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***THE MERCHANT SHIPPING (SAFETY OF FISHING VESSELS)
REGULATIONS, 2018***

**A Legislation Drafting Project submitted in partial fulfilment of the
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Introduction

The aim of this legislation drafting project is to incorporate the Cape Town Agreement into Maltese Law. This explanatory note provides an insight to the historical events which led to the adoption of the Cape Town Agreement and the objectives which it aims to achieve. It also discusses the reasons why Malta should accede to this agreement and finally the necessary legislative intervention for the incorporation and effective implementation of the Agreement into Maltese Law.

1. THE SAFETY OF FISHING VESSELS

Before delving into an analysis of the regulatory framework of safety of fishing vessels¹, it is important to understand why this subject matter is close to the heart of the international maritime community.

According to ILO, about 58.3 million people are engaged in the area of fisheries and aquaculture, 37 per cent of which are engaged full time, 23 per cent on a part-time basis and the remaining numbers working as occasional fishers or of unspecified status.² Fishing involves a strenuous activity in challenging marine conditions and unfortunately contributes heavily to the mortality rate at sea with approximately 24,000 fishermen losing their lives every year.³ The Occupational Safety and Health Branch of ILO estimates that the annual mortality rate in the fishing sector is around 80 persons per 100,000 with numerous non-fatal accidents, whilst the annual

¹ *International Convention for the Safety of Life At Sea*, (adopted 1st November 1974, entered into force 25th May 1980) 1184 UNTS 3, Chapter 1, Regulation 2.

A fishing vessel is defined as “a vessel used for catching fish, whales, seals, walrus or other fishing resources of the sea.”
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Council Directive 97/70/EC setting up a harmonised safety regime for fishing vessels of 24 metres in length and over (11th December 1997) Art 2(1).

A “fishing vessel” or “vessel” is defined as “any vessel equipped or used commercially for catching fish or other living resources of the sea.”

² *International Labour Standards On Fishers (Ilo.org)* <<http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/fishers/lang--en/index.htm>> accessed 13 December 2017.

³ *Safety For Fishermen (Fao.org)* <<http://www.fao.org/fishery/safety-for-fishermen/en/>> accessed 13 December 2017.

mortality rate of people employed in other general jobs was estimated to be 14.5 persons per 100,000.⁴ It is surprising that in a highly developed country such as the United States of America, the annual mortality rate relating to fishing between 1992 and 2008 was 58, translating to 128 deaths per 100,000 workers.⁵ This is a stark result when compared to average deaths of 5,894 from all U.S workers in general, which translates to 4 deaths per 100,000 workers.⁶

Such statistics highlight the need for improving the international standards for safety of fishing vessels and the following section of the explanatory note will provide an overview of the international community's efforts to establish such international standards.

2. INTERNATIONAL INSTRUMENTS REGULATING SAFETY OF FISHING VESSELS AND OTHER MATTERS

Given the significant amount of deaths, the need for safety regulations specifically applicable to fishing vessels has always been a main priority of the IMO. Unfortunately the two principal conventions dealing with the safety of ships, namely the SOLAS Convention⁷ and the Load Lines Convention⁸ are not applicable to fishing vessels. This is due to the differences in design and construction between fishing vessels and other types of vessels,

For this reason, IMO had to prepare a separate convention relating to the safety of fishing vessels. On 2 April 1977 the Torremolinos International Convention on the Safety of Fishing Vessels was adopted. The Convention was the first of its kind as it recognised the differences in design and operations between fishing vessels and other

⁴ (Fao.org, 2018) <<http://www.fao.org/docrep/003/x9656e/X9656E.htm>> accessed 25 April 2018.

⁵ *Commercial Fishing Deaths --- United States, 2000--2009* (Cdc.gov, 2010) <<https://www.cdc.gov/mmwr/preview/mmwrhtml/mm5927a2.htm>> accessed 13 December 2017.

⁶ Ibid.

⁷ The SOLAS Convention deals, *inter alia*, with the regulations of subdivision and damage stability of ships.

⁸ *International Convention on Load Lines* (adopted 5th April 1966, entered into force 21st July 1968) 9159 UNTS 640

The Load Lines Convention deals, *inter alia*, with the minimum draught and the reserve buoyancy required for ships.

ships and provided specific safety requirements which such types of vessels should adhere to.⁹ The provisions of the Convention were to apply to fishing vessels of 24 meters in length and over.¹⁰

Unfortunately the Convention failed to attract the necessary ratifications for it to come into force and the IMO had to assess the reasons why the Convention failed to generate any particular interest in order to give the provisions of the Convention the best possibility of coming into force. Following a Resolution adopted by the IMO Assembly on 7 November 1991, the Council decided to hold an international conference at Torremolinos, Spain, in order to consider the possibility of adopting a protocol, which would absorb and amend the Convention.¹¹ During this Conference, proposals for amendments put forward by States and relevant international organisations were considered in order to address those matters, which were lacking in the Convention.¹² The Conference adopted the 1993 Torremolinos Protocol which superseded the Convention. In fact, States that wanted to become parties to the Protocol were not required to take any additional action in respect of the Convention.¹³

Nonetheless, the Protocol also failed to provide the desired effect and the IMO had to re-evaluate its position on the subject matter and assess other possible solutions so as to tackle the lack of interest in the Protocol. The IMO noted that States with large fishing fleets under their flag were finding it difficult to implement the provisions of the Protocol which prevented its entry into force.¹⁴ In October 2012, a Diplomatic Conference was held in Cape Town, South Africa, to consider an agreement aimed at amending the provisions of the Protocol so as to assist States in the implementation of its provisions. Following this Conference, the “Cape Town Agreement of 2012 on the

⁹ *The Torremolinos International Convention For The Safety Of Fishing Vessels (Imo.org)* <<http://www.imo.org/en/About/conventions/listofconventions/pages/the-torremolinos-international-convention-for-the-safety-of-fishing-vessels.aspx>> accessed 9 December 2017.

¹⁰ Ibid.

¹¹ *1993 Torremolinos Protocol and Torremolinos International Convention For The Safety Of Fishing Vessels, Consolidated Edition 1995* (International Maritime Organisation 1995) 1.

¹² Ibid, 6.

¹³ *1993 Torremolinos Protocol and Torremolinos International Convention for the Safety of Fishing Vessels* (n11) , 159.

¹⁴ *Cape Town Agreement of 2012 on the Implementation of the Provisions of the Torremolinos Protocol of 1993, relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977* (adopted 29th October 2012), Preamble.

Implementation of the Provisions of the 1993 Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977” was adopted.

The Agreement has been described by Mr Koji Sekimizu, then IMO Secretary General, as “...history to improve safety of fishing vessels....”¹⁵ Whilst promoting the ratification of the Cape Town Agreement, Ms. Sandra Allnutt, Head of Maritime Technology in IMO’s Maritime Safety Division, stated that the main purpose for this Agreement is to reduce loss of life and enhance safety on board fishing vessels.¹⁶ Ms. Allnutt reiterated that, globally, the fishing sector unfortunately does not boast an acceptable safety record due to the lack of a global regulatory regime and thus, “it is of great importance for the safety of fishing vessels that the 2012 Cape Town Agreement enters into force as early as possible.”¹⁷ Currently the Cape Town Agreement has been ratified by seven States, representing only 884 ships from the 3,600 needed for the Agreement to enter into force.¹⁸

Apart from the safety of fishing vessels, the IMO has also focused on the importance of ensuring that proper training is provided for crewmembers working aboard fishing vessels. In this regard, IMO adopted the STCW-F 95 Convention on 7th July 1995 which only came into force on the 12 September 2012 after attaining the necessary ratifications.¹⁹ The STCW-F 95 established the minimum training standards which crewmembers working on fishing vessels above 24 meters in length are to undertake.

