3) and (4) of section *one hundred and sixty-two* shall apply, *mutatis mutandis*, in respect of any investigation under this section.

(3) The provisions of this section shall not in any way derogate from or modify the powers and duties of a port health officer under the provisions of the Public Health Act, 1919 (Act No. 36 of 1919).

[The Public Health Act 36 of 1919 was repealed
by the Public and Environmental Health Act 1 of 2015.]

Inspection of provisions, water and accommodation at sea

164. The master of a Namibian ship which is at sea shall, at least once in every ten days, cause an inspection to be made of the provisions and water provided for the use of the seamen, apprentice-officers and passengers and the crew accommodation and the accommodation for passengers, for the purpose of ascertaining whether the same are being maintained in accordance with the requirements of this Act and all other laws. The person making the inspection shall enter a statement of the result of the inspection in the official log-book.

[section 164 amended by Act 30 of 1959]

Compensation if short or bad provisions furnished

165. (1) If the allowance of any of the provisions which the master of a Namibian ship is by section *one hundred and fifty-six* required to furnish is reduced, or any of those provisions are bad in quality, the seaman or apprentice-officer may recover by way of compensation for that

Merchant Shipping Act 57 of 1951 (SA)

reduction or bad quality an amount which the court or the proper officer, as the case may be, considers reasonable, having regard to all the circumstances.

(2) Any amount recoverable in terms of sub-section (1) may be recovered as wages.

Provision of board and lodging elsewhere than on board ship

166. Whenever the master or a seaman or apprentice-officer of a Namibian ship who is entitled to be provided with accommodation or provisions, cannot, by reason of the fact that the ship is being fumigated, or for any other reason not due to his own wilful act or default or to his own misbehaviour, be provided with accommodation or provisions on board the ship, he shall be provided elsewhere at the expense of the owner of the ship with accommodation or food, as the case may be, proper to his rank or rating.

Medicines to be provided and kept on board certain ships

167. The owner and master of a Namibian ship of any prescribed class shall ensure that there is on board that ship an adequate supply, according to the prescribed scales, of antiscorbutics and medicines and appliances for the treatment and prevention of diseases and accidents likely to occur at sea and of the prescribed first-aid equipment.

[section 167 substituted by Act 24 of 1974]

Inspection of medicines and medical appliances

168. (1) A port health officer, district surgeon or other medical officer of the Ministry of Health and Social Services in Namibia, or any medical practitioner outside Namibia, may at the request of the proper officer board any Namibian ship and inspect the medicines, medical appliances and first-aid equipment carried, for the purpose of ascertaining whether the same are in accordance with the requirements of this Act or any other law.

(2) The provisions of sub-sections (2), (3) and (4) of section *one hundred and sixty-two* shall apply, *mutatis mutandis*, in respect of any investigation under this section.

(3) The provisions of this section shall not in any way derogate from or modify the powers and duties of a port health officer under the provisions of the Public Health Act, 1919 (Act No. 36 of 1919).

[The Public Health Act 36 of 1919 was repealed
by the Public and Environmental Health Act 1 of 2015.]

Expenses of medical attendance in cases of injury or illness

169. (1) If the master or a seaman or apprentice-officer of a Namibian ship receives any hurt or injury or suffers from any illness (not being a hurt, injury or illness due to his own wilful act or default or to his own misbehaviour), resulting in his being discharged or left behind at a place other than his proper return port, the expense of providing the necessary medical advice, attendance and treatment and medicine, and also the expenses of the maintenance of the said master, seaman or apprentice-officer in a manner appropriate to his rank or rating, until he is cured or dies or is returned to and arrives at a proper return port, and of his conveyance to that port, and in case of death the expense of his burial, shall be defrayed by the owner of the ship, without any relative deduction from the wages of the master, seaman or apprentice-officer concerned.

(2) If the master or seaman or apprentice-officer is on account of any illness or injury temporarily removed from his ship, at a port other than his proper return port, for the purpose of

Merchant Shipping Act 57 of 1951 (SA)

preventing infection, or otherwise for the convenience of the ship, and subsequently returns to his duty, the expenses of removal, medical attendance and treatment, and of maintenance while the master, seaman or apprentice-officer is away from the ship, shall be defrayed in like manner.

(3) The expenses of all medical attendance and treatment given to a master, seaman or apprentice-officer whilst on board his ship shall be defrayed in like manner.

(4) In all other cases any reasonable expenses duly incurred by the owner for any master, seaman, or apprentice-officer in respect of illness, and also any reasonable expenses duly incurred by the owner in respect of the burial of any master, seaman or apprentice-officer who dies whilst on service, shall, if proved to the satisfaction of the proper officer, be deducted from the salary or wages of the master, seaman or apprentice-officer.

(5) Nothing contained in this section shall deprive any person of any benefit to which he may be entitled under Chapter VIII of the Workmen's Compensation Act, 1941 (Act No. 30 of 1941), and to which this section does not entitle him.

**[The Workmen's Compensation Act 30 of 1941 was
renamed the "Employees' Compensation Act" in 1995.]**

(6) A seaman shall not be entitled to receive the same benefit under this section and also under the Workmen's Compensation Act, 1941; but his employer who has incurred any expense under this section which the Workmen's Compensation Commissioner would, but for the provisions of this section, have been liable to defray, shall, if he has paid all assessments for the payment of which he is liable under that Act, be entitled to recover that expense from the Workmen's Compensation Commissioner.

(7) In this section the expression "seaman" includes every person employed or engaged in any capacity on board any ship, but in the case of a ship which is a fishing boat, does not include any person who is entitled to be remunerated only by a share in the profits or the gross earnings of the working of the boat.

Recovery of expenses from owner

170. If any expenses payable by the master or owner of a Namibian ship in respect of illness, hurt or injury of the master or of a seaman or apprentice-officer of that ship are paid by any other person, those expenses shall be repaid to that person by the said master or owner, and if not so repaid shall constitute a debt recoverable in any competent court from the master or owner by whom they are payable.

Facilities for making complaints

171. (1) If a seaman or apprentice-officer whilst on board a Namibian ship states to the master of the ship his desire to make a complaint to a proper officer against the master or any of the crew or concerning the unseaworthiness of the ship, the master shall -

- (a) if the ship is then at a place where there is a proper officer, as soon after such statement as the service of the ship will permit; or
- (b) if the ship is not then at such a place, as soon after her first arrival at such place as the service of the ship will permit,

allow the complainant to go ashore or, if he is in custody, send him ashore in proper custody, so that he may make his complaint.

Merchant Shipping Act 57 of 1951 (SA)

(2) This section shall not apply in respect of a seaman or apprentice-officer on board a vessel belonging to Transnamib Limited and used by it in connection with the working of its harbours.

Seamen's property not to be detained

172. Any person who receives or takes into his possession or under his control any money or other property of a seaman or apprentice-officer who belongs or has recently belonged to any ship wherever registered shall return the same or pay the value thereof when required by the seaman or apprentice-officer subject to such deductions as may be justly due to him from the seaman or apprentice-officer in respect of board or lodging;

Soliciting seamen

173. No person shall within twenty-four hours after the arrival of any ship (wherever registered) at a port in Namibia, or within twenty-four hours before the projected departure therefrom -

- (a) solicit a seaman or apprentice-officer belonging to the ship to become a lodger at any house; or
- (b) take out of the ship any property of a seaman or apprentice-officer except under the direction of the seaman or apprentice-officer and with the permission of the master.

Misconduct by seamen endangering ship or life, and general offences against discipline

174. (1) No master of or seaman or apprentice-officer engaged on or belonging to any ship wherever registered shall knowingly -

- (a) do anything tending to the immediate loss, destruction or serious damage of the ship, or tending to endanger the life of or to cause injury to any person belonging to or on board the ship; or
- (b) refuse or omit to do any lawful act proper and requisite to be done by him for preserving the ship from immediate loss, destruction or serious damage, or for preserving any person belonging to or on board the ship from danger to life or from injury.

(2) Subject to the provisions of sub-section (4) of section *three hundred and fifty-five*, no seaman or apprentice-officer engaged on or belonging to a Namibian ship shall -

- (a) report for duty on the ship in a drunken condition or be drunk on board the ship; or
- (b) wilfully disobey any lawful command or neglect his duty; or
- (c) be guilty of continued wilful disobedience to lawful commands or continued wilful neglect of duty; or
- (d) combine with any of the crew to disobey lawful commands, or to neglect duty, or to impede the navigation of the ship or retard the progress of the voyage; or
- (e) assault the master or any ship's officer of the ship; or
- (f) prevent or hinder or retard the loading or unloading or departure of the ship; or

Merchant Shipping Act 57 of 1951 (SA)

- (g) wilfully damage the ship, or misappropriate, or make any improper use of, or wilfully damage, any of the ship's stores, equipment or cargo.

(3) No seaman on or before being engaged to serve on a Namibian ship shall knowingly make a false statement of the name of his last ship or alleged last ship, or knowingly make a false statement of his own name.

Desertion

175. (1) Subject to the provisions of sub-section (4) of section *three hundred and fifty-five*, no seaman or apprentice-officer engaged on or belonging to a treaty ship shall without reasonable cause -

- (a) at a port in Namibia, in the case of a treaty ship other than a Namibian ship; or
 (b) at any place whatsoever, in the case of a Namibian ship,

absent himself from his ship with the intention of not returning thereto.

[subsection (1) amended by Act 69 of 1962 and by Act 40 of 1963]

(2) Any person who contravenes the provisions of sub-section (1) shall be guilty of desertion.

(3) No person shall knowingly harbour or secrete a seaman or apprentice-officer who has contravened or is contravening the provisions of sub-section (1).

Absence without leave

176. (1) Subject to the provisions of sub-section (4) of section *three hundred and fifty-five*, no seaman or apprentice-officer engaged on or belonging to a treaty ship shall without reasonable cause -

- (a) at a port in Namibia, in the case of a treaty ship other than a Namibian ship; or
 (b) at any place whatsoever, in the case of a Namibian ship,

fail or refuse to join his ship or to proceed to sea therein, or be absent without leave from his ship or from his duty, either at the commencement or during the progress of a voyage.

[subsection (1) amended by Act 69 of 1962 and by Act 40 of 1963]

(2) Any person who contravenes the provisions of sub-section (1) shall, if his conduct does not amount to desertion, as defined in section *one hundred and seventy-five* be guilty of absence without leave.

(3) No person shall knowingly harbour or secrete a seaman or apprentice-officer who has contravened or is contravening the provisions of sub-section (1).

Notice to proper officer of absence of seaman at time of sailing

177. If a seaman or apprentice-officer engaged on or belonging to a treaty ship is not on board that ship at the time of sailing -

- (a) from a port in Namibia, in the case of a treaty ship other than a Namibian ship; or

(b) from any port whatsoever, in the case of a Namibian ship,

the master of the ship shall, as soon as possible, give written notice of the fact in the prescribed form and manner to the proper officer of that port.

[section 77 amended by Act 69 of 1962 and by Act 40 of 1963]

Unseaworthiness of ship a good defence to charge of desertion, etc.

178. (1) For the purpose of the proviso to sub-section (2) of section *one hundred and seventeen* and sections *one hundred and seventy-five* and *one hundred and seventy-six* the fact that the ship on which a seaman or apprentice-officer is engaged or to which he belongs is unseaworthy shall be deemed to be reasonable cause: Provided the seaman or apprentice-officer has, before absenting himself or being absent from, or failing or refusing to join, or to proceed to sea in, his ship, as the case may be, complained to the master or proper officer that the ship is unseaworthy.

(2) The provisions of section *two hundred and forty-three* shall apply in respect of any complaint to the proper officer referred to in sub-section (1).

(3) Whenever in any proceedings against any seaman or apprentice-officer on a charge of desertion or absence without leave the defence referred to in sub-section (1) is raised, the court may, if it think fit, order the ship to be inspected by a surveyor.

(4) If it is not proved that the ship was an unseaworthy ship, the expenses incurred in connection with any such inspection shall be paid to the Permanent Secretary by the seaman or apprentice-officer by whom the said defence has been raised, and upon demand by the Permanent Secretary the unpaid amount of such expenses shall be deducted by the master or owner of the ship out of the wages due or to become due to the said seaman or apprentice-officer and paid over to the Permanent Secretary.

(5) If it is proved that the ship was an unseaworthy ship, the expenses incurred in connection with the inspection shall be paid to the Permanent Secretary by the master or owner of the ship, who shall also pay to the seaman or apprentice-officer charged such compensation for the damage suffered by him by reason of the charge having been made against him as the court may award.

Deserter's certificates of discharge may be withheld

179. If it is shown to the satisfaction of a proper officer that a seaman engaged or belonging to a Namibian ship has been guilty of desertion or absence without leave, as defined by sections *one hundred and seventy-five* and *one hundred and seventy-six* respectively, the Minister may direct that the seaman's certificates of discharge shall be withheld for such period as the Minister may direct, and while such a direction is in force the proper officer or any other person may, notwithstanding anything to the contrary contained in this Act, refuse to furnish copies of any of the seaman's certificates of discharge or certified extracts of any particulars of his service or character.

Deserters from foreign ships

180. (1) If the Minister is satisfied that due facilities are or will be given by the Government of any foreign country for apprehending seamen and apprentice-officers who desert or are absent without leave from Namibian ships in that country, he may by notice in the *Gazette*

Merchant Shipping Act 57 of 1951 (SA)

declare that the provisions of sub-section (2) shall apply to seamen and apprentice-officers belonging to ships of that country.

[subsection (1) amended by Act 30 of 1959]

- (2) (a) If the provisions of this sub-section have in terms of sub-section (1) been applied to seamen and apprentice-officers belonging to ships of any foreign country, any magistrate may, on application by the master of a ship of that country, if he is satisfied from information taken on oath that reasonable grounds exist for suspecting that any seaman or apprentice-officer has deserted or is absent without leave from that ship, issue a warrant for the apprehension of that seaman or apprentice-officer and for bringing such seaman or apprentice-officer before a judicial officer.
- (b) Every such warrant shall be executed in the same manner as a warrant issued under section 43 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).
- (c) A judicial officer before whom the seaman or apprentice-officer is brought may, on proof that such seaman or apprentice-officer has deserted or is absent without leave from that ship, order that such seaman or apprentice-officer be conveyed on board that ship or delivered to the master or a ship's officer or the owner of that ship, to be so conveyed, and any such order shall be duly executed.

[subsection (2) amended by Act 30 of 1959 and by Act 7 of 1991]

(3) No person shall knowingly harbour or secrete any person liable to be apprehended under the provisions of this section.

Entry of offences in official log

181. If in or in respect of any Namibian ship any offence within the meaning of this Act of desertion or absence without leave or against discipline is committed, or if any act of misconduct is committed for which the offender's agreement imposes a fine and for which it is intended to enforce the fine -

- (a) an entry of the offence or act shall be made by the master in the official log-book, - and signed by him and also by a ship's officer or one of the crew;
- (b) the offender, if still in the ship, shall, before the next subsequent arrival of the ship at any port, or, if the ship is at the time in port, before her departure therefrom, either be furnished by the master with a copy of the entry or have the same read over distinctly and audibly to him in the official language selected by the offender, and he may thereupon make such reply thereto as he thinks fit;

[Act 7 of 1991 directs a global substitution of "the official language" for "one of the official languages". However, the resulting phrase ("the official language selected by the offender") does not make logical sense.]

- (c) a statement that a copy of the entry has been so furnished or, as the case may be, that the entry has been so read over, and of the offender's reply (if any) shall be entered and signed in manner aforesaid;
- (d) in any subsequent legal proceedings the entries required by this section shall, if practicable, be produced or proved, and in default of that production or proof the court hearing the case may in its discretion refuse to receive evidence of the offence or act of misconduct.

Merchant Shipping Act 57 of 1951 (SA)

Official log-books to be kept

182. (1) The master of every Namibian ship of more than one hundred gross register tons, and the master of every Namibian ship of one hundred gross register tons or less who has entered into an agreement with the crew of the ship, shall keep an official log-book in the prescribed form and in the official language of Namibia.

(2) The official log-book may, at the discretion of the master, be kept distinct from or united with the ordinary ship's logbook. In all cases the spaces in the official log-book shall be duly filled up.

(3) An entry required by this Act in an official log-book shall be made as soon as possible after the occurrence to which it relates, and if not made on the same day as that occurrence shall be so made and dated as to show the dates of the occurrence and of the entry respecting it.

(4) Every entry in the official log-book shall be signed by the master, and by a ship's officer or some other member of the crew, and also -

- (a) if it is an entry in respect of illness, hurt, injury or death, by the surgeon or medical practitioner, if any, on board; and
- (b) if it is an entry in respect of wages due to, or of the property of, a seaman or apprentice-officer who dies, by some other member of the crew.

(5) Every entry made in an official log-book in the manner provided by this Act shall be admissible in evidence.

Entries in official log-books

183. The master of a ship on board of which an official logbook is required to be kept in terms of this Act shall enter or cause to be entered in that book the following matters:

- (a) every conviction by a legal tribunal of a member of his crew, and the punishment inflicted;
- (b) every offence for which punishment is inflicted on board, and the nature of the punishment inflicted;
- (c) a statement of the conduct, character and qualifications of each member of the crew, or a statement that he declines to express an opinion thereon, with a statement of his reasons for so declining;
- (d) every case of illness, hurt or injury happening to a member of the crew, with the nature thereof, and the medical treatment adopted, if any;
- (e) every case of death happening on board, and the cause thereof, together with such particulars as may be prescribed;
- (f) every birth happening on board, with the sex of the infant and names of the parents, together with such particulars as may be prescribed;
- (g) every marriage taking place on board, with the names and the ages of the parties;

Merchant Shipping Act 57 of 1951 (SA)

- (h) the name of every seaman or apprentice-officer who ceases to be a member of the crew, otherwise than by death, with the place, time, manner and cause thereof;
- (i) the wages due to any seaman or apprentice-officer who dies during the voyage, and the gross amount of all deductions to be made therefrom;
- (j) every collision with any other ship, and the circumstances under which the same occurred;
- (k) every casualty or accident of which a report is required to be made under this Act;
- (l) every meeting with any other ship at sea, when persons or goods are transhipped; and
- (m) any other matter directed by this Act to be entered.

Unlawful entries or alterations in official log-books

184. (1) No person shall twenty-four hours after the arrival of a Namibian ship at its final port of destination of a voyage make any entry in the official log-book of that ship respecting an occurrence prior to the arrival of the ship at that port.

(2) No person shall wilfully destroy or mutilate or render illegible an entry in an official log-book, or wilfully make a false entry in such book, or wilfully fail to make any entry which it is his duty to make in such book.

Delivery of official log-books to proper officer

185. The master of every ship on board of which an official log-book is required to be kept in terms of this Act shall within forty-eight hours after the ship's arrival at its final port of destination in Namibia or upon the discharge of the crew, whichever first happens, deliver the official log-book of the voyage to the proper officer at the port where the crew is discharged.

[section 185 amended by Act 3 of 1982]

Transmission of official log-books to proper officer

186. (1) If for any reason the official log-book ceases to be required in respect of a Namibian ship, the master or owner of the ship, shall, if the ship is then in Namibia, within one month, and if it is elsewhere, within six months, after the cessation, deliver or transmit to the proper officer at the port to which the ship belonged the official log-book duly completed up to the time of the cessation.

(2) If a ship is lost or abandoned the master or owner thereof shall, if practicable, and as soon as possible, deliver or transmit to the proper officer at the port to which the ship belonged the official log-book duly completed up to the time of the loss or abandonment.

Documents to be handed to successor on change of master

187. If, at any time before or during the progress of a voyage, the master of a Namibian ship is removed or superseded, or, for any other reason, quits the ship and is succeeded in the command by some other person, he shall deliver to his successor the various documents in his custody relating to the navigation of the ship and to the crew, and his successor shall immediately on assuming the command of the ship enter in the official logbook a list of the documents so delivered to him.

Merchant Shipping Act 57 of 1951 (SA)

List of the crew

188. (1) The master of a foreign-going Namibian ship who has entered into an agreement with the crew of the ship, and the master or the owner of a coasting ship or a fishing, sealing or shore-based whaling boat registered in Namibia who has entered into an agreement with the crew of the ship, shall, upon the discharge of the crew, whether within or outside Namibia, make out and sign a list (in this Act referred to as the list of the crew) which may be combined in one document with the agreement with the crew, in the prescribed form, containing the following particulars:

- (i) the number and date of the ship's register, and her register tonnage;
- (ii) the length and general nature of the voyage or employment;
- (iii) the names, ages, and places of birth of all the crew, including the master and apprentice-officers; their ratings on board, their last ships or other employments, and the dates and places of their joining the ship; and
- (iv) the names of any of the crew who have ceased to belong to the ship, with the times, places, causes, and circumstances thereof.

[subsection (1) substituted by Act 30 of 1959]

- (2) The list of the crew shall be delivered to the proper officer -
 - (a) in the case of a foreign-going ship, by the master, within forty-eight hours after the ship's arrival at her final port of destination for the voyage, or, if the agreement entered into with the crew was a running agreement, within forty-eight hours after her arrival at her final port of destination for the last voyage over which the agreement extends, or upon the discharge of the crew, whichever event first occurs; and
 - (b) in the case of a coasting ship or a fishing, sealing or shore-based whaling boat, by the master or the owner, as the case may be, who entered into the agreement with the crew, within twenty-one days after the expiry of the agreement,

and the proper officer shall give to the master or owner from whom he has received the list a certificate of such delivery and any such ship may be detained until the certificate is produced.

[subsection (2) substituted by Act 30 of 1959]

(3) If a Namibian ship is lost or abandoned, the master or owner thereof shall, if practicable, and as soon as possible, deliver or transmit to the proper officer at the port to which the ship belonged the list of the crew, duly made out to the time of the loss or abandonment.

Returns of births and deaths

189. (1) Within forty-eight hours after the arrival of any ship at any port in Namibia, the master shall deliver or transmit to the proper officer in the prescribed form a return of such particulars as may be prescribed -

- (a) in the case of a Namibian ship, of every birth of a child and every death of a person on board the ship which has occurred after the last preceding occasion on which the ship left a port in Namibia; or

Merchant Shipping Act 57 of 1951 (SA)

- (b) in the case of a ship other than a Namibian ship, of every birth of a child on board the ship whose parents reside or intend to reside in Namibia, and of every death of a person on board the ship who at the time of his death was residing in Namibia, which has occurred during the voyage.

