

SHIPPING

Merchant Shipping Act 57 of 1951, as amended in South Africa prior to Namibian independence.

Summary: This Act controls merchant shipping.

Applicability to SWA: Section 3(1) states “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.” The Act expressly states that it does not affect the competency of the Legislative Assembly of South West Africa to make ordinances dealing with sealing, sea fisheries, and the licensing of sealing and fishing vessels.

RSA Proclamation R.107 of 1977 and RSA Proclamation R.71 of 1984 affect the application of this Act.

Transfer of administration to SWA: The relevant Transfer Proclamation is the Executive Powers (Transport) Transfer Proclamation (AG 14/1978), dated 15 March 1978. However, section 3(1)(c) of the transfer proclamation excluded this Act from the operation of section 3(1) of the General Proclamation, meaning that the administration of the Act was not transferred to SWA.

Amendments: Act 7/1991 amends the Act substantially to make it consistent with an independent Namibia (affecting sections 2, 3, 10, 11, 64, 135, 152, 161, 180, 267, 292, 298, 355, 356, 356*bis* and substituting certain words, and repealing sections 14 and 251).

The Namibian Ports Authority Act 2 of 1994 amends the definition of “port” in section 2.

The Wreck and Salvage Act 5 of 2004 amends sections 134, 135, and 345 and repeals sections 234, 258, 293-306 inclusive, 330, and 331.

Regulations: Record Book Regulations are contained in RSA GN R.2080 of 14 October 1977, as amended by GN 80/1998 (GG 1837).

The ratification of international conventions is addressed in RSA Proc. R.71 of 1982.

Ports of registry for the registration of ships are identified in GN 77/1990 (GG 112) and GN 24/1994 (GG 801).

The measurement of tonnage is addressed in GN 22/1991 (GG 162) and GN 109/1991 (GG 276).

Merchant Shipping (Radio Installations) Regulations are contained in GN 60/2002 (GG 2728), replacing GN 19/1998 (GG 1800), which in turn replaced RSA GN R.140 of 2 February 1968 and RSA GN R.140 of 15 February 1968.

Merchant Shipping Fees Regulations are promulgated in GN 80/1998 (GG 1837). These regulations repeal a number of previous regulations and amend the Record Book Regulations contained in RSA GN R.2080 of 14 October 1977.

Examination Regulations for Certificates of Competence as Marine Motormen and Fishermen are contained in GN 92/1998 and GN 93/1998 (GG 1847), replacing the regulations in RSA GN R.2653 of 29 November 1985. These are repealed by GN 180/2004 (GG 3261).

Manning of Ships Regulations are contained in GN 240/2003 (GG 3097), replacing the regulations in GN 94/1998 (GG 1847), which replaced the regulations in RSA GN R.2652 of 29 November 1985.

Certificates of Qualifications Regulations are contained in GN 41/2004 (GG 3164) replacing the regulations in GN 158/1998 (GG 1902), which replaced the regulations in RSA GN R.2654 of 29 November 1985.

Construction and Equipment Regulations for fishing vessels are contained in GN 61/2002 (GG 2729), which replaces the regulations contained in RSA GN 79 of 19 January 1968 insofar as they apply to fishing vessels.

Cases: *Bourgwells Ltd (Owners of MFV Ofelia) v Shepalov & Others* 1999 NR 410 (HC) (sections 135 and 172).

Marine Traffic Act 2 of 1981, as amended in South Africa prior to Namibian independence.

Summary: This Act regulates marine traffic comprehensively.

Applicability to SWA: RSA Proclamation 93/1985 (issued in terms of the *SWA Constitution Act 39 of 1968*) makes the Act “and all amendments thereof” applicable to SWA from 7 June 1985.

Amendments: The Act was amended by RSA Act 5/1983, which applied to SWA by virtue of RSA Proclamation 93/1985.

Act 15/1991 amended sections 1, 5, 9, and 14 and substituted certain words and expressions and the long title of the Act, to make it consistent with an independent Namibia.

The Namibian Ports Authority Act 2 of 1994 amends the definition of “harbour” in section 1.

Namibian Ports Authority Act 2 of 1994.

Summary: This Act provides for the establishment of the Namibian Ports Authority to undertake the management of ports and lighthouses in Namibia. The Act -- with the exceptions of paragraphs 4, 5, 6, 7, 8 and 9 of Schedule 2 -- came into force on 1 March 1994. The excepted provisions -- all of which deal with amendments to the National Transport Corporation Act 21 of 1987 (which was repealed by the National Transport Services Holding Company Act 28 of 1998 with effect from 1 April 1999) - - came into force on 1 April 1995 (GN 58/1995, GG 1044).

Amendments: The Act is amended by Act 12/2000 (sections 4, 5, 6, 9, 14, 23A, plus provisions relating to a Performance Agreement, and to the transfer of the Walvis Bay Port to the Namibia Ports Authority), which came into force on 8 November 2001

with the exception of sections 1, 2, 3 and 4 of the amending act. These sections of the amending act came into force on 2 May 2002. (See GN 221/2001, GG 2641 and GN 66/2002, GG 2734.)

Regulations: The date determined under section 11(1)(b) for transfer of management and control of the Lüderitz port and the Diaz Point lighthouse to the Namibian Ports Authority is 1 April 1995 (GN 58/1995, GG 1044). See also GN 131/1998 (GG 1885) on this topic.