Complimenting the aforementioned international instruments, IMO, together with FAO and ILO, has developed various non-mandatory instruments such as the

¹⁵ 'International Conference On The Safety Of Fishing Vessels (Closing Remarks)' (*Imo.org*, 2012) <<http://www.imo.org/en/MediaCentre/SecretaryGeneral/SpeechesByTheSecretaryGeneral/Pages/SFV-closing.aspx>> accessed 14 December 2017.

¹⁶ 'IMO Promotes Fishing Vessel Safety Agreement To Save Lives' (*Imo.org*) <<http://www.imo.org/en/MediaCentre/PressBriefings/Pages/27-Cape-Town-Agreement-.aspx>> accessed 14 December 2017.

¹⁷ Nanette Wootton, 'The Cape Town Agreement On The Safety Of Fishing Vessels At Centre Of Pacific Islands Gathering | Waste Management & Pollution Control' (*Sprep.org*) <<http://www.sprep.org/waste-management-pollution-control/the-cape-town-agreement-on-the-safety-of-fishing-vessels-at-centre-of-pacific-islands-gathering>> accessed 14 December 2017.

¹⁸ 'IMO Promotes Fishing Vessel Safety Agreement To Save Lives' (n16).

¹⁹ *International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel* (adopted 7th July 1995, entered into force 12th September 2012) 1361 UNTS 2. The STCW-F 95 came into force a couple of days after the adoption of the Cape Town Agreement.

FAO/ILO/IMO Document for Guidance on Fishermen's Training and Certification, the revised Code of Safety for Fishermen and Fishing Vessels, 2005, and the Voluntary Guidelines for the Design, Construction and Equipment of Small Fishing Vessels, 2005.²⁰

The revised Fishing Vessel Safety Code and Voluntary Guidelines have been developed for use primarily by various organisations, institutions and bodies, which have a vested interest in fishermen's health and safety and training.²¹

In 2007 IMO also developed safety standards for small fishing vessels. Since there were no or very limited international safety standards applicable to small fishing vessels, these new safety standards supplemented the Code of Safety and the Voluntary Guidelines and addressed the safety concerns specific to fishing vessels below 12 m in length, and undecked fishing vessels of any size.²²

Fishing at sea is considered to be a hazardous occupation with a large number of fatalities occurring every year.²³ As already mentioned approximately 24,000 lives are lost worldwide due to fishing and related activities, yet every attempt to bring into force an internationally binding instrument, apart from the STCW- F95, has failed. This brief historical overview of the instruments and guidelines adopted highlights the importance of implementing a global regulatory framework and is a testament of IMO's dedication towards improving the safety of fishing vessels. The international community has longed for the implementation of a global regime since the adoption of the Convention in 1977 and now the Cape Town Agreement "carries heavy weight of the good hope of all States...for the implementation of the Torremolinos Protocol of 1993..."²⁴

²⁰ 'Fishing Vessels' (*Imo.org*, 2018)

<<http://www.imo.org/en/OurWork/Safety/Regulations/FishingVessels/Pages/Default.aspx>> accessed 5 April 2018.

²¹ Ibid.

²² Ibid.

²³ Safety For Fishermen (*Fao.org*) (n3).

²⁴ 'International Conference on the Safety of Fishing Vessels (Closing Remarks)', (n15).

3. THE 1993 TORREMOLINOS PROTOCOL AS AMENDED BY THE CAPE TOWN AGREEMENT²⁵

3.1 The effects of acceding to the Agreement

As explained in this explanatory note, the purpose of this legislation-drafting project is to accede and effectively implement the Cape Town Agreement into Maltese law. The main purpose of the Cape Town Agreement is to amend the Protocol and facilitate its entry into force. Thus in this preliminary section of the explanatory note the effects of accession to the Cape Town Agreement deserve particular discussion.

Article 1 of the Cape Town Agreement sets out the general obligations of State Parties to the Agreement. It provides, *inter alia*, that those States that become Contracting Parties shall give effect to the provisions of: a) the Agreement and b) the Protocol as amended by the Agreement with the exception of articles 1(1)(a)(2) and (3), article 9 and article 10 of the same Protocol.²⁶ Furthermore sub-article (2) provides that the articles of the Agreement, articles 2 to 8, 11 to 14 and the regulations in the annex to the Protocol and the regulations in the annex to the Convention are to be read as one instrument as modified by the Agreement.²⁷

The principal effect of Article 1 on States is that by acceding to the Cape Town Agreement, a Party is, in effect, bringing into force the provisions of the original Convention as absorbed and amended by the Protocol and as subsequently amended by the provisions of the Agreement. Thus States need only submit an instrument of accession to the Cape Town Agreement and need not take any further action vis-à-vis the Protocol or the Convention.

²⁵ At the outset an important clarification is to be made for the purposes of references and definitions; for the purposes of this section of the explanatory note, any reference to ‘the Cape Town Agreement’ or ‘the Agreement’ shall be deemed to include a reference to the Protocol as amended by the Cape Town Agreement and vice-versa.

²⁶ Cape Town Agreement of 2012, (n14), Art 1 (1).

²⁷ Ibid, Art 1(2).

3.2 An overview of the principal provisions of the Cape Town Agreement

Considering the effects of acceding to the Agreement as discussed above, this section of the explanatory note will provide an overview of the provisions of the Protocol as amended by the Cape Town Agreement.

Broadly speaking the Cape Town Agreement retained the same structure of the Protocol and it is composed of two distinct sections:

- 1) The first section of the Cape Town Agreement provides the general obligations to be assumed by State Parties, such as in case of *force majeure*, port State control, surveys and certification, but also includes other provisions relating to entry into force of and amendments to the Agreement.
- 2) The second section of the Cape Town Agreement consists of an annex composed of ten different chapters, which establish the various technical specifications that fishing vessels should satisfy. In this explanatory note a brief overview of both sections will be provided so as to obtain a better understanding of the matters which the Cape Town Agreement seeks to address.

3.2.1 The general articles of the Cape Town Agreement

i. Definitions:

The general articles provide a very generic definition section, which *inter alia* provides the same definition of a ‘Fishing Vessel’ as found in the SOLAS Convention. This section also defines ‘Administration’ as the Government of the State whose flag the vessel is entitled to fly.²⁸ A more detailed definition section is found in the annex as it provides the various technical specifications to be complied with.

²⁸ The Torremolinos Protocol of 1993 for the safety of fishing vessels, as amended by the Cape Town Agreement of 2012 (Consolidated Version) Article 2.

ii. Scope of Application:

Article 3(1) provides that the Agreement shall apply to fishing vessels which are of 24 meters in length and over including those vessels which process their catch.²⁹ Furthermore Article 3(2) stipulates that the provisions of the Agreement shall not apply to vessels which are used exclusively for: a) sport or recreation, b) processing of fish or other living resources, c) research and training and d) carrying of fish.³⁰

iii. Port State Control

A crucial provision relates to the measures which State Parties may take with regards to vessels present in their ports.

Article 4(1) of the Agreement stipulates that where a vessel which is required to have a certificate enters the port of another State Party, such vessel may be subject to controls by the port authorities of that State Party for the purpose of ensuring that the vessel has the necessary certificates in place.³¹ Should the certificate be valid, it is to be accepted by the port authority unless there is suspicion that the actual condition of the vessel and its equipment do not correspond with the certificate provided or that the vessel does not comply with the requirements imposed by the Protocol.³² In this case or where the certificate has expired, the Port State authority is responsible for taking the necessary steps in order to prevent the ship from sailing before it can proceed to the appropriate repair yard without danger to the vessel or the persons on board.³³

Where this inspection leads to any form of intervention, it is the responsibility of the port authority to notify the consul or the closest diplomatic representation of the State whose flag the vessel is flying of the intervention undertaken. Furthermore, the port authority is to notify the nominated surveyor or the recognised organisation

²⁹ The Torremolinos Protocol of 1993 for the safety of fishing vessels (Consolidated Version) (n28) Art. 3(1).

³⁰ Ibid, Art. 3(2).

³¹ Ibid, Art. 4(1).

³² Ibid, Art. 4(2).