(2) The proper officer shall transmit every such return received by him to the registrar or assistant registrar of births and deaths within whose area the port is situated.

[subsection (2) amended by Act 58 of 1970]

CHAPTER V

SAFETY OF SHIPS AND LIFE AT SEA

PART I

*Construction of Ships, Provision of Life-saving Appliances and Installation of Radio***Initial and subsequent surveys of vessels in respect of safety provisions**

190. (1) If the owner of any vessel which, in terms of this Act, is required to be registered or licensed desires that a safety convention certificate or a local safety certificate be issued in respect of the vessel, he shall, before he applies for the issue of the certificate, cause her to be inspected by a surveyor.

(2) The owner of every vessel in respect of which a safety convention certificate or a local safety certificate has been issued shall cause her to be inspected by a surveyor at intervals, calculated from the date of the initial survey referred to in sub-section (1), as follows:

- (a) in the case of a passenger ship, at intervals not exceeding twelve months in accordance with the construction regulations, the life-saving equipment regulations, the collision regulations, the radio regulations and any other applicable regulations which may have been made;

[paragraph (a) substituted by Act 13 of 1965]

- (b) in the case of a vessel (other than a passenger ship) plying on international voyages, at intervals not exceeding twenty-four months in accordance with the construction regulations, the life-saving equipment regulations, the collision regulations and any other applicable regulations which may have been made: Provided that inspections in accordance with such of the said regulations which are solely applicable to the issue of a cargo ship safety construction certificate shall be at intervals not exceeding five years;

[paragraph (b) substituted by Act 13 of 1965]

- (c) in the case of a vessel (other than a passenger ship) which does not ply on international voyages, at intervals not exceeding twelve months in accordance with the construction regulations, the life-saving equipment regulations, the collision regulations and any other applicable regulations which may have been made;

[paragraph (c) substituted by Act 13 of 1965]

Merchant Shipping Act 57 of 1951 (SA)

- (d) in the case of a vessel (other than a passenger ship), which by the radio regulations is required to be fitted with a radio installation, at intervals not exceeding twelve months in accordance with the radio regulations applicable to her.

(3) On the inspection of a vessel in terms of sub-section (1) or (2) there shall be paid by the owner of the vessel such fee as may be prescribed.

Surveyor's report on inspection under safety regulations

191. (1) Every surveyor who inspects a vessel in pursuance of section *one hundred and ninety* or any provision of the construction regulations, the life-saving equipment regulations, the radio regulations, the collision regulations or any other applicable regulations which may have been made, shall draw up a report of his inspection in the prescribed form.

[subsection (1) substituted by Act 13 of 1965]

(2) The report shall contain full and clear statements as to the extent to which, in the case of an inspection of a ship referred to in paragraph (a), (b), (c) or (d) of sub-section (2) of the said section, the vessel is constructed and equipped in accordance with the regulations referred to in those paragraphs, respectively, and as to all matters on which the form indicates that a report is required.

(3) The surveyor shall forward the report to the proper officer.

Issue of safety convention certificates in respect of passenger ships

192. If, after consideration of the report of a surveyor, the Minister is satisfied -

- (a) that a passenger ship which, in terms of this Act, is required to be registered, is constructed and equipped in accordance with all the requirements of the construction regulations, the life-saving equipment regulations, the radio regulations, the collision regulations and any other regulations which may have been made, which are applicable to the ship when plying on international voyages or on short international voyages, he shall cause to be issued in respect of the ship a passenger ship safety certificate for an international voyage or a short international voyage, as the case may be;

[paragraph (a) substituted by Act 13 of 1965]

(b)

[paragraph (b) deleted by Act 13 of 1965]

- (c) that a passenger ship which, in terms of this Act, is required to be registered is exempt, by virtue of the exercise by him of a power conferred on him by the construction regulations, the life-saving equipment regulations, the radio regulations, the collision regulations or any other regulations which may have been made, from any of the requirements of the said regulations applicable to the ship when plying on international voyages, or on short international voyages, or when engaged in any special passenger trade on such voyages, and that she is constructed and equipped in accordance with the remaining requirements, he shall cause to be issued in respect of the ship an exemption certificate and a passenger ship safety certificate.

[paragraph (c) substituted by Act 13 of 1965]

Issue of safety convention certificates in respect of ships other than passenger ships

Merchant Shipping Act 57 of 1951 (SA)

193. If, after consideration of the report of a surveyor, the Minister is satisfied -

(1) that a ship (other than a passenger ship) to which the Safety Convention applies and which, in terms of this Act, is required to be registered is constructed and equipped in accordance with all the requirements of the construction regulations, the life-saving equipment regulations, the collision regulations and any other regulations which may have been made, which are applicable to the ship when plying on international voyages, he shall cause to be issued in respect of that ship -

- (a) a cargo ship safety construction certificate relating to the matters applicable to the issue of such a certificate; and
- (b) a cargo ship safety equipment certificate relating to the matters applicable to the issue of such a certificate;

[subsection (1) substituted by Act 13 of 1965]

(2) that a ship (other than a passenger ship) to which the Safety Convention applies and which, in terms of this Act, is required to be registered is exempt, by virtue of the exercise by him of a power conferred on him by the construction regulations, the life-saving equipment regulations, the collision regulations or any other regulations which may have been made, from any of the requirements of the said regulations applicable to the ship when plying on international voyages, and that she is constructed and equipped in accordance with the remaining requirements, he shall cause to be issued in respect of the ship -

- (a) an exemption certificate and a cargo ship safety construction certificate if the matters from which the ship is exempt relate to such latter certificate; and
- (b) an exemption certificate and a cargo ship safety equipment certificate, if the matters from which the ship is exempt relate to such latter certificate;

[subsection (2) substituted by Act 13 of 1965]

(3) that a ship (other than a passenger ship) to which the Safety Convention applies and which, in terms of this Act, is required to be registered, is equipped in accordance with all the requirements of the radio regulations applicable to the ship when plying on international voyages, he shall cause to be issued in respect of the ship -

- (a) if she is equipped with a radiotelegraph installation, a cargo ship safety radiotelegraphy certificate; or
- (b) if she is equipped with a radiotelephone installation, a cargo ship safety radiotelephony certificate;

[subsection (3) substituted by Act 13 of 1965]

(4) that a ship (other than a passenger ship) to which the Safety Convention applies and which, in terms of this Act, is required to be registered is exempt, by virtue of the exercise by him of a power conferred on him by the radio regulations, from any or all of the requirements of the said regulations applicable to the ship when plying on international voyages, and that she is equipped in accordance with the remaining requirements (if any), he shall cause to be issued in respect of the ship -

- (a) an exemption certificate; and

Merchant Shipping Act 57 of 1951 (SA)

- (b) in the case of a ship which is not exempt from all the said requirements -
 - (i) if she is equipped with a radiotelegraph installation, a cargo ship safety radiotelegraphy certificate; or
 - (ii) if she is equipped with a radiotelephone, a cargo ship safety radiotelephony certificate.

[subsection (4) substituted by Act 13 of 1965]

(5)

[subsection (5) deleted by Act 13 of 1965]

Issue of local safety certificates

194. (1) If, after consideration of the report of a surveyor, the Permanent Secretary is satisfied that a vessel referred to in sub-section (2) -

- (a) is constructed and equipped in accordance with all the requirements of the construction regulations, the life-saving equipment regulations, the radio regulations, the collision regulations and any other regulations which may have been made, which are applicable to the vessel when engaged in the voyages or the operations in which it is intended that she shall be engaged, he shall cause to be issued in respect of the vessel a local general safety certificate stating that she is so constructed and equipped, and specifying the voyages or the operations in which the vessel is by the certificate authorized to be engaged;

[paragraph (a) substituted by Act 13 of 1965]

- (b) is exempt, by virtue of the exercise by him of a power conferred on him by the regulations referred to in paragraph (a), from any of the requirements of the said regulations and is constructed and equipped in accordance with the remaining requirements, he shall cause to be issued in respect of the vessel -
 - (i) a local safety exemption certificate stating which of the said requirements the vessel is exempt from, and that the exemption is conditional on her being engaged only in the voyages or operations and complying with the other conditions (if any) specified in the certificates; and
 - (ii) a local general safety certificate stating that the vessel is constructed and equipped in accordance with the remaining requirements,

[Paragraph (b) amended by Act 13 of 1965. The comma at the end of subparagraph (ii) should be a full stop.]

- (2) The provisions of sub-section (1) shall apply in respect of all -
 - (a) passenger ships of whatever size which are not intended to be engaged in international voyages; or
 - (b) ships (other than passenger ships) -
 - (i) to which the Safety Convention does not apply and which are intended to be engaged in international voyages; or

Merchant Shipping Act 57 of 1951 (SA)

- (ii) of whatever size which are not intended to be engaged in international voyages,

[paragraph (b) amended by Act 13 of 1965]

and which, in terms of this Act, are required to be registered or licensed.

Form of safety certificate

195. (1) Every safety convention certificate and every local safety certificate shall be in the form prescribed.

(2) Every passenger ship safety certificate, cargo ship safety equipment certificate or local general safety certificate shall state the maximum number of persons which the vessel is fit to carry, distinguishing, if necessary, between the respective numbers to be carried on the deck and in the cabins and in different parts of the deck and cabins, and any conditions and variations to which those numbers shall be subject according to the time of the year, the nature of the voyage, the cargo carried, or other circumstances, as the case requires.

[subsection (2) substituted by Act 13 of 1965]

(3) Every local general safety certificate shall state the limits, if any, beyond which the vessel is not fit to proceed, and such other particulars as may be prescribed.

[subsection (3) substituted by Act 13 of 1965]

Modification of safety convention certificates as respects life-saving appliances

196. (1) If, on any international voyage, a passenger ship registered in Namibia, in respect of which a safety convention certificate is in force, has on board a total number of persons less than the number stated in that certificate to be the number for which the life-saving appliances on the ship provides, the Permanent Secretary or any other person authorized by him for the purpose may, at the request of the master of the ship, issue a memorandum stating the total number of persons carried on the ship on that voyage, and the consequent modification which may be made for the purpose of that voyage in the particulars with respect to life-saving appliances stated in the certificate, and that memorandum shall be annexed to the certificate.

(2) The master of the ship in respect of which any such memorandum has been issued shall return it to the Permanent Secretary at the end of the voyage to which it relates.

(3) If a recognized non-Namibian safety convention certificate is produced in respect of a passenger ship not registered in Namibia, and there is attached to the certificate a memorandum which -

- (a) has been issued by or under the authority of the Government of the country in which the ship is registered; and
- (b) modifies for the purpose of any particular voyage, in view of the number of persons actually carried on that voyage, the particulars stated in the certificate with respect to life-saving appliances,

the certificate shall have effect for the purpose of that voyage as if it were modified in accordance with the memorandum.

[subsection (3) amended by Act 40 of 1963]

Merchant Shipping Act 57 of 1951 (SA)

Duration of safety certificates

197. (1) Subject to the provisions of this section, a safety convention certificate or a local safety certificate shall expire at the end of such period, not exceeding two years, in the case of a cargo ship safety equipment certificate or five years, in the case of a cargo ship safety construction certificate, or one year, in the case of any other certificate, from the date of its issue, as may be specified therein, or upon the giving of notice by the Permanent Secretary to the owner or master of the vessel that it has been cancelled.

[subsection (1) substituted by Act 13 of 1965]

(2) An exemption certificate shall not remain in force for a period longer than the period of the passenger ship safety certificate, the cargo ship safety construction certificate, the cargo ship safety equipment certificate, the cargo ship safety radiotelegraphy certificate, or the cargo ship safety radiotelephony certificate, and a local safety exemption certificate shall not remain in force for a period longer than the period of the local general safety certificate, issued in respect of the same vessel.

[subsection (2) substituted by Act 13 of 1965]

- (3) (a) The Minister or any person thereto authorized by him may grant an extension of any safety convention certificate, except a cargo ship safety construction certificate, and the Permanent Secretary may grant an extension of any local safety certificate, issued in respect of any vessel registered or licensed under this Act, for a period not exceeding one month from the date when the certificate would, but for the extension, have expired, or, if the vessel is absent from Namibia on that date, for a period not exceeding five months from that date.
- (b) If any safety convention certificate, except a cargo ship safety construction certificate, issued in respect of a ship not registered in Namibia, expires while such ship is in any port in Namibia, the Minister or any person authorized thereto by him may, for sound reasons, extend such certificate for any period not exceeding five months, which extension shall be granted only for the purpose of allowing such ship to complete its voyage to the country in which it is registered or is to be inspected.
- (c) Notwithstanding the provisions of this section the validity of a certificate shall expire upon transfer of any ship to the flag of another country.

[subsection (3) amended by Act 3 of 1981]

Cancellation of safety convention certificates and local safety certificates

198. (1) The Minister may direct that a safety convention certificate be cancelled, and the Permanent Secretary may direct that a local safety certificate be cancelled, if, by reason of the contents of a report by a surveyor, or for any other reason, he is satisfied that -

- (a) it was obtained fraudulently or on wrong information; or
- (b) since it was issued, the hull, equipment or machinery of the vessel has, by reason of any alteration made thereto, or by reason of any injury sustained by the vessel, or for any other reason, become insufficient; or
- (c) since it was issued, the vessel has for any reason become unseaworthy; or

Merchant Shipping Act 57 of 1951 (SA)

- (d) the vessel no longer complies with all the requirements of the construction regulations, the life-saving equipment regulations, the radio regulations, the collision regulations and any other applicable regulations which may have been made, to the same extent to which she complied with those regulations when the certificate was issued.

[paragraph (d) substituted by Act 13 of 1965]

(2) For the purposes of this section the word “alteration”, in relation to the hull, equipment or machinery of a vessel, includes the renewal of any part thereof.

(3) Whenever a direction is issued under sub-section (1) for the cancellation of a certificate, the Permanent Secretary shall notify the owner or master of the vessel in respect of which the certificate was issued of the cancellation.

Surrender of expired or cancelled safety convention certificate or local safety certificate

199. (1) A safety convention certificate or a local safety certificate which has expired or has been cancelled shall on demand be surrendered by the owner or master of the ship to the Permanent Secretary or a person nominated by him.

(2) If any certificate required to be surrendered under subsection (1) is not surrendered, the Permanent Secretary or his nominee who has demanded its surrender may cause the ship to be detained until the certificate is surrendered.

Namibian ships not to be taken to sea without safety certificates

200. (1) Neither the owner nor the master of a Namibian ship shall cause or permit her to proceed to sea from any port within or outside Namibia, unless there is on board and in force in respect of that ship -

- (a) if she is a passenger ship engaged in an international voyage, a passenger ship safety certificate appropriate to the voyage in which she is engaged, and if an exemption certificate has been issued, such exemption certificate; or

[paragraph (a) substituted by Act 13 of 1965]

- (b) if she is a passenger ship not engaged in an international voyage, a local general safety certificate appropriate to the voyage in which she is engaged, and if a local safety exemption certificate has been issued, such local safety exemption certificate; or

[paragraph (b) substituted by Act 13 of 1965]

- (c) if she is a ship (other than a passenger ship) to which the Safety Convention applies and engaged in an international voyage -
- (i) a cargo ship safety construction certificate and if an exemption certificate has been issued, such exemption certificate; and
- (ii) a cargo ship safety equipment certificate and if an exemption certificate has been issued, such exemption certificate; and
- (iii) a cargo ship safety radiotelegraphy certificate and if an exemption certificate has been issued, such exemption certificate; or

Merchant Shipping Act 57 of 1951 (SA)

- (iv) a cargo ship safety radiotelephony certificate and if an exemption certificate has been issued, such exemption certificate; or
- (v) an exemption certificate, if the ship is exempt from all the requirements of the radio regulations; or

[paragraph (c) substituted by Act 13 of 1965]

- (d) if she is a ship (other than a passenger ship) not engaged in an international voyage or a ship (other than a passenger ship) to which the Safety Convention does not apply and engaged in an international voyage, a local general safety certificate appropriate to the voyage in which she is engaged, and if a local safety exemption certificate has been issued, such local safety exemption certificate.

[paragraph (d) substituted by Act 13 of 1965]

(2) Sub-section (1) shall not prohibit the owner or master of a ship from causing or permitting her to proceed to sea -

- (a) on a voyage other than an international voyage, if there are on board and in force in respect of the ship such certificates as would be required if she were engaged in an international voyage; or
- (b) if she is not a passenger ship, and if there are on board and in force in respect of the ship such certificates as would be required if she were a passenger ship.

(3) The Minister may authorize the owner or master of a passenger ship registered in Namibia to cause the ship to proceed to sea from a port in Namibia on an international voyage not exceeding twelve hundred nautical miles in length between the last port of call in Namibia and the final port of destination, provided there is on board and in force in respect of that ship a passenger ship safety certificate for a short international voyage and if an exemption certificate has been issued, such exemption certificate: and upon such authority being granted, the certificate or certificates referred to shall for the purposes of this section be deemed to be appropriate to such voyage, notwithstanding the fact that the distance between the said ports exceeds six hundred nautical miles.

[subsection (3) amended by Act 40 of 1963 and substituted by Act 13 of 1965]

Carrying persons in excess

201. No master or owner of any vessel registered or licensed in Namibia shall anywhere, and no master of any vessel not registered or licensed in Namibia shall in Namibia or the territorial waters thereof, permit persons to be on board or on or in any part of the vessel in excess of the number permitted by the vessel's safety convention certificate, local safety certificate, memorandum referred to in section *one hundred and ninety-six* or certificate referred to in sub-section (4) or (5) of section *two hundred and three*: Provided that the Minister may, for the purpose of enabling persons to be moved from any place in consequence of a threat to their lives, authorize more persons to be carried on board a ship than are permitted by the said certificate or memorandum; and the carriage of persons in accordance with such authority shall not constitute a contravention of the provisions of this section.

Issue of safety convention certificate by one Government at request of another

Merchant Shipping Act 57 of 1951 (SA)

202. (1) The Minister may request the Government of a country to which the Safety Convention applies to issue an appropriate safety convention certificate in respect of a ship registered in Namibia; and a certificate issued in pursuance of such a request shall contain a statement that it has been so issued, and shall be deemed to have been issued -

- (a) in the case of a passenger ship, under section *one hundred and ninety-two*; or
- (b) in the case of a ship other than a passenger ship, under section *one hundred and ninety-three*.

(2) The Minister may, at the request of the Government of a country to which the Safety Convention applies, cause an appropriate safety convention certificate to be issued in respect of a ship registered in that country, if he is satisfied in like manner as in the case of a ship registered in Namibia, that the certificate can properly be issued: Provided that he may cause the certificate to be issued if he is satisfied that the ship is constructed and equipped in accordance with all the requirements of the construction regulations, the life-saving equipment regulations, the radio regulations and any other regulations which may have been made, which are applicable to the ship and to the voyages on which she is to be engaged, in so far as those requirements are requirements of the Safety Convention applicable as aforesaid, notwithstanding the fact (if it be so) that she is not constructed or equipped in accordance with any requirements of the said regulations that are not applicable requirements of the Safety Convention, and that she is equipped in accordance with the requirements of the collision regulations. A certificate issued in pursuance of such a request shall contain a statement that it has been so issued and shall have effect as if it had been issued by the Government of the country in which the ship is registered.

[subsection (2) substituted by Act 13 of 1965]

Application of this Part to ships not registered or licensed in Namibia while in Namibia

203. (1) Subject to the provisions of this section, the provisions of this Part shall, *mutatis mutandis*, apply in respect of all ships not registered or licensed in Namibia while they are within Namibia or the territorial waters thereof.

(2) A recognized non-Namibian safety convention certificate issued in respect of any such ship by the Government of the country in which the ship is registered shall, subject to the provisions of sub-section (3), have the same effect as a corresponding certificate issued by the Minister under section *one hundred and ninety-two* or *one hundred and ninety-three*.

(3) If a recognized non-Namibian safety convention certificate is produced which has been issued in respect of any such ship by or under the authority of the Government of the country in which the ship is registered, and which corresponds with the safety convention certificate which, in accordance with the provisions of this Part, the ship would be required to carry if she were registered in Namibia, the ship shall not be required to be inspected by a surveyor except -

- (a) for the purpose of determining the maximum number of persons that the ship is fit to carry; or
- (b) if the proper officer so directs, for the purpose of verifying that the ship is in the condition of seaworthiness indicated in the non-Namibian safety convention certificate produced.

(4) On receipt of the report of a surveyor of an inspection made under paragraph (a) of sub-section (3), the Minister shall cause to be issued in respect of the ship a certificate stating the maximum number of persons which the ship is fit to carry.

Merchant Shipping Act 57 of 1951 (SA)

(5) Notwithstanding the provisions of paragraph (a) of subsection (3), if the non-Namibian safety convention certificate produced in respect of any such ship states the maximum number of persons that the ship is fit to carry, or if in addition to the non-Namibian safety convention certificate there is produced a certificate issued by or under the authority of the Government of the country in which the ship is registered stating the maximum number of persons that the ship is fit to carry, and the Minister is satisfied that that number has been determined substantially in the same manner as it would have been determined in the case of a ship registered in Namibia, he may, if he thinks fit, dispense with any inspection of the ship for the purpose of determining the maximum number of persons that she is fit to carry.

(6) If after consideration of the report of a surveyor of an inspection made under paragraph (b) of sub-section (3), the Minister is satisfied that a ship in respect of which a non-Namibian safety convention certificate has been produced is unseaworthy, he may direct that the said certificate be not recognized in Namibia, and thereafter the said certificate shall have no effect in Namibia.

(7) A safety certificate issued in respect of a ship to which the Safety Convention does not apply by or under the authority of the Government of the country to which the ship belongs, being a country other than Namibia, shall have the same effect as a certificate issued under section *one hundred and ninety-four*: Provided that, if, after consideration of the report of a surveyor on an inspection of such ship, the Permanent Secretary is satisfied that she is not in the condition of seaworthiness indicated in such certificate, he may direct that the certificate be not recognized in Namibia, and thereafter the said certificate shall have no effect in Namibia.

[subsection (7) inserted by Act 13 of 1965]

[section 203 amended by Act 40 of 1963]

PART II

Load Lines

Exemption from this Part and issue of load line exemption certificates

204. (1) If, after consideration of the report of a surveyor of his inspection of a load line ship registered in Namibia, the Minister (in the case of an international load line ship), or the Permanent Secretary (in the case of a local load line ship), is satisfied that the ship is exempt by virtue of the exercise by him of a power conferred on him by the load line regulations, from any or all of the requirements of the said regulations and that she complies with the remaining requirements (if any), the Minister or the Permanent Secretary, as the case may be, shall cause to be issued in respect of that ship -

- (a) if she is an international load line ship, an international load line exemption certificate; or
- (b) if she is a local load line ship, a local load line exemption certificate.