Tariffs are prescribed in General Notices 92/1995, 42/1996, 109-111/1997, 153-155/1998, 64-66/1999, 177-179/1999, 76-78/2000, 27-28/2001, 214/2001, 32-33/2002, 55-56/2003 and 36-37/2004 (GG 3156).

Regulations are contained in GN 117/2001 (GG 2549), which replaces RSA GN R.562 of 26 March 1982 (as amended).

Cases: *Seaflower Whitefish Corporation v Namibia Ports Authority* 1998 NR 316 (HC) and *Seaflower Whitefish Corporation Ltd v Namibian Ports Authority* 2000 NR 57 (HC) (application of wharfage rates in Harbour Tariff (Lüderitz)).

Wreck and Salvage Act 5 of 2004 .

Summary: This Act provides for the salvage of ships, aircraft and persons in danger at sea, and for the protection of the marine environment. It also amends or repeals certain sections of the *Merchant Shipping Act 57 of 1951*. It came into operation on 1 November 2004 (GN 232/2004, GN 3313).

INTERNATIONAL LAW

Convention on the International Maritime Organization, 1948

accession: 27 October 1994

(source: UN Treaty Database, <http://untreaty.un.org>)

On 27 October 1994, the UN also received instruments of acceptance in respect of Namibia for the following

- * 1964 amendments to articles 17 and 18
- * 1965 amendment to article 28 of the Convention
- * 1974 amendments to articles 10, 16, 17, 18, 20, 28, 31 and 32 of the Convention
- * 1975 amendments to the title and substantive provisions of the Convention
- * 1977 amendments to the Convention relating to the institutionalisation of the Committee on technical co-operation in the Convention
- * 1979 amendments to articles 17, 18, 20 and 51 of the Convention

Namibia subsequently accepted the following:

- * 1991 amendments to the IMO Convention relating to the institutionalisation of the Facilitation Committee in the Convention (not yet in force internationally as of 31 March 2003) (acceptance: 28 November 2000)
- * 1993 amendments to articles 16, 17 and 19 (b) of the Convention on the International Maritime Organization (which entered into force internationally on 7 November 2002) (acceptance: 10 September 2001).

International Convention for the Unification of Certain Rules relating to the arrest of Sea-Going Ships, 1952

accession: 13 June 2001 (source: Parliament)

International Convention on Load Lines, 1966

accession: 13 June 2001 (source: Parliament)

1988 Protocol (adoption of tacit amendment procedure)

accession: reported by IMO but without date

effective internationally: 3 February 2000

(source: International Maritime Organisation, <http://www.imo.org/home.asp>)

International Convention on Tonnage Measurement of Ships, 1969

accession: 27 November 2000; effective date: 27 February 2001

(source: International Maritime Organization, <http://www.imo.org/Conventions/>)

International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, as amended by the 1973 Protocol

accession approved by Parliament: 6 March 2002 (source: Parliament)

accession: 2004 (source: Ministry of Foreign Affairs)

International Convention on Civil Liability for Oil Pollution Damage, 1969, as replaced by the 1992 Protocol, as amended in 2000

(the 2000 amendments will come into force on 1 November 2003 by tacit acceptance)

accession: 9 October 2001

(source: Parliament; International Maritime Organisation, <http://www.imo.org/home.asp>)

International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, as replaced by the 1992 Protocol

accession: 9 October 2001

(source: Parliament; International Maritime Organisation, <http://www.imo.org/home.asp>)

Convention on the International Regulations for Preventing Collisions at Sea, 1972 (as amended)

accession: 27 November 2000

(source: International Maritime Organization, <http://www.imo.org/Conventions/>)

International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto

accession: 9 October 2001

(source: Parliament; International Maritime Organisation, <http://www.imo.org/home.asp>)

Note: Namibia has also acceded to Annexes I/II (Prevention of Pollution by Oil/Control of Pollution by Noxious Liquid Substances), III (Prevention of Pollution by Harmful Substances in Packaged Form), IV (Prevention of Pollution by Sewage from Ships) and V (Prevention of Pollution by Garbage from Ships), but has NOT acceded to the 1997 Protocol adding Annex VI (Prevention of Air Pollution from Ships), which was not yet in force internationally as of 28 February 2003 (source: International Maritime Organisation).

International Convention for the Safety of Life at Sea, 1974 (as amended)

accession: 27 November 2000; effective date: 27 February 2001

(source: International Maritime Organization, <http://www.imo.org/Conventions/>)

Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974, as amended

accession: 27 November 2000; effective date: 27 February 2001

(source: International Maritime Organization, <http://www.imo.org/Conventions/>)

Namibia is NOT a party to the following protocol:

* *Protocol of 1988 relating to the Harmonized System of Surveys and Certification*

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

accession approved by Parliament: 28 February 2002 (source: Parliament)

International Convention on Maritime Search and Rescue, 1979

ratification approved by Parliament: 23 October 2002 (source: Parliament)

ratification: 2004 (source: Ministry of Foreign Affairs)

International Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988

accession approved by Parliament: 22 April 2003

accession: 2004 (source: Ministry of Foreign Affairs)

See also **SEA AND SEASHORE**.

See also *Admiralty Jurisdiction Regulation Act 5 of 1972* and *Colonial Courts of Admiralty Act 1890 (COURTS)*.