³³ Ibid, Art. 4(3).

responsible for the issuance of the certificate. The port authority must also notify the IMO of the facts relating to the intervention.³⁴

In a case where the port authority is unable to prevent the vessel from sailing without danger to the vessel or the persons on board, or if the vessel has been allowed to proceed to the next port of call, the authority must notify the consul or the closest diplomatic representative of the flag State and the authority of the next port of call with the relevant information.³⁵

It is the responsibility of the State Party to ensure that when any of the above mentioned powers are exercised, such vessel is not unnecessarily detained or delayed. Where there is undue detention or delay the ship-owner of the vessel will be entitled to compensation for any loss or damage suffered.³⁶

An important aspect in this regard relates to vessels which do not fly the flag of a State party. The Agreement provides that State Parties shall equivalently apply the requirements found therein to such vessels so as to ensure that there is no favourable treatment afforded to these vessels.³⁷ This is a crucial provision because it seeks to protect those vessels flying the flag of State Parties and burden those vessels that do not fly the flag of a non-State party.

iv. Force Majeur

Article 5 of the Agreement deals with *force majeure*. It provides that if a vessel is not subject to the provisions of the Agreement or not required to hold a certificate as provided therein at the time of departure on a voyage, it shall not become subject to the provisions of the Agreement due to any deviation from its intended voyage, were such deviation was caused due to stress of weather or any other cause of *force majeure*.³⁸

³⁴ The Torremolinos Protocol of 1993 for the safety of fishing vessels (Consolidated Version) (n28) Art. 4(4).

³⁵ Ibid, Art. 4(5).

³⁶ Ibid, Art. 4(6).

³⁷ Ibid, Art. 4(7).

³⁸ Ibid, Art. 5(1).

Furthermore Article 5 also provides that if there are persons on board due to a *force majeure* event or in consequence of the duty to carry shipwrecked, such persons will not be taken into account when determining if any of the requirements in the Agreement are applicable to such vessel.³⁹

v. Casualties to fishing vessels

Another obligation imposed on a State Party relates to casualties which occur on fishing vessels. It is the responsibility of a State Party to ensure that an investigation is undertaken in case of a casualty occurring to any of its vessels, where it is the view of such State that such an investigation would assist the IMO in determining any amendments to the Protocol. In this case, such State Party is to notify its findings to the IMO for circulation to all State Parties.⁴⁰

The above are the salient provisions provided for in the general articles of the Agreement which seek to provide the general regulatory implications on States vis-à-vis fishing vessels.

3.2.2 The chapters of the annex to the Agreement

The annex to the Agreement is composed of ten chapters, which provide the technical regulations applicable to fishing vessels.

i. Chapter I

Chapter I of the annex provides the general provisions which are applicable to the rest of the chapters. Regulation 1(4) establishes that where it is not possible to immediately implement the provisions of chapters VII to X on existing fishing vessels, State Parties have the option to progressively implement the provisions of chapters VII, VIII and X over a period of five years and the provisions of chapter IX over a period of ten years.⁴¹ State Parties who avail of this possibility must notify the

³⁹ The Torremolinos Protocol of 1993 for the safety of fishing vessels (Consolidated Version) (n28) Art. 5(2).

⁴⁰ Ibid, Art. 7.

⁴¹ Consolidated Text of the Regulations Annexed to the Torremolinos Protocol of 1993, relating to the Torremolinos International Convention for the Safety of Fishing Vessels 1977, as modified by the Cape Town Agreement of 2012, chapter 1, reg. 1(4).

IMO of the provisions to be progressively implemented and the reasons thereof and provide the IMO with a plan of such progressive implementation.⁴²

In terms of the general articles, the Agreement is applicable to fishing vessels of 24 meters and over in length. However the Cape Town Agreement has introduced the use of tonnage for the purposes of calculating the measurement of fishing vessels in place of the actual length.⁴³ The decision to make use of such an alternative method of measurement is at the discretion of the Contracting State and where a State opts to make use of such method, it must notify the IMO with the reasons thereof.⁴⁴ In so far as this method of calculation is used, the Agreement provides that the gross tonnage is to be calculated in accordance with the provisions found in annex 1 of the International Convention on Tonnage Measurement of Ships, 1969.⁴⁵

It is also provided that the provisions of the annex shall apply to ‘new vessels’⁴⁶ which are defined as vessels for which on or after the date of entry into force of the Protocol:

- a) the building or major conversion contract of a ship is concluded; or
- b) the building or major conversion of a ship has been concluded before the date of entry into force of the Protocol and which is completed three years or more after the entry into force of the Protocol; or
- c) in the absence of a building contract:
 - i) the keel is laid;
 - ii) construction of a specific vessel begins;
 - iii) assembly of at least 50 tonnes or 1% of the estimated mass of all structural material whichever is less.⁴⁷

Chapter I also provides for exemptions from the applicability of any requirements found in chapters II to VII of the annex to certain fishing vessels. Regulation 3

⁴² Consolidated Text of the Regulations Annexed to the Torremolinos Protocol of 1993 (n41) regulation 1(5).

⁴³ Ibid, chapter 1, reg. 1(2).

⁴⁴ Ibid, chapter 1, reg. 1(3).

⁴⁵ Ibid, chapter 1, reg. 2.

⁴⁶ Ibid, chapter 1 reg. 1(1).

⁴⁷ Ibid, chapter 1, reg 2.

stipulates that such exemptions apply to those vessels that incorporate novel features and where the application of such requirements would prejudice the research into the development of such features and their incorporation into vessels.⁴⁸ Furthermore, following the amendments by the Cape Town Agreement, additional grounds for exemption are now included. Regulation 3(3) provides that exemptions from the requirements of the annex may also be applied if it is considered that their application would be unreasonable depending on the type of vessel, the weather conditions and lack of navigational hazards. Nonetheless, for such exemptions to apply, the vessel must; a) dispense of adequate safety measures depending on the services which it will be providing and b) the vessel must operate solely in:

- i) a common fishing zone established in adjoining marine areas under the jurisdiction of the States establishing such zone; or
- ii) the exclusive economic zone of the flag State or, in the absence of such zone, in an area beyond and adjacent the territorial sea of the flag State extending not more than 200 nautical miles; or
- iii) the exclusive economic zone or a marine area under the jurisdiction of another State or a common fishing zone, pursuant to an agreement entered into between the flag State and other States.⁴⁹

It is important to note that the Cape Town Agreement has extended the basis upon which a fishing vessel may be exempted from the provisions of the annex thus making it easier for States to implement it as it gives them the necessary flexibility to operate according to the types of fishing vessels registered under the flag and according to the types of operations conducted by such vessels.

Furthermore regulations 6 to 10 (inclusive) set out, *inter alia*, the obligation to inspect and conduct surveys and the time frames within which such surveys are to be carried out. The provisions on inspection and survey have been revamped by the Cape Town Agreement. The first notable change relates to the structure of the provisions. Under the original Protocol, regulation 6 was the only provision relating to the obligation of survey and inspection of fishing vessels. It was a highly convoluted provision, which

⁴⁸ Consolidated Text of the Regulations Annexed to the Torremolinos Protocol of 1993 (n41) chapter 1, reg. 3 (1).

⁴⁹ Ibid, chapter 1, reg. 3(3).

included all matters in relation to inspection and survey together in one provision. Although not necessarily wrong, this created unnecessary confusion, which the Cape Town Agreement sought to rectify. Now one finds five separate regulations under chapter I of the annex which relate to the obligation of inspection and survey.

Regulation 6 provides that the responsibility to carry out survey and inspection is that of the Administration of the flag State. In accordance with said Regulation, this function however may be delegated to nominated surveyors or recognised organisations. Nonetheless, the State must guarantee the completeness and efficiency of the inspection and survey and must ensure that the necessary arrangements are in place in order to satisfy this obligation.⁵⁰ Regulations 7, 8 and 9 provide for surveys to be conducted for life-saving appliances and other equipment, radio installations and structure, machinery and equipment respectively.⁵¹ Furthermore, the regulations provide specific intervals within which such surveys are to be performed for the types of equipment and machinery specified in regulations 7, 8 and 9 respectively.