[subsection (1) amended by Act 40 of 1963 and substituted by Act 42 of 1969]

- (2) Every load line exemption certificate shall be in the prescribed form.

[subsection (2) amended by Act 40 of 1963 and substituted by Act 42 of 1969]

(3) The owner and the master of a ship in respect of which a load line exemption certificate has been issued shall observe the terms and conditions specified therein.

(4)

[subsection (4) amended by Act 40 of 1963 and deleted by Act 42 of 1969]

Initial and subsequent surveys of ships in respect of load line provisions

205. (1) If the owner of any load line ship which, in terms of this Act, is required to be registered desires that a load line certificate be issued in respect of the ship, he shall, before he applies for the issue of the certificate, cause her to be inspected by a surveyor.

(2) The owner of every ship in respect of which a load line certificate has been issued, shall cause her to be inspected by a surveyor in accordance with the load line regulations, at the intervals specified in the said regulations, calculated from the date of the initial survey referred to in subsection (1).

[subsection (2) substituted by Act 42 of 1969]

(3) On the inspection of any ship in terms of sub-section (1) or (2) there shall be paid by the owner of the ship such fee as may be prescribed.

Surveyor's inspection report on load line ship

206. (1) Every surveyor who inspects a ship in pursuance of section *two hundred and five* or of any provision of the load line regulations shall draw up a report of his inspection in the prescribed form.

(2) The report of the inspection of a load line ship in respect of which no load line certificate is in force, or in respect of which a load line certificate is in force which is due to expire within a period of twelve months after the date on which the inspection takes place, shall deal fully with the matters mentioned in section *two hundred and seven* and with such other matters as may be prescribed.

(3) The report of the inspection of a load line ship in respect of which a load line certificate is in force which is due to expire at a date later than twelve months after the date on which the inspection takes place, shall deal in detail with the question whether the certificate ought to remain in force during the period of twelve months following the inspection, with the matters mentioned in section *two hundred and seven* and with such other matters as may be prescribed.

(4) The surveyor shall forward his report to the proper officer.

Issue of load line certificates other than load line exemption certificates

207. If, after consideration of the report of a surveyor of his inspection of a load line ship registered in Namibia, the Minister (in the case of an international load line ship), or the Permanent Secretary (in the case of a local load line ship), is satisfied that -

- (a) the ship is marked with deck lines and load lines of the description and number required by the load line regulations; and
- (b) the ship's load lines are in the position required by the load line regulations; and
- (c) the ship complies with the conditions of assignment,

Merchant Shipping Act 57 of 1951 (SA)

the Minister or the Permanent Secretary, as the case may be, shall cause to be issued in respect of that ship -

- (i) if she is an international load line ship, an international load line certificate other than an international load line exemption certificate; or
- (ii) if she is a local load line ship, a local load line certificate other than a local load line exemption certificate,

which shall be in the form prescribed.

[section 207 amended by Act 30 of 1959 and by Act 13 of 1965, and substituted by Act 42 of 1969]

Entry of load line particulars in official log-book

208. (1) When a load line certificate has been issued in terms of this Act in respect of a load line ship registered in Namibia, the master, before making any other entry in the official log-book shall enter therein the particulars as to the position of the deck line and load lines specified in the certificate.

(2) Before any load line ship registered in Namibia leaves any port within or outside Namibia, or before any passenger ship not registered in Namibia and plying between ports in Namibia, or between a port in Namibia and any other port leaves any port in Namibia, for the purpose of proceeding to sea the master shall -

- (a) enter in the official log-book the prescribed particulars relating to the depth to which the ship is for the time being loaded; and
- (b) cause a notice in the prescribed form, and containing such of the said particulars as may be prescribed, to be displayed in some conspicuous place on board the ship and to be kept so displayed and legible until the ship arrives at some other port.

[subsection (2) amended by Act 40 of 1963]

Duration of load line certificates

209. (1) A load line certificate issued under the provisions of this Act shall expire at the end of such period, not exceeding five years from the date of its issue, as may be specified therein, or upon the giving of notice by the Permanent Secretary to the owner or master of the ship that it has been cancelled.

(2) The Minister or any person thereto authorized by him may grant an extension of any international load line certificate, and the Permanent Secretary may grant an extension of any local load line certificate, issued in respect of any ship registered under this Act, for a period not exceeding one month from the date when the certificate would, but for the extension have expired, or, if the ship is absent from Namibia on that date, for a period not exceeding five months from that date.

[subsection (2) substituted by Act 13 of 1965]

Cancellation of load line certificates

210. (1) The Minister may direct that an international load line certificate be cancelled, and the Permanent Secretary may direct that a local load line certificate be cancelled, if he is satisfied that -

Merchant Shipping Act 57 of 1951 (SA)

- (a) it was obtained fraudulently or on wrong information; or
- (b) since it was issued, structural alterations, which affect the position of the load lines, have taken place in the hull or superstructures of the ship; or
- (c) the fittings and appliances for the protection of openings, the guard rails, the freeing ports or the means of access to the crew accommodation have not been maintained on the ship in as effective a condition as that in which they were when the certificate was issued; or
- (d) the owner of the ship has failed to cause her to be inspected in accordance with the provisions of section *two hundred and five*; or
- (e) the marking of the deck lines and load lines on the ship have not been properly maintained.

[subsection (1) amended by Act 13 of 1965]

(2) For the purposes of this section the word “alteration” in relation to the hull or superstructures of a ship, includes the renewal of any part thereof.

(3) Whenever a direction is issued under sub-section (1) for the cancellation of a load line certificate, the Permanent Secretary shall notify the owner or master of the ship in respect of which the certificate was issued of the cancellation.

Surrender of expired or cancelled load line certificate

211. (1) A load line certificate which has expired or has been cancelled, shall on demand be surrendered by the owner or master of the ship to the Permanent Secretary or a person nominated by him.

[subsection (1) substituted by Act 42 of 1969]

(2) If any certificate required to be surrendered under subsection (1) is not surrendered, the Permanent Secretary or his nominee who has demanded its surrender may cause the ship to be detained until the certificate is surrendered.

Namibian ships not to be taken to sea without load line certificates

212. Neither the owner nor the master of a load line ship registered in Namibia shall cause or permit her to proceed to sea from a port within or outside Namibia unless there is on board and in force in respect of that ship -

- (a) if the voyage which she is undertaking is an international voyage -
 - (i) in the case of an international load line ship, an international load line certificate other than an international load line exemption certificate, and if an international load line exemption certificate has been issued, such international load line exemption certificate, or an international load line exemption certificate if the ship is exempt from all the requirements of the load line regulations; or
 - (ii) in the case of a local load line ship, a local load line certificate other than a local load line exemption certificate, and if a local load line exemption

Merchant Shipping Act 57 of 1951 (SA)

certificate has been issued, such local load line exemption certificate, or a local load line exemption certificate if the ship is exempt from all the requirements of the load line regulations; or

[paragraph (a) substituted by Act 30 of 1959, Act 13 of 1965 and Act 42 of 1969]

- (b) if the voyage which she is undertaking is not an international voyage -
- (i) an international load line certificate other than an international load line exemption certificate, and if an international load line exemption certificate has been issued, such international load line exemption certificate, or an international load line exemption certificate if the ship is exempt from all the requirements of the load line regulations; or
 - (ii) a local load line certificate other than a local load line exemption certificate, and if a local load line exemption certificate has been issued, such local load line exemption certificate, or a local load line exemption certificate if the ship is exempt from all the requirements of the load line regulations.

[paragraph (b) substituted by Act 30 of 1959, amended by Act 40 of 1963, and substituted by Act 143 of 1965 and by Act 42 of 1969]

Maintenance of load lines and deck lines

213. (1) The owner and the master of a load line ship registered in Namibia shall maintain the marking of her deck lines and load lines in the position specified in the load line certificate in force in respect of that ship or in the position approved by a person entitled under the load line regulations to approve the alteration of the position of the said deck lines or load lines.

(2) No person shall conceal, remove, alter, deface or obliterate, or suffer any person under his control to conceal, remove, alter, deface or obliterate any mark placed on any ship in accordance with the provisions of this Act, except with the authority of a person entitled under the load line regulations to authorize the alteration of the mark, or except for the purpose of escaping capture by an enemy or by a foreign ship in the exercise of some belligerent right.

Submersion of load line on Namibian ships

- 214.** (1) The master of a load line ship registered in Namibia shall not -
- (a) so load the ship; or
 - (b) suffer the ship to be so loaded; or
 - (c) bring the ship into any port in Namibia so loaded,

as to submerge in salt water, when the ship has no list, the load line on each side of the ship appropriate to the circumstances then existing.

[subsection (1) substituted by Act 30 of 1959]

(2) Any surveyor who finds upon inspection that the ship is loaded in contravention of sub-section (1) shall give notice in writing to that effect to the master, pointing out the extent of the overloading, and requiring that the matter be rectified.

Merchant Shipping Act 57 of 1951 (SA)

(3) A copy of every notice so given shall be transmitted by the surveyor to the proper officer at any port at which a clearance for that ship may be requested, and a clearance shall not be granted, and the ship shall be detained, until a certificate under the hand of a surveyor is produced stating that the deficiency has been made good.

Issue of international load line certificate by one Government at request of another

215. (1) The Minister may request the Government of a country to which the Load Line Convention applies to issue an international load line certificate in respect of a load line ship registered in Namibia; and a certificate issued in pursuance of such a request shall contain a statement that it has been so issued, and shall be deemed to have been issued under paragraph 1 of section *two hundred and seven*.

(2) The Minister may, at the request of a country to which the Load Line Convention applies, cause an international load line certificate to be issued in respect of a load line ship registered in that country, if he is satisfied, in like manner as in the case of a ship registered in Namibia, that the certificate can properly be issued: Provided that he may cause the certificate to be issued if he is satisfied that the ship is marked with deck lines and load lines in accordance with the requirements of the load line regulations in so far as those requirements are requirements of the Load Line Convention, notwithstanding the fact (if it be so) that she is not marked with deck lines and load lines in accordance with any requirements of the said regulations that are not requirements of the Load Line Convention, A certificate issued in pursuance of such a request shall contain a statement that it has been so issued, and shall have effect as if it had been issued by the Government of the country in which the ship is registered.

[section 215 substituted by Act 13 of 1965]

Inspection and control of load line convention ships not registered in Namibia

216. (1) If a recognized non-Namibian international load line certificate is produced in respect of a load line ship which is registered in a country (other than Namibia) to which the Load Line Convention applies and is at a place within Namibia or the territorial waters thereof, a surveyor's powers of inspecting the ship with respect to load line shall be limited to ascertaining

- (a) whether the ship is loaded beyond the limits allowed by the certificate;
- (b) whether the position of the load lines on the ship corresponds with the position specified in the certificate;
- (c) whether since the certificate was issued any structural alterations have taken place in the hull or superstructures of the ship which affect the position of the load lines; and
- (d) whether the fittings and appliances for the protection of openings, the guard rails, the freeing ports and the means of access to the crew accommodation have been maintained on the ship in as effective a condition as they were in when the certificate was issued.

[subsection (1) amended by Act 40 of 1963 and by Act 13 of 1965]

(2) If a surveyor finds on inspection that the ship is loaded beyond the limits allowed by the certificate, he shall give notice in writing to that effect to the master, pointing out the extent of the overloading and requiring that the matter be rectified.

Merchant Shipping Act 57 of 1951 (SA)

(3) If a surveyor finds on inspection that the load lines of the ship are not in the position specified in the certificate, he shall give notice in writing to that effect to the owner or master, pointing out the defects and requiring the same to be made good.

(4) A copy of every notice given under sub-section (2) or (3) shall be transmitted by the surveyor to the proper officer at any port at which a clearance for that ship may be requested, and a clearance shall not be granted, and the ship shall be detained, until a certificate under the hand of a surveyor is produced stating that the matter has been rectified or the deficiency made good, as the case may be.

(5) If a recognized non-Namibian international load line certificate is not produced to the surveyor on such demand as aforesaid, the surveyor shall have the same power of inspecting the ship, for the purpose of seeing that the provisions of this Part have been complied with, as if the ship were a ship registered in Namibia.

[subsection (5) amended by Act 40 of 1963 and substituted by Act 13 of 1965]

(6) For the purposes of this section a ship shall be deemed to be loaded beyond the limits allowed by the certificate if she is so loaded as to submerge in salt water, when the ship has no list, the appropriate load line on each side of the ship, that is to say, the load line appearing by the certificate to indicate the maximum depth to which the ship is for the time being entitled under the Load Line Convention to be loaded.

Issue of load line certificates in respect of ships not registered in Namibia

217. (1) The Minister may cause a special load line certificate to be issued in respect of any load line ship not registered in Namibia.

(2) The provisions of this Chapter relating to the issue, effect, duration, renewal and cancellation of local load line certificates shall apply, *mutatis mutandis*, in relation to special load line certificates: Provided that -

- (a) if a special load line certificate is issued in respect of a load line ship registered in a country to which the Load Line Convention does not apply, it shall be available in respect of international voyages as well as other voyages, but if issued in respect of a load line ship registered in a country to which the Load Line Convention applies, shall only be valid so long as the ship is not plying on international voyages, and shall be endorsed with a statement to that effect, and may be cancelled by the Minister if he is satisfied that the ship is so plying; and
- (b) a survey for the purpose of ascertaining whether the certificate should remain in force shall take place whenever the Minister so requires.

Recognition of certificates as to load lines issued in other countries

218. If the Minister is satisfied-

- (a) either -
 - (i) that, by the law in force in any treaty country (other than Namibia) provision has been made for the fixing, marking and certifying of load lines on ships (or any class or description of ships) registered in that treaty country; or
 - (ii) that such provision has been made by the law in force in any foreign country with respect to ships (or any class or description of ships) registered in that

Merchant Shipping Act 57 of 1951 (SA)

country, and has also been so made (or it has been agreed that provision shall be so made) for recognizing load line certificates issued in Namibia as having the same effect in ports of that country as certificates issued under the said provision; and

- (b) that the provision for the fixing, marking and certifying of load lines is based on the same principles as the corresponding provisions of this Chapter and of the load line regulations and is equally effective,

he may, by notice in the *Gazette*, direct that certificates issued in pursuance of that provision in respect of ships (or that class or description of ships) registered in that treaty country, or in respect of ships (or that class or description of ships) registered in that foreign country, as the case may be, shall have the same effect, for the purposes of this Chapter as special load line certificates.

[section 218 amended by Act 30 of 1959 and by Act 69 of 1962]

Load line ships not registered in Namibia not to be taken to sea without load line certificates

219. The master of a load line ship not registered in Namibia shall not cause or permit her to proceed to sea from a port in Namibia unless there is on board and in force in respect of that ship -

- (a) if she is registered in a country to which the Load Line Convention applies, and -
- (i) is engaged in an international voyage, a recognized non-Namibian international load line certificate or a certificate issued under sub-section (2) of section *two hundred and fifteen*; or
- (ii) is not engaged in an international voyage, a certificate referred to in paragraph (i) or a special load line certificate or a certificate which in terms of a notice issued under section *two hundred and eighteen* has the same effect as a special load line certificate; or
- (b) if she is not registered in a country to which the Load Line Convention applies, a special load line certificate or a certificate which in terms of a notice issued under section *two hundred and eighteen* has the same effect as a special load line certificate.

[section 219 amended by Act 40 of 1963 and by Act 13 of 1965]

Submersion of load line on ships not registered in Namibia

220. The provisions of section *two hundred and fourteen* shall apply to load line ships not registered in Namibia, while they are at any port in Namibia, as they apply to load line ships registered in Namibia: Provided that in the application of the said provisions the expression “the load line” shall mean -

- (a) in the case of a ship in respect of which there is produced a recognized non-Namibian international load line certificate, the load line appearing by the certificate to indicate the maximum depth to which the ship is for the time being entitled under the Load Line Convention to be loaded; or

[paragraph (a) substituted by Act 13 of 1965]

- (b) in the case of a ship in respect of which there is produced a certificate which, in terms of a notice issued under section *two hundred and eighteen*, has the same effect for the purposes of this Chapter as a special load line certificate, the load line appearing by the certificate to indicate the maximum depth to which the ship is for the time being entitled, under the law in force in the country in which the ship is registered, to be loaded; or,
- (c) in any other case, the load line which corresponds with the load line indicating the maximum depth to which the ship is for the time being entitled under the load line regulations to be loaded, or if no load line on the ship corresponds as aforesaid, the lowest load line thereon.

[section 220 amended by Act 40 of 1963]

PART III

Safety of Navigation

Ship's complement

221. (1) The owner and the master of every -

- (a) Namibian ship going to sea from any port whatsoever; or
- (b) ship (other than a Namibian ship) embarking passengers at, and going to sea from, any port in Namibia,

shall ensure that, in addition to the ships' officers which in terms of section *seventy-three* must be employed on board that ship, there are employed as crew the number and description of persons prescribed.

(2) The owner of every treaty ship (other than a ship embarking passengers at a port in Namibia) going to sea from any port in Namibia shall ensure that, in addition to the ships' officers which in terms of sub-section (4) of section *seventy-three* must be employed on board that ship, there are employed as crew the number and descriptions of persons which, by the relative laws in force in the treaty country in which the ship is registered, she is required to carry when going to sea from a port in that treaty country.

[subsection (2) amended by Act 69 of 1962 and by Act 40 of 1963]

(3) Paragraph (a) of sub-section (1) shall not apply in respect of any vessel belonging to Transnamib Limited and used by it in connection with the working of its harbours, if that vessel goes to sea in an emergency.

Employment of radio officers and operators

222. (1) No person shall be employed as a radio officer or operator of a radio installation on any Namibian ship unless he is a Namibian citizen or a citizen of a treaty country (other than Namibia) or his employment has, in any special case, been authorized by the Postmaster-General, and unless he holds an appropriate certificate of proficiency issued or approved in accordance with the radio regulation.

[subsection (1) amended by Act 69 of 1962]

Merchant Shipping Act 57 of 1951 (SA)

(2) A person employed as a radio officer or operator on board a Namibian ship shall subscribe to a declaration of secrecy, which shall be in the approved form; and no person, having made the declaration, shall, either directly or indirectly, divulge to any other person unless lawfully authorized to do so, any information which he has acquired by virtue of his employment.

Surveyor may direct that defects be made good

223. (1) If upon the inspection of a vessel a surveyor finds that the provisions of section *seventy-three* or *two hundred and twenty-one* are not being complied with, or that the vessel is not equipped as required by the construction regulations, the life-saving equipment regulations, the radio regulations, the collision regulations or any other applicable regulations which may have been made, or not marked as required by the load line regulations, or that the equipment is not in a good condition, or that the deck lines or load lines are not being properly maintained, or that the qualified staff required by the radio regulations for the operation of the radio installation is not provided, he shall give notice in writing to that effect to the owner or master, pointing out the deficiencies or defects and requiring that they be made good.

[subsection (1) substituted by Act 13 of 1965]

(2) A copy of every notice so given shall be transmitted by the surveyor to the proper officer at any port at which a clearance for that vessel may be requested, and a clearance shall not be granted, and the vessel shall be detained, until a certificate under the hand of a surveyor is produced stating that the deficiencies or defects have been supplied or made good.

Display of safety convention certificate, local safety certificate or load line certificate

224. Immediately after receipt of a safety convention certificate, a local safety certificate or a load line certificate, the owner or master shall cause it to be framed and displayed in some conspicuous place on board the vessel for the information of all on board, and shall cause it to be kept so framed and displayed so long as it remains in force and the vessel is in use: Provided that this section shall not apply in respect of any vessel of less than one hundred gross tons, if the Permanent Secretary has exempted her from its provisions.

[section 224 substituted by Act 42 of 1969]

Printed notices and diagrams as to location of life-boats, etc.

225. (1) The master of every passenger ship, wherever registered, plying between ports in Namibia or between a port in Namibia and any other port shall cause ample provision to be made, to the satisfaction of a surveyor, by printed notices, and by diagrams where necessary, to enable the passengers to ascertain the position of lifeboats, life-jackets and other life-saving appliances, fire-buckets, axes and fire-extinguishers. He shall also cause to be kept exhibited in each cabin, and throughout the ship to the satisfaction of a surveyor, notices showing the method of adjusting life-jackets to the body.

[subsection (1) amended by Act 40 of 1963]

(2) The master of every passenger ship registered in Namibia shall cause to be kept in some conspicuous place accessible to all the passengers a printed copy of this Part.

Information about stability of ship

226. (1) The owner of every Namibian ship of the class or tonnage prescribed by regulation built after the coming into operation of this section shall cause to be kept on board the

Merchant Shipping Act 57 of 1951 (SA)

ship such information in writing about the stability of the ship as is necessary for the guidance of the master in loading and ballasting the ship.

[subsection (1) substituted by Act 42 of 1969]

(2) The information required in terms of subsection (1) shall be as determined by regulation, and shall be based upon the determination of the stability of the ship by means of an inclining test of the ship: Provided that the Permanent Secretary may allow the information to be based on a similar determination of the stability of a sister ship.

[subsection (2) substituted by Act 42 of 1969]

(3) When any such information is provided concerning any ship, the owner of the ship shall send a copy thereof to the Permanent Secretary: Provided that the owner shall not be required to send a copy of any information to the Permanent Secretary if a copy of the same information has been previously sent to him.

(4) For the purposes of section *one hundred and eighty-seven* every document containing such information as is referred to in this section shall be deemed to be a document relating to the navigation of the ship.

Production of certificates to officers of customs

227. (1) The master of any ship which is at any port in Namibia shall produce to the officer of customs from whom a clearance for that ship is requested -

- (a) if she is a ship to which section *two hundred* or *two hundred and three* applies, the certificate or certificates which in terms of those sections must be on board that ship; or
- (b) if she is a load line ship registered in Namibia, the certificate which in terms of section *two hundred and twelve* must be on board that ship; or
- (c) if she is a load line ship not registered in Namibia, the certificate which in terms of section *two hundred and nineteen* must be on board that ship; or
- (d) if she is a load line ship carrying a deck cargo of timber, a certificate issued under sub-section (1) of section *two hundred and thirty-seven*.

