

SHIPPING

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

Summary: This Act ([SA GG 4684](#)) 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.

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 ([GG 217](#)) 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 ([GG 810](#)) amends the definition of “port” in section 2.

The Wreck and Salvage Act 5 of 2004 ([GG 3244](#)) amends sections 134, 135, and 345 and repeals sections 234, 258, 293-306, 330 and 331.

Regulations: Pre-independence regulations have not been comprehensively researched.

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

Previous Examination Regulations for Certificates of Competence as Marine Motormen and Fishermen are repealed by GN 180/2004 ([GG 3261](#)).

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

Manning of Ships Regulations are contained in GN 240/2003 ([GG 3097](#)).

Certificates of Qualifications Regulations are contained in GN 41/2004 ([GG 3164](#)), as amended by GN 185/2007 ([GG 3919](#)).

Merchant Shipping Fees Regulations are contained in GN 39/2009 ([GG 4227](#)), which repeal GN 80/1998 ([GG 1837](#)). (Note that GN 80/1998 repealed a number of previous regulations and amended the Record Book Regulations contained in RSA GN R.2080 of 14 October 1977.)

Merchant Shipping (Radio Installations) Regulations are contained in GN 105/2010 ([GG 4486](#)).

Notices: 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](#)).

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

Related international agreements: The Schedules to the Act reproduce the following international conventions applicable to Namibia, but without including all of the amendments and protocols which are applicable –

- ***International Convention for the Safety of Life at Sea (SOLAS), 1974***
Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974
- ***Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREG)***
- ***International Convention on Load Lines (LL), 1966***
Protocol of 1988 relating to the International Convention on Load Lines (LL PROT), 1966
- ***International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978***
- ***International Convention on Tonnage Measurement of Ships (TONNAGE), 1969.***

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

Summary: This Act ([RSA GG 7408](#)) regulates marine traffic comprehensively.

Applicability to SWA: *RSA Proclamation 93 of 1985* ([RSA GG 9774](#)), issued in terms of the *South-West Africa Constitution Act 39 of 1968*, makes the Act “and all amendments thereof” applicable to SWA from 7 June 1985. The only amendment to the Act in South Africa prior to Namibian independence was the *Marine Traffic Amendment Act 5 of 1983* ([RSA GG 8571](#)), which was applicable to SWA by virtue of *RSA Proc. 93 of 1985*.

Amendments: The following pre-independence South African amendment was applicable to SWA –

- *Marine Traffic Amendment Act 5 of 1983* ([RSA GG 8571](#)).

Act 15/1991 ([GG 312](#)) 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 ([GG 810](#)) amends the definition of “harbour” in section 1.

Regulations: Regulations are authorised by section 14 of the Act. Pre-independence regulations have not been researched. No post-independence regulations have been promulgated.

Namibian Ports Authority Act 2 of 1994

Summary: This Act ([GG 810](#)) provides for the establishment of the Namibian Ports Authority to undertake the management of ports and lighthouses in Namibia. The Act – with the exception 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 ([OG 5439](#)) (which was repealed by the National Transport Services Holding Company Act 28 of 1998 ([GG 1961](#)) with effect from 1 April 1999) – was brought into force on 1 April 1995 by GN 58/1995 ([GG 1044](#)).

Amendments: The National Transport Services Holding Company Act 28 of 1998 ([GG 1961](#)), brought into force in relevant part on 1 April 1999 (GN 51/1999, [GG 2075](#)), amends Schedule 2.

The Act is also amended by Act 12/2000 ([GG 2365](#)) (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](#)).

The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and later re-named the Public Enterprises Governance Act 2 of 2006, amends section 4, 6, 7 and 9 and substitutes section 16.

Regulations: Section 30 includes a savings clause, but pre-independence regulations have not been researched.

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

Notices: 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.

The area defined in Schedule 1 of the Act is extended by GN 215/2011 ([GG 4834](#)).

Tariffs: Tariffs prescribed by the Namibian Ports Authority from time to time have not been recorded here.

Appointments: Appointments to the Board of Directors are announced in GN 8/2005 ([GG 3374](#)), GN 78/2012 ([GG 4901](#)) and GN 81/2012 ([GG 4901](#)).

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 ([GG 3244](#)) 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 was brought into force on 1 November

2004 by GN 232/2004 ([GN 3313](#)).

Regulations: Regulations are authorised by section 36 of the Act, but none have yet been promulgated.

INTERNATIONAL LAW

African Maritime Transport Charter, 1993

Compensation for Oil Pollution Damage, 1971, as replaced by the 1992 Protocol

Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA), 1988

Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms

Located on the Continental Shelf (SUA PROT), 1988

Convention on the International Maritime Organization (IMO), 1948

Amendments to the Convention on the International Maritime Organization (institutionalization of the Facilitation Committee), 1991

Amendments to Articles 16, 17 and 19(b) of the Convention on the International Maritime Organization, 1993

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

International Convention for the Control and Management of Ships' Ballast Water and Sediments (BMW), 2004

International Convention for the Prevention of Pollution from Ships (MARPOL), 1973, as modified by the Protocol of 1978

Annex I – Regulations for the Prevention of Pollution by Oil

Annex II – Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk

Annex III – Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form

Annex IV – Regulations for the Prevention of Pollution by Sewage from Ships

Annex V – Prevention of Pollution by Garbage from Ships

Annex VI – Regulations for the Prevention of Air Pollution from Ships

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

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

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

International Convention on Civil Liability for Bunker Oil Pollution Damage (BUNKERS), 2001

International Convention on Load Lines (LL), 1966

Protocol of 1988 relating to the International Convention on Load Lines (LL PROT), 1966

International Convention on Maritime Search and Rescue (SAR), 1979

International Convention on Oil Pollution Preparedness, Response and Co-operation (ORPC), 1990

International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F), 1995

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

International Convention on Tonnage Measurement of Ships (TONNAGE), 1969

International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (INTERVENTION), 1969

Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil (INTERVENTION PROT), 1973

Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CCL PROT 1992)

Protocol of 1992 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (FUND PROT 1992) (1992 Fund Convention)

****Revised African Maritime Transport Charter, 2010** (which will supersede the *African Maritime Transport Charter, 1993* when it comes into force).

See also **ADMIRALTY LAW**.

See also **SEA AND SEASHORE**.