The shipowner is obliged to maintain the condition of the vessel and its equipment in line with the requirements of the annex so as to ensure that it poses no danger to itself and those on board.⁵² Following any survey in terms of regulations 7,8 or 9, the shipowner is precluded from making any changes to the structure, machinery, equipment and other items covered in the survey without the authorisation of the flag State.⁵³ When an accident occurs on a vessel or a defect affecting its safety, efficiency or life-saving equipment is discovered, the master or shipowner is under the obligation to notify the flag State or the nominated surveyor who is to determine whether a survey under regulations 7, 8 or 9 is required.⁵⁴

These regulations are closely linked to the International Fishing Vessel Safety Certificate, catered for in regulation 11. Fishing vessels which satisfy the applicable safety requirements are issued with an International Fishing Vessel Safety Certificate.

⁵⁰ Consolidated Text of the Regulations Annexed to the Torremolinos Protocol of 1993, (n41) chapter 1, reg. 6.

⁵¹ Ibid, chapter 1, reg. 7,8 and 9.

⁵² Ibid, chapter 1, reg. 10(1).

⁵³ Ibid, chapter 1, reg.10(2).

⁵⁴ Ibid, chapter 1, reg. 10(3).

Conversely for those fishing vessels which have been exempted under regulation 3, except under regulation 3(3), the State is to issue an International Fishing Vessel Exemption Certificate.⁵⁵ In any case it is the State party which is to assume full responsibility of the certificates. The standard form of the above mentioned certificates is annexed to the Protocol.

As with survey and inspection, the Cape Town Agreement also amended the regulations on certification. Even though the main amendments to the regulations relate to their structure, there are also certain substantive changes which are to be taken in to account. Regulation 11 now establishes that a Record of Equipment must accompany the International Fishing Vessel Safety Certificate.⁵⁶ The provisions of the Protocol provided that such a certificate be issued for a period of four years subject to an extension of an additional year and to the necessary periodical and intermediates surveys.⁵⁷ Under the Cape Town Agreement, an International Fishing Vessel Certificate shall be valid for a period not exceeding five years.⁵⁸ Furthermore Regulation 13 also caters for certain instances where the period of validity of the certificate changes depending on when the renewal survey is performed. It provides that:

- a) if a renewal survey is completed within three months from the expiration of the certificate, the new certificate shall be valid from the date of the completion of the survey to a date not exceeding five years from the date of expiry of the existing certificate;
- b) if a renewal survey is completed after the expiry date of the existing certificate, the new certificate shall be valid from the date of completion of the survey to a date not exceeding five years from the date of expiry of the original certificate;
- c) if a renewal survey is completed more than three months before the expiration of the existing certificate, the new certificate shall be valid from the date of

⁵⁵ Consolidated Text of the Regulations Annexed to the Torremolinos Protocol of 1993, (n41) reg. 11(3).

⁵⁶ Ibid, chapter 1, reg. 11(2).

⁵⁷ 1993 Torremolinos Protocol and Torremolinos International Convention for the Safety of Fishing Vessels (n11) 192.

⁵⁸ Consolidated Text of the Regulations Annexed to the Torremolinos Protocol of 1993, (n41), chapter 1, reg. 13(1).

completion of the survey to a date not exceeding five years from the date of the renewal survey.⁵⁹

Regulation 12 provides that a State Party may request the Administration of another State Party to survey a fishing vessel flying the flag of the requesting State. If the surveying State finds that the vessel complies with the specifications of the annex, it shall issue the relevant certificates to the vessel or endorse the certificates already on board the vessel. Where a certificate is issued in terms of this Regulation by the surveying State, the certificate shall contain a statement providing that the certificate has been issued at the request of the Government of the flag State and that such certificate shall have the same force as if the Authority of the flag State issued it.

An important addition under the Cape Town Agreement which complements Regulation 12 is Regulation 16. It provides that certificates, which are issued by the authority of another State, shall be accepted by other States and shall be regarded as having the same force as if it were issued by the other State.⁶⁰ This is an important provision as it facilitates the movement and operation of fishing vessels flying the flag of State Parties and thus a further incentive for States to become parties to the Cape Town Agreement.

ii. Chapters II to X

Chapters II to X address the technical specifications which fishing vessels subject to the Protocol are to meet in order to obtain the International Fishing Vessel Certificate. As stated earlier on, the provisions of the Protocol apply to fishing vessels over 24 meters in length; however not all chapters are applicable across the board. Chapters II, III, VI, VIII and X apply to all new fishing vessels which are of 24 meters in length and over, whilst chapters IV, V, VII and IX apply to new fishing vessels of 45 meters in length and over.

Chapter II deals with construction, watertight integrity and equipment. The regulations in this chapter establish that the strength and construction of hull,

⁵⁹ Consolidated Text of the Regulations Annexed to the Torremolinos Protocol of 1993, (n41) regulation 13(2).

⁶⁰ Ibid, chapter 1, reg. 16.

superstructures, deck houses, machinery casings, companionways and any other structures and the vessels' equipment shall be sufficient to withstand all weather conditions which are to be extended during the ordinary course of operations and shall be to the satisfaction of the flag State.⁶¹

Chapter III provides for stability and associated seaworthiness. It states that fishing vessels are to be designed and constructed in accordance with the operating conditions which are to the satisfaction of the flag State.⁶² These operating conditions shall include:

- a) the departure towards the fishing zone with full fuel, stores, ice and fishing gear;
- b) the departure from the fishing zone with full catch;
- c) the arrival at home port with full catch and 10% stores, and fuel; and
- d) the arrival at home port with 10% stores and fuel and a minimum catch of 20% of the full catch but may be up to 40% of the full catch.⁶³

Furthermore the flag State must be satisfied that the ship meets the minimum stability criteria under the abovementioned operating conditions.⁶⁴

Chapter IV deals with machinery and electrical installations and periodically unattended machinery spaces. Such machinery and electrical installations are to be designed, constructed, tested, installed and serviced to the satisfaction of the flag State.⁶⁵ Chapter V deals with fire protection, fire detection, fire extinction and fire fighting. Even though chapter V applies to new fishing vessels which are of 45 meters in length and over, it also distinguishes between the specific fire safety measures to be taken for vessels which are of 45 meters and over but less than 60 meters and those which are over 60 meters in length.

⁶¹Consolidated Text of the Regulations Annexed to the Torremolinos Protocol of 1993, (n41) chapter 2, reg. 1

⁶²Ibid, chapter 3, reg. 7(1).

⁶³Ibid, chapter 3, reg. 7(1).

⁶⁴Ibid, chapter 3, reg. 7(2).

⁶⁵Ibid, chapter 4, reg. 3(1).

Chapter VI of the annex provides for protection of the crew. It provides protection measures dealing with deck openings, bulwarks, rails and guards and stairways and ladders.

Chapter VII deals with life-saving appliance and arrangements. Even though this chapter is applicable to new fishing vessels of 45 meters in length and over, Regulations 13 and 14 of the same chapter dealing with radio life-saving appliances and radar transponders will also be applicable to existing vessels when the Cape Town Agreement comes into force.⁶⁶

Chapter VIII provides for emergency procedures, musters and drills. This chapter is applicable to new and existing fishing vessels of 24 meters in length and over.⁶⁷ Each crewmember is to be provided with a clear set of instructions in case of emergency⁶⁸ and the flag State must take the necessary measures to ensure that crewmembers are provided with adequate training in their duties in the case of an emergency.⁶⁹

Chapter IX speaks of radio-communications. An amendment brought in by the Agreement now provides that, in the case of existing fishing vessels, the flag State may permit the use of existing radio-communications on board the vessels where it is satisfied that such radio-communication satisfies the requirements imposed in chapter IX.⁷⁰ Furthermore Regulation 3 of chapter IX provides that a flag State may grant fishing vessels flying its flag partial or conditional exemptions from the application of Regulations 6 to 10 and 14(7) if the fishing vessel complies with the requirements in Regulation 4 of chapter IX and the flag State is satisfied that such exemptions do not impact the general efficiency of the vessel for its and other vessels' safety.⁷¹

Finally chapter X deals with shipborne navigational equipment and arrangements. This chapter applies to new and existing fishing vessels. A flag State may exempt a

⁶⁶ Consolidated Text of the Regulations Annexed to the Torremolinos Protocol of 1993, (n41) chapter 7, reg. 1(2).