(2) If the certificate or certificates required to be produced by or under sub-section (1) are not produced, the ship shall be detained until such certificate or certificates are produced.

Compasses to be adjusted

228. (1) The master of every ship plying between ports in Namibia or between a port in Namibia and any other port, wherever she may be registered, shall ensure that the compasses on board that ship are properly adjusted from time to time, in accordance with the regulations.

[subsection (1) amended by Act 40 of 1963]

(2) Any person thereto authorized by the Permanent Secretary may at any time inspect the compasses of any ship referred to in subsection (1) and shall report to the Permanent Secretary the result of his inspection; and the Permanent Secretary may upon such report direct that the compasses of the ship shall be adjusted in accordance with the regulations by an adjuster of

Merchant Shipping Act 57 of 1951 (SA)

compasses licensed under the regulations; and the master of the ship shall ensure that such direction is carried out.

Signalling lamps

229. The master or owner of a Namibian ship of one hundred or more gross register tons (or of such lower tonnage gross register as may be prescribed) shall not cause or permit the ship to proceed to sea unless she is provided with a signalling lamp in accordance with the regulations.

230.

[section 230 deleted by Act 30 of 1959]

Registration of private code of signals

231. (1) If the owner of a ship, wherever registered, desires to use any signals for the purpose of a private code he may register them with the Permanent Secretary, who may from time to time publish a list of the signals so registered.

(2) The Permanent Secretary may refuse to register any signals which, in his opinion, cannot easily be distinguished from signals generally used as signals of distress, signals for pilots, signals of urgency, signals prescribed for indicating that a message is about to be sent relating to a danger, or from signals registered in the name of any other person.

(3) The Permanent Secretary may, if he think fit, cancel the registration of any signal at any time.

(4) No person shall -

- (a) use any signal so registered, except by the authority of the person in whose name it is registered; or
- (b) use any signal the registration of which has been cancelled by the Permanent Secretary.

Signals of distress

232. (1) The master of a vessel which is registered or licensed in Namibia or which in terms of this Act is required to be so registered or licensed shall not, within or outside Namibia, and the master of any other vessel shall not, within Namibia or the territorial waters thereof, use or display or cause or permit any person under his authority to use or display, and no person shall use or display at a place on land within Namibia from which it can be seen from the sea -

- (a) any signal which by regulation is declared to be a signal of distress, except in the circumstances and for the purpose prescribed; or
- (b) any private signal, whether registered or not, which is likely to be mistaken for any such signal of distress.

[subsection (1) substituted by Act 24 of 1974]

(2) Any person convicted of contravening sub-section (1) shall be liable, in addition to any penalty imposed under section *three hundred and thirteen*, to pay compensation for any

Merchant Shipping Act 57 of 1951 (SA)

labour undertaken, risk incurred or loss sustained in consequence of the signal used or displayed having been taken to be a signal of distress. Such compensation may, without prejudice to any other remedy, be recovered in the same manner in which salvage is recoverable in terms of this Act.

Boat and fire drills and inspection of life-saving appliances

233. (1) The master of every -

- (a) passenger ship; or
- (b) ship (other than a passenger ship) of not less than five hundred gross register tons (or of such lower tonnage gross register as may be prescribed),

which is registered in Namibia, shall, if it be practicable to do so, cause -

- (i) boat drill and fire drill to be practised, in the case of a passenger ship, at least once in every week, and, in the case of a ship other than a passenger ship, at least once in every month; and
- (ii) the life-saving appliances on board the ship to be inspected to ascertain whether they are fit and ready for use, at least once in every such period as may be prescribed.

(2) The master of every such ship shall cause an entry to be made in the official log-book of every occasion on which boat drill and fire drill are practised or the said appliances are inspected; and if, -

- (a) in the case of a passenger ship, boat drill or fire drill is not practised in any week; or
- (b) in the case of a ship other than a passenger ship, boat drill or fire drill is not practised in any month; or
- (c) in the case of any ship, the said appliances are not inspected in any such period as is prescribed,

the master shall cause a statement to be entered in the official log-book of the reasons why the drill was not practised or the appliances were not inspected in that week, month or period.

234.

[section 234 deleted by Act 5 of 2004]

Dangerous goods not to be carried

235. (1) No person shall send by or carry in any ship, except in accordance with the prescribed regulations, as cargo or ballast, any dangerous goods.

(2) No person shall send by any ship, or, if he be not the master or owner of a ship carry in that ship, any dangerous goods without distinctly marking, in the official language of Namibia, their nature on the outside of the package containing the same, in accordance with the prescribed regulations, and without giving written notice of the nature of such goods and of the name and address of the sender thereof to the master or owner of a ship at or before the time of sending the same to be taken on board the ship.

Merchant Shipping Act 57 of 1951 (SA)

(3) The master or owner of any ship may refuse to take on board any package or parcel which he suspects to contain dangerous goods, and may require such package or parcel to be opened to ascertain the fact.

(4) The provisions of this section shall not apply to ships' distress signals, or to the carriage of naval or military stores for the public service under conditions authorized by the Permanent Secretary.

(5) This section shall apply -

- (a) to Namibian ships wherever they may be; and
- (b) to all other ships while they are within any port in Namibia, or are embarking or disembarking passengers within the territorial waters of Namibia, or are loading or discharging cargo or fuel within those waters.

[subsection (5) amended by Act 40 of 1963]

Carriage of grain

236. (1) Whenever grain is loaded in any port in Namibia on board any ship, wherever she may be registered, or is loaded on board a Namibian ship in any port outside Namibia, the owner or the master of the ship, or any agent of the owner who is charged with the loading or with sending the ship to sea laden with the grain, shall take all precautions prescribed by regulation to prevent the grain from shifting and in addition shall take all other precautions to prevent the grain from shifting which in the circumstances are necessary and reasonable; and if all such precautions are not taken, the ship shall be deemed to be unseaworthy.

(2) Whenever any ship, wherever she may be registered, having been loaded with grain outside Namibia without the taking of all such precautions as are referred to in sub-section (1), enters any port in Namibia so laden, the owner or master of the ship shall be guilty of an offence and the ship shall be deemed to be unseaworthy: Provided that this sub-section shall not have effect if the ship would not have entered any such port but for stress of weather or any other circumstances that neither the master nor the owner nor the charterer (if any) could have prevented or forestalled.

(3) Sub-sections (1) and (2) shall not apply in respect of a ship loaded in all respects in accordance with any provisions approved by the Minister in the special case.

(4) On the arrival at a port in Namibia from a port outside Namibia of any ship, wherever she may be registered, carrying a cargo of grain, the master shall cause to be delivered to the proper officer a notice stating -

- (a) the draught of water and freeboard of the said ship after the loading of her cargo was completed at the final port of loading; and
- (b) the following particulars of the grain carried, namely, -
 - (i) the kind of grain and the quantity thereof, stated in cubic feet, bushels, or tons weight;
 - (ii) the mode in which the grain is stowed; and
 - (iii) the precautions taken to prevent the grain from shifting.

Merchant Shipping Act 57 of 1951 (SA)

(5) In this section the word “grain” includes wheat, maize, oats, rye, barley, rice, pulses, seeds, and processed forms thereof, whose behaviour during transport in bulk is similar to that of grain in its natural state, and in sub-section (4) the expression “ship carrying a cargo of grain” means a ship carrying a quantity of grain exceeding one-third of the ship’s net register tonnage, reckoning 2,83 cubic metres or two tonne mass of grain as equivalent to one ton of net register tonnage.

[subsection (5) amended by Act 3 of 1981]

[section 236 amended by Act 40 of 1963]

Carriage of timber deck cargo

237. (1) Whenever a load line ship carrying a deck cargo of timber is about to make a voyage from a port in Namibia the owner or master shall cause the ship to be inspected by a surveyor who, if satisfied that the ship is suitable for the carriage of deck cargoes of timber and that such cargo is properly stowed and secured in accordance with the timber cargo regulations, shall issue a certificate to that effect.

[subsection (1) amended by Act 40 of 1963]

(2) Neither the owner nor the master of any such ship shall cause or permit her to proceed to sea from a port in Namibia unless there is on board a certificate issued under sub-section (1) in force in respect of that ship.

(3) In any proceedings against an owner or master in respect of a contravention of the timber cargo regulations, it shall be a good defence to prove that the contravention was due solely to deviation or delay, being deviation or delay caused solely by stress of weather or other circumstances which neither the master nor the owner nor the charterer (if any) could have prevented or forestalled.

(4) This section shall apply to all ships wherever they may be registered.

Marking of heavy packages or objects

238. No person shall in Namibia consign to be loaded on any ship, and no owner or master of any ship in Namibia, wherever she may be registered, shall cause or permit to be loaded on that ship any package or object of a gross weight of two thousand pounds or more, unless its weight is plainly and durably marked on the outside of the package or object: Provided that in the case of a package or object of such a character that its exact weight would be difficult to ascertain an approximate weight may be so marked accompanied by the word “approximate” or “ongeveer” or any reasonable abbreviation thereof.

Report of alteration or damage affecting seaworthiness, efficiency or compliance with regulations

239. (1) If any alteration has been made in, or any damage has been sustained by, a Namibian ship so material as to affect her seaworthiness or her efficiency, whether in her hull, equipment or machinery, or her compliance with such of the construction regulations, the life-saving equipment regulations, the radio regulations, the collision regulations, the load line regulations or any other regulations which may have been made, as apply to her, the owner or master shall, as soon as possible, forward a report to the Permanent Secretary, giving full particulars of the alteration or damage.

[subsection (1) substituted by Act 13 of 1965]

Merchant Shipping Act 57 of 1951 (SA)

(2) If, by reason of the contents of a report made in terms of sub-section (1), or for any other reason, the Permanent Secretary is of the opinion or suspected -

- (a) that a Namibian ship is unseaworthy; or
- (b) that the hull, equipment or machinery of a Namibian ship is insufficient; or
- (c) that a Namibian ship does not comply with such of the regulations referred to in sub-section (1) as apply to her,

he may give special directions for the inspection of the ship by a surveyor, notwithstanding the fact that a safety convention certificate, a local safety certificate or a load line certificate is still in force in respect of that ship.

(3) Any ship in respect of which any such directions as are referred to in sub-section (2) have been given may be detained by the proper officer.

(4) If any such directions are not complied with, the Minister may cancel any certificates issued in respect of that ship under this Chapter.

(5) For the purpose of this section the expression “alteration” in relation to the hull, equipment or machinery of a ship includes the renewal of any part thereof.

Unseaworthy ships not permitted to leave port

240. No person including the owner or master shall cause or permit -

- (a) any ship (other than a ship of Namibian nationality) to be navigated away from any port in Namibia;
- (b) any ship of Namibian nationality to be navigated away from any port whatsoever,

in an unseaworthy state.

[section 240, including the heading, amended by Act 25 of 1985]

Obligation to secure seaworthiness of ship

241. (1) In every contract of service, express or implied, between the owner of a ship and the master or an apprentice-officer and in every agreement between the master and the crew there shall be implied, notwithstanding any agreement to the contrary, an obligation on the owner of the ship that he and the master and every agent charged with the loading, preparing for sea or sending to sea of the ship shall use all reasonable means to ensure the seaworthiness of the ship for the voyage at the time when the voyage commences, and to keep her in a seaworthy condition for the voyage and during the voyage.

(2) This section shall apply in respect of every contract to serve on a Namibian ship, wherever the contract be entered into, and in respect of every contract to serve on a ship not registered in Namibia, if the contract is entered into in Namibia.

Sending unseaworthy ship to sea in special circumstances

Merchant Shipping Act 57 of 1951 (SA)

242. Nothing in sections *two hundred and forty* and *two hundred and forty-one* contained shall subject the owner or master of any ship to any liability, civil or criminal, by reason of the ship being sent or taken to sea in an unseaworthy state, if it be proved -

- (a) that he used all reasonable means to ensure the seaworthiness of the ship; and
- (b) that, owing to special circumstances, the sending or taking of the ship to sea in such an unseaworthy state was reasonable and justifiable.

Unseaworthy ships to be detained

243. If on complaint made to him in accordance with the provisions hereinafter contained, or without any complaint, a proper officer has reason to believe that a ship at any port in Namibia is unseaworthy, he shall, whether or not she is registered in Namibia, detain her until he is satisfied that she is in a seaworthy state.

Ships may be inspected

244. (1) If any ship is detained in terms of section *two hundred and forty-three*, the proper officer may, before releasing it, require those defects or deficiencies which are believed or alleged to exist to be inspected by a surveyor.

(2) The surveyor who makes the inspection under this section, shall report fully to the proper officer who detained the ship on such supposed or alleged defects or deficiencies.

(3) The proper officer shall transmit a copy of the surveyors' report to the Permanent Secretary and to the master of the ship.

Complaint as to seaworthiness to be in writing

245. Every complaint in respect of the seaworthiness of a ship shall be in writing, stating the name and address of the complainant, and if the ship be detained, a copy of the complaint, including the name and address of the complainant, shall be served on the master of the ship together with the notice of detention issued under section *three hundred and thirty-five*.

Complainant as to unseaworthiness may be required to give security

246. Before a ship is detained by a proper officer under the provisions of section *two hundred and forty-three* in consequence of a complaint, he shall assure himself by all means at his disposal that the complaint is not vexatious, frivolous or unreasonable, and if he thinks fit so to do, he may, except where the complaint is made by three or more of the members of the crew of the ship, require the complainant to give security to his satisfaction for the expenses of the inspection and any loss which may be sustained by the owner on account of the detention of the ship.

Complainant to pay costs if not successful

247. (1) If, on inspection, it is determined that any ship detained under the provisions of section *two hundred and forty-three* was not an unseaworthy ship, the expenses incurred in connection with the inspection shall be paid to the Permanent Secretary by the person making the complaint, and if it be proved that there was not reasonable cause, by reason of the condition of the ship or the act or default of the owner or master, for the detention of the ship, the Minister shall, out of moneys made available by Parliament for the purpose pay to the owner compensation for any damage suffered by him by reason of the detention or survey.

Merchant Shipping Act 57 of 1951 (SA)

(2) The provisions of this section in respect of payment of the cost of the inspection shall not have effect where the complaint is made by members of the crew of the ship complained of, unless, in the opinion of the Permanent Secretary, such complaint was frivolous or vexatious.

Expenses to be paid by owner if complaint founded

248. If, on inspection, it is found that any complaint in respect of a ship detained under section *two hundred and forty-three* was well-founded, all expenses incurred in connection with the inspection shall be paid by the owner, and the ship shall not be released until they are paid.

Reports of dangers to navigation

249. (1) The master of a Namibian ship on meeting with dangerous ice, a dangerous derelict, dangerous storm or any other direct danger to navigation, shall forthwith send information accordingly by all means of communication at his disposal and in accordance with the regulations, to ships in the vicinity and to such authorities on shore as may be prescribed.

(2) Any person in charge of a radio station which is under the control of the Postmaster-General or which is carried on under licence issued by the Postmaster-General, shall on receiving the prescribed signal that a message is about to be sent under this section, refrain from sending messages for a time sufficient to allow other stations to receive the message, and shall transmit the message in such manner as may be required by the Permanent Secretary. Compliance with this sub-section shall be deemed to be a condition of every licence granted by the Postmaster-General under the Radio Act, 1952 (Act No. 3 of 1952), or any amendment thereto. Nothing in this sub-section shall interfere with the transmission by radio of any signal which by regulation has been declared to be a signal of distress.

[Subsection (2) is amended by Act 30 of 1959. The Radio Act 3 of 1952 was repealed by the Communications Act 8 of 2009.]

(3) For the purpose of this section, the expression “dangerous storm” means a hurricane, typhoon, cyclone, or other storm of a similar nature and the master of a ship shall be deemed to have met with a dangerous storm if he has reason to believe that there is such a storm in his vicinity.

Careful navigation near ice

250. The master of a Namibian ship, when ice is reported on or near his course, shall at night either proceed at a moderate speed or change course so as to keep well clear of the ice reported and of the area of danger.

251.

[Section 251 is amended by Act 40 of 1963 and deleted by Act 7 of 1991.

Section 11(2) of Act 7 of 1991 provides the following transitional provision:

“Any certificate or memorandum which in terms of the section repealed by subsection (1) is deemed to have been issued under the principal Act, and of which the period of validity as specified therein has not yet expired, shall, notwithstanding the repeal of the said section, continue to be valid until the said period expires.”]

Period of grace for compliance with certain provisions

252. (1) Nothing contained in section *two hundred, two hundred and three, two hundred and twelve* or *two hundred and nineteen* shall prohibit a ship from going to sea without

Merchant Shipping Act 57 of 1951 (SA)

the certificates referred to in those sections until after the expiration of one year from the date on which, in terms of a proclamation issued under section *three hundred and fifty-eight*, those sections are put into operation.

(2) Nothing contained in section *two hundred and twenty-seven* shall require the master of any ship to produce any certificate referred to in that section until after the expiration of one year from the date on which, in terms of a proclamation issued under section *three hundred and fifty-eight*, the first mentioned section is put into operation.

Provisions of this Chapter not to be applied to ships not registered in Namibia driven into Republic ports by stress of weather

253. Notwithstanding the fact that any provision of this Chapter is expressed to apply to ships not registered in Namibia while they are within Namibia or within the territorial waters thereof, that provision shall not be applied to a ship not registered in Namibia if she would not have been within Namibia or within the territorial waters thereof but for stress of weather or any other circumstances that neither the master nor the owner nor the charterer (if any) of the ship could have prevented or forestalled.

Admissibility in evidence of safety and load line certificates and surveyors' reports

254. Every safety convention certificate, local safety certificate, and load line certificate and every report made by a surveyor in terms of any provision of this Act shall be admissible in evidence.

*PART IV**Collisions, Accidents at Sea, and Limitation of Liability***Division of loss in case of collision**

255. (1) Whenever by the fault of two or more ships damage or loss is caused to one or more of them or to the cargo or freight of one or more of them or to any property on board one or more of them, the liability to make good the damage or loss shall be in proportion to the degree in which each ship was at fault: Provided that -

- (a) if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally; and
- (b) nothing in this section shall operate so as to render any ship liable for any loss or damage to which her fault has not contributed; and
- (c) nothing in this section shall affect the liability of any person under any contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of law, or as affecting the right of any person to limit the liability in the manner provided by law.

(2) For the purposes of this chapter, references to damage or loss caused by the fault of a ship shall be construed as including references to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages.

Damages for personal injury

Merchant Shipping Act 57 of 1951 (SA)

256. (1) Whenever loss of life or personal injuries are suffered by any person on board a ship owing to the fault of that ship and of any other ship or ships, the liability of the owners of the ships concerned shall be joint and several.

(2) Nothing in this section shall be construed as depriving any person of any right of defence on which, independently of this section, he might have relied in an action brought against him by the person injured, or any person entitled to sue in respect of such loss of life, or shall affect the right of any person to limit his liability in cases to which this section relates in the manner provided by law.

Right of contribution

257. (1) Whenever loss of life or personal injuries are suffered by a person on board a ship owing to the fault of that ship and of any other ship or ships, and a proportion of the damages is recovered against the owner of one of the ships which exceeds the proportion in which she was in fault, the said owner may recover by way of contribution the amount of the excess from the owners of the other ship or ships to the extent to which those ships were respectively in fault: Provided that no amount shall be so recovered which could not, by reason of any statutory or contractual limitation of, or exemption from, liability, or which could not for any other reason, have been recovered in the first instance as damages by the persons entitled to sue therefor.

(2) In addition to any other remedy provided by law, the person entitled to any contributions under sub-section (1) shall, for the purpose of recovering the contribution, have, subject to the provisions of this Act, the same rights and powers as the persons entitled to sue for damages in the first instance.

258.

[section 258 deleted by Act 5 of 2004]

Report to proper officer of accidents to ships

259. (1) The owner or master of any ship -

- (a) which has been lost, abandoned or stranded; or
- (b) which has been seriously damaged or has caused serious damage to any other ship; or
- (c) on which any casualty resulting in loss of life or serious injury to any person has occurred; or
- (d) which has been in a position of great peril either from the action of some other ship or for any other reason; or
- (e) which, having left any port in Namibia has put back to that port; or
- (f) which has fouled or done any damage to any harbour, dock or wharf or to any lightship, buoy, beacon or sea mark,

shall within twenty-four hours after the happening of the event, or as soon thereafter as possible, report it to the nearest proper officer in the form prescribed, stating the nature of the event and of the probable cause therefor, the name of the ship, her official number, the port to which she

Merchant Shipping Act 57 of 1951 (SA)

belongs, the place where the event occurred and the place where the ship then is, and giving all other available relevant information.

(2) Subsection (1) shall, subject to subsection (3), apply to every ship which is registered or licensed in Namibia or which is in terms of this Act required to be so registered or licensed and to or in respect of or on board of which any such event as is referred to in subsection (1) has occurred anywhere, and it shall apply to a ship registered in a country other than Namibia only while she is within Namibia or the territorial waters thereof and if any such event has occurred to or in respect of or on board of the ship during a voyage to a port in Namibia or within Namibia or the territorial waters thereof.

[subsection (2) substituted by Act 42 of 1969]

(3) Paragraph (f) of sub-section (1) shall not apply to any vessel belonging to Transnamib Limited and used by it in connection with the working of its harbours.

Notice to Permanent Secretary of loss of ship

260. If the owner or the agent of the owner of a Namibian ship or of a ship plying between ports in Namibia or between a port in Namibia and any other port has reason, owing to the nonappearance of the ship or to any other circumstances, to believe or to fear that the ship has been wholly lost, he shall as soon as conveniently may be notify the Permanent Secretary in writing of the loss or the feared loss and of the probable occasion thereof, stating the name of the ship, her official number, the port to which she belongs, and giving all other available relevant information.

[section 260 amended by Act 40 of 1963]

When owner not liable for whole damage

261. (1) The owner of a ship, whether registered in Namibia or not, shall not, if any loss of life or personal injury to any person, or any loss of or damage to any property or rights of any kind, whether movable or immovable, is caused without his actual fault or privity -

- (a) if no claim for damages in respect of loss of or damage to property or rights arises, be liable for damages in respect of loss of life or personal injury to an aggregate amount exceeding an amount equivalent to two thousand six hundred and thirty-five gold francs for each ton of the ship's tonnage; or
- (b) if no claim for damages in respect of loss of life or personal injury arises, be liable for damages in respect of loss of or damage to property or rights to an aggregate amount exceeding an amount equivalent to eight hundred and fifty gold francs for each ton of the ship's tonnage; or
- (c) if claims for damages in respect of loss of life or personal injury and also claims for damages in respect of loss of or damage to property or rights arise, be liable for damages to an aggregate amount exceeding an amount equivalent to two thousand six hundred and thirty-five gold francs for each ton of the ship's tonnage: Provided that in such a case claims for damages in respect of loss of life or personal injury shall, to the extent of an aggregate amount equivalent to one thousand seven hundred and eighty-five gold francs for each ton of the ship's tonnage, have priority over claims for damages in respect of loss of or damage to property or rights, and, as regards the balance of the aggregate amount equivalent to two thousand six hundred and thirty-five gold francs for each ton of the ship's tonnage, the unsatisfied portion of the first-mentioned claims shall rank *pari passu* with the last-mentioned claims.

Merchant Shipping Act 57 of 1951 (SA)

[subsection (1) amended by Act 30 of 1959 and by Act 25 of 1985]

(2) The provisions of this section shall extend and apply to the owners, builders or other persons interested in any ship built at any port or place in Namibia, from and including the launching of such ship until the registration thereof under the provisions of this Act.

(3) The provisions of this section shall apply in respect of claims for damages in respect of loss of life, personal injury and loss of or damage to property or rights arising on any single occasion, and in the application of the said provisions claims for damages in respect of loss, injury or damage arising out of two or more distinct occasions shall not be combined.

(4) For the purposes of this section a gold franc shall be taken to be a unit consisting of sixty-five and a half milligrams of gold of millesimal fineness nine hundred.

[subsection (4) inserted by Act 30 of 1959]

(5) The Permanent Secretary may from time to time by notice in the Gazette specify the amounts which for the purposes of this section shall be taken as equivalent to two thousand six hundred and thirty-five and eight hundred and fifty gold francs, respectively.

[Subsection (5) is inserted by Act 30 of 1959 and amended by Act 25 of 1985.
The English text of Act 25 of 1985 refers to subsection (3) but the change clearly involves subsection (5); the Afrikaans text is correct on this point.]

Tonnage how calculated

262. (1) For the purpose of section *two hundred and sixty-one*, the tonnage of a ship shall be her gross register tonnage.

[subsection (1) amended by Act 25 of 1985]

(2) There shall not be included in such tonnage any space occupied by seamen or apprentice-officers and appropriated to their use which has been certified by a surveyor to comply in all respects with the requirements of this Act.

(3) The measurement of such tonnage shall be -

- (a) in the case of a Namibian ship, according to the law of Namibia;
- (b) in the case of a treaty ship registered elsewhere than in Namibia, according to the law of the treaty country where the ship is registered;
- (c) in the case of a foreign ship, according to the law of Namibia, if capable of being so measured.

[subsection (3) amended by Act 69 of 1962]

(4) In the case of any foreign ship, which is incapable of being measured under the law of Namibia, the Minister shall, after consideration of the available evidence concerning the dimensions of the ship, give a certificate under his hand stating what would, in his opinion, have been the tonnage of the ship if she had been duly measured according to the law of Namibia; and the tonnage so stated in such certificate shall, for the purpose of section *two hundred and sixty-one*, be deemed to be the tonnage of the ship.

Application of this Part to persons other than the owners

Merchant Shipping Act 57 of 1951 (SA)

263. (1) Any obligation imposed by this Part upon any owner of a ship shall be imposed also upon any person (other than the owner) who is responsible for the fault of the ship; and in any case where, by virtue of any charter or lease, or for any other reason, the owner is not responsible for the navigation and management of the ship, this Part shall be construed to impose any such obligation upon the charterer or other person for the time being so responsible, and not upon the owner.

(2) For the purposes of section 261 the word 'owner' in relation to a ship shall include any charterer, any person interested in or in possession of such ship, and a manager or operator of such ship.

[subsection (2) inserted by Act 3 of 1981]

CHAPTER VI

SPECIAL SHIPPING ENQUIRIES AND COURTS OF ENQUIRY AND COURTS OF SURVEY

Preliminary enquiry into shipping casualties

264. (1) The Permanent Secretary may, in his discretion, appoint any competent person to hold a preliminary enquiry -

- (a) whenever an allegation of incompetency or misconduct is made against the master or any of the ship's officers of a ship which is registered or licensed in Namibia or which is in terms of this Act required to be so registered or licensed; or
- (b) whenever -
 - (i) a ship referred to in paragraph (a) has been lost, abandoned or stranded; or
 - (ii) a ship referred to in paragraph (a) has been damaged or has caused damage to any other ship; or
 - (iii) loss of life or injury to any person on board a ship referred to in paragraph (a) has occurred,

at any place whatsoever.

(2) The Permanent Secretary may, in his discretion, appoint any competent person to hold a preliminary enquiry whenever -

- (a) any such allegation as is referred to in subsection (1)(a) is made against the master or any of the ship's officers of a ship registered in a country other than Namibia and which is wholly engaged in plying between ports in Namibia, or any such event as is referred to in subsection (1)(b) has occurred at any place whatsoever to or in respect of or on board such a ship; or
- (b) any such event as is referred to in subsection (1)(b) has occurred in a port in Namibia or on or near the coasts of Namibia to or in respect of any ship registered in a country other than Namibia and which is not wholly engaged in plying between ports in Namibia.

Merchant Shipping Act 57 of 1951 (SA)

(3) The Permanent Secretary may, in his discretion, appoint any competent person to hold a preliminary enquiry whenever any such event as is referred to in subsection (1)(b) has occurred elsewhere than in a port in Namibia or on or near the coasts of Namibia to or in respect of or on board a ship registered in a country other than Namibia and -

- (a) the ship subsequently arrives at a port in Namibia and an enquiry into the casualty has not been held by any competent court or other investigatory body in any other treaty country; or
- (b) in the case of a treaty ship, evidence is obtainable in Namibia as to the circumstances in which the ship proceeded to sea, or was last heard of, or was lost, abandoned or stranded, or suffered or caused damage, or in which loss of life or serious injury to any person on board the ship occurred.

[section 264 amended by Act 69 of 1962 and by Act 40 of 1963, and substituted by Act 42 of 1969]

Report to Permanent Secretary by person who has held preliminary enquiry

265. Upon the conclusion of an enquiry by a person appointed in terms of section *two hundred and sixty-four* he shall without delay transmit to the Permanent Secretary a report containing a full statement of the case, and of his opinion thereon, accompanied by such report of or extracts from the evidence and such observations as he thinks fit.

Convening of court of marine enquiry in Namibia

266. (1) The Minister may, in his discretion, and whether or not a preliminary enquiry has been made under section *two hundred and sixty-four*, convene a court (hereinafter referred to as a court of marine enquiry) to hold formal investigation into any such allegation or event as is referred to in that section.

(2) A formal investigation shall not be held into any allegation against the master or a ship's officer of a ship registered in any treaty country other than Namibia, or into any event that has occurred to or in respect of or on board any such ship, save at the request or with the consent of the Government of that treaty country: Provided that this restriction shall not apply if -

- (a) the allegation relates to the master or a ship's officer of a ship which is wholly engaged in plying between ports in Namibia, or the event has occurred at any place whatsoever to or in respect of or on board any such ship; or
- (b) the event has occurred in a port in Namibia or on or near the coasts of Namibia to or in respect of or on board a ship other than a ship referred to in paragraph (a).

[subsection (2) amended by Act 69 of 1962 and by Act 40 of 1963]

Constitution of court of marine enquiry

267. (1) A court of marine enquiry shall consist of a judge or ex-judge of the High Court or Supreme Court, magistrate, ex-magistrate, advocate or attorney, who shall be the presiding officer, and either two or four other members.

[subsection (1) is amended by Act 3 of 1981 and by Act 7 of 1991]

(2) The members of the court shall be appointed by the Minister, and all members other than the presiding officer shall be persons of suitable nautical, engineering or other special skill,

Merchant Shipping Act 57 of 1951 (SA)

knowledge or experience, and, whenever possible, at least one member shall be in active sea-going service.

(3) The members of the court other than the presiding officer shall be selected from a list of persons approved by the Minister from time to time in accordance with the regulations: Provided that the Minister may appoint as a member of the court a person whose name does not appear on the said list, if it appears to him expedient to do so by reason of the special nature of the investigation.

(4) If by death, resignation or any other cause the number of members of the court is reduced, the remaining members shall, if they consist of the presiding officer and at least one other member, constitute the court.

(5) If the court, as originally constituted or as reduced for any reason referred to in subsection (4), consists of the presiding officer and two other members, the presiding officer and one other member shall form a quorum; and if it consists of the presiding officer and more than two other members, the presiding officer and two other members shall form a quorum.

How decisions of court of marine enquiry are reached and announced

268. (1) Any matter of law arising for decision at any investigation held by a court of marine enquiry, and any question arising thereat as to whether a matter for decision is a matter of fact or a matter of law, shall be decided by the presiding officer, and no other member shall have a voice in any such decision.

(2) The presiding officer may adjourn the argument upon any such matter or question as is mentioned in sub-section (1), and may sit alone for the hearing of such argument and the decision of such matter or question.

(3) Whenever the presiding officer gives a decision in terms of sub-section (1), he shall give his reasons for that decision.

(4) Upon all matters of fact the decision of the majority of the members of the court shall be the decision of the court.

(5) The decision of the court upon any matter in terms of sub-section (4) shall be declared by one of the members concurring in that decision, and the reasons therefor shall be stated by at least one such member. Any member who dissents from the decision of the court may declare his dissent and his reasons therefor.

(6) If for any reason a majority of the members of the court (or, if the court consists of only two members, both members) are not agreed upon any matter of fact upon which a decision is necessary in order that the investigation may be completed, the presiding officer shall report that fact to the Permanent Secretary, and thereupon the Minister may refer the matter back to the court for reconsideration or may discharge the members of the court and, if he thinks fit, appoint another court of marine enquiry to hold the formal investigation.

Powers of court of marine enquiry in respect of master or ship's officer

269. (1) If a court of marine enquiry finds that any master as substituted by or ship's officer is incompetent or has been guilty of any act of misconduct, or that loss, abandonment, or stranding of or serious damage to any ship or loss of life or serious injury to any person has been caused by the wrongful act or default of any master or ship's officer, it may, subject to the provisions of section 283, cancel the certificate of competency or service of the master or ship's officer or suspend it for a stated period or, whether or not the master or ship's officer holds a

Merchant Shipping Act 57 of 1951 (SA)

certificate of competency or service, prohibit his employment in any stated capacity in a ship for a stated period or reprimand him.

[subsection (1) substituted by Act 24 of 1974]

(2) Subsection (1) shall apply in respect of masters or ships' officers of all ships which are registered or licensed in Namibia or which are in terms of this Act required to be so registered or licensed, and in respect of masters or ships' officers of ships registered in a country other than Namibia only if those ships are wholly engaged in plying between ports in Namibia.

[section 269 amended by Act 40 of 1963 and substituted by Act 42 of 1969]

Convening of maritime courts outside Namibia

270. Whenever -

- (a) a complaint which appears to a proper officer outside Namibia to require immediate investigation is made to him by the master or any member of the crew of a Namibian ship; or
- (b) the interest of the owner of a Namibian ship or of the cargo thereof appears to such an officer to require it; or
- (c) an allegation of incompetency or misconduct is made to him against the master or any of the ship's officers of a Namibian ship; or
- (d) any Namibian ship is lost, abandoned or stranded at or near the place where such an officer may be, or whenever the crew or part of the crew of any Namibian ship which has been lost, abandoned or stranded arrives at that place; or
- (e) any loss of life or any serious injury to any person has occurred on board a Namibian ship at or near that place,

he may, in his discretion, convene a court (hereinafter referred to as a maritime court) to investigate the said complaint or allegation or the matter affecting the said interest or the cause of the loss, abandonment or stranding of the ship or of the loss of life or of the injury to the person.

Constitution of maritime courts

271. (1) A maritime court shall consist of the proper officer who convenes it and either two or four other members.

(2) The other members of the court shall be appointed by the proper officer who convenes it, and shall be persons of suitable nautical, engineering or other special skill, knowledge or experience, and, whenever possible, at least one member shall be in active sea-going service.

(3) If by death, resignation or any other cause the number of members of the court is reduced to not less than two, the remaining members shall constitute the court.

(4) If the court, as originally constituted, or as reduced for any reason referred to in sub-section (3), consists of three members, two members shall form a quorum; and if it consists of more than three members, three members shall form a quorum.

(5) The proper officer who convened the court shall be the presiding officer unless for any reason referred to in sub-section (3) he ceases to be a member of the court, in which event the

proper officer (or his successor) shall appoint one of the other members of the court to be the presiding officer.

How decisions of maritime courts are reached and announced

272. (1) The decision of the majority of the members of a maritime court shall, subject to the provisions of paragraphs (a) and (b) of sub-section (1) of section *two hundred and seventy-three*, be the decision of the court.

(2) The decision of the court shall be declared by one of the members concurring in that decision, and the reasons therefor shall be stated by at least one such member. Any member who dissents from the decision of the court may declare his dissent and his reasons therefor.

(3) If for any reason a majority of the members of the court (or, if the court consists of only two members, both members) are not agreed upon any matter upon which a decision is necessary in order that the investigation may be completed, the presiding officer, if he is the proper officer, shall discharge the members of the court, and, if he thinks fit, he may summon another maritime court to hold the investigation, or, if he is not the proper officer, he shall report the fact to the proper officer, and thereupon the proper officer may refer the matter back to the court for reconsideration or may discharge the members of the court, and, if he thinks fit, summon another maritime court to hold the investigation.

Powers of maritime courts

273. (1) A maritime court may, after hearing and investigating the case, and subject to the provisions of section *two hundred and eighty-three* -

- (a) if unanimous that the safety of a Namibian ship or her cargo or crew or the interest of the owner of a Namibian ship or of the cargo thereof requires it, remove the master and appoint another qualified person to act in his stead;
- (b) if unanimous that any master or ship's officer of a Namibian ship is incompetent or has been guilty of any act of misconduct, or that loss, abandonment, stranding of or serious damage to any ship or loss of life or serious injury to any person has been caused by the wrongful act or default of any master or ship's officer of a Namibian ship, suspend the certificate of competency or service of that master or ship's officer for a stated period, or, whether or not the master or ship's officer holds a certificate of competency or service, prohibit his employment in any stated capacity in a ship for a stated period or reprimand him;

[paragraph (b) substituted by Act 42 of 1969 and by Act 24 of 1974]

- (c) discharge a seaman from a Namibian ship and order the wages of any seaman so discharged or any part of those wages to be forfeited;
- (d) decide any questions as to wages or fines or forfeitures arising between any of the parties to the proceedings;
- (e) direct that any or all of the costs incurred by the master or owner of a Namibian ship in procuring the imprisonment of any seaman or apprentice-officer in a port outside Namibia, or in his maintenance while so imprisoned, shall be paid out of and deducted from the wages of that seaman or apprentice-officer, whether then or subsequently earned;

Merchant Shipping Act 57 of 1951 (SA)

- (f) exercise the same powers with regard to persons charged before it with the commission of offences at sea or abroad as consular representatives can in terms of section *three hundred and forty-one*;
- (g) punish any master or member of the crew of a Namibian ship respecting whose conduct a complaint is brought before it for any offence under this Act of which he has been found guilty by the court and shall for that purpose have the same powers as a magistrate's court would have if the case were tried in Namibia: Provided that where an offender is sentenced to imprisonment, the proper officer shall approve the place of imprisonment, whether on land or on board ship: Provided, further, that the court may direct that any fine imposed upon an offender shall be paid out of and deducted from his wages and paid over to the proper officer, who shall transmit it to the Permanent Secretary;
- (h) if it considers such a step expedient, order a survey to be made of any Namibian ship which is the subject of investigation;
- (i)

[paragraph (i) deleted by Act 30 of 1959]

(2) All orders made by a maritime court shall, whenever practicable, be entered in the official log-book of the ship which forms the subject of investigation or on board which the casualty or occurrence or conduct investigated took place, and be signed by the presiding officer of the court.

Appeal from surveyor to court of survey

- 274.** (1) If a surveyor who has inspected a vessel -
- (a) makes a statement in his report of his inspection with which the owner (or his agent) or the master of the vessel is dissatisfied; or
 - (b) gives notice under sub-section (2) of section *two hundred and fourteen*, sub-section (2) or (3) of section *two hundred and sixteen* or sub-section (1) of section *two hundred and twenty-three*; or
 - (c) declines to give the certificate referred to in sub-section (3) of section *two hundred and fourteen*, sub-section (4) of section *two hundred and sixteen* or sub-section (2) of section *two hundred and twenty-three*,

the owner (or his agent) or the master, as the case may be, may, subject to the provisions of sub-section (2) of this section and section *two hundred and eighty-two*, appeal to a court of survey.

(2) Whenever a surveyor inspects any vessel, he shall, if the owner (or his agent) or the master of the vessel so requires, be accompanied on the inspection by some person nominated by the owner (or his agent, or the master, as the case may be, and if the person so nominated agrees with the surveyor as to the statement made or the notice given by the surveyor or the refusal by the surveyor to give a certificate, there shall be no appeal to a court of survey from that statement, notice or refusal.

[subsection (2) amended by Act 30 of 1959]

Convening of court of survey

Merchant Shipping Act 57 of 1951 (SA)

275. Whenever an appeal to a court of survey lies in terms of section *two hundred and seventy-four* and has been duly noted, the Minister shall, subject to the provisions of section *two hundred and eighty-two*, convene a court (hereinafter referred to as a court of survey) to hear the appeal.

Constitution of court of survey

276. (1) A court of survey shall consist of a magistrate and either two or four other members.

(2) The members of the court shall be appointed by the Minister, and all members other than the presiding officer shall be persons of suitable nautical, engineering or other special skill, knowledge or experience.

(3) Whenever a foreign ship is the subject of an appeal the Minister may consult a diplomatic or consular representative of the country in which that ship is registered before nominating the members.

(4) The members of the court other than the presiding officer shall be selected from a list of persons approved by the Minister from time to time in accordance with the regulations: Provided that the Minister may appoint as a member of the court a person whose name does not appear on the said list, if it appears to him expedient to do so by reason of the special nature of the questions involved in the appeal.

(5) If by death, resignation or any other cause the number of members of the court is reduced to not less than two, the remaining members shall constitute the court.

(6) If the court, as originally constituted, or as reduced for any reason referred to in sub-section (5), consists of three members, two members shall form a quorum; and if it consists of more than three members, three members shall form a quorum.

(7) The magistrate appointed as a member of the court as originally constituted shall be the presiding officer unless for any reason referred to in sub-section (5), he ceases to be a member of the court, in which event the Minister shall appoint one of the other members of the court to be the presiding officer.

How decisions of courts of survey are reached and announced

277. (1) The decision of the majority of the members of a court of survey shall be the decision of the court.

(2) The decision of the court shall be declared by one of the members concurring in that decision, and the reasons therefor shall be stated by at least one such member. Any member who dissents from the decision of the court may declare his dissent and his reasons therefor.

(3) If for any reason a majority of the members of the court (or, if the court consists of only two members, both members) are not agreed upon the question what the decision upon the appeal should be, the presiding officer shall report the fact to the Permanent Secretary, and thereupon the Minister may refer the appeal back to the court for reconsideration, or may discharge the members of the court and appoint another court of survey to hear the appeal.

(4) Notwithstanding the provisions of this section, if a ship has been detained or it is proposed to detain a ship by reason of a report made or a notice given by a surveyor, or by reason of a refusal by a surveyor to grant a certificate, and appeal is made against the making of the report or the giving of the notice or the refusal to grant the certificate, the ship shall, if she has

been detained, be released, and if she has not yet been detained, shall not be detained after the first meeting of the court, unless a majority of the members of the court are in favour of her being detained.

[The word "Notwithstanding" is misspelt in the *Government Gazette*, as reproduced above.]

Powers of court of survey

278. A court of survey or, if an appeal has been referred to an expert or experts under section *two hundred and eighty-two*, that expert or those experts, may, if the appeal is against -

- (a) any statement in a report by a surveyor, dismiss the appeal, in which event the statement shall stand, or uphold the appeal and cancel or vary the statement; or
- (b) any notice given by a surveyor, dismiss the appeal and confirm that notice or uphold the appeal and set aside the notice; or
- (c) the refusal by a surveyor to grant a certificate, dismiss the appeal and confirm that refusal or uphold the appeal and grant the certificate.

Interested persons not to serve on courts of marine enquiry, maritime courts or courts of survey

279. (1) No person who is connected, directly or indirectly, with the ship which forms the subject of investigation by a court of marine enquiry or a maritime court, or which forms the subject of an appeal to a court of survey, or on board which the casualty or occurrence or conduct to be investigated by a court of marine enquiry or a maritime court took place, or with the owners of that ship, shall be appointed as a member of that court or under section *two hundred and eighty-two*.

(2) Nothing in sub-section (1) contained shall prohibit the appointment as a member of a court of marine enquiry or a maritime court or a court of survey or under section *two hundred and eighty-two* of any person who is in the employ of or entitled to receive a pension from the Government of Namibia, merely on the ground that the said Government is the owner of the ship referred to in sub-section (1).

[subsection (2) amended by Act 40 of 1963]

Procedure at court of marine enquiry or maritime court or court of survey

280. (1) A court of marine enquiry, a maritime court or a court of survey, or an expert or experts to whom an appeal has been referred under section *two hundred and eighty-two* may, subject to the provisions of this Act, determine the procedure to be followed at the investigation or the hearing of the appeal.

(2) Every such investigation shall, unless the court decide otherwise, be held in open court, and the hearing of every such appeal shall be held in open court; and the decision or finding shall, at the conclusion of the investigation or hearing, or as soon afterwards as possible, be delivered in open court.

Court of survey may cause ship to be surveyed

281. (1) A court of survey may appoint a surveyor to inspect the ship which is the subject of appeal and report thereon to the court.

Merchant Shipping Act 57 of 1951 (SA)

(2) The owner and master of the ship and any person appointed by the owner or master, and also any person appointed by the Permanent Secretary, may attend at any inspection made in terms of this section.

Reference in difficult cases to scientific persons

282. (1) If the Permanent Secretary is of opinion that an appeal to a court of survey involves a question of construction or design or of scientific difficulty or an important principle, he may refer the appeal to one or more experts approved by the Minister and selected by agreement between the Permanent Secretary and the appellant, or, in default of any such agreement, by the Minister, and thereupon the appeal shall be determined by such experts instead of by the court.