⁶⁷ Ibid, chapter 8, reg. 1.

⁶⁸ Ibid, chapter 8, reg. 2(2).

⁶⁹ Ibid, chapter 8, reg. 4.

⁷⁰ Ibid, chapter 9, reg. 1(2).

⁷¹ Ibid, chapter 9, reg. 3(1).

fishing vessel from any of the requirements found in the chapter if it considers that the nature of the voyage or the vessel's proximity to land does not warrant such requirements. Such exemption may only be granted:

- a) if the conditions relating to safety are such to render their full application unreasonable or unnecessary;
- b) in exceptional circumstances, for a single voyage outside the sea area for which the vessel is equipped;
- c) when the vessel will be taken permanently out of service within two years from the entry into force of the Agreement.⁷²

4. THE EUROPEAN FRAMEWORK

4.1 Council Directive 97/70/EC setting up a harmonised safety regime for fishing vessels of 24 meters in length and over.

As part of the European Union, Malta is obliged to transpose EU directives into Maltese law. On 11 December 1997, the EU adopted Council Directive 97/70/EC setting up a harmonized safety regime for fishing vessels over 24 meters in length (the “**Directive**”).⁷³ The main purpose of the Directive was to harmonise the different and varying national safety requirements and to do so, the Directive sought to implement the provisions of the 1993 Torremolinos Protocol, as provided in Article 3(1).⁷⁴ Furthermore Article 3(1) stipulates that the provisions of the Protocol are to apply unless Annex I to the Directive provided otherwise.⁷⁵

The Directive modified certain technical requirements found in chapters II to X of the Protocol. Most of the modifications made by the Directive related to which fishing vessels chapters II to X applied. Whereas the 1993 Torremolinos Protocol provides that Chapters IV, V, VII and IX are applicable to fishing vessels of 45 meters in length and over, Article 3(2) of the Directive provides that such chapters are applicable to

⁷² Consolidated Text of the Regulations Annexed to the Torremolinos Protocol of 1993, (n41) reg. 3(2).

⁷³ Council Directive 97/70/EC (n1).

⁷⁴ Ibid, Art. 3(1).

⁷⁵ Ibid.

new fishing vessels of 24 meters in length and over.⁷⁶ Furthermore, Article 3(4) of the Directive provides that the safety requirements included in its annex IV shall also be applicable to fishing vessels of 24 meters in length and over.⁷⁷ Annex IV provides further safety requirements to chapters II, III, IV and V of the Protocol which deal with i) construction, watertight integrity and equipment, ii) stability and associated seaworthiness, iii) machinery and electrical installations and periodically unattended machinery spaces and iv) fire protection, fire detection, fire extinction and fire fighting, respectively.

Article 5 of the Directive establishes that the standards for design, construction and maintenance are to be the rules which are in force at the date of the construction of the vessel and which are specified by a recognized organization or used by the flag State administration.⁷⁸

With regards to fishing vessels flying the flag of a third country, Article 3(5) of the Directive states that Member States are to prohibit any such vessels from operating within their internal waters or territorial sea or landing their catch in their ports unless such vessels are certified by their flag State administration to comply with the requirements of Articles 3(1), (2), (3) and (4) and Article 5 of the Directive.⁷⁹

This position is reflected under Maltese law, in the Merchant Shipping (Fishing Vessel Safety) Rules⁸⁰ whereby Malta transposed the Directive into Maltese law and thus also transposed the provisions of the 1993 Protocol as amended by the Directive. Nonetheless since the adoption of the Directive, it has been recognized that the 1993 Protocol has not yet come into force and that a number of provisions in the Protocol have become obsolete since the adoption of Directive. For this reason the adoption of the Cape Town Agreement required a reaction from the European Union which reaction took the form of Council Decision 2014/195/EU.

⁷⁶ Council Directive 97/70/EC (n1) Art. 3(2).

⁷⁷ Ibid, Art. 3(4).

⁷⁸ Ibid, Art. 5.

⁷⁹ Ibid, Article 3(5).

⁸⁰ S.L. 234.36.

4.2 Council Decision 2014/195/EU

Following the adoption of the Cape Town Agreement, the Council of the European Union resolved to authorise Member States to accede to the Cape Town Agreement of 2012.⁸¹

In its decision, the European Council explained that it is in the interests of maritime safety and fair competition that the Agreement be ratified or acceded to by Member States having fishing vessels flying their flag which fall within the scope of application of the Agreement and which operate in their internal waters or territorial sea, or which land catch in their port, to ensure the entry into force of the provisions of the Torremolinos Protocol.⁸² By means of the Council Decision, Member States are allowed to accede to the Agreement in its entirety thus bringing together the applicable European regime with the standards laid down in the Agreement and setting aside the amendments brought in by the Directive.

However, the Council Decision does provide for two important deviations from the provisions of the Cape Town Agreement. First and foremost, in order to maintain the safety levels provided for in the Council Directive, Member States are required to issue a declaration to the effect that the exemptions provided for in Regulations 1(6) and 3(3) of Chapter 1 of the Annex to the Cape Town Agreement, are not applicable.⁸³ Secondly, such declaration is to provide that third country fishing vessels

⁸¹ Council Decision 2014/195/EU, authorising Member States to sign, ratify or accede to the Cape Town Agreement of 2012 on the Implementation of the Provisions of the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977, Article 1.

⁸² Ibid, Preamble (8).

⁸³ Ibid, Preamble (9).

Regulation 1(6) provides that, “*The Administration may exempt a vessel from annual surveys, as specified in regulations 7(1)(d) and 9(1)(d), if it considers that the application is unreasonable and impracticable in view of the vessel's operating area and the type of vessel.*”

Furthermore Regulation 3(3) provides that “*The Administration may exempt any vessel entitled to fly its flag from any of the requirements of this annex, if it considers that the application is unreasonable and impracticable in view of the type of vessel, the weather conditions and the absence of general navigational hazards, provided:*

- (a) *the vessel complies with safety requirements which, in the opinion of that Administration, are adequate for the service for which it is intended and are such as to ensure the overall safety of the vessel and persons on board;*
- (b) *the vessel is operating solely in:*
 - (i) *a common fishing zone established in adjoining marine areas under the jurisdiction of*

of 24 meters in length and over operating in the territorial or internal waters of Member States, or landing catch at their ports, are subject to the safety standards laid down in the Directive and that the exemptions provided for in Regulation 3(3) of Chapter 1 of the Annex to the Cape Town Agreement will not be accepted in relation to such third country fishing vessels.⁸⁴

5. The 2012 Cape Town Agreement– Reasons for adoption and implementation in Malta.

Throughout its' history, Malta has always proved to be a point of convergence between Europe and North Africa thus allowing it to develop a strong maritime culture which has grown into an international center for the maritime and shipping industries. Malta's success in the shipping industry is largely derived from the flag related services it offers which area has been nurtured for the past 30 years. According to recent statistics, Malta has the largest merchant-flag in Europe and 6th largest in the world.⁸⁵

It is currently estimated that Malta's maritime cluster contributes to the employment of around 20,000 people with a value added benefit to the national GDP of Malta of approximately 11% which is expected to rise above 14% in the coming years. This is evidence of the fact that the maritime and the shipping industries play a crucial role in

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- neighbouring States which have established that zone, in respect of vessels entitled to fly their flags, only to the extent and under the conditions that those States agree, in accordance with international law, to establish in this regard; or*
- (ii) *the exclusive economic zone of the State of the flag it is entitled to fly, or, if that State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured; or*
 - (iii) *the exclusive economic zone or a marine area under the jurisdiction of another State, or a common fishing zone, in accordance with an agreement between the States concerned in accordance with international law, only to the extent and under the conditions that those States agree to establish in this regard; and*
- (c) *the Administration notifies the Secretary-General of the terms and conditions on which the exemption is granted under this paragraph.*

⁸⁴ Council Decision 2014/195/EU (n81), Preamble (9).