(2) The Permanent Secretary, if the appellant in any appeal so requests and gives security to the satisfaction of the Permanent Secretary to pay any relative costs, shall refer the appeal to one or more experts selected in terms of sub-section (1).

(3) An expert or experts to whom an appeal is referred in terms of sub-section (1) or (2) shall have the same powers as a court of survey.

(4) If an appeal is referred to more than one expert, the provisions of section *two hundred and seventy-seven* shall apply, *mutatis mutandis*, to the hearing of the appeal.

(5) If an appeal is referred under sub-section (1) to more experts than one, the Permanent Secretary shall appoint one of them as presiding officer.

Opportunity of making a defence

283. (1) If at an investigation by a court of marine enquiry or a maritime court it is alleged or suggested that the conduct of any person has amounted to a punishable act or omission, that person shall be given a reasonable opportunity for making a defence.

(2) A court of marine enquiry shall not cancel or suspend a certificate or prohibit the employment of a person or reprimand him, and a maritime court shall not suspend a certificate or prohibit the employment of a person or reprimand him -

- (a) unless the holder of the certificate or other person has been present at the hearing of any evidence on which the decision of the court to cancel or suspend his certificate or to prohibit his employment or to reprimand him is based, or, if he has not been so present, unless a transcript of the notes of such evidence has been furnished to him at least forty-eight hours before he is called upon to make his defence; and
- (b) unless copies of any written depositions or reports upon which such decision is based have been furnished to him and a copy of the charges laid against him has been served upon him in the manner prescribed, at least forty-eight hours before he is called upon to make his defence, and if after a copy of a charge laid against him has been served upon him the charge is amended, he has been given a reasonable opportunity of making a defence to the amended charge.

[subsection (2) amended by Act 42 of 1969]

(3) If the holder of the certificate concerned or other person has been summoned to attend before the court and has not done so, or if upon being asked in writing or otherwise whether he wishes to make a defence he has not replied that he wishes to do so, it shall not be necessary to furnish to him the notes, depositions or reports referred to in subsection (2).

[subsection (3) substituted by Act 42 of 1969]

Court may require delivery of certificate during course of investigation

284. A court of marine enquiry or a maritime court may at any time during the progress of the investigation order any master or ship's officer affected by the investigation to deliver his certificate to the court forthwith.

Witnesses to be allowed expenses

285. Every witness summoned by a person appointed under section *two hundred and sixty-four* to make a preliminary enquiry or by a court of marine enquiry, a maritime court or a court of survey or an expert or experts to whom an appeal has been referred under section *two hundred and eighty-two* shall be paid such expenses as would be allowed to any witness attending or subpoenaed to give evidence in a civil case before a magistrate's court.

Transmission to Permanent Secretary of record and decision of court of marine enquiry, maritime court, or court of survey

286. (1) The presiding officer of a court of marine enquiry, maritime court or court of survey or body of experts to whom an appeal has been referred under section *two hundred and eighty-two*, or, if an appeal has been referred to only one expert that expert shall, at the conclusion of the investigation or hearing transmit to the Permanent Secretary the notes of evidence and as many copies as the Permanent Secretary may require of the record of the proceedings and the report and decisions; and any member of the court or any one of the experts who dissents from any decision may attach to the record his written reasons for so dissenting, and the presiding officer shall transmit such written reasons with the record.

(2) When the investigation affects a master or ship's officer of a ship other than a Namibian ship the Permanent Secretary shall transmit a copy of the court's finding or decision, together with the notes of the evidence, to the proper authority in the country where the ship is registered.

Effect of cancellation or suspension of certificate or prohibition of employment

287. The cancellation or suspension of a certificate by the Minister or a court of marine enquiry, or the suspension of a certificate by a maritime court, or the prohibition of employment by a court of marine enquiry or a maritime court, shall -

- (a) if the certificate was issued in Namibia, or if the prohibition of employment is in respect of a Namibian citizen, be effective everywhere and in respect of all ships; and
- (b) if the certificate was issued elsewhere than in Namibia or if the prohibition of employment is in respect of a citizen of a country other than Namibia, be effective -
 - (i) within Namibia and the territorial waters of Namibia in respect of all ships; and
 - (ii) outside Namibia and the territorial waters of Namibia only in respect of ships which are registered or licensed in Namibia or which are in terms of this Act required to be so registered or licensed.

[section 287 substituted by Act 42 of 1969]

Merchant Shipping Act 57 of 1951 (SA)

Delivery of Republic certificate cancelled or suspended

288. A master or ship's officer who is the holder of a certificate issued in Namibia shall, if such certificate has been cancelled or suspended by the Minister or a court of marine enquiry or suspended by a maritime court, deliver his certificate to the Minister or court on demand, or if it is not demanded by the Minister or court, to the Permanent Secretary.

Certificate not to be endorsed

289. If the certificate of a master or ship's officer is suspended by the Minister or a court of marine enquiry or a maritime court, or if the employment of a master or ship's officer is prohibited or he is reprimanded by a court of marine enquiry or a maritime court, or if a direction is given by the Minister under section 87(2) in respect of the holder of a certificate, no person shall make any endorsement to that effect on the certificate of the master or ship's officer.

[section 289 substituted by Act 42 of 1969]

Powers of Minister in respect of cancelled or suspended certificates

290. The Minister may, if he thinks the justice of the case requires it -

- (a) set aside the suspension of a certificate suspended by a court of marine enquiry or a maritime court, or shorten or lengthen the period of suspension of, or cancel, a certificate so suspended; or
- (b) grant a new certificate of the same grade or any lower grade in the place of a certificate cancelled by any such court or grant a new certificate of any lower grade in the place of a certificate suspended by any such court, if the certificate was issued in Namibia, or return any certificate so cancelled or suspended, if it was issued elsewhere than in Namibia; or

[paragraph (b) substituted by Act 42 of 1969]

- (c) set aside the prohibition of employment by a court of marine enquiry or a maritime court or shorten or lengthen the period of the prohibition, or set aside the reprimand by any such court.

[paragraph (c) inserted by Act 42 of 1969]

Rehearing

291. (1) Whenever an investigation has been held by a court of marine enquiry or a maritime court, the Minister may order the case to be reheard, either generally or as to any part thereof, and shall so order -

- (a) if new and important evidence which could not be produced at the investigation has been discovered; or
- (b) if for any other reason there has been in his opinion ground for suspicion that a miscarriage of justice has occurred.

(2) The Minister may order the case to be reheard by the court of marine enquiry or the maritime court, as the case may be, consisting (if such is practicable) of the some members who, or other members than, constituted the court when it held the investigation in the first instance;

and may, if the investigation was held by a maritime court, order the case to be reheard by a court of marine enquiry.

Appeals against decisions of courts of marine enquiry and maritime courts

292. (1) Any person aggrieved by any decision of a court of marine enquiry or a maritime court may appeal to the High Court.

[subsection (1) substituted by Act 7 of 1991]

(2) An appeal to the High Court shall, if the appeal is made merely on a point of law, be heard by a judge of that court, and in every other case by a judge of that court assisted by at least one assessor acting in an advisory capacity, who shall be a person of suitable nautical, engineering or other special skill, knowledge or experience summoned by the judge for the purpose.

(3) The court to which the appeal is made may confirm or quash or vary the decision appealed from, or remit the case for rehearing either generally or as to any part thereof by the court from whose decision the appeal is brought, consisting (if such is practicable) of the same members who, or other members than, constituted that court when it held the investigation in the first instance.

(4) An appeal under this section shall be made in the manner and subject to the conditions and in accordance with the provisions laid down in the regulations.

CHAPTER VII

WRECKS AND SALVAGE

293.

[section 293 deleted by Act 5 of 2004]

294.

[section 294 amended by Act 5 of 1976 and deleted by Act 5 of 2004]

295.

[section 295 deleted by Act 5 of 2004]

296.

[section 296 deleted by Act 5 of 2004]

297.

Merchant Shipping Act 57 of 1951 (SA)

[section 297 deleted by Act 5 of 2004]

298.

[section 298 amended by Act 30 of 1959, Act 40 of 1963
and Act 7 of 1991, and deleted by Act 5 of 2004]

299.

[section 299 deleted by Act 5 of 2004]

300.

[section 300 deleted by Act 5 of 2004]

301.

[section 301 amended by Act 30 of 1959 and by
Act 5 of 1976, and deleted by Act 5 of 2004]

302.

[section 302 deleted by Act 5 of 2004]

303.

[section 303 deleted by Act 5 of 2004]

304.

[section 304 deleted by Act 5 of 2004]

304A.

[section 304A inserted by Act 5 of 1976, amended by
Act 70 of 1977 and deleted by Act 5 of 2004]

305.

[section 305 deleted by Act 5 of 2004]

306.

[section 306 deleted by Act 5 of 2004]

CHAPTER VIII

CARRIAGE OF GOODS BY SEA

307.

[section 307 deleted by Act 1 of 1986]

308.

[section 308 deleted by Act 1 of 1986]

309.

[section 309 deleted by Act 1 of 1986]

310.

[section 310 deleted by Act 1 of 1986]

311.

[section 311 amended by Act 40 of 1963
and deleted by Act 1 of 1986]

CHAPTER IX

OFFENCES, PENAL PROVISIONS AND LEGAL PROCEDURE

Offences not expressly mentioned

312. Any person who contravenes any provision of this Act or who fails to comply with any provision thereof with which it was his duty to comply shall be guilty of an offence.

Penalties for offences

Merchant Shipping Act 57 of 1951 (SA)

313. (1) Every person who is guilty of an offence for offences under this Act for which no penalty is specially provided in subsection (2) or (3) of this section or section 323(4) or under section 356(5) shall on conviction be liable to a fine not exceeding R200.

(2) Every person who is guilty of an offence under this Act mentioned in Column 1 hereunder shall on conviction be liable to a penalty not exceeding the penalty mentioned in Column 2 hereunder opposite the offence:

Column 1.	Column 2.
Contravening or failing to comply with the following provisions.	Penalty.
Section 201.	Fine of R80 and, in addition, for every passenger in excess of the number permitted by the certificate or memorandum, a fine of double the highest fare payable by any passenger on board.
Section 16, 19(2), 36(2), 65(2), 68, 72, 117(1), 118, 172, 213, 232(1) or 250.	Fine of R400.
Section 9(2), 174(2)(c) or (e), 200(1)(c) or (d), 212(b), 219(a)(ii), 228(1) or 303(1).	Fine of R400 or six months' imprisonment or both such fine and imprisonment.
Section 32(2).	Fine of R400 or six months' imprisonment or both such fine and imprisonment and, in addition, a fine of R20 for every day during which the offence continues after conviction.
Section 73(1), 174(2)(d), (f) or (g), 200(1)(a) or (b), 212(a), 219(a)(i) or (b), 221(1), 235(1) or (2), 236(1), 237(1) or (2), 316(a), (b), (e), (f), (g) or (h) or 320.	Fine of R800 or one year's imprisonment or both such fine and imprisonment.
Section 9(3), 11(2), 25, 65(3), 66, 67, 174(1), 204(3), 234(1) or (2), 296, 299(2), 314, 315 or 316(c).	Fine of R2 000 or two years' imprisonment or both such fine and imprisonment.
Section 214(1).	Fine of R2 000 or two years' imprisonment, or both such fine and such imprisonment, and, in addition, a fine of R800 for every 25 mm or fraction thereof by which the appropriate load line on each side of the ship was submerged or would have been submerged if the ship had had no list.
Section 240.	Fine of R4 000 or three years' imprisonment or both such fine and imprisonment.
Section 316(d).	Fine of treble the value of the ship or goods received or had in possession or R4 000, whichever is the greater, or three years'

Merchant Shipping Act 57 of 1951 (SA)

	imprisonment or both such fine and imprisonment.
--	--

(3) Every person who, being the master of a ship involved in a collision, fails to comply with the provisions of section 258(1) or who, being the master of a ship to which any provision of the collision regulations applies, without reasonable cause contravenes or fails to comply with that provision, shall on conviction be liable to a fine not exceeding R2 000 or imprisonment for a period not exceeding two years, or both such fine and imprisonment.

[section 313 substituted by Act 5 of 1976]

Bribery

314. No person shall, in respect of a matter relating to this Act -

- (a) not being authorized so to do, give or promise to give, directly or indirectly, any reward to an officer or a person who is employed by the Government, or upon whom any duty is imposed or to whom any function is entrusted by or under this Act, in respect of the performance or non-performance, by any such officer or person, of his employment, duty or function; or
- (b) agree with or propose to any such officer or person to do, or permit anything in contravention or evasion of this Act; or
- (c) being an officer or a person referred to in paragraph (a) -
 - (i) demand or receive except from or through the Government or in accordance with the provisions of this Act, any reward in respect of the performance or non-performance of his employment, duty or function; or
 - (ii) by any wilful act, neglect or default do or permit or agree to do or permit anything in contravention or evasion of this Act.

Forgery and other fraudulent acts

315. No person shall -

- (a) forge any document issued under this Act; or
- (b) make any false representation for the purpose of procuring the issue of any document under this Act, or for the purpose of inducing any person to do any act which by this Act he is authorized to do; or
- (c) produce or otherwise put off any forged document purporting to be a document issued under this Act, which he knows to be forged; or
- (d) knowingly produce or otherwise use any document issued under this Act which has been cancelled or suspended or which has expired or to which he is not entitled; or
- (e) make in any document, produced or delivered to any person authorized to receive it under this Act, any statement which he knows is untrue in any particular; or
- (f) produce or deliver any document which contains any statement which he knows is untrue in any particular to any person authorized to receive it under this Act; or

Merchant Shipping Act 57 of 1951 (SA)

- (g) lend to any person who he knows is not entitled thereto a document issued under this Act or allow any such document to be used by any such person.

Obstructing administration of Act

316. No person shall -

- (a) damage, destroy, conceal or dispose of any vessel or goods to prevent the detention, forfeiture or seizure thereof under this Act; or
- (b) rescue, damage or destroy any vessel or goods detained, forfeited or seized under this Act; or
- (c) being the owner or master of a vessel, which has been detained under this Act, or any other person under the control of either of them, cause or permit the vessel to proceed to sea without the permission of the proper officer; or
- (d) knowingly receive or have in his possession any vessel or goods forfeited under this Act; or
- (e) being the master of a vessel proceeding to sea, wrongfully take to sea any officer authorized to detain the vessel or any surveyor or other officer when on board the vessel in the execution of his duty; or
- (f) insult, resist, hinder or mislead any person or court upon whom any duty is imposed or any power is conferred or to whom any function is entrusted by or under this Act, in the discharge of that duty or the exercise of that power or the performance of that function, or refuse or fail to give all reasonable assistance, when called upon to do so, to any such person or court in such discharge, exercise or performance, or hinder or prevent any other person from assisting any such person or court in such discharge, exercise or performance; or
- (g) hinder or prevent any witness from attending in obedience to any summons issued under this Act; or
- (h) hinder or prevent the service of any document under this Act.

Stowaways

317. (1) No person shall go to sea in a ship without the consent of the owner, master, a ship's officer or some other person entitled to give that consent, or secrete himself for the purpose of going to sea without that consent.

(2) Every person who goes to sea in a ship without the consent mentioned in sub-section (1) shall so long as he remains in the ship be deemed to belong to the ship and be subject to the same laws and regulations for preserving discipline as if he were a member of the crew and had signed the agreement with the crew.

(3) Sub-sections (1) and (2) shall apply to any person who goes to sea or secretes himself for the purpose of going to sea -

- (a) in a Namibian ship going to sea from any port whatsoever; or
- (b) in a ship (other than a Namibian ship) going to sea from a port in Namibia; or

Merchant Shipping Act 57 of 1951 (SA)

- (c) in a ship (other than a Namibian ship) going to sea from a port outside Namibia and bound for a port in Namibia.

[subsection (3) amended by Act 40 of 1963]

(4) The master of any Namibian ship arriving at any port within or outside Namibia, and the master of any ship other than a Namibian ship arriving at a port in Namibia, shall, if any person has gone to sea in that ship without the consent mentioned in sub-section (1), report the fact in writing to the proper officer as soon as practicable after the arrival of the ship.

[subsection (3) amended by Act 40 of 1963]

Ships not to be boarded without authority

- 318.** No person not being duly authorized by or under this Act or any other law shall -
- (a) without the permission of the owner or master, go on board any ship, whether registered in Namibia or not, which is about to arrive, is arriving or has arrived in Namibia; or
 - (b) remain on board any such ship at a port in Namibia, after being required to leave by the owner or master or by a police officer, an officer of customs or proper officer.

Offences in connection with passenger ships

- 319.** (1) No person shall -
- (a) if, on account of his being drunk or disorderly, he has been refused admission to a passenger ship by the owner thereof or any person in his employ, and if he has received or been tendered a refund of his fare (if he has paid it), go on board the ship; or
 - (b) if, on account of his being drunk or disorderly on board any passenger ship, he has been requested by the master or any other person employed in the ship to leave the ship at any place in Namibia at which he can conveniently do so, and if he has received or been tendered a refund of his fare (if he has paid it), refuse or fail to comply with the request; or
 - (c) after warning by the master of or any other person employed in a passenger ship, molest or continue to molest any passenger on the ship; or
 - (d) after having been refused admission to a passenger ship by the owner thereof or any person in his employ on account of the ship being full, and having received or been tendered a refund of his fare (if he has paid it), go on board the ship; or
 - (e) if, having gone on board a passenger ship at any place in Namibia, he has been requested, on account of the ship being full, by the master of or any other person employed in the ship to quit the ship, before it has left that place, and has received or been tendered a refund of his fare (if he has paid it), refuse or fail to comply with the request; or
 - (f) travel in any passenger ship without first paying his fare, and with intent to evade payment thereof; or

Merchant Shipping Act 57 of 1951 (SA)

- (g) if he has paid his fare for a certain distance, knowingly proceed in a passenger ship beyond that distance without first paying the additional fare for the additional distance, and with intent to evade payment thereof; or
- (h) if he has arrived in a passenger ship at a place to which he has paid his fare, knowingly refuse or fail to quit the ship; or
- (i) being on board a passenger ship, and being requested by the master of or any other person employed in the ship, either to pay his fare or exhibit his ticket or other document showing payment of his fare, refuse or fail to comply with the request; or
- (j) being on board a passenger ship, and being requested by the master or any other person employed in the ship to furnish his name and address, refuse or fail to comply with the request or furnish a false name or address.

(2) The provisions of sub-section (1) shall apply in respect of all passenger ships wherever registered while they are in Namibia or the territorial waters thereof.

Obstruction of navigation of ship

320. No person shall without reasonable excuse do anything to obstruct or injure any of the equipment of any ship wherever registered, or obstruct, impede or molest any of the crew in the navigation and management of the ship or otherwise in the execution of their duties about the ship.

Conveyance of deserter on board ship

321. Whenever any seaman or apprentice-officer of a Namibian ship or other treaty ship is convicted by any court of Namibia, or any seaman or apprentice-officer of a Namibian ship is convicted by a court of a treaty country other than Namibia, of desertion or absence without leave or other breach of discipline, the court shall, if the voyage has not yet been completed, and if the master or any ship's officer or the owner or his agent so requires, instead of imposing upon him any fine or sentence of imprisonment, cause him to be conveyed on board for the purpose of proceeding on the voyage: Provided that the court may decline to exercise this power in any particular case, if for any reason it thinks it advisable so to decline.

[section 321 amended by Act 69 of 1962]

Imprisoned seamen may be sent back on board

322. If a seaman or apprentice-officer of a Namibian ship or other treaty ship is undergoing a sentence of imprisonment in Namibia, or if a seaman or apprentice-officer of a Namibian ship is undergoing a sentence of imprisonment in a treaty country other than Namibia, for the offence of desertion or absence without leave or other breach of discipline, any person who is a judicial officer of a court within whose area of jurisdiction the place of imprisonment is situated may, during his imprisonment, and before his engagement is at an end, and on the application of the master or owner or agent of the ship, and notwithstanding that the period of imprisonment has not concluded, cause the seaman or apprentice-officer to be conveyed on board his ship for the purpose of proceeding on the voyage, and the seaman or apprentice-officer shall not thereafter be required to serve the remaining portion of the period of imprisonment.

[section 322 amended by Act 69 of 1962]

Deduction from wages and payment to proper officers etc. of fines

Merchant Shipping Act 57 of 1951 (SA)

323. (1) Every fine imposed on a seaman belonging to a Namibian ship for any act of misconduct for which his agreement prescribes a fine in accordance with the regulations shall be deducted as follows:

- (a) if the seaman is discharged in Namibia, and the act of misconduct and the entry in the log-book required by this Act in respect thereof are proved to the satisfaction of the proper officer before whom the discharge takes place, the master or owner shall deduct the fine from the wages of the seaman concerned;
- (b) if the seaman is discharged outside Namibia, and the act of misconduct and the entry as aforesaid are proved to the satisfaction of the proper officer by whose sanction he is discharged, the master or owner shall deduct the fine as aforesaid,

and an entry shall be made in the official log-book of the ship and signed by the proper officer referred to, and the master or owner shall pay over the amount of the fine deducted to that proper officer.

(2) A proper officer shall remit any amounts received by him under this section to the Permanent Secretary and render such accounts in respect thereof, as the Permanent Secretary requires.

(3) The Permanent Secretary, if he is satisfied that any such act of misconduct was committed and that the deduction of a fine was properly made, shall cause the amount of the fine to be paid into the State Revenue Fund; and if the Permanent Secretary is not so satisfied, he shall cause the amount deducted to be refunded to the seaman.

(4) If a master or owner fails without reasonable cause to pay over to the proper officer any fine as required by this section, he shall be guilty of an offence and liable on conviction to a fine not exceeding six times the amount of the unpaid fine.

(5) An act of misconduct for which a fine has been imposed and deducted from the wages of the seaman, shall not be otherwise punished under this Act.

Permanent Secretary may impose penalty upon admission of guilt

324. (1) If any person -

- (a) admits to the Permanent Secretary that he has contravened any provision of this Act, or that he has failed to comply with any such provision with which it was his duty to comply; and
- (b) agrees to abide by the decision of the Permanent Secretary; and
- (c) deposits with the Permanent Secretary such sum as that officer may require of him, but not exceeding the maximum fine which may be imposed upon a conviction for the contravention or failure in question,

the Permanent Secretary may, after such enquiry as he deems necessary, determine the matter summarily and may, as penalty, without legal proceedings, order forfeiture of the whole or any part of the said deposit.

(2) From a determination or order of the Permanent Secretary under sub-section (1), when the penalty imposed by him exceeds one hundred pounds, an appeal shall lie to the Minister, whose decision shall be final.

Merchant Shipping Act 57 of 1951 (SA)

(3) The imposition of a penalty under sub-section (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 section shall in any way affect liability to forfeiture of ships, shares therein or goods.

Release from forfeiture or mitigation of penalties

325. The Minister, or the Permanent Secretary in cases where the power of release or mitigation of penalties has been delegated to him by the Minister, may -

- (a) direct that any ship or any share in a ship or any goods detained, seized or forfeited under this Act be released or delivered to the owner thereof; or
- (b) mitigate or remit any penalty incurred under this Act, not being a sentence imposed after conviction by a court of law,

on such conditions as to him appear proper: Provided that if the owner of any ship, share or goods referred to in paragraph (a) accepts such conditions he shall not thereafter be entitled to institute or maintain any action or other proceedings for damages on account of the detention, seizure or forfeiture.

Appropriation of wages to satisfy award of compensation in offences against discipline

326. When a seaman or apprentice-officer has been convicted of desertion as defined by section *one hundred and seventy-five* or of absence without leave as defined by section *one hundred and seventy-six* or of contravening any of the provisions of sub-section (1), (2) or (3) of section *one hundred and seventy-four*, and the court trying the case has made an award of compensation under section *three hundred and fifty-seven* of the Criminal Procedure Act, 1955 (Act No. 56 of 1955), any wages that have accrued or that may thereafter accrue to him may be applied to the satisfaction of the award.

[Section 326 is amended by Act 30 of 1959. Section 357 of the Criminal Procedure Act 56 of 1955 is no longer in force. The relevant law is now the Criminal Procedure Act 51 of 1977.]

Jurisdiction in respect of offences committed outside Namibia

- 327.** (1) If any person -
- (a) being a Namibian citizen, is charged with having committed an offence on board a Namibian ship on the high seas, or on board a Namibian ship in any port outside Namibia, or on board any ship (other than a Namibian ship) irrespective of whether he belongs to that ship or not; or
 - (b) not being a Namibian citizen is charged with having committed an offence on board a Namibian ship on the high seas,

and that person is found within the area of jurisdiction of any court in Namibia which would have had jurisdiction to try the offence if it had been committed within the said area, that court shall have jurisdiction to try the offence.

[subsection (1) is amended by Act 3 of 1981]

- (2) If any Namibian citizen -

Merchant Shipping Act 57 of 1951 (SA)

- (a) is charged with having committed an offence on board a Namibian ship during a voyage to a port in any treaty country (other than Namibia), or on board a Namibian ship in a port in treaty country (other than Namibia); or
- (b) who is a seaman belonging to a Namibian ship which is in a port in any treaty country (other than Namibia), is charged with having committed an offence in that treaty country,

and he is found within the area of jurisdiction of any court in that treaty country which, according to the laws in force in that treaty country, would have had jurisdiction to try the offence if the act or omission which under the laws in force in Namibia constitutes the offence were also punishable under the criminal law in force in that treaty country, and if the act had been committed or the omission had occurred on board a ship registered in that treaty country or within the said area, that court shall have jurisdiction to try the offence, provided the Minister has generally or in the particular case requested that the courts of that treaty country shall exercise such jurisdiction.

[subsection (2) amended by Act 69 of 1962]

(3) The Minister may by notice in the *Gazette* declare that the provisions of sub-section (2) shall apply in respect of the courts of any foreign country mentioned in that notice as if that foreign country were a treaty country; and thereupon the said provisions shall apply in respect of the courts of that foreign country as if it were a treaty country.

[subsection (3) amended by Act 30 of 1959 and by Act 69 of 1962]

(4) In this section the expression “offence” means any act or omission which is punishable under the criminal law in force in Namibia.

Jurisdiction of magistrates’ courts to impose punishment

328. Notwithstanding anything to the contrary contained in any other law, a magistrate’s court shall have jurisdiction to impose any punishment prescribed by this Act: Provided that this section shall not apply in respect of any compensation referred to in sub-section (2) of section *two hundred and thirty-two* or to any forfeiture under section *three hundred and thirty-four*.

329.

[section 329 deleted by Act 105 of 1983]

330.

[section 330 deleted by Act 5 of 2004]

331.

[section 331 deleted by Act 5 of 2004]

332.

[section 332 substituted by Act 40 of 1963
and deleted by Act 105 of 1983]

Inquiry into cause of death on board ship

333. (1) If any person dies on board any foreign-going Namibian ship the proper officer at the port where the crew of the ship is discharged, or the proper officer at any earlier port of call in Namibia, shall, on the arrival of the ship at that port, inquire into the cause of the death, and shall make in the official log-book an endorsement to the effect, either that the statement of the cause of death in the book is in his opinion true, or the contrary, according to the result of the inquiry.

[subsection (1) amended by Act 40 of 1963]

(2) If in the course of an inquiry it appears to the proper officer that a death has been caused on board the ship by violence or other improper means, he shall either report the matter to the Permanent Secretary, or if the emergency of the case so requires, take immediate steps for bringing the offender or offenders to justice.

Forfeiture of ships, shares in ships and goods

334. All ships, shares or interests in ships or goods which are dealt with contrary to the provisions of this Act, or by means of which any offence under this Act is committed, or in connection with which or concerning which any false statement is made or any forged document or any document containing any false statement is produced or used for any purpose of this Act, or in connection with which an offence is committed under sub-section (2) of section *eleven*, section *twenty-five*, subsection (3) of section *sixty-five*, section *sixty-six*, section *sixty-seven*, section *two hundred and forty* or paragraph (c) of section *three hundred and sixteen*, read with section *three hundred and twelve*, shall be liable to forfeiture.

Method of detaining a vessel or a share in a ship or goods

335. (1) Whenever under sub-section (1) of section *nineteen*, sub-section (2) of section *sixty-three*, sub-section (2) of section *seventy-one*, sub-section (3) of section *eighty-six*, sub-section (2) of section *one hundred and five*, sub-section (4) of section *one hundred and fifty-eight*, sub-section (3) of section *one hundred and sixty-two*, sub-section (2) of section *one hundred and sixty-three*, sub-section (2) of section *one hundred and sixty-eight*, subsection (2) of section *one hundred and eighty-eight*, sub-section (2) of section *one hundred and ninety-nine*, sub-section (2) of section *two hundred and eleven*, sub-section (3) of section *two hundred and fourteen*, sub-section (4) of section *two hundred and sixteen*, sub-section (2) of section *two hundred and twenty-three*, sub-section (2) of section *two hundred and twenty-seven*, sub-section (3) of section *two hundred and thirty-nine*, section *two hundred and forty-three*, sub-section (1) of section *three hundred and four*, or sub-section (1) or (2) of section *three hundred and thirty-nine*, a vessel or a share in a ship or any goods must or may be detained, a proper officer may cause that vessel or share in a ship or those goods to be detained.

(2) The detention shall be effected by the service of a notice of detention in accordance with the provisions of this section.

(3) A notice of detention shall be in the prescribed form, shall be signed by the proper officer, shall declare that the vessel or share or goods are thereby detained, and shall set forth the grounds of detention.

Merchant Shipping Act 57 of 1951 (SA)

(4) A notice of detention of a vessel or share in a ship shall be served upon the master of the vessel, and a notice of detention of goods shall be served upon the person in whose physical possession they are, and thereupon the vessel or share or goods shall be deemed to be detained for the purposes of this Act.

(5) A copy of every notice of detention shall forthwith be transmitted by the officer who issued it to the Permanent Secretary.

(6) Whenever the Permanent Secretary directs the proper officer to release a detained vessel or share in a ship or any detained goods, the proper officer shall issue a notice declaring that that vessel or share or those goods are released.

(7) A notice of release shall be in the prescribed form and shall be signed by the proper officer.

(8) A notice of release of a vessel or a share in a ship shall be served upon the master of the vessel, and a notice of release of goods shall be served upon the person in whose possession they are, and thereupon the vessel or share or goods shall be deemed to be released.

Procedure in forfeiture of a ship, a share in a ship or goods

336. (1) Whenever under sub-section (2) of section *twelve*, sub-section (9) of section *forty-three* or section *three hundred and thirty-four* a ship or a share in a ship is or any goods are liable to forfeiture, the Permanent Secretary may direct the proper officer to issue a notice of forfeiture of that ship or share or those goods in pursuance of that provision.

(2) A notice of forfeiture shall -

(a) be in the prescribed form;

(b) be signed by the proper officer;

(c) set forth the grounds on which, and refer to the provisions of this Act under which, the forfeiture is claimed; and

(d) state that unless the ship or share is or the goods are released in accordance with the provisions of subsection (8) or under an order of court, the ship, share or goods will be forfeited;

(e) be served, in the case of a ship or share in a ship, upon the master of the ship, and, in the case of goods, upon the owner or if he is not within Namibia or his address is not known, upon the person in whose physical possession they are.

(3) The owner or any other person interested in any ship, share in a ship or goods in respect of which a notice of forfeiture has been issued, who objects to the forfeiture thereof, shall, within the period of thirty days from the date upon which the notice of forfeiture was served, or within such further period as may be fixed by the court under sub-section (7), give notice in writing to the Permanent Secretary or to the proper officer who issued the notice, that he claims the release of the ship, share or goods, as the case may be.

(4) If notice is not given by the owner or interested person in terms of sub-section (3), no legal proceedings shall thereafter be instituted by him against the State, the Minister, the Permanent Secretary or any other officer for the release of the ship, share or goods or based merely upon the detention, seizure or forfeiture thereof.

Merchant Shipping Act 57 of 1951 (SA)

(5) When notice has been given in terms of sub-section (3), the person giving such notice may, within the period of ninety days from the date on which it was delivered to the Permanent Secretary, or within such further period as may be fixed by the court under sub-section (7), but not earlier than thirty days from the date upon which the said notice was so delivered, institute proceedings in a court of competent jurisdiction for the release of the ship, share or goods.

(6) If -

- (a) notice is not given in terms of sub-section (3); or
- (b) such notice having been given, proceedings are not instituted in terms of sub-section (5); or
- (c) such proceedings having been instituted, the court dismisses the claim for release,

the ship, share or goods shall be forfeited and become the property of the State -

- (i) upon expiry of the period of thirty days from the date upon which the notice of forfeiture was served, or upon expiry of such further period as may be fixed by the court under sub-section (7); or
- (ii) upon expiry of the period of ninety days from the said date, or upon expiry of such further period as may be fixed by the court under sub-section (7); or
- (iii) upon dismissal by the court of the claim for release, respectively.

(7) A court having jurisdiction to try a claim for the release of the ship, share or goods, may, before or after the expiry of the period referred to in sub-section (3) or (5), extend such period, if it thinks that the interests of justice so require.

(8) The Permanent Secretary may at any time before the forfeiture has become effective in terms of sub-section (6) direct that a notice of forfeiture be withdrawn, and thereupon the provisions of sub-sections (6), (7) and (8) of section *three hundred and thirty-five* shall, *mutatis mutandis*, apply.

Seizure of a ship, a share in a ship or goods detained or liable to forfeiture

337. (1) The Permanent Secretary or proper officer may, if he deems it expedient to do so, in order that any ship, share in a ship or goods in respect of which a notice of detention or of forfeiture has been served in terms of section *three hundred and thirty-five* or *three hundred and thirty-six*, or in respect of which it is intended to cause such a notice to be so served, may be secured against damage, destruction, concealment, removal or rescue, cause that ship or share or those goods, as the case may be, to be seized by a person thereto authorized by him in writing under his hand.

(2) The seizure of a ship or goods shall be effected by the physical taking possession thereof, and the seizure of a share in a ship shall be effected by the physical taking possession of that ship.

(3) The person effecting seizure of any ship, share in a ship or goods shall, upon demand, exhibit his written authority to do so, and, if at the time of seizure a notice of detention or forfeiture has not yet been served, shall serve upon the person in whose possession the ship or goods are seized a notice setting forth that it is intended to cause a notice of detention or forfeiture to be served and the grounds on which that intention is based.

Merchant Shipping Act 57 of 1951 (SA)

No clearance to be granted to detained ship

338. Whenever in terms of this Act a ship must be or has been detained an officer of customs shall, and whenever in terms of this Act a ship may be detained an officer of customs may, refuse to grant a clearance to that ship.

Detention of foreign ship that has occasioned damage

339. (1) Whenever injury has in any part of the world been caused to property belonging to the Government of Namibia or the Government of any other treaty country or to a Namibian citizen or a citizen of any treaty country (other than Namibia) by a foreign ship, and at any time thereafter that ship is found within Namibia or the territorial waters thereof, the High Court may, upon the application of any person who alleges that the injury was caused by the misconduct or want of skill of the master or any member of the crew of the ship, issue an order directed to any proper officer or other officer named, requiring that officer to detain the ship until such time as the owner, master or consignee thereof has satisfied any claim in respect of the injury, or has given security to the satisfaction of the court, to pay all costs and damages that may be awarded in any legal proceedings that may be instituted in respect of the injury. Any proper officer or other officer to whom the order is directed shall detain the ship accordingly.

[subsection (1) amended by Act 69 of 1962 and by Act 40 of 1963]

(2) Whenever it appears that, before, an application can be made under this section, the ship in respect of which the application is to be made will have departed from Namibia or the territorial waters thereof, any proper officer may detain the ship for such time as will allow the application to be made and the result thereof to be communicated to the officer detaining the ship, and that officer shall not be liable for any costs or damages in respect of the detention unless the same is proved to have been made without reasonable grounds.

(3) In any legal proceedings in relation to any such injury aforesaid, the person giving security shall be made defendant and shall be stated to be the owner of the ship that has occasioned the damage.

Notice to be given to consular representative of proceedings taken in respect of foreign ships

340. If any foreign ship is detained under this Act, or if any proceedings are taken under this Act against the master or owner of any foreign ship, notice shall forthwith be served on the consular representative of the country in which the ship is registered at or nearest to the port where the ship is for the time being, and such notice shall specify the grounds on which the ship has been detained or the proceedings have been taken.

Conveyance of accused persons and witnesses to Namibia

341. (1) Whenever any complaint is made to any consular representative of Namibia or of any other treaty country -

- (a) that any offence against property or person has been committed at any place, either ashore or afloat, outside any treaty country by any master, seaman, or apprentice-officer who at the time when the offence was committed, or within three months before that time, was employed in any Namibian ship; or
- (b) that any offence on the high seas has been committed by any master, seaman, or apprentice-officer belonging to any Namibian ship,

Merchant Shipping Act 57 of 1951 (SA)

that consular representative may inquire into the case and may, if in his opinion reasonable grounds of suspicion exist against the alleged offender, take any steps in his power for the purpose of placing him under the necessary restraint and of sending him as soon as practicable in safe custody to Namibia.

[subsection (1) amended by Act 69 of 1962]

(2) The consular representative may order the master of any ship registered in and bound to Namibia to receive and afford a passage and subsistence during the voyage to any such alleged offender as aforesaid and also to any persons who in the opinion of the consular representative are material witnesses to the offence. The master shall comply with any such order. The consular representative may endorse upon the agreement with the crew such particulars with respect to any alleged offenders or witnesses sent in the ship as he considers advisable.

(3) The master of a ship to whose charge an alleged offender has been so committed shall, on his ship's arrival in Namibia hand the alleged offender over to a member of the police who shall take him to a police station or charge office. The alleged offender shall thereafter be detained until a warrant is obtained for his further detention upon a charge of an offence or until he is released by reason that no charge is to be brought against him, and unless so released he shall as soon as possible be brought before a judicial officer upon a charge of an offence: Provided that he shall not be so detained for a longer period than forty-eight hours unless a warrant for his further detention is obtained.

(4) The expense of imprisoning any such alleged offender and of conveying him and the witnesses to a port in Namibia in any manner other than in the ship to which they respectively belong, shall be paid out of moneys provided by Parliament for that purpose.

Service of documents

342. Where for the purposes of this Act any document is to be served on any person, that document may be served -

- (a) in any case by delivering a copy thereof personally to the person on whom the document is to be served; or by sending such copy to him, in accordance with the regulations, by registered post, enclosed in an envelope upon which is written his name and address; or by leaving such copy for him with a member of his household at his dwelling; or, if no person belonging to his household can be found there, then by affixing such copy to the principal outer door of the said dwelling or of any place where he actually resides or was last known to reside; or
- (b) if the document is to be served on the master of a ship or on a person belonging to a ship, by leaving a copy thereof for him on board that ship with the person being or appearing to be in command or charge of the ship; and,
- (c) if the document is to be served on the master of a ship, and there is no master, and the ship is within Namibia or the territorial waters thereof, by serving it on the owner of the ship, if he is within Namibia, or on an agent of the owner residing in Namibia, or if no such agent is known or can be found, by affixing a copy thereof to the mast of the ship.

Notice of action against Government to be given

343. (1) No legal proceedings shall be instituted against the State, the Minister, the Permanent Secretary or any officer of the State in his capacity as such for anything done in pursuance of any provisions of this Act until one month after delivery of notice in writing.

Merchant Shipping Act 57 of 1951 (SA)

(2) In the notice shall be clearly and explicitly stated the cause of action, the name and address of the person who is to institute proceedings, and the name and address of his attorney or agent, if any.

Indemnification of the State and certain persons in the employ of the State

343bis. Notwithstanding anything to the contrary in any law contained, the State and its officers and employees acting in the performance of their duty in shall not be liable for -

- (a) any loss or damage caused by the death of, or injury to, any person while conveyed in any vessel owned, operated or chartered by the State through its Department of Transport, or while entering or embarking upon or being in such vessel for the purpose of being conveyed in it, or while being in or alighting from such vessel after having been conveyed in it, if that person was so conveyed or to be so conveyed otherwise than in the performance of his duty as an officer or employee of the State and otherwise than for reward; or
- (b) any loss of or damage to any goods conveyed in such a vessel otherwise than in the interests of the State and otherwise than for reward.

[section 343bis inserted by Act 13 of 1965]

Prescription

344. (1) The period of extinctive prescription in respect of legal proceedings to enforce any claim or lien against a ship or its owners in respect of any damage to or loss of another ship, its cargo or freight, or any goods on board such other ship, or damage for loss of life or personal injury suffered by any person on board such other ship, causes by the fault of the former ship, whether such ship be wholly or partly at fault, shall be two years and shall begin to run on the date when the damage or loss or injury was caused.

[subsection (1) substituted by Act 5 of 2004]

(2) The period of extinctive prescription in respect of legal proceedings under this Act to enforce any contribution in respect of an overpaid proportion of any damages for loss of life or personal injury shall be one year and shall begin to run on the date of payment.

(3) Any court having jurisdiction to try proceedings referred to in sub-section (1) or (2) shall, before or after the expiry of such period, if it is satisfied that owing to the absence of the defendant ship from Namibia and its territorial waters and from the country to which the plaintiff's ship belongs or in which the plaintiff resides or carries on business and its territorial waters, the plaintiff has not during such period had a reasonable opportunity of arresting the defendant ship, extend such period sufficiently to give him such reasonable opportunity

(4) The period of extinctive prescription in respect of legal proceedings against the State, the Minister, the Permanent Secretary or any officer of the State in his capacity as such on a cause of action arising out of the provisions of this Act, other than a cause of action referred to in sub-section (1) or (2), shall be one year, and shall begin to run on the date when the right of action first arose.

Payment of allowances to persons appointed to make preliminary enquiries into shipping casualties, to members of courts of marine enquiry, maritime courts or courts of survey and assessors

Merchant Shipping Act 57 of 1951 (SA)

345. Any person appointed under section 264, any member of a court of marine enquiry, maritime court or court of survey, any expert to whom an appeal has been referred under section 282 or any assessors summoned under section 292(2) shall, if he or she is in the employ of the Government of Namibia, be paid such allowances towards subsistence and transport as may be prescribed (otherwise than under this Act) for Government employees of his or her class, and if he or she is not in the employ of the Government of Namibia, or if no such allowances have been prescribed for Government employees of his or her class, he or she shall be paid such allowances towards subsistence and transport as may be prescribed by the regulations made under this Act.

[section 345 amended by Act 40 of 1963 and substituted by Act 5 of 2004]

Presumption of knowledge

346. Whenever at the trial of any person charged under this Act the question arises whether the accused knew at any particular time that a statement referred to in the indictment, summons or charge was untrue, and it is proved or admitted that that statement was untrue, the accused shall be presumed to have known at the particular time referred to that the statement was untrue, unless the contrary is proved, and unless it is proved also that his ignorance was not due to negligence on his part.

Presumption in case of collision

347. If any damage to person or property arises from the non-observance by any ship of any of the collision regulations, the damage shall be deemed to have been caused by the wilful default of the person in charge of the deck of the ship at the time, unless it is proved that the circumstances of the case made a departure from the regulations necessary.

Mode of making declaration

348. Declarations required by this Act shall be made in Namibia before a proper officer or commissioner of oaths, and outside Namibia before a proper officer or any person who by the law of the place where it is made is authorized to administer an oath, and may be made on behalf of a corporate body by the Permanent Secretary or any other officer of that body authorized by it for the purpose.

Power to dispense with declarations and other evidence

349. When in terms of this Act any person is required to make a declaration, or any documentary or oral evidence is required to be produced to the proper officer, and it is shown to the satisfaction of that officer that for reasonable cause that person is unable to make the declaration, or that the evidence cannot be produced, the said officer may, with the approval of the Permanent Secretary, and on the production of such other evidence, and subject to such terms as he may think fit, dispense with the declaration or evidence.

Admissibility of documents in evidence

350. (1) Any document which is by this Act declared to be admissible in evidence shall on production from the proper custody be admissible in evidence, and shall be *prima facie* evidence of the particulars stated therein in pursuance of this Act or in pursuance of any duty under this Act.

(2) A copy of or extract from any such document shall also be admissible in evidence and be *prima facie* evidence of the particulars stated in such copy or extract, if it purports to be signed and certified as a true copy or extract by the officer to whose custody the original document

Merchant Shipping Act 57 of 1951 (SA)

has been entrusted; and that officer shall, upon payment of the prescribed fee, furnish a copy or extract so certified to any person applying for it.