⁸⁵ 'Malta Flag becomes the 6th Largest Merchant Ship Register in the World, Consolidates its Position as Largest in Europe' (*Transport Malta News*) <<https://news.transport.gov.mt/malta-flag-becomes-the-6th-largest-merchant-ship-register-in-the-world-consolidates-its-position-as-largest-in-europe/>> accessed 6 April 2018.

Malta's economy.⁸⁶

These results came about because Malta's potential to become a leading maritime jurisdiction was recognised and accordingly, all stakeholders ensured that Malta was always abreast with any relevant developments from those relating to environmental protection and seafarers rights, to maritime safety and security. This approach is evidenced by the numerous international conventions which Malta has ratified and implemented in its local legislation. Furthermore being a member of the European Union, Malta is also obliged to adhere to the various European legislative instruments which are in place.

In order to maintain Malta's steady growth in the various maritime sectors, last year Malta Marittima, a government agency responsible for promoting the continued and enhanced development of the marine and maritime industries, was launched. This agency has divided Malta's maritime industry into clusters and one of the clusters relates to fisheries and aquaculture. One of the specific matters falling within this cluster deals with owners of fishing vessels.

The fishing sector has always played an integral part of the maritime industry and economy by providing income to numerous households throughout history. In this regard, the safety and standards of the Maltese fishing fleets are a priority so as to ensure that this industry does not suffer. The Maltese Government is committed to adopt high standards for all fishing vessels flying the Malta Flag and that proper safety practices are implemented across the board.⁸⁷

Currently Malta has two subsidiary legislations which regulate two important aspects in relation to fishing vessels. These are the Merchant Shipping (Fishing Vessels)(Minimum Safety and Health Requirements) Regulations⁸⁸ and the Merchant Shipping (Fishing Vessel Safety) Rules cited above. The Merchant Shipping (Fishing

⁸⁶ *Shipping - Market Consolidation To Continue?* 4 Getting the deal through (Market Intelligence, 46 2017).

⁸⁷ 'Food' (*Maltamarittima.org.mt*) <<http://www.maltamarittima.org.mt/index.php/what-is-clustering/policy-areas/food>> accessed 18 December 2017.

⁸⁸ S.L. 234.34.

Vessels)(Minimum Safety and Health Requirements) Regulations transpose Council Directive 93/103/EC concerning the Minimum Safety and Health Requirements for Work on board Fishing Vessels and thus have no bearing on the discourse. For this reason such regulations need not be amended or repealed following the accession to the Cape Town Agreement.

The Merchant Shipping (Fishing Vessel Safety) Rules are of importance for the purpose of this legislation drafting project because, as stated, they transpose the Council Directive and consequently the provisions of the Protocol into Maltese law. Nonetheless it is submitted that the current legislation in place lacks the necessary implementation of such provisions⁸⁹ and furthermore, most of the provisions in the 1993 Protocol are now outdated as highlighted in the Council Decision. For this reason and considering the sensitivity of the subject matter, the legislation needs to properly outline the obligations of the State together with the obligations of ship-owners and provide for adequate sanctions where it is found that these obligations are not being met.

In this regard it is recommended that in line with the Council Decision, Malta should accede to the Cape Town Agreement so as to bring into effect the provisions of the Protocol as updated. This would fall in line with the Government's objective of setting high standards for fishing vessels flying the Malta flag. Furthermore Malta's accession to the Cape Town Agreement will support the IMO's constant efforts to improve the safety of fishing vessels. Although Malta may not boast one of the largest fishing fleets in the world and thus it may seem superfluous to accede to and implement this Agreement, it does boast one of the largest ship-registries and thus such accession would show that the safety of fishing vessels is relevant for Malta and would possibly serve as an impetus for other jurisdictions to follow suit. This would once again put Malta on the map, improve its bargaining power against the larger

⁸⁹ The main deficiency found in the current legislation is that most of the provisions of the 1993 Torremolinos Protocol are merely incorporated by reference and not properly implemented. Furthermore the current legislation is not clear in which circumstance a fishing vessel may be exempted from any provisions of the 1993 Protocol. The legislation does not properly highlight the powers of the Maltese Port Authorities and the corresponding obligations towards the shipowner. Additionally the law does not include any *force majeure* provisions which are fundamental in order to determine whether a fishing vessel is subject to the provisions of the Cape Town Agreement.

States and further cement its position as one of the leading maritime jurisdictions in the world.

6. The Procedure for the implementation of the 2012 Cape Town Agreement

In terms of the Merchant Shipping Act, 1973⁹⁰ the Minister responsible for Transport is empowered to make regulations in terms of the Act⁹¹. The provisions of the Cape Town Agreement, and consequently the provisions of the Protocol as amended, will be implemented into Maltese Law by means of a Legal Notice. The Legal Notice is to be approved by the Minister and subsequently published in the Government Gazette. Once the Legal notice is published in the Government Gazette, it will take the form of Subsidiary Legislation under the Merchant Shipping Act and shall be entitled “Merchant Shipping (Safety of Fishing Vessels) Regulations, 2018 (the **“Regulations”**)”.

The purpose of the Legal Notice will be two fold. Its first effect will be to repeal the current rules in place and, secondly it will implement the provisions of the Cape Town Agreement. The moment the Regulations will come into force depends on the approach of the legislator. The Regulations may immediately repeal the Merchant Shipping (Fishing Vessel Safety) Rules and come into force once they are adopted. Alternatively, the legislator may opt to bring into force the Regulations only when the Cape Town Agreement reaches the necessary ratifications to bring it into force. In the latter case the Merchant Shipping (Fishing Vessel Safety) Rules will remain applicable in the interim period.

The Regulations are composed of the following parts:

- a) Part 1 is composed of the scope of the subsidiary legislation and the definition section. This section highlights the purpose of the Regulations to repeal the Merchant Shipping (Fishing Vessel Safety) Rules and to implement the

⁹⁰ Chapter 234 of the Laws of Malta.

⁹¹ *Interalia*, Art. 374 provides that “*Without prejudice to the powers conferred by the foregoing provisions of this Act, the Minister may make regulations, rules or orders, or give instructions, for the carrying into operation of any of the provisions of this Act...*”

provisions of the Cape Town Agreement as underlined by the Council Decision. Furthermore it provides the definitions of the terms used in the Regulations which are without prejudice to the definitions found in the Cape Town Agreement;

- b) Part 2 deals with the applicability of the subsidiary legislation and the grounds for exempting any vessel from the requirements of the subsidiary legislation. The Maltese Administration may only exempt a Maltese fishing vessel from any requirements of the Cape Town Agreement where the vessel embodies features of a novel kind and the imposition of the such requirements would be burdensome on the vessel. Exemptions from radio communications or shipborne navigational equipment may also be granted in the instances provided for in the Cape Town Agreement. Crucially it also provides that fishing vessels flying the flag of third countries do not enjoy any favourable treatment and thus may not benefit from any exemptions granted to it under the laws of the flag state if such exemptions are not recognized by the Maltese Administration;
- c) Part 3 sets out the obligations of the Maltese authorities in conducting survey and inspections and the different types of survey and inspection to be conducted. The Administration has the power to delegate this responsibility to nominated surveyors or recognized organisations; however the ultimate responsibility of any survey or inspection rests with the Administration. These surveys and inspections are to be conducted according to the provisions of the Cape Town Agreement. The Maltese Administration may also request the Administration of another member of the European Union or of another State Party to the Cape Town Agreement, to conduct surveys of Maltese fishing vessels found within the jurisdiction of such State. The certificates issued by such administrations shall be recognized and have the same effects as if the Maltese Administration issued them. This section also deals with certifications and states that the Registrar General or a recognized organization or surveyor nominated by the Registrar shall issue an International Fishing Vessel Certificate to a Maltese fishing vessel which complies with the requirements of the Cape Town Agreement;
- d) Part 4 provides for the powers which may be exercised by the Maltese authorities over fishing vessels present in Maltese Ports such as the power of

port state control to detain fishing vessels that do not comply with the requirements of the regulations or whose certificates are expired.

- e) Part 5 consists of provisions on sanctions and includes closing regulations.

Attached to the Regulations, one finds the technical chapters and the relevant standard form certificates and other documentation.



**DECLARATION BY THE REPUBLIC OF MALTA IN TERMS OF COUNCIL
DECISION 2014/195/EU OF THE 17 FEBRUARY 2014 AUTHORIZING
MEMBER STATES TO SIGN, RATIFY OR ACCEDE TO THE CAPE TOWN
AGREEMENT OF 2012 ON THE IMPLEMENTATION OF THE
PROVISIONS OF THE TORREMOLINOS PROTOCOL OF 1993 RELATING
TO THE TORREMOLINOS INTERNATIONAL CONVENTION FOR THE
SAFETY OF FISHING VESSELS, 1977.**

As part of a regional arrangement authorised under Article 3(5) of the Torremolinos Protocol, **MALTA** is bound by relevant European Union legislation, namely Council Directive 97/70/EC of 11 December 1997 setting up a harmonised safety regime for fishing vessels of 24 metres in length and over (1). Consequently **MALTA** will apply the provisions of the Torremolinos Protocol regarding safety standards to third country fishing vessels of 24 metres in length and over which operate in its internal or territorial waters or which land catch in one of its ports, subject to the terms laid down in the abovementioned Directive.

Under that regional arrangement, the exemptions provided for in Regulation 1(6) of Chapter I of the Annex to the Cape Town Agreement in relation to annual surveys and in Regulation 3(3) of Chapter I of the Annex thereto concerning a common fishing zone or exclusive economic zone shall not apply to the fishing vessels of the Member State, and to third country fishing vessels of 24 meters in length and over while operating in the depositing Member State's common fishing zone, exclusive economic zone, or landing catch at its ports. Exemptions issued under Regulation 3(3) of Chapter I of the Annex to the Cape Town Agreement, concerning a common fishing zone or an exclusive economic zone, to fishing vessels falling within the scope of application of Regulation 1 of Chapter I of the Annex to the Cape Town Agreement, shall not be accepted.

L.N. _____, of 2018

**Merchant Shipping Act
(Cap. 234)**

Merchant Shipping (Safety of Fishing Vessels) Regulations, 2018

IN exercise of the powers conferred by articles 207, 208 and 374 of the Merchant Shipping Act, the Minister for Transport, Infrastructure and Capital Projects has made the following regulations:

Part I
Preliminary

Citation and Commencement

1. (1) The title of these regulations is the Merchant Shipping (Safety of Fishing Vessels) Regulations, 2018.

(2) These regulations shall enter into force on the date appointed by the Minister for Transport, Infrastructure and Capital Projects.

(3) These regulations, upon their entry into force, shall have the effect of repealing Legal Notice 443 of 2003 and implementing the measures found in the Cape Town Agreement of 29th October 2012 in terms of Council Decision 2014/195/EU.

Interpretation

2. (1) In these regulations, unless the context otherwise requires:

“**the Act**” means the Merchant Shipping Act, Chapter 234 of the Laws of Malta;

“**Administration**” means the Authority for Transport in Malta established by article 5 of the Authority for Transport in Malta Act, Chapter 499 of the Laws of Malta, and in relation to other State Parties means the national maritime administration maintained by such States;

“**Annex**” means the annex to the Cape Town Agreement comprising of Chapters I to X as may be amended from time to time;

“**Cape Town Agreement**” or “**Agreement**” means the Cape Town Agreement of 2012 on the Implementation of the Provisions of the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977;

“**certificate**” means the certificate referred to in regulation 8 hereof;

“**Council Decision 2014/195/EU**” means Council Decision

2014/195/EU of 17th February 2014 authorising Member States to sign, ratify or accede to the Cape Town Agreement of 2012 on the Implementation of the Provisions of the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977;

“Council Directive 97/70/EC” means Council Directive 97/70/EC of 11th December 1977, setting up a harmonized safety regime for fishing vessels over 24 meters in length;

“Directive” means Directive [] of [insert date], setting up a harmonized safety regime for fishing vessels over 24 meters in length;

“existing fishing vessel” means a vessel which is not a new fishing vessel;

“fishing waters” shall have the same meaning as provided in Article 3 of the Fisheries and Conservation Management Act, Chapter 425 of the Laws of Malta;

“fishing vessel” means any vessel used commercially for catching fish, whales, seals, walrus or other living resources of the sea;

“length” means, unless provided otherwise, 96% of the total length on a waterline at 85% of the least moulded depth measured from the keel line, or the length from the foreside of the stem to the axis of the rudder stock on that waterline, if that be greater, provided that in vessels designed with rake of keel the waterline on which this length is measured shall be parallel to the designed waterline;

“Maltese fishing vessel” means a fishing vessel registered under the Act’

“new fishing vessel” means a fishing vessel for which on or after the coming into force of these regulations:

- a) the building or major conversion contract is placed; or
- b) the building or major conversion contract has been placed before, and which is delivered three years or more after that date; or
- c) in the absence of a building contract:
 - i) the keel is laid; or
 - ii) construction identifiable with a specific ship begins; or
 - iii) assembly has commenced comprising at least 50 tonnes or 1% of the estimated mass of the structural material, whichever is less;

“operating” means catching or catching and processing fish or other living resources of the sea without prejudice to the right of innocent passage in the territorial sea and the freedom of navigation in the 25 nautical mile exclusive fishing zone

“Organisation” means International Maritime Organisation;

“recognised organization” means an organisation or body authorised in terms of article 367 of the Act or an official surveyor of ships appointed in terms of that article, duly authorised by the Registrar-General

“territorial waters of Malta” shall have the same meaning as provided in Article 3 of the Territorial Waters and Contiguous Zone Act, Chapter 226 of the Laws of Malta.

Part II
Applicability

Scope of Applicability

3. (1) These regulations apply to Maltese fishing vessels of 24 metres in length and over, wherever they may be, and to other fishing vessels of 24 metres in length and over operating in the internal waters, territorial waters or fishing waters of Malta or landing their catch in Malta.

(2) Without prejudice to regulation 3(1), the Administration may, at its discretion, establish the length of Maltese fishing vessels on the basis of the gross tonnage of such fishing vessel as provided in regulation 1(2) of Chapter 1 of the Annex.

(3) These Regulations shall not apply to any fishing vessel which is used exclusively for the purpose of:

- a) sport or recreation,
- b) processing of fish or other living resources,
- c) research and training; and
- d) carrying of fish

Exemptions

4. (1) The Administration may exempt any Maltese fishing vessel which embodies features of a novel kind from any of the requirements found in Chapters II, III, IV, V, VI and VII of the Annex, the application of which might seriously impede research into the development of such features and their incorporation in vessels. The Administration however, shall ensure that any such vessel shall nonetheless comply with other safety requirements which in its opinion, are adequate for the service for which the fishing vessel is intended and are such as to ensure the overall safety of the vessel.

Provided that the exemptions referred to in Regulations 1(6) and 3(3) of Chapter I of the Annex are not applicable to any Maltese fishing vessel as provided in Council Decision 2014/195/EU.