Evidence as to agreement with crew

351. In any legal or other proceedings a seaman may bring forward evidence to prove the contents of any agreement with the crew, without producing or giving notice to produce the agreement or any copy thereof.

Acts done by courts and functionaries of Namibia in relation to treaty ships other than Namibian ships

352. Whenever any law enacted before or after the coming into operation of this section and in force in any treaty country (other than Namibia) provides that any court or functionary of Namibia may or shall exercise any authority or perform any act in relation to ships registered or entitled to be registered in that treaty country, their owners, masters, seamen, or apprentice-officers, such court or functionary may exercise any such authority or perform any such act, and all things done by such court or functionary under this section shall have the same effect as if that law had been enacted in Namibia.

[section 352 substituted by Act 69 of 1962]

Acts done by courts and functionaries of other treaty countries in relation to Namibian ships

353. (1) Every provision of this Act which purports to require any court or functionary of any treaty country (other than Namibia) or any person other than a Namibian citizen to exercise any authority or perform any act outside Namibia in relation to Namibian ships, their owners, masters, seamen or apprentice-officers shall be construed as being permissive only and to mean that any such court or functionary or person is thereby empowered so to exercise such authority or perform such act.

(2) If any court or functionary of any treaty country (other than Namibia) exercises any authority or performs any act in relation to any ship registered or entitled to be registered in Namibia, her owner, master, seamen or apprentice-officers, which by any statutory enactment in force in that treaty country such court or functionary is empowered to exercise or perform, all things done outside Namibia by such court or functionary in accordance with the said enactment shall have the same effect as if they had been done in accordance with an Act of the Parliament of Namibia, provided the Minister has generally or in the particular case requested that the courts or functionaries of that treaty country shall exercise such authority or perform such act or has in manner prescribed by regulation recognized the exercise of the authority or the performance of the act or adopted any decision made in the exercise of the authority.

[section 353 substituted by Act 69 of 1962]

CHAPTER X**GENERAL****Recognition of certificates of competency or qualification granted in other treaty countries**

354. (1) If provision is made by the laws in force in any treaty country (other than Namibia) for the grant of certificates of competency or qualification similar to those referred to in this Act, and the Minister is satisfied -

Merchant Shipping Act 57 of 1951 (SA)

- (a) that the conditions under which any such certificates are granted in that treaty country require standards of competency not lower than those required for the grant under this Act of corresponding certificates; and
- (b) that certificates of competency or qualification granted under this Act are accepted in that treaty country in lieu of the corresponding certificates granted under the laws of that treaty country,

he may by notice in the *Gazette* declare that any certificate of competency or qualification granted under the laws in force in that treaty country and specified in that notice shall for the purposes of this Act be recognized as equivalent to a certificate of competency or qualification granted under this Act and specified in the notice.

(2) Whenever the provisions of this Act require that a person employed in any capacity on board any ship shall be the holder of a specified certificate of competency or qualification granted under this Act, any person employed in that capacity shall, if he is the holder of a certificate recognized under sub-section (1) as equivalent to the first-mentioned certificate or to a certificate of higher grade granted under this Act, and still in force, be deemed to be duly certificated under this Act.

[section 354 substituted by Act 69 of 1962]

Application of certain industrial laws to seamen

355. (1) Nothing in this Act contained shall affect the application of the provisions of the Industrial Conciliation Act, 1956 (Act No. 28 of 1956), or of the Wage Act, 1957 (Act No. 5 of 1957), or of the Native Labour (Settlement of Disputes) Act, 1953 (Act No. 48 of 1953), to seamen in respect of their employment as such.

[subsection (1) amended by Act 30 of 1959]

(2) To the extent to which any provisions of this Act which, but for the provisions of this section, would apply to any seamen are inconsistent with any agreement or award under the Industrial Conciliation Act, 1956, or any determination under the Wage Act, 1957, or any order under the Native Labour (Settlement of Disputes) Act, 1953, which is binding in respect of those seamen, the provisions of this Act referred to shall not apply in respect of those seamen.

[subsection (2) amended by Act 30 of 1959]

(3) Any agreement or award under the Industrial Conciliation Act, 1956, or any determination under the Wage Act, 1957, or any order under the Native Labour (Settlement of Disputes) Act, 1953, which is binding in respect of any seamen employed on board any ship which is registered in Namibia or on board any ship which is not registered in Namibia and is wholly engaged in plying between ports in Namibia, while the ship is in Namibia, shall be binding in respect of such seamen while the ship is outside Namibia.

[subsection (3) amended by Act 30 of 1959 and by Act 40 of 1963]

(4) No seaman who is an employee, as defined in section *one* of the Industrial Conciliation Act, 1956, who is not a person referred to in sub-section (2) of section *two* of that Act, and who is engaged on or belongs to any Namibian ship, shall be guilty of an offence under paragraph (b), (c), (d) or (f) of sub-section (2) of section *one hundred and seventy-four*, section *one hundred and seventy-five* or section *one hundred and seventy-six* merely by reason of the fact that he has taken part in a strike or in the continuation of a strike, as defined in section *one* of that Act, in such circumstances that the act or omission by which he has taken part therein does not constitute an offence under section *sixty-five* of that Act: Provided that this subsection shall not

Merchant Shipping Act 57 of 1951 (SA)

apply in respect of any act which is committed or any omission which occurs while the ship is at sea.

[subsection (4) amended by Act 30 of 1959]

(5) In this section the expression “seamen” includes all persons employed or engaged in any capacity on board any ship.

[section 355 amended by Act 7 of 1991] – not yet done (substitution)

[The Industrial Conciliation Act 28 of 1956 and the Wage Act 5 of 1957 were not applicable to South West Africa. The analogous law in South West Africa was the Wage and Industrial Conciliation Ordinance 35 of 1952, which was replaced by the Labour Act 6 of 1992, replaced in turn by the Labour Act 11 of 2007. The Native Labour (Settlement of Disputes) Act 48 of 1953 was not applicable to South West Africa and was repealed in South Africa by the Labour Relations Amendment Act 57 of 1981.]

Regulations

356. (1) The Minister may make regulations -

[introductory phrase of subsection (1) amended by Act 30 of 1959]

- (i) prescribing the books, forms and other documents to be used for the convenient and effective carrying out of the provisions of this Act, and the particulars which shall be contained therein;
- (ii) prescribing the powers and duties of officers or other persons employed in the administration of this Act;
- (iii) prescribing the services rendered or work done in pursuance of this Act for which fees shall be paid, the amount of such fees, and when and by whom such fees shall be paid;
- (iv) as to the manner in which a ship registered or a vessel licensed under this Act shall be marked;
- (v) as to the manner in which application for the registry of a ship shall be made, and the declarations to be made and the documents to be produced in support of such application;
- (vi) as to the procedure to be followed in the event of a certificate issued under this Act being mislaid, lost or destroyed;
- (vii) prescribing the rules to be observed in regard to the names of ships registered in Namibia;
- (viii) as to the procedure to be followed in transferring the registry of a ship from one port to another;
- (ix) prescribing the manner in which a ship shall be inspected, surveyed and measured for any purpose under this Act, and the particulars and statements which shall be contained in the report or certificate of a surveyor;
- (x) prescribing the minimum numbers of the several classes of seamen required to be engaged as part of the crew of a ship;

Merchant Shipping Act 57 of 1951 (SA)

- (xi) prescribing what proportion of any of the several classes of seamen comprising the crew of a Namibian ship shall be Namibian citizens;
- (xii) prescribing the qualifications which any person employed on board a ship in a particular capacity is required to hold;
- (xiii) prescribing -
 - (a) the scope and conduct of examinations to be passed by a person desiring the grant under this Act of a certificate of competency or qualification as a ship's officer, an able seaman, a lifeboatman, a ship's cook or a ship's steward, or any other certificate of competency or qualification testifying to his ability to perform work or duties of a particular kind on board a ship, and the standards required for passing;
 - (b) the age and qualifications of the candidates, including the service at sea and other service which they must have performed and the training which they must have undergone;
 - (c) the fees to be paid by candidates for examination; and
 - (d) the qualifications of examiners and the conditions under which they are appointed, including the remuneration to be paid to them;
- (xiv) as to the inspection of certificates which in terms of this Act any person employed on board a ship in any particular capacity is required to hold;
- (xv) prescribing the classes of Namibian ships on which cadets or apprentice-officers may be employed as such, the maximum number of cadets or apprentice-officers which may be employed as such on different classes of Namibian ships, the terms of indentures of apprentice-officers, the minimum wages which such apprentice-officers shall be paid and the manner of payment thereof;
- (xvi) regulating the manner and extent to which a ship shall be manned;
- (xvii) as to the medical examination of persons engaged to serve in ships, including the particulars to be contained in medical certificates;
- (xviii) as to the relief, maintenance and return to a proper return port of shipwrecked seamen and apprentice-officers and seamen and apprentice-officers found otherwise in distress in any place outside Namibia;
- (xix) prescribing the crew accommodation and the accommodation for passengers to be provided on board a Namibian ship;
- (xx) prescribing the class or classes of ships on which qualified and approved medical practitioners shall be employed as such;
- (xxi) as to the licensing and conduct and inspection of houses in which seamen and apprentice-officers are lodged, the charges that may be made in such houses for food and lodging, and the payment of fees for such licences;

Merchant Shipping Act 57 of 1951 (SA)

- (xxii) providing for the care and treatment of sick seamen (including masters and apprentice-officers) in hospitals, and for the recovery of expenses in connection therewith;
- (xxiii) providing for the maintenance by the master in respect of every seaman on his ship of a card on which shall be made a copy of every entry made in respect of the seaman in the official log-book in terms of paragraph (d) of section *one hundred and eighty-three*;
- (xxiv) providing for the vaccination against smallpox and the inoculation against yellow fever and typhoid fever of seamen (including masters and apprentice-officers) at the expense of the owner of the ship on which they serve;
- (xxv) prescribing the precautions to be taken in connection with the design and construction of ships and in respect of other matters to prevent the entrance of rats into ships;
- (xxvi) as to the ventilation to be provided when coal is loaded or carried in a ship as cargo or ballast;
- (xxvii) as to the dissemination of information concerning dangers to navigation;
- (xxviii) prescribing what signals are to be regarded as signals of distress, and the circumstances in and the purposes for which such signals are to be used;
- (xxix) as to the examination and licensing of adjusters of compasses;
- (xxx) prescribing the class or quantity of goods which may be carried in ships, and the manner in which such goods may be so carried;
- (xxxi) as to the carriage of ballast and the precautions to be taken to prevent shifting thereof;
- (xxxii) as to the conditions governing the installation, working and use of any anchors, chains, cables, and loading and discharging gear and any other machinery whatsoever on board or in connection with ships, and the strength and quality thereof, and the precautions to be taken to prevent persons being injured thereby or by falling articles;
- (xxxiii) prescribing with what radio and other navigational aids ships must be provided;
- (xxxiv) as to the inspection of equipment on ships;
- (xxxv) prescribing rules to be followed in respect of -
 - (a) the convening of courts of marine enquiry, maritime courts and courts of survey;
 - (b) the appointment of the members of such courts and of the experts to whom appeals are to be referred under section two hundred and eighty-two; and
 - (c) the noting and prosecution of appeals from courts of marine enquiry or maritime courts to the High Court,

Merchant Shipping Act 57 of 1951 (SA)

and prescribing the procedure to be followed by courts of marine enquiry, maritime courts, courts of survey and experts to whom appeals are referred under section *two hundred and eighty-two*;

[paragraph (xxxv) substituted by Act 30 of 1959]

(xxxv)*bis* empowering courts of marine enquiry or maritime courts to order the payment of compensation by persons who have made frivolous or unjustified complaints, and empowering such courts, courts of surveyor experts to whom appeals have been referred under section *two hundred and eighty-two* to make orders as to costs, including the costs incurred by the State in connection with the convening of such courts, the appointment of the members of such courts or of the experts and in connection with any investigation made by such courts or experts, and the costs incurred by the parties;

[paragraph (xxxv)*bis* inserted by Act 30 of 1959]

(xxxv)*ter* prescribing the scales according to which costs shall be calculated, and providing for the taxation or assessment of costs;

[paragraph (xxxv)*ter* inserted by Act 30 of 1959]

(xxxv)*quat* as to -

- (a) the enforcement of judgments pronounced by the High Court on appeals from courts of marine enquiry or maritime courts; and
- (b) the enforcement of orders for the payment of compensation made by courts of marine enquiry or maritime courts and for the payment of costs made by such courts, courts of surveyor experts to whom appeals have been referred under section *two hundred and eighty-two*;

[paragraph (xxxv)*quat* inserted by Act 30 of 1959]

(xxxvi) prescribing the standards of seaworthiness to be observed in respect of vessels to which the Safety Convention does not apply, and regarding the marking and inspection of such vessels and the life-saving appliances and first-aid apparatus with which such vessels shall be equipped;

[paragraph (xxxvi) substituted by Act 5 of 1976]

- (xxxviA) (a) requiring such life-saving appliances to comply with specifications determined in terms of the Standards Act, 1962 (Act No. 33 of 1962); and
- (b) determining the circumstances under which such life-saving appliances shall for the purposes of this Act be deemed to comply with such specifications; and

**[Paragraph (xxxviA) is inserted by Act 5 of 1976 and amended by Act 7 of 1991.
The Standards Act 33 of 1962 has been replaced by the Standards Act 18 of 2005.]**

(xxxvii) prescribing the period of pre-sea training required of seamen and apprentice-officers;

(xxxviii) requiring ships, vessels or other craft which are not by this Act required to comply with any of its provisions, to comply with such of the said provisions as may be

Merchant Shipping Act 57 of 1951 (SA)

specified, subject to such exemptions, restrictions or modifications as may be prescribed;

[paragraph (xxxviii) amended by Act 24 of 1974]

- (xxxix) prescribing the class or classes of ships on which supplies of antiscorbutics, medicines and appliances for the treatment and prevention of diseases and accidents likely to occur at sea and of first-aid equipment are to be carried;

[paragraph (xxxix) substituted by Act 24 of 1974 and by Act 5 of 1976]

- (xl) prescribing scales according to which supplies of antiscorbutics, medicines and appliances for the treatment and prevention of diseases and accidents likely to occur at sea and of first-aid equipment are to be carried on board a ship of a prescribed class;

[paragraph (xl) inserted by Act 24 of 1974 and substituted by Act 5 of 1976]

- (xli) prescribing the first-aid equipment to be carried on board a ship of a prescribed class

[paragraph (xli) inserted by Act 24 of 1974 and substituted by Act 5 of 1976]

- (xli)*bis* prescribing the conditions contemplated in section 68(3)(b);

[paragraph (xli)*bis* inserted by Act 25 of 1985]

- (xlii) prescribing such other matters as are necessary or useful to be prescribed for carrying out the purposes of this Act.

[paragraph (xlii) inserted by Act 24 of 1974]

(2) The Minister may make such notifications, declarations and regulations as may appear to him to be necessary to give effect, subject to such exemptions, restrictions and modifications as appear to him to be desirable, to the provisions of -

- (a) the Safety Convention;
- (b) the International Collision Regulations Convention;
- (c) the Load Line Convention. and

[The full stop after “Load Line Convention” should be a semicolon.]

- (d) any other convention relating to merchant shipping ratified on behalf of Namibia and set out in any Schedule to this Act.

The regulations made under this sub-section may include other and more extensive provisions than those contained in the said conventions, provided they relate to the same or similar matters as are dealt with in the said conventions.

[subsection (2) amended by Act 30 of 1959 and by Act 3 of 1982]

(3) The Minister may by regulation apply, subject to such exemptions, restrictions and modifications as appear to him to be desirable, any of the regulations made under sub-section (2), to ships to which and in circumstances in which the provisions of the Safety Convention, the

Merchant Shipping Act 57 of 1951 (SA)

International Collision Regulations Convention, the Load Line Convention and any convention referred to in subsection (2)(d) do not apply.

[subsection (3) amended by Act 30 of 1959, Act 40 of 1963 and Act 3 of 1982]

(4)

[subsection (4) deleted by Act 40 of 1963]

(5) Any regulations made under subsections (1) and (2) may prescribe penalties for contravention thereof or failure to comply therewith, but no such penalty shall exceed a fine of R400 or imprisonment for the period of one year or both such fine and such imprisonment: Provided that if by any such regulation a penalty is prescribed for any act or omission for which a different penalty is prescribed by section *three hundred and thirteen* or *three hundred and twenty-three*, the provisions of the said sections shall prevail.

[subsection (5) amended by Act 3 of 1982]

(6) Different regulations may be made under sub-sections (1) and (2) in respect of ships falling within different classes or categories or of different tonnage or in respect of ships built before or after a date stated in the regulations.

(7) Before any regulations are made under section 356(1)(xli)*bis*, such regulations shall be published by the Minister in the *Gazette* together with a notice intimating that it is proposed to issue such regulations as regulations under this section within a stated period, but not less than four weeks as from the date of the said publication, and inviting interested persons to submit any objections to or representations concerning the proposed regulations: Provided that, if the Minister thereafter determines on any alterations in the regulations published as aforesaid, as a result of any objections or representations submitted thereon, it shall not be necessary to publish such alterations, before finally issuing the regulations in terms of subsection (1).

[subsection (7) amended by Act 30 of 1959, deleted by Act 3 of 1982 and inserted by Act 25 of 1985]

Ratification of certain conventions and of certain amendments of conventions

356bis. The President may by proclamation in the *Gazette* -

- (a) add to this Act any Schedule setting out any convention relating to merchant shipping and ratified as contemplated in the Namibian Constitution; and
- (b) (i) amend any Schedule to this Act to give effect to any amendment of any convention setting out in the Schedule concerned; and
- (ii) substitute for any convention appearing in any Schedule to this Act, any convention which has been substituted for such convention.

[section 356bis inserted by Act 40 of 1963, amended by Act 3 of 1982 and substituted by Act 7 of 1991]

Exemption from stamp duty

357. Notwithstanding anything to the contrary in any law in force relating to stamp duty, any affidavit, certificate, receipt or other document required or issued under any provisions of this Act except a bill of lading, shall be exempt from stamp duty.

Merchant Shipping Act 57 of 1951 (SA)

[section 357 amended by Act 40 of 1963 with effect from
1 January 1960, in terms of section 61(2) of Act 40 of 1963]

Short title and commencement

358. This Act shall be called the Merchant Shipping Act, 1951, and shall come into operation on a date to be fixed by the President by proclamation in the *Gazette*: Provided that the President may from time to time by proclamation in the *Gazette* bring into operation only such portions of this Act as he may specify in such proclamation.

[Act 40 of 1963 made a global substitution of “State President” for “Governor-General”, and Act 7 of 1991 then made a global substitution of “President” for “State President”. However, the Act had already been brought into force by a proclamation of the Governor-General prior to these substitutions.]

Merchant Shipping Act 57 of 1951 (SA)
 First Schedule: Laws Repealed or Amended by Section One

First Schedule

**[The First Schedule is amended by Act 30 of 1959, Act 30 of 1966
 (as Act 30 of 1966 is amended by Act 65 of 1981).]**

LAWS REPEALED OR AMENDED BY SECTION ONE

Country, Province or Territory.	No. and Year.	Title or Subject.	Extent of Repeal or Amendment.
United Kingdom.	Chapter 60, 1894.	Merchant Shipping Act, 1894.	The repeal of the whole of the Act mentioned and of all Acts adding to or amending it in so far as they are in force in Namibia.
Cape of Good Hope.	Act No. 13 of 1855.	Local Merchant Seaman's Act, 1855.	The repeal of the whole.
“	Act No. 3 of 1863.	Local Merchant Seaman's Amendment Act, 1863.	The repeal of the whole.
“	Act No. 13 of 1874.	Local Merchant Shipping Act, 1874.	The repeal of the whole.
“	Act No. 18 of 1905.	Merchant Shipping Act, 1905.	The repeal of the whole.
Natal.	Law No. 4 of 1871.	To facilitate the carrying out in the Colony of the provisions of the Foreign Deserters Act, 1852, of the Parliament of the United Kingdom.	The repeal of the whole.
“	Law No. 23 of 1875.	Local Merchant Seamen's Law.	The repeal of the whole.
“	Law No. 10 of 1883.	Shipping Casualties Law, 1883.	The repeal of the whole.
“	Law No. 4 of 1884.	To amend the Shipping Casualties Law, 1883.	The repeal of the whole.
“	Law No. 1 of 1890.	To make provision in respect of the appliances to be carried by certain ships for saving life at sea.	The repeal of the whole.
“	Act No. 5 of 1895.	To amend certain Natal Laws relating to shipping.	The repeal of the whole.

Merchant Shipping Act 57 of 1951 (SA)

“	Act No. 50 of 1903.	To amend the law relating to foreign seamen.	The repeal of the whole.
Union.	Act No. 17 of 1923.	Births, Marriages and Deaths Registration Act, 1923.	The repeal of sections <i>thirty-six</i> and <i>thirty-seven</i> .
“	Act No. 45 of 1925.	Merchant Shipping (Certificates of Competency) Act, 1925.	The repeal of the whole.
“	Act No. 16 of 1929.	Merchant Shipping Act, 1929.	The repeal of the whole.
“	Act No. 42 of 1934.	Merchant Shipping (Certificates of Competency) Amendment Act, 1934.	The repeal of the whole.
“	Act No. 24 of 1936.	Insolvency Act, 1936.	The insertion after sub-paragraph (ii) of paragraph (b) of sub-section (1) of section <i>seventeen</i> of the following new sub-paragraph:- “(ii) <i>bis</i> every officer having charge of a register of ships kept at a port of registry appointed as such in terms of paragraph (a) of section <i>four</i> of the Merchant Shipping Act, 1951, for the registration of ships”; and the insertion after sub-section (3) of section <i>seventeen</i> of the following new sub-section:- “(3) <i>bis</i> . Upon the receipt by any officer referred to in sub-paragraph (ii) <i>bis</i> of paragraph (b) of sub-section (1) of a sequestration order he shall enter a caveat against the transfer of every ship or share in a ship or the cancellation or cessation of every deed of mortgage of a ship or share in a ship registered in the name of or belonging to the insolvent or his or her spouse”.
“	Act No. 17 of 1938.	Finance Act, 1938.	The repeal of sections <i>sixteen</i> and <i>seventeen</i> .
South-West Africa	Administrator’s Proclamation No. 12 of 1929.	Merchant Shipping (Walvis Bay) Proclamation, 1929.	The repeal of the whole.