(2) The Administration may grant partial or conditional exemptions to any Maltese fishing vessel from the requirements of regulations 6 to 10 and regulation 14(7) of Chapter IX of the Annex provided that:

- a) such vessel complies with the functional requirements of regulation 4 of Chapter IX of the Annex; and
- b) the Administration has taken into account the effect such exemptions may have upon the general efficiency of the service for the safety of all ships and vessels.

Provided further that an exemption may be granted under sub regulation (2) only:

- i) if the conditions affecting safety are such as to render the full application of regulations 6 to 10 and 14(7) of Chapter IX of the Annex unreasonable or unnecessary; or
- ii) in exceptional circumstances, for a single voyage outside the sea area or sea areas for which the vessel is equipped; or
- iii) when the vessel will be taken permanently out of service within two years of the date of entry into force of the Cape Town Agreement.

(3) The Administration may exempt any Maltese fishing vessel from any of the requirements of Chapter X of the Annex, where it considers that the nature of the voyage or the vessel's proximity to land does not warrant such requirements.

(4) Any exemption granted in terms of sub-regulation (1), (2) or (3) shall be communicated to the Organisation.

(5) No fishing vessel flying the flag of a third country of 24 meters in length and over shall operate in the internal or territorial waters of Malta or land their catch in Maltese ports unless it is certified by the flag State Administration that such fishing vessel also complies with the safety requirements laid down in the Cape Town Agreement and Council Directive 97/70/EC. Furthermore no exemption granted in terms of Regulation 3(3) of Chapter 1 of the Annex shall be accepted in relation to such third country fishing vessels.

Part III

Surveys, Inspections and Certificates

Surveys and Inspections

5. (1) The standards for the design, construction and maintenance of hull, main and auxiliary machinery, electrical and automatic plants of a fishing vessel shall be the rules in force at the date of its construction, specified for classification by a recognized organisation or used by the flag State administration.

(2) The Administration shall ensure that the surveys of life-saving appliances and other equipment, radio installations and structure, machinery and equipment are performed in accordance with regulations 7,8 and 9 respectively of Chapter I of the Annex.

(3) Following the survey of a Maltese fishing vessel in terms of sub-regulation (2), the condition of the vessel and its equipment shall be

maintained to conform with the provisions of these regulations and no alterations to the structural arrangements, machinery, equipment and other items covered by the survey shall be made without the authorisation of the Administration.

(4) The Administration may appoint recognized organisations or surveyors for the purpose of ensuring that Maltese fishing vessels adhere to the regulations herein and for the purpose of granting exemptions therefrom and shall notify the Organisation with the particulars of the authority delegated to such recognized organizations or surveyors.

Certificates

6. (1) The Registrar-General or a recognised organization or surveyor duly authorised by him shall issue to Maltese fishing vessels duly inspected and complying with these Regulations, an International Fishing Vessel Safety Certificate which is to be supplemented by a record of equipment. Where an exemption is granted to a Maltese Fishing Vessel in accordance with these Regulations, an International Fishing Vessel Exemption Certificate shall be issued in addition to the International Fishing Vessel Safety Certificate prescribed above;

Provided that the Administration may also request the administration of another State party to the Cape Town Agreement, to conduct a survey of a Maltese fishing vessel and if such administration is satisfied that the Maltese fishing vessel complies with the provisions of the Cape Town Agreement, it shall issue or authorize the issue of certificates to the Maltese fishing vessel and, where appropriate, endorse or authorize the endorsement of certificates on the vessel in accordance with the present regulations. Any certificate so issued shall contain a statement to the effect that it has been issued at the request of the Administration, and it shall have the same force and receive the same recognition as a certificate issued under sub-regulation (1) above.

(2) The Registrar-General shall, subject to the provisions of these regulations and the Cape Town Agreement, determine the conditions of issue and validity of such certificates.

(3) The International Fishing Vessel Safety Certificate, the International Fishing Vessel Exemption Certificate and record of equipment shall be in the format laid down in the Cape Town Agreement or as near thereto as circumstances permit.

(4) The certificates referred to in sub-regulation (1) shall be issued after an initial survey, carried out by the exclusive surveyors appointed in terms of article 367 of the Act or by the exclusive surveyors of a recognised organization, of a Member State of the European Union or of a State Party to the Cape Town Agreement authorised by the Registrar-General to carry out surveys, in accordance with Regulation 5 above.

(5) The period of validity of the certificates referred to in sub-regulation (1) above shall not exceed those established in regulation 13 of Chapter 1 of the Annex. A renewal of the certificate of compliance shall be issued after periodical surveys, in accordance with Regulation 7,8 and 9 of Chapter I of the Annex have been carried out.

(6) Any certificate issued under regulation 6(1) shall cease to be valid in any of the following circumstances:

- a. if the relevant surveys and inspections are not completed within the periods specified under regulations 7(1), 8(1) and 9(1) of Chapter 1 of the Annex;
- b. if the certificate is not endorsed in accordance with the present regulations; and
- c. upon transfer of the vessel to the flag of another State.

(7) The Administration shall regard any certificates held by fishing vessels flying the flag of a Member State of the European Union or of a State party to the Cape Town Agreement, as having the same force as any certificate issued under sub-regulation (1) above.

Part IV

Powers of the Port Authorities

General Power

7. (1) Maltese fishing vessels wherever they are and, other fishing vessels when in Maltese inland or territorial waters or in Malta ports shall be subject to control by the Registrar-General, in accordance with Article 4 of the Cape Town Agreement and without discrimination with regard to flag or nationality of the operator, in order to verify that they comply with these regulations.

Power to detain

(2) Where:

- i) it is evident that the condition of the vessel or of its equipment does not correspond substantially with the particulars of that certificate or that the vessel and its equipment are not in compliance with the provisions of the relevant regulations; or
- ii) a certificate has expired or ceased to be valid,

the Administration shall have the power to detain the ship until it can proceed to sea or leave the port for the purpose of proceeding to the appropriate repair yard without danger to the vessel or persons on board.

(3) Where the power to detain under sub-regulation (2) is exercised, the Administration shall immediately notify, in writing, the Consul or the nearest diplomatic representative of the flag State and it shall also notify the surveyor or recognised organisation responsible for such fishing vessels' certificates. Furthermore the Administration is to notify the Organisation of such intervention;

Provided that where the Administration is unable to exercise the powers granted under sub-regulation (2) or where the Administration allows such fishing vessel to proceed to its next port of call, the Administration shall notify the Port State Authority of the next port of call and the parties referred to in sub-regulation (3).

Right of recourse for the shipowner

(4) The Administration shall ensure that all possible efforts are taken so as to avoid any fishing vessel being unduly detained when exercising its powers under this regulation.

Provided that the Administration will be liable in damages to the shipowner if it is proven that the Administration failed to comply with its obligation under this sub-regulation.

Part V
Miscellaneous

Power to Investigate

8. (1) In the case of a casualty on board a Maltese fishing vessel, the Administration shall in any case open an investigation where it is established that such investigation may bring to light any amendments required to the Cape Town Agreement.

(2) The Administration shall report its findings from such investigation to the Organisation for consideration.

Force Majeur

9. (1) Any fishing vessel not subject to the provisions of these Regulations or not required to hold a certificate in terms of regulation 8 at the time of its departure on any voyage, shall not become subject to such provisions on account of any deviation from its intended voyage due to stress of weather or any other cause of force majeure.

(2) In ascertaining the applicability or otherwise of the Cape Town Agreement and these Regulations, the Administration shall not take into account any persons who are on board a vessel by reason of *force majeure* or in consequence of the obligation to carry shipwrecked or other persons.

Jurisdiction

10. Any dispute arising out of these regulations shall be subject to the jurisdiction of the Civil Court, First Hall unless the Act provides otherwise.

Offences

11. It shall be the duty of the owner of the company which has assumed the operation of the vessel and the master to ensure that the vessel is in compliance with the provisions and requirements of these rules and such person, if in fault, shall be liable to the penalties provided for in the Act, and if no such penalty is provided, such person shall, for each offence, be liable to a fine (*multa*) not exceeding five hundred units.

